

In the Matter of ALLIS-CHALMERS MANUFACTURING COMPANY and
PATTERN MAKERS LEAGUE OF NORTH AMERICA, DISTRICT 1, A. F.
OF L.

Case No. 9-R-1778.—Decided November 8, 1945

Mr. W. J. McGowan, of Milwaukee, Wis., for the Company.

Mr. C. D. Madigan, of Cleveland, Ohio, and *Mr. George Lanser*,
of St. Bernard, Ohio, for the Pattern Makers.

Mr. Emerson Sonnycalb and *Mrs. Margaret Sonnycalb*, both of
Norwood, Ohio, for the U. E.

Mr. Phillip Licari, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Pattern Makers League of North America, District 1, A. F. of L., herein called the Pattern Makers, alleging that a question affecting commerce had arisen concerning the representation of employees of Allis-Chalmers Manufacturing Company, Norwood, Ohio, herein called the Company, the National Labor Electrical, Radio & Machine Workers of America, C. I. O., Local 765, Shaw, Trial Examiner. The hearing was held at Cincinnati, Ohio, on July 12, 1945. The Company, the Pattern Makers, and United Electrical Radio & Machine Workers of America, C. I. O., Local 765, herein called the U. E., 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 U. E. moved to dismiss the petition. For reasons set forth in Sections III and IV, *infra*, 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

Allis-Chalmers Manufacturing Company, a Delaware corporation, with its principal office and place of business in Milwaukee, Wisconsin, manufactures machinery at plants located throughout the United States. Only the Company's Norwood Works, Norwood, Ohio, is involved in the instant proceeding. During the past 12 months the Company purchased for the Norwood Works raw materials valued in excess of \$1,000,000, of which approximately 50 percent was shipped from points outside the State of Ohio. During the same period the Company's Norwood Works produced finished goods valued at approximately \$10,000,000, all of which was sold to the United States Government for the use of its armed forces.

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 North America, District 1, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Electrical, Radio & Machine Workers of America, Local 765, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In 1937 an unaffiliated labor organization called The Employees Association was formed and thereafter bargained collectively for the Company's Norwood Works production and maintenance employees, including pattern makers. On August 31, 1942, after an election directed by the Board in which the U. E. and The Employees Association participated, the U. E. was certified as the exclusive bargaining representative of all the Norwood Works production and maintenance employees, including pattern makers.¹ Approximately 8 months following the certification the U. E. entered into a collective bargaining agreement with the Company on April 27, 1943, which provided in part as follows:

The agreement shall remain in force until April 15, 1944, and thereafter from year to year unless one party gives notice in

¹ See *Matter of Allis-Chalmers Manufacturing Co.*, 43 N. L. R. B. 255.

writing to the other party of at least thirty (30) days prior to the expiration of the agreement, that it proposes certain changes therein.

During the latter part of 1943 a dispute arose between the Company and the U. E. concerning wages and other conditions of employment. On February 18, 1944, The Employees Association filed a petition with the Board for an investigation and certification of representatives of the Norwood Works' production and maintenance employees, including pattern makers. The U. E. intervened in this proceeding. Because of the unsettled matters between them, on March 21, 1944, the Company and the U. E. extended their 1943 contract as follows:

It is agreed by United Electrical, Radio & Machine Workers of America, Local 765, C. I. O., and the Allis-Chalmers Manufacturing Company, Norwood Works, that the collective bargaining agreement between them, effective until April 15, 1944, shall be extended until the superseding contract is executed.

Predicated upon The Employees Association's petition of February 18, 1944, on May 18 of that year, the Board directed an election among the Norwood Works production and maintenance employees, including pattern makers.² The disputed issues between the Company and the U. E. were certified to the War Labor Board on June 5, 1944. Thereafter, on June 19, 1944, having won the election ordered by the Board, the U. E. was again certified as the exclusive bargaining representative of the Norwood Works production and maintenance employees, including pattern makers.

