

In the Matter of GOODYEAR TIRE & RUBBER COMPANY and PATTERN
MAKERS LEAGUE OF N. A., AKRON ASSOCIATION

Case No. 8-R-1216.—Decided March 31, 1944

Mr. John A. Hull, Jr., for the Board.

Mr. Arden E. Firestone, of Akron, Ohio, for the Company.

Mr. C. D. Madigan, of Cleveland, Ohio, and *Mr. M. C. Schenley*,
of Akron, Ohio, for the Pattern Makers League.

Mr. Max W. Johnstone, of Akron, Ohio, for the Rubber Workers.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Pattern Makers League of N. A., Akron Association, herein called the Pattern Makers League, alleging that a question affecting commerce had arisen concerning the representation of employees of Goodyear Tire & Rubber Company, Akron, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Walter Wilbur, Trial Examiner. Said hearing was held at Akron, Ohio, on September 2 and 4, 1943. The Company, the Pattern Makers League, and United Rubber Workers of America, Local #2 (CIO), herein called the Rubber Workers, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Rubber Workers made a motion at the hearing to dismiss the petition of the Pattern Makers League, ruling upon which the Trial Examiner reserved for the Board. For reasons hereinafter set forth, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Goodyear Tire & Rubber Company, an Ohio corporation, with its main office and principal place of business located in Akron, Ohio, is

55 N. L. R. B., No. 164.

presently engaged in the production of tires, tubes, tire rims, mechanical rubber goods, and war products for the United States Government. During the year 1942 the Company used, in the course and conduct of its business, raw materials valued in excess of \$125,000,000, over 75 percent of which was received from points located outside the State of Ohio. During the same period the Company manufactured finished products valued in excess of \$250,000,000 of which more than 90 percent was shipped to points located outside the State of Ohio.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Pattern Makers League of N. A., Akron Association, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Rubber Workers of America, Local #2, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about July 10, 1943, the Pattern Makers League requested recognition from the Company as the bargaining representative of all its employees engaged as pattern makers and pattern maker apprentices. The Company refused this request on the ground that it was currently operating under a contract with the Rubber Workers covering all its production and maintenance employees on a plant-wide basis.

In 1937, the Rubber Workers won a consent election held by a Board agent,¹ and was thereby designated as the exclusive collective bargaining representative of all the Company's hourly paid and piece work production and maintenance employees at the Akron plant. For 4 years, however, the bargaining relationship between the Company and the Rubber Workers was informal in character; the first written agreement between them was not executed until October 28, 1941. This agreement was succeeded by a new contract between the parties, dated October 24, 1942, which provided that it "shall remain in full force and effect until July 1, 1943, and continue thereafter for yearly periods unless notice of termination is given by either party to the other party thirty (30) days or more prior to the expiration of such period; provided, however, that termination may be effected by either party upon a thirty (30) days' notice in writing at any

¹ Case No. 8-R-29.

time after July 1, 1943." Neither party had, as of the date of the hearing, availed itself of the proviso, and both consider the contract as continuing in effect. However, since the October 1942 agreement expressly provides for termination by either party at any time subsequent to July 1, 1943, upon appropriate notice, we find that it does not preclude a present determination of representatives.²

A statement of the Board's Field Examiner, introduced into evidence at the hearing, indicates that the Pattern Makers League represents a substantial number of employees in the unit which it seeks.³

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The unit which the Pattern Makers League seeks to represent is composed of all wood and metal pattern makers, both journeymen and apprentices. Its petition is opposed by the Rubber Workers on the ground that the current bargaining unit should not be altered. That union takes the position that the consent election in 1937 fixed a plant-wide production and maintenance unit as the appropriate one and that this is reinforced by the collective bargaining history since that date. A representative of the Company stated that its position was neutral, but if given a choice it would rather bargain with one union than several.

