

In the Matter of GENERAL ELECTRIC COMPANY (LYNN RIVER WORKS AND EVERETT PLANT) and PATTERN MAKERS LEAGUE OF NORTH AMERICA, LYNN ASSOCIATION (A. F. OF L.)

Case No. 1-R-1756.—Decided September 5, 1944

Mr. J. Edwin Doyle, of Lynn, Mass., for the Company.

Mr. George Q. Lynch, of Washington, D. C., and *Mr. Ernest Umpleby*, of Schenectady, N. Y., for the Association.

Mr. David Scribner, of New York City, and *Mr. Alfred Coulthard*, of Lynn, Mass., for the U. E.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Pattern Makers League of North America, Lynn Association (A. F. of L.), herein called the Association, alleging that a question affecting commerce had arisen concerning the representation of employees of General Electric Company, Lynn and Everett, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel G. Zack, Trial Examiner. Said hearing was held at Boston, Massachusetts, on June 2, 1944. The Company, the Association, and United Electrical, Radio and Machine Workers of America (CIO) and its Local 201, herein jointly called the U. E., 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 rulings of the Trial Examiner made at the hearing, are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board. On July 11, 1944, pursuant to notice served on all the parties, a hearing for the purpose of oral argument was held before the Board at Washington, D. C. The Association and the U. E. appeared and participated.

Upon the entire record in the case,¹ the Board makes the following:

¹ Pursuant to an agreement of the parties, the record and decision in Case No. R-5221, *Matter of General Electric Company (Lynn River Works and Everett Plant)*, 50 N. L. R. B. 401, is hereby incorporated as part of the record in the instant proceeding

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

General Electric Company, a New York corporation, has its principal office in Schenectady, New York. The Company operates several plants throughout the United States, where it is engaged in the manufacture of electrical equipment. Only its two plants in Lynn and Everett, Massachusetts, are involved in the present proceeding. During the year 1943, the Company used at its Lynn and Everett plants raw materials, consisting chiefly of steel and copper, having a value in excess of \$35,000,000, of which more than 50 percent represents the value of raw materials shipped to these plants from points outside the Commonwealth of Massachusetts. During the same period, the Company manufactured finished products at the Lynn and Everett plants having a value in excess of \$75,000,000, of which more than 50 percent was shipped to points outside the Commonwealth of Massachusetts.

The Company admits that in the operation of its Lynn and Everett plants it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Pattern Makers League of North America, Lynn Association, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Electrical, Radio and Machine Workers of America and its Local 201, are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Association has sought recognition from the Company as the exclusive collective bargaining representative of the pattern makers employed at the Lynn and Everett plants. The Company has refused to recognize the Association unless and until the latter is certified by the Board.

A statement by an agent of the Board, introduced into evidence at the hearing, indicates that the Association represents a substantial number of employees in the unit it alleges to be appropriate.²

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.

²The Board's agent reported that the Association submitted 80 membership cards, and that there were 85 employees in the unit alleged to be appropriate.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Association is petitioning for a unit of all wood and metal pattern makers and their apprentices employed by the Company at its Lynn and Everett plants. The Company and the U. E. contend that such a unit is inappropriate in view of the existing multiple-plant production and maintenance unit which includes pattern makers. The precise issue between the parties is whether a craft unit may be severed from an established production and maintenance unit for the purposes of collective bargaining. This issue is not a novel one, having been raised before the Board in numerous cases involving many crafts. Because of the conflicting policy considerations sometimes present, the issue has not always been a simple one. On the one hand, a complete and absolute freedom to change an established bargaining unit would lead to instability and a consequent lack of responsibility in collective bargaining relations, since it is apparently inevitable that there will be groups of employees who are not wholly satisfied with the existing unit. The result might well be the elimination of the plant unit as an effective means of bargaining between employers and their employees. On the other hand, the freezing of an established plant unit in every case as the only basis for collective bargaining could lead to inequitable results in many instances to the detriment of deserving craft organizations. In an endeavor to strike a balance between these diametrically opposed policy considerations, the Board has set up certain prerequisites which must be met if a craft group is to be severed from an established production and maintenance unit. The group must demonstrate that it is a true craft, that it has not been a mere dissident faction but has maintained its identity as a craft group throughout the period of bargaining upon a more comprehensive unit basis, and that it has protested inclusion in the more comprehensive unit.³ As an alternative, a craft group may show that the production and maintenance unit was established without its knowledge,⁴ or that there has been no previous consideration of the merits of a separate unit.⁵ Where the prerequisites have been satisfied, the Board, prior to making its final determination of the appropriate unit, has directed elections to discover the desires of the employees in the proposed craft unit. Before ascertaining the extent to which the pattern makers employed by the Company at its

