

Alcan Cable West, Division of Alcan Aluminum Corporation and United Steelworkers of America, AFL-CIO. Case 32-CA-266 (formerly 20-CA-13129)

February 23, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND MURPHY

Upon a charge filed on July 13, 1977,¹ by United Steelworkers of America, AFL-CIO, herein called the Union, and duly served on Alcan Cable West, Division of Alcan Aluminum Corporation, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 20, issued a complaint on August 18 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 9, following a Board election in Case 20-RC-13739, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;² and that, commencing on or about July 13, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 31, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint and stating as affirmative defenses that (1) the complaint fails to state a claim upon which relief may be granted and (2) the Union, its agents, and supporters engaged in extensive objectionable conduct which interfered with the conduct of a proper secret-ballot election.

On November 23, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and a memorandum in support thereof. Subsequently, on December 13, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's

Motion for Summary Judgment should not be granted. Thereafter, Respondent filed a response to Notice To Show Cause and supporting memorandum, and a Cross-Motion for Summary Judgment.³

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to Notice To Show Cause and supporting memorandum, the Respondent, in substance, attacks the validity of the Union's certification on the grounds that the Board improperly overruled its objections to the election in the underlying representation proceeding and denied its request for a hearing on substantial and material issues of fact raised by the objections. The General Counsel, on the other hand, argues that all material issues have been previously decided and that there are no litigable issues of fact warranting a hearing. We agree with the General Counsel.

Review of the record herein, including that in the representation proceeding, Case 20-RC-13739, establishes that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on November 12, 1976, which the Union won by a vote of 49 to 34 with 2 challenged ballots. The Respondent filed timely objections to conduct affecting the results of the election alleging, *inter alia*, that (1) the Union, by promises of benefits, threats of reprisals, and other coercive conduct, induced employees to vote for it; (2) the Union campaigned at or near the polling area during the election, thereby intimidating or inducing employees into voting for it; (3) the presence of Harry Preece, a union officer, former employee, and alleged discriminatory dischargee and his conduct before, during, and after he voted prejudiced the election; (4) third parties coerced employees into participating in the election and voting for the Union; (5) the Board agent conducting the election discriminatorily enforced a policy against carrying anything into the voting booth, thereby creating a "racial incident;" (6) the Board agent, by opening the polls late, prevented an undetermined number of employees from voting; and (7) the Board agent, by allowing a "carnival

¹ Unless otherwise indicated, all events herein occurred in 1977.

² Official notice is taken of the record in the representation proceeding, Case 20-RC-13739, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26

(C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA, as amended.

³ These documents, dated "December, 1977," were received by the Board on December 27.

atmosphere" at the polls and exhibiting bias, prejudice, and favoritism toward the Union, destroyed the necessary laboratory conditions. After investigation, the Acting Regional Director for Region 20 issued, on January 24, his report on objections in which he concluded that none of the Respondent's objections warranted setting aside the election. The Respondent filed timely exceptions and a supporting brief with attached affidavits, reiterating its objections and contentions and requesting a hearing on the objections. On May 9, the Board, after reviewing the record in light of the Respondent's exceptions and brief, found that the Employer's exceptions raised no material or substantial issues of fact or law that would warrant reversal of the Acting Regional Director's recommendations or require a hearing, adopted his findings and recommendations, and certified the Union.

Thereafter, on May 23, the Respondent filed a motion for reconsideration requesting that the Board reconsider its decision and direct the election to be set aside or, in the alternative, that an evidentiary hearing be held to investigate the factual issues raised by the objections. In an order dated June 2, the Board denied Respondent's motion on the grounds that it was lacking in merit and contained nothing not previously considered by the Board.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁴

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the General Counsel's Motion for Summary Judgment.⁵

On the basis of the entire record, the Board makes the following:

⁴ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

⁵ The Respondent asserts in its Cross-Motion for Summary Judgment that "there are no material issues of fact regarding the existence of its objective good-faith doubt concerning charging party's majority status and other consideration [sic] which create a full and complete defense to its duty

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is, and at all times material herein has been, a corporation with an office and place of business in Rocklin, California, where it is engaged in the business of producing bare insulated cable products. During the past calendar year Respondent has, in the course and conduct of its business operation, sold goods valued in excess of \$50,000 directly to customers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees of the Employer at its Rocklin, California, location, excluding laboratory technicians, purchasing agents, office clerical employees, salesmen, production control employees, managers, guards and supervisors as defined in the Act.

2. The certification

On November 12, 1976, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 20, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on May

to bargain at the present time with the charging party." Inasmuch as the Respondent has presented no basis for doubting the Union's majority status other than the matters raised and fully litigated in the underlying representation proceeding, we find the Respondent's assertion without merit. Accordingly, the Respondent's Cross-Motion for Summary Judgment is hereby denied.

9, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about May 11, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 13, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since July 13, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328

F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Alcan Cable West, Division of Alcan Aluminum Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees of the Employer at its Rocklin, California, location, excluding laboratory technicians, purchasing agents, office clerical employees, salesmen, production control employees, managers, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since May 9, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 13, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Alcan Cable West, Division Alcan Aluminum Corporation, Rocklin, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees of the Employer at its Rocklin, California, location, excluding laboratory technicians, purchasing agents, office clerical employees, salesmen, production control employees, managers, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Rocklin, California, location copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of the Employer at its Rocklin, California, location, excluding laboratory technicians, purchasing agents, office clerical employees, salesmen, production control employees, managers, guards and supervisors as defined in the Act.

ALCAN CABLE WEST,
DIVISION OF ALCAN
ALUMINUM