At the time the consent election was held in 1937, it does not appear that the Pattern Makers League was notified of the representation case. The Company did employ a few pattern makers at this period. They were tacitly considered eligible for participation in the 1937 consent election, and the record indicates that some of them did participate. For several years thereafter, however, no written contract was made between the Rubber Workers and the Company, although the Rubber Workers was certified as the collective bargaining representative of the employees as a result of the election.

According to testimony taken at the hearing, pattern makers occasionally presented grievances and requests for higher wages directly to supervisory employees, although the Rubber Workers was the recognized bargaining agent. On October 28, 1941, a contract was

² *Matter of Phelps Dodge Refining Corporation*, 40 N. L. R. B. 1159, *Matter of Allegheny Ludlum Steel Corporation*, 40 N. L. R. B. 1285.

³ The Field Examiner reported that the Pattern Makers League submitted 11 designations, 10 of which bore apparently genuine original signatures and containing the names of persons appearing upon the Company's pay roll of August 16, 1943. He further reported that said pay roll indicated that the Company engaged 15 employees in the unit proposed by the Pattern Makers League.

The Rubber Workers relies upon the current renewal of its contract with the Company dated October 24, 1942, for the establishment of its interest.

executed between the Rubber Workers and the Company. This agreement remained in effect until October 1942, when the parties executed a subsequent agreement terminable July 1, 1943, which contained the clause previously described permitting either party to terminate it upon 30 days' notice at any time after July 1, 1943.

During the term of the very first contract, the pattern makers sought to achieve separate recognition and to negotiate with the Company separately concerning their wages and working conditions. The Company, however, refused to recognize the committee designated by the pattern makers as their bargaining representative or to deal with it except in the presence of an officer of the Rubber Workers Union. Shortly thereafter, a number of pattern makers did join the Rubber Workers Union.⁴

At the time that the contract between the Company and the Rubber Workers was entered into in 1942, the parties were unable to agree upon the wage scale, or upon a demand of the Rubber Workers making membership a condition of employment. The matter was submitted to the War Labor Board in an application by the union, which included therein a request for an increase of 20 cents in the hourly rate for employees in the engineering department of which the pattern shop was a part. On May 21, 1943, the War Labor Board issued a directive granting a wage increase of 3 cents an hour to all employees of the Company and requiring that the Company insert a maintenance of membership clause in the contract. The Rubber Workers protested this decision and filed a motion for reconsideration with the War Labor Board. While this motion was still pending, a further attempt at separate representation was made by the pattern makers, seven of them notifying the Company that they wished to withdraw from membership in the Rubber Workers.⁵ In its answer, the Company informed these employees that the 15-day "escape period" specified in the order of the War Labor Board had expired and it therefore deemed them bound by the maintenance of membership clause. Thereafter, as previously stated, an official of the Pattern Makers League requested the Company to recognize this union as the bargaining representative for the employees in the pattern shop and on July 12 filed the petition in this case.

We have had frequent occasion to pass upon claims of pattern makers to be represented as a craft unit, and it has been our almost universal finding that where a petitioning union limits the proposed bargaining unit to the employees in such a unit it is entitled to an election

⁴ The record indicates that 9 of the 16 pattern makers employed by the Company are listed by the Rubber Workers as members in good standing.

⁵ There is a conflict in testimony as to whether the Rubber Workers received a separate notice of withdrawal from these employees.

on the question of whether they wish to be represented separately or be included in a larger plant or departmental unit.⁶ These findings have been based upon the fact that pattern making is a skilled craft and that the acquisition of the skill requires a long apprenticeship. The record establishes the definite craft character of the pattern makers involved herein and their functional differentiation from all other groups in the Akron plant. It also establishes the fact that the function these pattern makers perform is not confined to that factory, although they are physically located there. These pattern makers not only make patterns for the Akron plant, but also for all Goodyear plants in other parts of the country. Their work is therefore peculiarly severable from the Akron operations.

