

IN the Matter of AMERICAN TOOL WORKS COMPANY and PATTERN
MAKERS' LEAGUE OF NORTH AMERICA, A. F. OF L.

Case No. 9-R-1570.—Decided November 20, 1944

Mr. Cornelius J. Petzhold, of Cincinnati, Ohio, for the Company.
Mr. C. D. Madigan, of Cleveland, Ohio and *Mr. George J. Lanser*,
of St. Bernard, Ohio, for the Pattern Makers.
Mr. Waldo Stager, of Cincinnati, Ohio, for the UE.
Mr. Ben Grodsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Pattern Maker's League of North America, A. F. of L., herein called the Pattern Makers, alleging that a question affecting commerce had arisen concerning the representation of employees of American Tool Works Company, Cincinnati, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on October 16, 1944. The Company, the Pattern Makers, and the United Electrical, Radio and Machine Workers of America, C. I. O., herein called the UE, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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

American Tool Works Company is an Ohio corporation with its office and principal place of business in Cincinnati, Ohio, where it is
59 N. L. R. B., No. 81.

engaged in the manufacture of machine tools. During the year 1943 its purchases of raw materials, consisting principally of steel and cast iron, were in excess of \$1,000,000, over 25 percent of which was shipped to the plant from points outside the State of Ohio. During the same period the Company manufactured finished products valued in excess of \$2,000,000, of which approximately 80 percent was shipped from the Company's plant to points outside the State of Ohio.

The Company admits for the purposes of this proceeding, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

United Electrical, Radio and Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about August 18, 1944, the Pattern Makers orally requested that the Company recognize it as the representative of the employees in the Company's pattern shop but the Company refused to do so because of an existing contract with the UE.

The contract in question, containing an automatic renewal clause, was entered into on June 18, 1943, for an initial term of 1 year. The operation of the automatic renewal clause was stayed in 1944 by timely notice given by the UE to the Company of its desire to open the contract for negotiation. Subsequently, the Regional War Labor Board for the Fifth Region by Directive Order dated August 14, 1944, directed the parties to continue the contract in effect pending consummation of a new agreement.

The UE urges that a bar exists to this proceeding because the Pattern Makers did not make its claim to representation until after the Directive Order of August 14. Inasmuch as the contract of June 18, 1943, was terminated on June 18, 1944, and cannot, in itself, preclude a present determination of representatives, this contention assumes that the doctrine of the *Allis Chalmers* case¹ is applicable because of the proceedings before another governmental agency. The UE was designated in October 1942 by a Regional Director of the Board as the bargaining representative of employees of the Company as the result of a consent election. The Company and the UE thereafter

¹50 N. L. R. B. 306.

entered into the agreement of June 18, 1943, and the UE thereby secured for the employees it represented substantial collective bargaining benefits. It is clear, therefore, that the UE was not a newly recognized or newly certified union at the time of the War Labor Board proceedings and that it secured for the employees it represented the benefits of collective bargaining. The mere facts that a governmental procedure has been invoked is not sufficient to delay an immediate determination of representatives.² Consequently, we find that there is no bar to the instant proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Pattern Makers represents a substantial number of employees in the unit alleged to be appropriate.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 Pattern Makers seeks a unit comprising all pattern makers and pattern makers' apprentices employed in the Company's pattern shop, excluding supervisory employees. The UE contends that this unit is not appropriate and that the only appropriate unit is a plant unit embracing all production and maintenance employees. The Company's position is neutral, but it questions the inclusion of one employee, Ray Bohenenkamp, whom the Pattern Makers desires to include in the proposed unit.

The pattern shop is separated from the other production and maintenance departments in the plant. It is on the same floor as the Company's general offices, drafting department, and tool storage department. For a number of years no other manufacturing activity has been performed on this floor but pattern making. When patterns are completed, they are sent to outside foundries to be used in making castings, since the Company does not operate a foundry. Accordingly, the pattern makers have no direct contact with other production workers.

The pattern makers involved in this proceeding do similar work to pattern makers in pattern shops generally. We have had many occasions to consider such work and have found that it is work demanding the highest skill and that pattern makers form a clearly delineated craft. The record herein discloses that several of the pattern makers

² *Matter of Fort Dodge Creamery Company*, 53 N. L. R. B. 928.

³ The Field Examiner reported that the Pattern Makers submitted six dues records; that the names of five persons appearing on the dues records were listed on the Company's pay roll of September 2, 1944, which contained the names of six employees in the alleged appropriate unit. The UE claims an interest in this proceeding by reason of the 1943 contract mentioned above.

have maintained their membership in the Pattern Makers continuously since 1937, that none of them is or has been a member of the UE, and that none sought UE representation in collective bargaining matters.

Prior to 1937 the Company recognized no bargaining representative. In that year the Company acceded to the Steel Workers Organizing Committee, herein called the SWOC, informal recognition for its members only. As a result of the SWOC's bargaining, there were two increases in wages, one of 3 cents and the other 2 cents, which the employees of the pattern shop received as well as all other production and maintenance workers. There were no further general wage increases until November 1941. In 1938 the SWOC secured further concessions from the Company in the form of a vacation policy and overtime provisions. Thereafter, no bargaining representative presented itself to the Company until the UE, as a result of the 1942 election noted above, was designated by the Regional Director as the bargaining representative of all production and maintenance employees, including employees in the pattern shop.⁴ The pattern-shop employees voted with the other production and maintenance workers at this election and were later represented by the UE in the negotiations between the UE and the Company which resulted, in January 1944, in a plant-wide job evaluation and wage adjustment, retroactive to December 1943. While the job evaluation was in progress the pattern-shop employees composed and transmitted a letter to the management relating to their status, and it appears that they considered that their subsequent wage adjustment in January 1944 was, in part at least, due to this letter.

