

In the Matter of THE WALWORTH COMPANY and PATTERN MAKERS' ASSOCIATION OF PITTSBURGH AND VICINITY, PATTERN MAKERS' LEAGUE OF N. A., AFFILIATED WITH A. F. OF L.

In the Matter of THE WALWORTH COMPANY and STEEL WORKERS' ORGANIZING COMMITTEE ON BEHALF OF THE A. A. I. S. T. OF N. A.

Cases Nos. R-647 and R-648.—Decided August 2, 1938

Valve and Pipe Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: dispute between craft and industrial unions as to appropriate unit; no question as to majority status of industrial organization in plant; substantial doubt as to majority status of rival union—*Unit Appropriate for Collective Bargaining:* election to determine; where other considerations determinative of appropriate unit are evenly balanced, decisive factor is desire and choice of employees involved—*Election Ordered—Representatives:* proof of choice: signed petitions and membership cards—*Certification of Representatives:* for industrial unit, withheld, pending election in craft unit.

Mr. Henry Shore, for the Board.

Mr. E. H. Briggs, of Greensburg, Pa., for the Company.

Mr. William T. Corbett, of Pittsburgh, Pa., for the Association.

Mr. Benjamin C. Sigal, of Pittsburgh, Pa., for the S. W. O. C.

Mr. Richard Meigs, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 22, 1937, Pattern Makers' Association of Pittsburgh and Vicinity, herein called the Association, filed with the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Walworth Company, Greensburg, Pennsylvania, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On January 27, 1938, a similar petition was filed by Steel Workers' Organizing Committee, herein called the S. W. O. C., on behalf of Amalgamated Association of Iron, Steel, and Tin Workers of North America, herein called the Amalgamated.

On February 7, 1938, 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 upon due notice, and acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that the aforesaid two cases be consolidated for the purpose of hearing.

On March 2, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Association, and upon the S. W. O. C. Thereafter said parties were notified that the hearing had been postponed until a later date. Pursuant to the aforesaid notices, a hearing was held on March 18 and 19, 1938, at Pittsburgh, Pennsylvania, before Henry T. Hunt, the Trial Examiner duly designated by the Board. The Board, the Association, and the S. W. O. C. were represented by counsel and participated in the hearing. The Company was represented by E. H. Briggs, works manager at its Greensburg Works. 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 on 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 in 1872 under the laws of Massachusetts. It operates plants in five different States and maintains sales offices in New York City and in 12 other States. Its products are sold through wholly owned subsidiaries in the United States, Canada, and abroad. It employs 95 salesmen who travel in all of the States of the United States. The volume of its business in dollars for 1935 was \$7,959,333; for 1936, \$10,629,261; and for the first 6 months of 1937, \$7,562,366. The Company manufactures in excess of 40,000 separate items, consisting of valves, pipe fittings, pipe tools, cast-iron pipe, etc. There are in the United States some 160 manufacturers of these products. The Company does approximately 15 per cent of the total business of the industry.

The only plant of the Company here involved is that located at Greensburg, Pennsylvania. This plant consists of 30 departments, in-

cluding a pattern shop and five foundries. The principal raw materials used at the plant are iron and steel scrap, coal, oil, brass, etc. Approximately 70 per cent of these materials are derived from outside the State of Pennsylvania. The products of the Greensburg plant are shipped to all the States and possessions of the United States, Canada, and foreign countries. Approximately 90 per cent of such products are shipped to points outside Pennsylvania by railroad, truck, and airplane carrier. The average number of persons employed at the plant for the first 11 months of 1937 was 1,864. Of this number, 43 were employed in the pattern shop and one in pattern storage.

II. THE ORGANIZATIONS INVOLVED

Pattern Makers' Association of Pittsburgh and Vicinity, a local of Pattern Makers' League of North America, is a labor organization affiliated with the American Federation of Labor. It admits to its membership "practical pattern makers (including their apprentices) known to be competent workmen of good character, who acknowledge its jurisdiction and conform to its laws," and claims jurisdiction over the trade in all its branches. Foremen and supervisors of pattern makers are also admitted.

Amalgamated Association of Iron, Steel, and Tin Workers of North America is a labor organization affiliated, through the Steel Workers' Organizing Committee, with the Committee for Industrial Organization. It admits to its membership all production and maintenance employees, exclusive of foremen, assistant foremen, supervisors, watchmen; and office employees, in the Company's Greensburg plant.

III. THE QUESTION CONCERNING REPRESENTATION

Prior to April 13, 1937, the Company maintained an employee representation plan. On that date the plan was abandoned and the Company entered into a written agreement with the S. W. O. C., on behalf of the Amalgamated, recognizing and dealing with that organization as representative of its members among the production and maintenance employees at the Company's Greensburg plant. On October 4, 1937, a supplemental agreement was executed by the same parties, modifying and adding to the terms of the original agreement, and providing that the entire contract should remain in force until December 31, 1938, and that thereafter conferences should be held relative to the formation of a new contract. In June or the first part of July 1937, for the first time, representatives of the Association conferred with Company officials, and, claiming to represent a majority of the workers employed in the pattern shop at the Greensburg plant, unsuccessfully attempted to obtain recognition as the bargaining representative for such employees.