³ See *Matter of Goodyear Tire & Rubber Company*, 55 N. L. R. B. 918; *Matter of Bendix Products Division of Bendix Aviation Corporation*, 39 N. L. R. B. 81; *Matter of General Electric Company*, 29 N. L. R. B. 162; *Matter of The Maryland Dry Dock Company*, 23 N. L. R. B. 917; and *Matter of Chicago Malleable Castings Company*, 16 N. L. R. B. 15.

⁴ See *Matter of Sullivan Machinery Company*, 31 N. L. R. B. 749.

⁵ See *Matter of Bethlehem Steel Company (Shipbuilding Division)*, 40 N. L. R. B. 923; and *Matter of Bethlehem Steel Company (Boston Yards)*, 39 N. L. R. B. 1230.

Lynn and Everett plants have satisfied the prerequisites, the Company's history of collective bargaining relations at these plants must be considered.

The Association bargained collectively with the Company at the Lynn and Everett plants prior to, and during, the first World War, as did other crafts. In 1918, however, an Employees' Representation Plan was formed upon a plant unit basis. There is no dispute that since that time the Company has not formally recognized a single union upon a craft unit basis. Nonetheless, it appears that during the existence of the Plan, the Association continued to negotiate informally, at least, with the Company. Such negotiations were generally with the foreman of the pattern shop, and, if satisfaction was not obtained, were successfully continued, on occasion, between the president of Pattern Makers League of North America, the parent body of the Association, herein called the P. M. L., and either the president or the chairman of the board of directors of the Company.⁶ During the period from 1929 to 1934, the last year² of the Plan, a pattern maker, who was later to become financial secretary of the Association, acted as the representative of the pattern shop under the plan.⁷ Viewed in retrospect, it appears that the line of demarcation between self-representation of the Company's pattern makers through the Association and their representation under the Plan was not hard and fast. Thus, it is conceivable that, during the operation of the Plan, the pattern makers may have regarded themselves as bargaining through the Association, whereas the Company may have considered that they were active participants in the Plan.

In 1933 and 1934, the employees of the Company sought to organize apart from the Plan upon a plant unit basis. Among the employees were two members of the Association who aided in the formation of the Electrical Industry Employees Union. On March 29, 1934, a consent election was conducted under the auspices of the National Labor Board. In this election, the Plan was defeated by the Electrical Industry Employees Union.⁸ A witness for the Association testified that the pattern makers, generally, had no interest in the election and that they were of the opinion that the election would not interfere with their mode of bargaining with the Company. This belief on the part of the pattern makers accounts for their lack of desire to have the name of the Association placed on the ballot. Such a position is understandable since in 1934 ideas as to appropriate units for collective bargaining purposes were at most only in the formative stages, having

⁶ There is testimony that one such meeting took place at the home of the Company's president.

⁷ The pattern maker in question testified that he was elected in only one year under the Plan's procedure, and that every other year he was chosen as a delegate by members of the Association. Other evidence indicates that he was elected in 1931.

⁸ The American Federation of Labor was also represented on the ballot.

not then crystallized into the clear-cut patterns to which we are accustomed today, and many modern doctrines based upon subsequent experience had not even been formulated.