Pattern-shop employees testified that they bargained directly with their foreman for wage increases and, with reference to grievances, that they did not elect a shop steward in accordance with the provisions of the UE contract of 1943. There is no evidence that they ever availed themselves of the grievance machinery provided for by the contract. None of the pattern makers is a member of the UE. In addition to the plant-wide wage increases under the SWOC's 1937 agreement and the UE's 1943 contract, the pattern makers received a 5-cent per hour increase on October 26, 1940, and another 5-cent increase on November 16, 1941, the latter being a plant-wide increase granted by the Company. The Company's works manager stated, with regard to the October 1940 increase, that it was a merit increase granted to employees of the pattern shop. When the other employees engaged in a strike in December 1943, the pattern-shop employees did not participate, nor were they requested to participate.

The UE contends that, in view of the fact that the history of collective bargaining on behalf of the Company's employees has been

⁴ The Pattern Makers was not a party to this proceeding.

based upon a plant unit since 1937, the Pattern Makers is foreclosed from coming forward and claiming a smaller unit at this late date. The UE further contends that it has bargained on behalf of the pattern-shop employees and that they received wage increases and increased vacation periods as a result of its dealings with the Company.

The pattern-shop employees are a highly skilled craft group which, under appropriate circumstances, could be established as a separate unit. In the present case, except for their participation in the 1942 election, the pattern shop employees have not shown any unity of interest or action with the other production employees. On the contrary, they have continued, even during the period that the UE's 1943 contract has been in effect, to bargain with the Company in the same manner as before. Even the January 1944 wage increase was granted under circumstances which could readily have led them to believe that it had been secured, in part at least, through their own efforts. Despite the UE's contention, there is no extensive history of effective plant-wide collective bargaining. The informal recognition of SWOC in 1937 was limited only to SWOC's members. The first and only effective plant-wide agreement was the UE's agreement of June 18, 1943: This agreement is of such recent date that it cannot, under the circumstances be construed to foreclose a present determination that the craft unit herein sought may be appropriate.

We are of the opinion that the employees of the pattern shop have not forfeited any right they may have had to bargain separately. The following factors tend to favor a finding that a separate unit of pattern makers is appropriate: there is only a relatively recent history of effective collective bargaining on a plant basis; the pattern makers comprise a unique, highly skilled craft; a number of the pattern makers maintained their membership in the Pattern Makers both before and after the advent of the UE; bargaining by employees of the pattern shop has at all times followed the same procedure, namely, with the pattern-shop foreman; and none of the pattern makers became members of the UE or sought representation through the UE.⁵ On the other hand, they could be included in the existing comprehensive unit. Accordingly, we shall make no final determination at this time of the appropriate unit, but shall proceed as hereinafter indicated,

The Company urges that Bohenkamp, who is classified as an assistant foreman, is a supervisory employee, and should therefore be excluded. The Pattern Makers contends that Bohenkamp works full time as a pattern maker and should be included. The pattern shop is in charge of a foreman who is paid on a salary basis, does no pattern making and possesses full supervisory authority over the six other

⁵ See *Matter of General Electric Company (Lynn River Works and Everett Plant)*, 58 N. L. R. B. 57.

pattern-shop employees. He spends about 35 percent of his time away from the shop on other duties. Normally, he lays out and assigns jobs before he leaves and there is rarely any further need for supervision as all but one of the men have been with the Company 20 years or more and need little instruction or supervision in carrying out their assignments. Prior to 1938 an employee named Dietz was the oldest pattern-shop employee apart from the foreman. As the oldest he received a higher rate of pay and, in the absence of the foreman, made assignments and gave instructions to the others. In 1938 Dietz died and Bohenkamp, the next oldest employee, became his successor. Bohenkamp spends over 99 percent of his time making patterns and has but little occasion to assign work or give instructions. He is paid a higher rate than other pattern makers. Although the Company states that Bohenkamp has authority to change the status of employees in the pattern shop, there is no evidence that this authority was ever exercised. In view of the small size of the pattern shop and the long tenure of most of its employees, it is obvious that such authority as is vested in Bohenkamp is nominal in character. The foreman has intimate knowledge of the capabilities and qualifications of all the employees in the pattern shop and it is unlikely that any subordinate would have truly effective power to affect the status of such employees. We are of the opinion that Bohenkamp's duties are not supervisory and we shall include him.

As noted above, we shall make no final determination at this time of the appropriate unit. We shall direct that an election by secret ballot be conducted among all the Company's pattern makers and pattern makers' apprentices, including the assistant foreman of the pattern shop⁶ but excluding the foreman of the pattern shop and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such changes, who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth therein.⁷ Upon the results of the election will depend, in part, our determination of the appropriate unit. If a majority of employees in this voting group select the Pattern Makers as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate bargaining unit. If, however, a majority of these employees choose the UE, then they will have thereby indicated their desire to be part of the established production and maintenance unit.

⁶ Bohenkamp.

⁷ The Pattern Makers and the UE desire to appear on the ballot as their names are set forth in the Direction of Election.

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 American Tool Works Company, Cincinnati, 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 Ninth 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 the 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 North America, A. F. of L., or by United Electrical, Radio and Machine Workers of America, Local 766, C. I. O., for the purposes of collective bargaining, or by neither.