On January 24, 1945, a partial directive was issued by the Regional War Labor Board, and on February 7, 1945, the Company appealed to the National War Labor Board on issues of (1) seniority for supervisory employees; and (2) arbitration. On March 26, 1945, the Regional War Labor Board issued another directive, and on April 13, 1945, the Union appealed on issues of (1) wages; and (2) progression schedules. No final directive has yet been issued by the National War Labor Board on either of these appeals, and no contract has been executed between the Company and the U. E. to supersede the 1943 contract, as provided by the 1944 extension agreement.

On March 22, 1945, after having orally informed the Company that it represented a majority of the Norwood Works pattern makers, the Pattern Makers filed the petition herein.

The U. E. contends that the 1943 contract forecloses a current determination of representatives. It is clear, however, that the 1943 contract, as extended by the 1944 agreement, is one of indefinite duration and cannot serve to bar the instant proceeding.³

² *Matter of Allis-Chalmers Manufacturing Company*, 56 N. L. R. B. 675.

³ See *Matter of General Electric Company*, 48 N. L. R. B. 1044.

Inferentially, the U. E. also asserts that because it was certified by the Board on June 19, 1944, as the collective bargaining representative of the Norwood Works production and maintenance employees, including pattern makers, and certain disputed issues between it and the Company are now pending before the War Labor Board, under the principle enunciated in *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306, a dismissal of the petition is warranted. Although the Board has held in the past that a measure of protection should be afforded newly recognized or newly certified unions which, without fault, are forced into long inactivity because they take advantage of the peaceful means of settling disputes provided by the Government and are thus deprived of an opportunity to show their effectiveness as bargaining agents, we are of the opinion that in the instant case the U. E. is not such a newly recognized or newly certified union entitled to immunity from a reinvestigation of its status.

Initially, the U. E. became the certified bargaining representative of the Norwood Works employees as far back as 1942. Thereafter, it completed its first bargaining program by entering into a 1-year collective agreement with the Company in 1943. Only towards the latter part of 1943 did a controversy arise between the contracting parties, and it was not until June 5, 1944, that proceedings were instituted before the War Labor Board. We conclude from these facts that the U. E. has enjoyed ample opportunity since its initial certification to demonstrate its effectiveness as a bargaining agent, and that a current determination of representatives is justified.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Pattern Makers represents a substantial number of employees in the unit it alleges to be appropriate.⁴

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 to represent a unit comprising "all wood and metal pattern makers and pattern makers' apprentices, except for all supervisors . . ." The Company takes no position with respect to the issue of the appropriate unit, but the U. E. opposes the establishment of the unit sought on the ground that past collective bargain-

⁴ The Field Examiner reported that the Pattern Makers submitted 7 authorization cards, of which 5 were dated between March 1939 and March 1945, and 2 were undated. The Field Examiner further reported that there were approximately 11 employees in the unit alleged to be appropriate by the Pattern Makers.

The U. E. relies upon its contract with the Company as evidence of its interest in this proceeding.

ing has been successfully conducted with the Company on the basis of a plant-wide unit, including pattern makers.

The Company's Norwood Works pattern shop is located in a building which is physically separated from the Company's other buildings and departments. There, the Company employs approximately 11 pattern makers who are under separate supervision, performing exclusively all the Company's pattern making operations. They are paid an hourly rate higher than the employees working in other departments. Since the record is clear that these pattern makers form a cohesive and distinct craft group for the purpose of collective bargaining, the only other factor to be considered is the history of collective bargaining.

From 1937 until 1942 The Employees Association engaged in collective bargaining for the Norwood Works production and maintenance employees on a plant-wide basis, including pattern makers. And from 1942 until the present the U. E. has been the collective bargaining agent of all the Norwood Works production and maintenance employees, including pattern makers.