Because of the highly skilled and identifiable character of pattern work, we have also tended to preserve its craft identity even though contracts or prior Board decisions have established plant-wide bargaining units. For many years a majority of the Board, when it was satisfied of the homogeneity and severability of a craft, always permitted separate elections even under these circumstances.⁷ A different rule was adopted in 1939 when a majority of the Board decided that if the history of bargaining showed that collective representation had been conducted on a plant basis it would decline to hold elections in smaller groups embraced within the plant unit.⁸ Although this is still the general rule of decision, an exception has been made in the case of pattern makers and two or three other cohesive crafts under appropriate circumstances.

An exception of this general rule was first made in the *Bendix* case.⁹ This plant had originally been the subject of Board determination holding that a plant unit was the appropriate one for collective bargaining purposes, and a union organized on an industrial basis was certified as the bargaining agency.¹⁰ No notice of this proceeding having been served upon the pattern makers, the Pattern Makers League petitioned for a separate election. This was denied by a majority of the Board on the authority of the *American Can* case.¹¹ A similar petition was filed 2 years later by the Pattern Makers League. This time the Board unanimously voted to overrule the earlier decision, although one of the members who participated had been on the majority side in the prior case.

The principal opinion in the last *Bendix* case dwelt at some length upon the peculiar facts presented, including the fact that the pattern

⁶ *Matter of The Walworth Company*, 8 N. L. R. B. 765.

⁷ *Matter of Globe Machine & Stamping Co.*, 3 N. L. R. B. 294.

⁸ *Matter of American Can Co.*, 13 N. L. R. B. 1252; *Matter of Roberts & Manders Stove Co.*, 16 N. L. R. B. 943.

⁹ *Matter of Bendix Products Division, etc.*, 39 N. L. R. B. 81.

¹⁰ *Matter of Bendix Products Corp.*, 3 N. L. R. B. 682.

¹¹ *Matter of Bendix Products Corp.*, 15 N. L. R. B. 965.

makers had refused to become identified with the certified representative, and despite strikes and threats of strike they had consistently sought, and to some degree achieved, separate recognition. These facts, however, were not stated as being decisive of the matter, and the concurring opinion suggests that the decision could have been grounded on the fact that the pattern makers were never afforded an opportunity either to vote or afforded a hearing on the merits of the appropriate severability of their craft from the rest of the plant. Within a few months, this decision was followed with respect to separate pattern makers' units in the *Bethlehem Steel Company (Boston Yards)*,¹² in the *Goodyear Aircraft*,¹³ and in the *Tennessee Coal & Iron Company* cases.¹⁴

In none of these cases had there been any record of the proposed craft unit securing any collective bargaining relationship of its own. It could be reasonably inferred from those decisions that the last *Bendix* case had established a well recognized limitation upon the *American Can* doctrine and that the decision was not limited to its peculiar facts. This was also reflected by the *Aluminum Co.* case¹⁵ and by the *Tampa Brewery* case,¹⁶ in which separate units of bricklayers and engineers were recognized, respectively, despite a history of plant-wide bargaining.

It seems to us that the instant case falls within the broad principle of the *Bendix* decision. There is here no question about the functional differentiation of the pattern shop or of its craft character, nor has there been any real collaboration between the pattern makers and the plant-wide representative, a factor which we have regarded as distinguishing some pattern makers cases from the *Bendix* decision. Here, and during the very first year of the contract term, the pattern makers through a shop committee sought separate representation, and it was only after being told that their grievances would not be handled in that way that any of them decided to join the Rubber Workers.¹⁷ It has also been strongly urged that the failure of these pattern makers to withdraw their membership from the Rubber Workers after a maintenance of membership provision had been adopted, pursuant to the War Labor Board's order, indicates a degree of collaboration fatal to the petitioner's case.¹⁸ This factor does not

¹² *Matter of Bethlehem Steel Company (Boston Yards)*, 39 N. L. R. B. 1230.

¹³ *Matter of The Goodyear Aircraft Corp.*, 45 N. L. R. B. 369.

