

In the Matter of AKRON STANDARD MOLD COMPANY, EMPLOYER and
PATTERN MAKERS LEAGUE OF NORTH AMERICA, AKRON ASSOCIATION,
AFL, PETITIONER

Case No. 8-RC-557.—Decided January 27, 1950

DECISION
AND
DIRECTION OF DECISION

Upon a petition duly filed, a hearing was held before Carroll L. Martin, hearing officer. At the hearing the Employer and the Intervenor, United Steelworkers of America, CIO, moved to dismiss the petition, contending that a current contract between them is a bar to this petition. The hearing officer referred this motion to the Board. For reasons given in paragraph numbered 3, *infra*, this motion is hereby denied.¹ The hearing officer's other rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel. [Chairman Herzog and Members Houston and Reynolds].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organizations involved claim to represent employees of the Employer.
3. The question concerning representation:

The Employer and the Intervenor contend that a contract executed between them on June 16, 1949, for a term of 1 year, is a bar to this proceeding. The Employer and the Intervenor have had contractual relations since July 1943. In the July 1943 contract the pattern makers, whom the Petitioner here seeks to represent in a separate unit, were specifically included among the named department composing the unit in the Employer's Akron, Ohio, plant. In January 1945,

¹ The Employer also contended that the Petitioner's showing of interest was insufficient. The Board has repeatedly held that the showing of interest is an administrative matter for the Board to determine, and is not litigable at the hearing. *Decker Clothes, Inc.*, 83 NLRB 484.

the pattern makers' shop was moved by the Employer from its Akron plant to the premises of a subsidiary corporation located at Barberton, Ohio. Although the record does not disclose the terms of any of the intervening contracts which may have been executed, the pattern department was omitted from the departments specifically named in the current contract of June 16, 1949, and no grievances have been processed by the Intervenor for the pattern makers. Although wage raises obtained by the Intervenor for employees at the Akron plant have been applied by the Employer to the pattern makers, the record discloses at least one instance in which the Employer has dealt directly with the pattern makers themselves concerning proposed wage increases in the pattern shop.²

In view of the entire record, we find that the pattern makers are not covered by the contract between the Employer and the Intervenor, and that therefore it is not a bar to the instant proceedings.³

4. The record discloses that the pattern makers are skilled craftsmen who perform the usual duties of their craft. We find that they may appropriately constitute a separate unit, if they so desire.⁴ As they are subject to the general supervision of the Employer's management, and most of the patterns made by them are used in the Employer's plant at Akron, they may likewise constitute part of the unit of production and maintenance employees at the Akron plant. We shall, accordingly, direct an election in the following voting group:

All pattern makers and apprentices employed at the Employer's Barberton, Ohio, pattern shop, excluding all other employees, guards, and all supervisors as defined in the Act.

However, we shall make no final unit determination at this time, but shall first ascertain the desires of these employees as expressed in the election hereinafter directed. If a majority vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit. If a majority vote for the Intervenor, they will be taken to have indicated a desire to be bargained for as part of the unit of production and maintenance employees presently represented by the Intervenor at the Employer's Akron plant.

5. At the hearing a dispute arose between the Employer and the Petitioner as to whether three pattern makers⁵ who were laid off in October and November 1949 should be eligible to vote in an election. The Petitioner asserts that they have a reasonable expectation of

² In 1946, while the Intervenor was seeking to obtain a wage increase for the employees in the Akron plant, the Employer made an offer of a wage increase directly to the pattern makers. After consideration of this offer, the pattern makers, acting as a group, rejected it.

³ See *General Electric Supply Corporation*, 83 NLRB 1135.

⁴ *W. A. Jones Foundry & Machine Co.*, 83 NLRB 211.

⁵ Andrew Zahoryin, Raymond Rigby, and Jack Kail.

being recalled to work and should be eligible. The Employer contended that these three employees were permanently separated from their positions, and introduced evidence showing that for more than 6 months before these employees were laid off it did not have enough work to keep all the pattern makers fully employed, and therefore reduced the hours of all pattern makers in order to prorate the work among them. It is also clear from the severance notices given to these employees that they were permanently severed. The Employer states that there is no prospect of rehiring any of them within the foreseeable future. Under the circumstances, we find that the three pattern makers were not temporarily laid off, but were discharged, and that they are therefore ineligible to vote in the election herein directed.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the voting group described in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by Pattern Makers League of North America, Akron Association, AFL, or by United Steelworkers of America, CIO, or by neither.