It appears, however, that throughout these periods, pattern makers have been members of the Pattern Makers. As a general practice the pattern makers never used the grievance machinery established by either The Employees Association or the U. E., preferring to present their grievances individually to their foreman. Moreover, on May 18, 1944, after an organizational drive to enroll all those pattern makers who were not its members, the Pattern Makers filed a petition with the Board for an investigation and certification of representatives. This petition was administratively dismissed.⁵ In addition, in March 1945, subsequent to the issuance of the March 26, 1945, directive of the Regional War Labor Board referred to above, all pattern makers took advantage of an escape provision in the maintenance of membership clause provided by this directive and resigned from the U. E.⁶ Also, the pattern makers refused to join in a strike called by the U. E. in June 1945 and walked through the picket line formed by the strikers. It further appears from the record that, since March 1944, the pattern makers have refused to accept any official position in the U. E.⁷ and as a result the U. E. was forced to appoint a truck driver, who hauls materials for the pattern shop, as steward for the pattern makers' group.

⁵ Case No. 9-R-1453

⁶ Pursuant to the 1943 contract between the Company and the U. E. all employees, as a condition of employment, were required to be members of the U. E. in good standing.

⁷ For almost a year prior to March 1944, William Kranz, a pattern maker hereinafter mentioned, was the U. E.'s steward for the pattern makers' group. He was not active in this position, and some time in March 1944 refused to continue to act as steward. Kranz resigned from the U. E. in March 1945.

In view of the foregoing facts, we are of the opinion that, during the periods in which The Employees Association and the U. E. acted as exclusive representatives, the Norwood Works pattern makers did not by their actions lose their identity as a separate craft group.⁸

We therefore conclude that the pattern makers 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 appropriate unit, we shall ascertain the desires of the employees themselves as reflected by the results of an election by secret ballot. We shall direct an election by secret ballot to be conducted among the employees in the following group who were employed during the pay-roll period immediately preceding the date of the Direction of Election, subject to the limitations and additions set forth therein:

All wood and metal pattern makers and pattern makers' apprentices employed by the Company at its Norwood Works, Norwood, Ohio, excluding the foreman, the assistant foreman, 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 action, to determine whether they desire to be represented by the Pattern Makers 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 Pattern Makers as their bargaining representative, they will be taken to have indicated their desire to constitute a separate appropriate unit. If, however, a majority of these employees choose the U. E., then they will be taken to have indicated their desire to remain part of the established production and maintenance unit.

There is some dispute as to the voting eligibility of William Kranz, Floyd Gates, Harry Bickel and Samuel Mesh.

William Kranz: The record shows that this employee was recently made a group leader to act, in the absence of the regular assistant foreman, Gillan, as the assistant foreman of the pattern shop. The Company expects Gillan, who is advanced in years and ill, to retire in the near future, and it intends to promote Kranz to Gillan's position. It further appears that Kranz was made a group leader solely for the purpose of preparing him to occupy the position of assistant foreman in the pattern shop. While acting as assistant foreman he has the authority to recommend effectively the hiring and discharging of employees. At the time of the hearing Kranz was acting as assistant

⁸ See *Matter of General Electric Company (Lynn River Works & Everett Plant)*, 58 N. L. R. B. 57.

foreman. The Company does not wish to have Kranz participate in the election, whereas the Pattern Makers contends that he is eligible to vote. If during the eligibility period Kranz was still acting as assistant foreman, he shall not be permitted to vote.

Floyd Gates and Harry Bickel: Gates is a pattern maker and Bickel is a pattern maker's apprentice. At the time of the hearing there was a possibility that Gates, a school teacher, and Bickel, a student, might return to school when the fall term started. The Pattern Makers contends that these employees work on a temporary basis and should not be permitted to vote. The Company takes no position with respect to their voting eligibility. If during the eligibility period these employees were working for the Company in the jobs they held at the time of the hearing, they shall be permitted to vote.

Samuel Mesh: The Company hired this employee as a pattern maker. However, the record shows that since he was engaged he has done nothing but carpentry work. The Pattern Makers contends that this employee should not be eligible to vote in the election because he is not presently engaged in pattern making. The Company takes no position with respect to his voting eligibility. If this employee was still engaged in carpentry work during the eligibility period he shall not be permitted to vote.

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 Allis-Chambers Manufacturing Company, Norwood, 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 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 who 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, District No. 1, A. F. of L., or by United Electrical, Radio & Machine Workers of America, Local 765, C. I. O., for the purposes of collective bargaining, or by neither.

Mr. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.