¹⁴ *Matter of Tennessee Coal, Iron and R. R. Co.*, 45 N. L. R. B. 423

¹⁵ *Matter of Aluminum Co. of America*, 42 N. L. R. B. 772.

¹⁶ *Matter of Tampa Florida Brewery, Inc.*, 42 N. L. R. B. 642.

¹⁷ Membership of some of the pattern makers in the certified union is apparently not decisive. In the *Goodyear Aircraft* case (supra), several voted for a U. A. W. shop steward (*semble*).

¹⁸ Collaboration or acquiescence by the pattern makers has been deemed to distinguish the line of authority cited. In *Matter of General Electric Company (Lynn River Works and Everett Plant)*, 50 N. L. R. B. 401, we refused to let the Pattern Makers League obtain an election in the pattern shop because, *inter alia*, one of its members had taken the lead in the formation of the plant union and was still holding office in it.

appear to us to be a compelling one in view of two factors developed in the record. Without passing upon the protests of the parties to the validity of this order, it should be noted that the contract which was involved in that case was not for a fixed term, but could be ended by either party on 30 days' notice. Moreover, according to a witness offered by the Rubber Workers Union itself, the motion for reconsideration was made upon the initiative of the Rubber Workers as soon as the War Labor Board's decision was announced. This reconsideration also involved the Company's objections to the maintenance of membership phase of the order. The testimony indicates that the May order was not reaffirmed until late June or early July. It therefore appears that the employees might reasonably have believed that the operation of the order relating to the 15-day escape period might have been stayed until that agency had disposed of the pending motion. Therefore, the failure to drop out of the industrial union immediately cannot be viewed as an election.

Accordingly, we are of the opinion that there is no genuine difference between this case and the factual situations involved in the *Goodyear Aircraft* case,¹⁹ and the *Bethlehem Steel* case.²⁰ Here, in the agreement resulting in the consent election of 1937, which initiated the present bargaining relationship between the Company and the Rubber Workers, no consideration was accorded to the merits of a separate unit for the pattern makers craft. Furthermore, the pattern makers had attempted to preserve their identity as a craft, as evidenced by their attempts in 1942 and 1943 to obtain separate recognition from the Company.²¹ There is, therefore, only a very short history of bargaining on a plant-wide basis, in the face of efforts toward collective action by the pattern makers and the well recognized fact that bargaining for pattern makers is generally conducted on a strictly craft basis. For these reasons we have held that pattern makers may decide whether they wish to bargain separately or as a part of a plant-wide unit.

Accordingly, before making a final determination with respect to the unit proposed by the Pattern Makers League, we shall first ascertain the desires of the employees themselves. We shall direct an election by secret ballot to be conducted among all pattern makers and pattern maker apprentices, excluding supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and all other employees who were employed during the pay-

¹⁹ *Matter of the Goodyear Aircraft Corp.*, *supra*, footnote 13.

²⁰ *Matter of Bethlehem Steel Company (Boston Yards)*, *supra*, footnote 12; See also *Matter of Fort Pitt Malleable Iron Company*, 48 N. L. R. B. 818.

²¹ See *Matter of Bendix Products Division of Bendix Aviation Corporation*, *supra*, footnote 9.

roll period immediately preceding the date of the Direction herein, subject to the limitations and additions set forth in the Direction, to determine whether they desire to be represented by the Pattern Makers League or by the Rubber Workers. Upon the results of the election will depend, in part, our determination of the appropriate unit. If the employees in this voting group select the Pattern Makers League as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, these employees choose the Rubber Workers, they will have thereby indicated their desire to be part of the production and maintenance unit.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Goodyear Tire & Rubber Company, Akron, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among all pattern makers and pattern maker apprentices of the Company at its Akron, Ohio, plant, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and all other employees of the Company, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Pattern Makers League of N. A., Akron Association, affiliated with the American Federation of Labor, or by United Rubber Workers of America, Local #2, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.