In March 1936, the Electrical Industry Employees Union was merged with the U. E. The latter executed its first bargaining contract with the Company in that year, and each year thereafter has entered into successive contracts or renewed preceding ones. In all instances, the pattern makers have been covered by the contracts. Moreover, the pattern makers have utilized the U. E. grievance procedure in carrying grievances beyond the superintendent of the pattern shop to higher management. They have, however, presented grievances to the foreman and the superintendent of the pattern shop independently of the U. E., with good results.⁹

On June 11, 1943, the Board dismissed a petition of the Association seeking, for the first time, the unit which is alleged to be appropriate in the present proceeding.¹⁰ Following this decision, the pattern makers refused to utilize the U. E. grievance machinery, even though it meant that their grievances went unprosecuted.

An examination of the record in the prior proceeding, viewed in the light of the additional evidence adduced in the present proceeding, discloses several factors which favor an ultimate finding by the Board that the pattern makers employed by the Company at its Lynn and Everett plants are entitled to bargain separately from its other production and maintenance employees. Of first importance is the peculiar nature of the work in which pattern makers are engaged. Thus it is not disputed that pattern making is a highly skilled craft whose journeymen are required to serve as much as 5 years' apprenticeship; that other craftsmen cannot successfully duplicate the essential operations of the craft of pattern making and, hence are not readily interchangeable with pattern makers; and that pattern makers are qualified to work at their trade in a variety of industries, with the result that the labor market for them is not confined to the plant or to the industry in which they are engaged at the moment. The work of pattern makers is somewhat peculiar in another respect. It precedes the actual production of any article requiring the use of patterns and thus, although an integral part of an integrated operation, is nonetheless, because of the time lag between the completion of the pattern and its use in the manufacturing process, less directly connected with the production line than is the work of other craftsmen. This perhaps accounts for the segregation of pattern makers from other employees. In any event, such segregation is prevalent.

⁹ The results included wage increases for a number of pattern makers and the application of special overtime provisions to pattern makers

¹⁰ *Matter of General Electric Company (Lynn River Works and Everett Plant)*, 50 N. L. R. B. 401.

Another factor with which the Board has been impressed in cases where pattern makers have sought separate units, is the unusual character of the P. M. L., an organization which claims as members more than 90 percent of the pattern makers throughout the country. Unlike most other craft organizations, the P. M. L. has rigidly adhered to its traditional craft lines. It does not admit to membership, nor seek to represent, employees who have not met the strict qualifications of the craft.¹¹ Because of its wide membership among pattern makers throughout the country and in the absence of any competing craft organization, the Association holds a commanding position in the labor market for pattern makers. It is likewise able to provide trade reports which indicate the available positions for pattern makers both locally and nationally.

A further factor which favors a separate unit of the pattern makers employed by the Company in its Lynn and Everett plants is to be found in the history of their membership in the Association. The record indicates that the Association was chartered in 1904, and that a substantial majority of its membership has consisted of the Company's pattern makers. During the last 25 years, the Association has continuously had as members at least a majority of the Company's pattern makers, and, except for the economic depression in the early 1930's, has had as members in each of these years an overwhelming majority of such employees. In the past 1 or 2 years, membership in the Association among these employees has been almost 100 percent complete. It is evident, therefore, that membership in the Association of a majority of the Company's pattern makers existed both before and after the advent of the U. E. and its predecessor in the Lynn and Everett plants, and that such membership has continued even though the U. E. was recognized by the Company as the exclusive collective bargaining representative of all its production and maintenance employees.

Moreover, it is undisputed that the U. E., except in 1935, or 1936, has not had membership among more than 12 of the Company's pattern makers.¹² At present, the U. E. does not claim more than 6 pattern makers as members, and the Association does not even concede this number. Thus, the petition in this proceeding does not reflect the desires of members newly acquired in a belated, intensive organizing campaign, but represents an expression of the will of employees who have consistently adhered to a craft union over a period of many years.

