

In the Matter of ALUMINUM COMPANY OF AMERICA and FEDERAL LABOR
UNION 23538, A. F. OF L.

Case No. 4-R-1229.—Decided November 6, 1943

Mr. John B. Holmes, of Burlington, N. J., for the Company.

Mr. Edward Kennedy, of Trenton, N. J., for the Union.

Miss Muriel J. Levor, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by Federal Labor Union 23538, A. F. of L., herein called the Union,¹ alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Company of America, Burlington, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Burlington, New Jersey, on October 11, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Aluminum Company of America, a Pennsylvania corporation, operates a plant for the production of pig aluminum at Burlington, New Jersey. It is with this plant, owned by the United States Government, that we are concerned herein. The principal raw material,

¹ A motion was made and granted at the hearing to amend the petition and other formal documents to set forth the name of the Union, as above

alumina, used in the plant's operations is shipped from points outside the State of New Jersey at the rate of 1,000 tons monthly. During the month of August 1943, 700 tons of pig aluminum, valued at more than \$100,000, were produced at the Burlington plant, of which 95 percent was shipped to points outside the State of New Jersey.

The Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Federal Labor Union 23538, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about August 20, 1943, the Union asserted a claim to represent a majority of the plant-protection employees at the Burlington plant, and requested the Company to recognize it as their bargaining agent. The Company refused to accord such recognition, unless and until the Board certifies the Union, on the ground that these employees do not constitute an appropriate bargaining unit.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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 Union seeks a collective bargaining unit composed exclusively of plant-protection employees at the Company's Burlington plant. The Company contends that a unit so constituted is inappropriate because plant-protection employees were expressly excluded from the unit of production and maintenance employees set up by the terms of a recent consent election agreement,³ and on the further ground that the duties of guards are confidential. There is no merit to either contention. The Board has carefully considered and re-considered the problems presented herein but has always come to the conclusion that militarized guards are employees within the meaning

²The Regional Director reports that the Union submitted 49 designations of which 48, bearing apparently genuine original signatures, correspond with names on the Company's pay roll of September 11, 1943, which contains 55 names.

³The agreement was between the Company and Aluminum Workers Local Union 23501, A. F. of L., which as a result of an election held August 3, 1943, was found by the Regional Director to be the bargaining representative of the production and maintenance employees of the Burlington plant.

of the Act and that they have a right to be represented in a unit of their own by the union of their choice.⁴

The plant-protection employees with which we are here concerned are ordinary uniformed and armed plant and fire guards. They are employees of the Company and retain the usual employer-employee relationship although they have been sworn as members of the Auxiliary Military Police. Their principal function, the custody and protection of company property, including its concomitant authority, is of a monitory and not a supervisory character. The parties are agreed that these guards have no supervisory functions with respect to the production and maintenance employees and it appears that they do not have access in the course of their usual duties to information of a confidential nature.⁵ We shall, therefore, establish a separate unit for the guards.

There is a further controversy as to the composition of the unit since the Company asserts, and the Union denies, that sergeants and the fire marshal should be excluded from the unit as supervisory. The Company employs a captain, who is in charge of the plant-protection force. A lieutenant heads each shift and has a sergeant to assist him and take charge in his absence. The Company employs no corporals. It appears that a sergeant's authority is little less than that of a lieutenant, who is conceded to be a supervisory employee by the parties. Furthermore sergeants have the authority to make effective recommendations concerning the status of other guards. The fire marshal supervises the activities of the fire guards. Accordingly, we shall exclude the sergeants and the fire marshal as supervisory employees.⁶

We find that all militarized plant and fire guards of the Company's Burlington, New Jersey, plant, but excluding captains, lieutenants, sergeants, the fire marshal, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the em-

⁴ See *Matter of Firestone Tire and Rubber Company*, 50 N. L. R. B. 679, and cases cited therein; *Matter of Dravo Corp.*, 52 N. L. R. B. 322; and *Matter of Bethlehem Steel Company, Shipbuilding Division, Hoboken Yard*, 52 N. L. R. B. 1265.

⁵ See *Matter of Creamery Package Mfg. Co. (Lake Mills Plant)*, 34 N. L. R. B. 108.

⁶ The Company employs a watchman, whose duties are those usually assigned to that type of employee. It appears that this particular watchman is a sworn member of the Auxiliary Military Police. Accordingly, we do not find it necessary to exclude him from the unit of militarized guards. However, in accordance with our finding in the *Dravo* case we shall exclude any non-militarized watchmen whom the Company may employ hereafter.

ployees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of our Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Aluminum Company of America, Burlington, New Jersey, 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 Fourth 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 unit found appropriate 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 have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Federal Labor Union 23538, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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