The Company, having entered into a collective bargaining agreement with the S. W. O. C., is unwilling to deal with the Association unless and until the production and maintenance employees in its pattern shop at the Greensburg plant are found by the Board to be an appropriate unit for collective bargaining. The Association maintains that these employees should constitute a separate and appropriate unit, that a majority thereof has designated it as representative, and that it is entitled to be certified as such.

The S. W. O. C. maintains that the production and maintenance employees as a whole constitute the sole appropriate unit, that a majority thereof have designated it as representative, and that it is entitled to certification as representative of all such employees, including those employed in the pattern shop. The Company has recognized the S. W. O. C. as representative of its members employed in the Greensburg plant, but declined to recognize it as the representative of non-member employees.

We find that a question has arisen concerning representation of employees of the Company at its Greensburg plant.

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 to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The S. W. O. C. seeks a bargaining unit composed of all the production and maintenance employees of the Company at its Greensburg plant, exclusive of supervisory and clerical employees. The Association asks that the employees of the pattern shop be excluded from the industrial unit and set aside as a separate bargaining unit. This is the only objection raised by any of the parties at the hearing to the unit sought by the S. W. O. C.

The pattern shop is one of 30 departments into which the Greensburg plant is divided. It occupies one floor of a building which it shares with the cooperage and carpenter shops. There is a total of 43 wood and metal pattern makers employed within the shop. They may be roughly classified as masters, ordinary skilled, and apprentices. Their work is a part of a continuous process of manufacturing finished products from raw materials. Wood patterns are constructed by the wood pattern makers from drawings created

in the engineering department, and where the production of only a small number of items from the pattern is required, a sturdy wood pattern is sufficient for the purpose. Where quantity production is necessary, however, the wood patterns are sent to one of the five foundries and from them are cast metal patterns. It is the principal work of the metal pattern makers to file, plane, mill, and otherwise process the rough castings to make them usable. Occasionally they turn out simple and cylindrical metal patterns on a lathe by direct reference to engineers' drawings.

The testimony indicates that the duties of the wood pattern makers in the Greensburg plant require more skill than that required of the metal pattern makers; that is, there are five metal pattern makers, known as grinders, whose work is rated but a slight degree above ordinary labor; that these grinders are promoted within the craft group as their skill increases, but rarely do they become wood pattern makers; and that the majority of wood pattern makers are derived from the ranks of apprentices in that branch of the craft. However, although actual skill and knowledge may vary widely among the individuals in the two groups, it is clear that pattern making, whether metal or wood, is a high-skilled work, involving in varying degrees a knowledge of drafting, the ability to read drawings and visualize the object, and a theoretical knowledge of moulding the machinery.

It is to be noted, in connection with the contentions of the S. W. O. C. that pattern shop workers should be included in the plant unit, that the Association did not take concrete steps to organize the pattern shop until June 1937, approximately 2 months after the S. W. O. C. had succeeded, on behalf of the Amalgamated, in negotiating a written contract with the Company. Under the contract the Company representative plan was abandoned, the Amalgamated received recognition as the representative of its members, certain agreements were reached as to hours, wages, working conditions, seniority, adjustment of grievances, safety and health, holidays and vacations, and negotiations for a new contract on the termination of the old were provided for. The contract also provided for a raise in pay of 10 cents per hour which was 5 cents more than the raise which had been promised under the employee representation plan previously in force. The contract, by its terms, was applicable only to members of the Amalgamated. Since a considerable number of employees in the pattern shop were members of the Amalgamated, they automatically shared in all the benefits obtained under the contract. Moreover, deeming it impractical to confine the increase in pay to Amalgamated members only, the Company extended it throughout the entire plant, including the pattern shop. In short, the negotiations between the S. W. O. C. and the Company resulted in substantial benefits for both members

and non-members of the Amalgamated, including those employed in the pattern shop.

The testimony at the hearing showed that in the plants of many other companies the S. W. O. C. represents all the production employees, including pattern makers, in a single unit, and that the interests of the pattern makers have not suffered by inclusion in the larger unit. On the other hand, it was testified that the Association successfully represents pattern makers in a number of other plants in which industrial unions contemporaneously exist. While this is by no means conclusive, it does indicate that such separate representation has not universally been regarded, even by industrial unions, as an impractical arrangement.

