

In the Matter of FAIRBANKS, MORSE & COMPANY and PATTERN MAKERS
ASSOCIATION OF BELOIT

Case No. R-665.—Decided May 16, 1938

Machinery, Electrical Equipment, Radio, and Refrigerator Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union until determination of appropriate unit by Board; rival organizations; strike—*Unit Appropriate for Collective Bargaining:* metal and wood pattern makers, checkers, and workers engaged in construction, maintenance, and repair of patterns, excluding molders, saw filers, pattern carriers, and clerical and supervisory employees; craft; skill; occupational differences; desires of employees, as evidenced by membership in craft union, continuous protest against inclusion in industrial unit, and strike; participation in consent election without waiving contention concerning appropriate unit; where other considerations determinative of appropriate unit are evenly balanced, decisive factor is desire and choice of employees involved—*Representatives:* proof of choice: comparison of pay roll with union list; stipulation as to majority representation in appropriate unit—*Certification of Representatives:* upon proof of majority representation.

Mr. Frederick P. Mett, for the Board.

Pope & Ballard, by *Mr. Merrill Shepard*, of Chicago, Ill., for the Company.

Padway, Goldberg & Tarrell, by *Mr. A. G. Goldberg*, of Milwaukee, Wis., for the Association.

Mr. W. O. Sonnemann, of Milwaukee, Wis., for the Amalgamated.

Mr. Raymond J. Compton, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On August 31, 1937, Pattern Makers Association of Beloit, herein called the Association, filed with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Fairbanks, Morse & Company, Beloit, Wisconsin, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Na-

tional Labor Relations Act, 49 Stat. 449, herein called the Act. On September 17, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing. The Board also ordered, pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of the Rules and Regulations, that this proceeding be consolidated for the purposes of hearing with a case based on charges filed against the Company by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1533, alleging that the Company had engaged in and was engaging in unfair labor practices within the meaning of the Act. On February 8, 1938, the Board issued an order severing the two cases and continuing them as separate proceedings.

On March 24, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Association, and upon the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1533, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on April 4, 1938, at Beloit, Wisconsin, before Herbert Wenzel, the Trial Examiner duly designated by the Board. The Board, the Company, the Association, and the Amalgamated were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a corporation organized under the laws of the State of Illinois, with its principal executive offices at Chicago, Illinois, and is licensed to do business in each of the other States of the United States and in the Territory of Alaska. It owns and controls 17 subsidiaries, including Fairbanks-Morse Construction Company, Fairbanks, Morse & Co., Incorporated (Maine); Fairbanks-Morse

Water Supply Company, Seaford Light and Power Company, Municipal Acceptance Corporation, the Inland Utilities Company, and Fairbanks-Morse Company (Australasia) Limited.

The Company is engaged in the design, manufacture, assembly, sale, and distribution of diesel and other internal combustion engines, electric motors, generators and magnetos, pumps and auxiliary pump equipment, washing machines, radios, windmills, refrigerators, stokers, scales, various other farm and home appliances, railroad equipment, and other products at its manufacturing plants located in Three Rivers, Michigan; Indianapolis, Indiana; East Moline, Illinois; Stuttgart, Arkansas; St. Johnsbury, Vermont; San Francisco, California; and Beloit, Wisconsin.

For the sale and distribution of its various products other than home appliances, the Company maintains and operates 17 branch sales offices throughout the United States. Home appliances manufactured by the Company are sold and distributed by dealers located in various parts of the United States, and an export division office is maintained in New York City for distribution to foreign countries. The Company is under contract with the United States Government for the manufacture and installation of various of its products and equipment for use by many Government agencies. Its advertising is done by direct mail and through nationally circulated general publications and trade journals.