The two records also indicate that all but a few of the pattern makers who have been employed by the Company since 1934 have been furnished directly or indirectly through the Association or have been

¹¹ See *Matter of Bethlehem Steel Company (Shipbuilding Division)*, 40 N. L. R. B. 923.

¹² A witness for the U. E. testified that the U. E. had "maybe 20 or 30 members" in 1935 or 1936. In 1934, the Company employed approximately 38 pattern makers and apprentices at its Lynn and Everett plants; in 1936, 60; in 1940, 61; and in 1944, 68.

trained by the Company under an apprenticeship system which is in conformity with the standards followed by the Association.

While there are these many factors to support a finding that a separate unit of the pattern makers employed by the Company at its Lynn and Everett plants is appropriate, the Board, as noted above, on June 11, 1943, dismissed a petition of the Association seeking the same unit which is alleged to be appropriate in the instant proceeding. In arriving at its decision, the Board relied upon the following findings of fact: that members of the Association had aided and participated in the formation of the independent industrial union which immediately preceded the U. E.; that, at an election conducted in 1934, of which the Association was aware, and in which some pattern makers participated, the Association made no attempt to secure a place on the ballot; that, since 1918, the Company had not bargained with or recognized any craft union; and that, since 1936, when the U. E. was recognized, the pattern makers had used the bargaining offices of the U. E. without protest. The record in the prior proceeding revealed that two pattern makers aided in the formation of the industrial union which preceded the U. E. The present record indicates that they were the only two to give aid, and that the remaining pattern makers showed no interest. Moreover, the one pattern maker who is shown to have remained actively associated with the industrial union movement has had his membership in the Association revoked.

In the light of all the evidence now before us, we are of the opinion that the fact that the Association made no attempt to secure a place on the ballot in 1934 should not be held to prejudice its right to seek subsequently to represent the Company's pattern makers in a separate unit. As of March 29, 1934, the National Labor Relations Act had not yet been enacted, and such protection of the right to collective bargaining as existed was provided under Section 7 (a) of the National Industrial Recovery Act, as implemented by an Executive Order. The latter Act had only been operative since June 16, 1933. Provision for the conduct of elections was not made until an Executive Order dated February 1, 1934, was issued. It would appear that during the initial operation of the above labor regulations, labor organizations cannot fairly be expected to have been fully aware of the effects of exclusive collective bargaining rights, and, more particularly, of the disabilities which might be incurred by failure to participate in proceedings designed to determine collective bargaining representatives. As stated previously, the record indicates that the pattern makers were not interested in the election, since they did not realize that it might affect their relations with the Company. We do not, therefore, consider the fact that the pattern makers did not seek a place on the ballot for the Association in the 1934 election as a factor which should foreclose the establishment of a separate unit of pattern makers at this time.

While the Company has not formally recognized any but an industrial union since 1918, as we have indicated above, it has bargained informally with representatives of the Association at the lower levels of management both during the existence of the Plan and since the recognition of the U. E. The latter fact is discounted by the U. E. on the ground that such bargaining was on a level at which the U. E. grievance procedure permitted all groups to submit grievances to the Company without the necessity of calling in representatives of the U. E. We do not consider the argument of the U. E. to be conclusive, however, particularly in view of the considerable evidence in the present record that bargaining on these lower levels frequently brought results satisfactory to the pattern makers and the Association. One particularly significant example of this type of bargaining is that in which the pattern makers on the floor of the Association's meeting hall drew up certain novel provisions for the distribution of overtime work among pattern makers, which they submitted to the superintendent and the foreman of the pattern shop, and which the Company and all its pattern makers observed thereafter, without further negotiations. No other section of the plant had like provisions governing the distribution of overtime work. The fact that the U. E. grievance procedure provided for such bargaining does not make it any the less bargaining upon a craft basis. From the foregoing facts, therefore, we now conclude that the Association's bargaining relations with the Company antedate those of the U. E., and that the Company has bargained with the Association since 1918.