In light of all the circumstances of this case, we find that the employees in the Company's pattern shop, exclusive of three foremen employed therein,¹ can be considered either as a separate unit appropriate for the purposes of collective bargaining, as claimed by the Association, or as a part of a single industrial unit, as claimed by the S. W. O. C.² The essential separateness of pattern making work at the Greensburg plant, and the requirement of a certain amount of skill for that work support the feasibility of the former approach. The successful negotiation of a plant-wide agreement on April 13, 1937, as well as the interrelation and interdependence of the various departments at the Greensburg plant, are proof of the feasibility of the latter. Under similar circumstances, we have held the determining factor to be the desires of the men themselves.³ In the instant case, the record does not show clearly what the desires of the employees in the pattern shop are in respect to representation. The Company introduced in evidence a list prepared from its pay roll as of December 30, 1937, showing the names of 40 pattern shop employees, exclusive of the three foremen. A comparison of the names on the list with the names appearing on membership cards introduced by the Association and membership cards and petitions introduced by the S. W. O. C. showed that out of the said 40 eligible persons 14 had signed membership cards of the Association, 11 had signified a preference for the S. W. O. C. by signing membership cards or petitions, and 9 had signed cards or petitions for both organizations.

¹ The Association admits foremen to its membership and desires the inclusion of the foremen in the pattern shop within the bargaining unit. The S. W. O. C. wants the foremen excluded. Inasmuch as one of the labor organizations participating in the election desires their exclusion, we shall, in accordance with our usual practice under such circumstances, exclude the foremen.

² See *Matter of Fairbanks, Morse & Company and Pattern Makers Association of Beloit*, 7 N. L. R. B. 229.

³ See *Matter of The Globe Machine and Stamping Co. and Metal Polishers Union, Local No. 3, International Association of Machinists, District No. 54, Federal Labor Union 18788 and United Automobile Workers of America*, 3 N. L. R. B. 294.

Under the circumstances we shall direct that an election be held among the pattern shop employees, exclusive of foremen, to determine whether such employees desire to be represented by the Association or by the S. W. O. C., for and on behalf of the Amalgamated, for the purposes of collective bargaining, or by neither. If the Association is chosen by a majority, the pattern shop employees will constitute a separate bargaining unit. If the S. W. O. C. is chosen by a majority, the pattern shop employees will be included in the plant-wide unit.

VI. THE DETERMINATION OF REPRESENTATIVES

Neither the Company nor the Association questioned the fact that the S. W. O. C., for and on behalf of the Amalgamated, represents a majority of the production and maintenance employees at the Greensburg plant, exclusive of supervisors and clerks. A comparison of the membership cards and petitions of the S. W. O. C. with the Company pay roll for the period ending June 15, 1937, revealed that out of 1,706 such employees, exclusive of those working in the pattern shop, 1,238 desire representation by the S. W. O. C., for and on behalf of the Amalgamated. Since the Company employs only 43 workers in the pattern shop, it is clear that the S. W. O. C., for and on behalf of the Amalgamated, represents a majority of the production and maintenance employees, irrespective of the inclusion or exclusion of the pattern makers. We shall, therefore, certify the S. W. O. C., for and on behalf of the Amalgamated, as the bargaining representatives of the plant-wide unit as soon as the election hereinafter ordered among the pattern makers has been held and a determination made as to whether or not the pattern makers are to be included therein.

The persons eligible to vote in the election hereinafter ordered shall be all the employees in the pattern shop at the Greensburg plant who were employed by the Company during the pay-roll period ending December 30, 1937, exclusive of the foremen and those who have since quit or been discharged for cause. This eligibility date is adopted in view of the fact that at the hearing all parties agreed that a list of pattern shop employees appearing on the Company pay roll as of that date should be used for the purposes of comparison with membership cards and petitions of the S. W. O. C. and the Association.

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

CONCLUSION OF LAW

A question affecting commerce has arisen concerning the representation of employees of The Walworth Company at its Greensburg, Pennsylvania, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with The Walworth Company, Greensburg, Pennsylvania, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the employees of The Walworth Company at its Greensburg, Pennsylvania, plant, who were employed in the pattern shop of said plant during the pay-roll period ending December 30, 1937, excluding foremen and those who have since quit or been discharged for cause, to determine whether they desire to be represented by Pattern Makers' Association of Pittsburgh and Vicinity, Pattern Makers' League of North America, affiliated with the American Federation of Labor, or by Steel Workers' Organizing Committee, for and on behalf of Amalgamated Association of Iron, Steel, and Tin Workers of North America, affiliated with the Committee for Industrial Organization, for the purpose of collective bargaining, or by neither.

EDWIN S. SMITH, DISSENTING:

For reasons set forth in a number of similar cases ⁴ in which I have dissented, I believe that the purposes of the Act as regards collective bargaining will be best promoted by not permitting the pattern makers as a craft to disassociate themselves from the general body of employees.

I would deny the Association's petition.

⁴ E. g. *In the Matter of Alvis-Chalmers Manufacturing Company and International Union, United Automobile Workers of America, Local 248*, 4 N L R B 159