The plant of the Company situated at Beloit, Wisconsin, hereinafter referred to as the Beloit Plant, is the only plant concerned in this proceeding. It occupies 112 acres upon which there are 30 major buildings and 18 minor buildings, with a total floor area of approximately 1,254,505 square feet. In the operation of its Beloit Plant, the Company purchases and uses large quantities of raw materials consisting of pig iron, scrap steel, bar steel, coal, silica sand, fire clay, grey iron castings, nuts, bolts, screws, rivets, electric and gasoline motors, lumber, copper, tin sheet metal, various types and kinds of wires, paint, chemicals, cables, pulleys, and other products and materials.

Ninety-nine per cent of these materials are obtained from outside the State of Wisconsin. In 1937, the Company's total net sales of finished products amounted to \$30,596,349.54. About 98 per cent of the products manufactured at the Beloit Plant were shipped to points outside the State of Wisconsin. The Beloit Plant employs in excess of 3,000 persons.

II. THE ORGANIZATIONS INVOLVED

Pattern Makers Association of Beloit is a labor organization affiliated with the Pattern Makers League of North America, which in

turn is affiliated with the American Federation of Labor. The Association admits to membership wood and metal pattern makers, checkers, and persons engaged in the construction, maintenance, and repair of patterns, employed by the Company.

Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1533, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all production and maintenance employees of the Company. Steel Workers Organizing Committee, representing the Amalgamated in this case, is likewise a labor organization affiliated with the Committee for Industrial Organization.

III. THE QUESTION CONCERNING REPRESENTATION

By virtue of a consent election held June 19, 1937, the Amalgamated claims to represent all the production and maintenance employees of the Company, including the pattern makers, all of which employees the Amalgamated contends constitute a unit appropriate for the purposes of collective bargaining. Prior to the consent election, and several times thereafter, the Association protested against the inclusion within such a unit of the pattern makers and the employees engaged in the construction, maintenance, and repair of patterns. Following the consent election, the Company recognized and bargained with the Amalgamated for all production and maintenance workers in its employ, but excluded the pattern makers as subjects of special bargaining with the Amalgamated until such time as their asserted right to separate representation was determined. The Company is willing to deal with the Association only if the Board finds that the pattern makers and repairers constitute an appropriate bargaining unit, so that until a determination is made by the Board the representation of the pattern makers and repairers remains unsettled.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead and has led to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

Upon the broad basis that the coexistence of craft and industrial unions in the same plant is not conducive to effective collective bargaining, the Amalgamated contends that the entire Beloit Plant should be treated as a single unit. On the other hand, the Association contends that the pattern makers, checkers, and pattern repairmen, employed by the Company constitute a unit appropriate for the purposes of collective bargaining.

The Amalgamated began its organization of the Company's plant at Beloit a short time before the Association received its charter from the Pattern Makers League of North America on May 24, 1937. Following the consent election held on June 19, 1937, the Amalgamated was recognized by the Company as the bargaining representative of all the production and maintenance employees in the Beloit Plant.

However, both prior to and following the consent election in which they participated without waiving their contention concerning the appropriate unit, the pattern makers vigorously claimed the right to be considered a unit separate and apart from the industrial unit. Evidencing the solidarity of their desire to be separately represented, the pattern makers' protest culminated in a strike on August 18, 1937. On October 4, 1937, the pattern makers returned to work and were granted an increase in pay with the understanding that recognition and bargaining would await the decision of the Board as to the appropriate unit. Although the Amalgamated conducted successful negotiations for a collective bargaining agreement covering all employees of the Beloit Plant during the period the pattern makers were on strike, special bargaining by the Amalgamated on behalf of the pattern makers was expressly omitted until such time as the Board determined their claim for separate representation.

That the pattern-making craft is one that requires the highest degree of skill in the plant is not contested by the Amalgamated. The checkers are capable pattern-maker journeymen; and the pattern repairmen, through experience gained in repair work, are also able to make some patterns, thus justifying their inclusion within the unit claimed by the Association to be appropriate. Although there are two molders, one saw filer, a number of pattern carriers, and some clerical workers employed in the separate building which comprises the Pattern Shop of the Company, none of these workers are so allied with the pattern makers as to justify their inclusion within the same craft unit. The Association makes no claim to represent the pattern maker apprentices employed by the Company, due to the fact that their services are furnished under a contract between the Com-

panty and the Industrial Commission of the State of Wisconsin which makes full provision for all conditions relative to their employment.