While the Association admits that the pattern makers, until our decision of last year, used the bargaining offices of the U. E. without protest, their acquiescence in the exclusive bargaining rights of the U. E. in this respect is offset by evidence adduced in the present proceeding that they have consistently refused to vote for a departmental representative under the U. E. system, but have, as members of the Association, selected their own shop committee. Not until 1943 was a patternmaker nominated for departmental representative, and even then, although one was elected in that year, the pattern makers refrained from voting.¹³ When the Company advised the pattern makers that the candidate elected in 1943 was their representative, they immediately protested by filing a petition with the Board for separate representation. Moreover, the acquiescence of the pattern makers in the production and maintenance unit must be viewed in the light of the dual existence and dual participation in collective bargaining of the U. E. and the Association during the period in which the U. E. has been the exclusive collective bargaining representative of the Company's production and maintenance employees. It would be one thing for

¹³ Non-pattern makers in the department voted.

the pattern makers to acquiesce in bargaining upon a production and maintenance unit basis when it entailed the complete cessation of the activities of all craft unions. It is a different matter, however, where, as here, acquiescence has not destroyed the identity of the Association as a labor organization and appears to have curtailed its activities only to the extent that, in order to present grievances to higher management, it had to do so under the auspices of the U. E. These facts could even be construed to indicate a tacit understanding between the U. E. and the Association until 1943. Viewed from this standpoint, we do not consider that the Company's pattern makers acquiesced in bargaining upon a plant unit basis to a degree sufficient to foreclose a later attempt on their part to bargain separately.

Having reexamined our prior decision, we are now of the opinion that the pattern makers employed by the Company at its Lynn and Everett plants have not by their actions during the period in which the U. E. has been the exclusive collective bargaining representative of the Company's employees forfeited any right they may have had to bargain separately. We may thus properly consider whether the pattern makers have satisfied the prerequisites for representation in a craft unit separate from the established production and maintenance unit. As set out above, the following factors favor our finding a separate unit of pattern makers to be appropriate: the pattern makers comprise a unique, highly skilled craft; the Association, which seeks to represent them, is affiliated with the P. M. L., a pure craft organization which supplies most of the labor market with pattern makers and renders special services to pattern makers and to them only; pattern makers hired by the Company since 1934 have been furnished by the Association or trained as apprentices; the Association antedates the U. E. as a labor organization; and for 25 years a majority of the pattern makers have been members of the Association, so that the petition in this proceeding represents an expression of the will of employees who have consistently adhered to the Association.

We are of the opinion that the presence of these factors warrants the severing of a craft unit from the established production and maintenance unit. We conclude, therefore, that the pattern makers employed by the Company at its Lynn and Everett plants could function as a separate unit or, because of the bargaining history, could be included in the existing comprehensive unit. Accordingly, before making a final determination with respect to the unit proposed by the Association, we shall first ascertain the desires of the employees themselves. We shall direct an election by secret ballot to be conducted among the employees of the Company at its Lynn and Everett plants in the following group who were employed during the pay-roll period immediately preceding the date of our Direction of Election, subject

to the limitations and additions set forth therein: all wood and metal pattern makers and their apprentices, 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, to determine whether they desire to be represented by the Association or by the U. E. Upon the results of the election will depend, in part, our determination of the appropriate unit. If a majority of the employees in this voting group select the Association as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, a majority of these employees choose the U. E., then they will have thereby indicated their desire to remain part of the established 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with General Electric Company, Lynn and Everett, Massachusetts, 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 First 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 the employees in the voting group set forth in Section IV, above, 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 any 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 North America, Lynn Association (A. F. L.), or by U. E. R. and M. W. A., Local 201, for the purposes of collective bargaining, or by neither.¹⁴

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.

¹⁴ The Association and the U. E. expressed preferences at the hearing that their respective names appear on the ballot as set forth in the Direction of Election