There is a showing that the pattern makers could satisfactorily function either as a separate unit or as part of the larger industrial unit. Since this is true, we will follow our previous ruling in similar situations that the determining factor is the desire of the employees themselves.¹ Here, as found below in Section VI, a majority of the pattern makers are included in the Association membership. This membership of a majority in the Association is not the only indication of the desire of the pattern makers to constitute a separate bargaining unit; that desire is further evidenced by their continuous protest against inclusion within the industrial unit, which protest resulted in their striking on August 18, 1937.

We find that the wood and metal pattern makers, checkers, and workers engaged in the construction, maintenance, and repair of patterns, excluding molders, saw filers, pattern carriers, clerical and supervisory employees, employed in the Pattern Shop of the Company, constitute a separate unit appropriate for the purposes of collective bargaining, and that said unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing, counsel for the Board made a check of the membership list submitted by the Association² which he compared with the Association books and with the Company's pay rolls of August 31, 1937, and March 31, 1938, respectively.³ It was found that of the 44 eligible employees of the Company, 35 were members of the Association, and counsel for the Amalgamated stipulated that such finding was correct.

We find that the Association has been designated and selected by a majority of employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

¹ *Matter of Globe Machine and Stamping Co.*, 3 N. L. R. B. 294; *Matter of Commonwealth Division of General Steel Castings Corporation*, 3 N. L. R. B. 779; *Matter of Allis-Chalmers Mfg Co.*, 4 N. L. R. B. 159; *Matter of Schick Dry Shaver Co.*, 4 N. L. R. B. 246; *Matter of American Hardware Corporation*, 4 N. L. R. B. 412; *Matter of Worthington Pump and Machinery Corp.*, 4 N. L. R. B. 448, *Matter of Waterbury Mfg. Co.*, 5 N. L. R. B. 288; *Matter of Combustion Engineering Co., Inc.*, 5 N. L. R. B. 344.

² Petitioner Exhibit No. 8.

³ Board Exhibit Nos. 2 and 3.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Fairbanks, Morse & Company, Beloit, Wisconsin, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

2. The metal and wood pattern makers, checkers, and workers engaged in the construction, maintenance, and repair of patterns, excluding molders, saw filers, pattern carriers, clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Pattern Makers Association of Beloit is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Pattern Makers Association of Beloit has been designated and selected by a majority of the metal and wood pattern makers, checkers, and workers engaged in the construction, maintenance, and repair of patterns of Fairbanks, Morse & Company, Beloit, Wisconsin, excluding molders, saw filers, pattern carriers, clerical and supervisory employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Pattern Makers Association of Beloit is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

EDWIN S. SMITH, dissenting:

In accordance with the view taken by me in previous cases,⁴ I hold that the unit composed of Pattern Shop employees found by the majority of the Board to be an appropriate unit for collective bar-

⁴ See *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159

gaining is, under the circumstances of this case, not such an appropriate unit.

The Amalgamated was on June 19, 1937, chosen at a secret election as the collective bargaining representative for a majority of the production and maintenance employees of the Company. There is no contention that it has lost support since then. To split off the minority group of skilled pattern makers from the general body of production workers, although possibly constituting an advantage to a small number of workers, also constitutes a threat to the collective bargaining effectiveness of the rest of the workers, both skilled and unskilled. The majority of all production and maintenance workers have decided to pool their separate strengths for the purpose of presenting a united bargaining front to the employer. To deprive them of the support of the pattern makers invites disruption and economic rivalries which may interfere with continued successful bargaining for the bulk of the employees. On the other hand, there is no evidence that the Amalgamated could not bargain successfully for the pattern makers. I would deny the petition of the Association.