

In the Matter of MONARCH ALUMINUM MFG. COMPANY and INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, CASTING DIVISION (CIO)

Case No. 8-R-1275.—Decided November 29, 1943

Messrs. Mooney, Hahn, Loeser, Keough & Freedheim, by Monroe A. Loeser, of Cleveland, Ohio, for the Company.

Messrs. Alex Balint and Pete Zvara, of Cleveland, Ohio, for the C. I. O.

Messrs. Joseph C. Breitenstein and F. G. Kleinhenz, of Cleveland, Ohio, for the Independent.

Mr. Joseph W. Kulkis, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by International Union of Mine, Mill & Smelter Workers, Casting Division (CIO), herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Monarch Aluminum Mfg. Company, Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis Plost, Trial Examiner. The hearing was held at Cleveland, Ohio, on November 4, 1943. The Company, the C. I. O., and the Aluminum Workers Organization, Inc., herein called the Independent, 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. Subsequent to the hearing, the Company requested oral argument. The request is hereby denied. The Independent's motion to dismiss the petition was reserved to the Board by the Trial Examiner. For reasons hereinafter set forth, the motion is hereby denied.

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:

53 N. L. R. B., No. 181.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Monarch Aluminum Mfg. Company, an Ohio corporation, operates a plant in Cleveland, Ohio, where it is engaged principally in the manufacture of airplane, bomb, and jeep parts. During the year of 1942, the Company purchased raw materials, consisting chiefly of aluminum, valued at approximately \$1,650,000, of which 25 percent was shipped to the Company's plant from points outside the State of Ohio. During the same period, the Company's shipments were in excess of \$3,000,000, of which 75 percent was sold and shipped to points outside the State of Ohio. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union of Mine, Mill & Smelter Workers, Casting Division, affiliated with the Congress of Industrial Organizations, and Aluminum Workers Organization, Inc., unaffiliated, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 4, 1941, the Company and the Independent entered into a 2-year contract which expired October 4, 1943. On August 30, 1943, the C. I. O. advised the Company that it represented a majority of the Company's employees and requested recognition as their exclusive bargaining agent. The Company refused to recognize the C. I. O. on the ground that the Company was already under contract with the Independent. Thereafter, on October 4 and November 4, 1943, respectively, the Company and the Independent executed 30-day extensions of the previously expired contract. The Independent contended, in its motion to dismiss, that the contract, as extended, constituted a bar to the determination of representatives. Since the Company was on notice of the representation claim of the C. I. O. prior to the expiration of the original contract and before execution of the extensions thereof, we find this contention to be without merit.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.¹

¹ The report of the Field Examiner shows that the C. I. O. submitted 394 authorization cards bearing apparently genuine signatures of 375 persons, of which 254 names appear on the October 15, 1943, pay roll of the Company, which contains the names of 800 persons within the alleged appropriate unit. The Company stipulated that there are now 700 within the alleged appropriate unit.

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 parties agree that all production and maintenance employees, including all regular part-time employees, but excluding timekeepers, clerks, office workers, technical employees, and supervisors who have authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, constitute an appropriate unit. The parties are in disagreement, however, with reference to the inclusion or exclusion of watchmen, guards, and laboratory employees.

The record discloses that the guards, of whom there are eight in number, are armed, uniformed, and are subject to the control of the United States War Department. Because of their militarized status and in accordance with our usual practice, we shall exclude them.²

The Company employs two watchmen whose duties are confined to the patrol of the Company's premises and the performance of other acts normally incident to such employment. None of the watchmen are armed or in any respect militarized. Accordingly, we find that they may appropriately be included within the production and maintenance unit; we shall include them.³

The C. I. O. seeks the exclusion of laboratory employees upon the ground that they are confidential employees. The Company contends that these employees should be included. The record reveals that there are approximately 25 employees employed in the laboratory, 3 of whom are highly skilled technicians paid on a salary basis, and occupy a supervisory status. We shall exclude the 3 technical employees. The remaining employees are known as laboratory assistants. These employees are without special technical training, and are engaged in performing routine tests under supervision for control of the quality of the Company's products. They receive substantially the same hourly rates of pay as production employees. There is no evidence that their duties place them in a confidential relationship to the management. While it appears that the C. I. O. does not admit them to membership, they are eligible to membership in the Independent and were included in its bargaining negotiations with the Company. In view of the foregoing, we are of the opinion that these employees should be included in the production and maintenance unit; accordingly, we shall include them.

² See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

³ See *Matter of Brown Paper Mill*, 45 N. L. R. B. 1227; *Matter of Gluck Bros.*, 45 N. L. R. B. 1161; *Matter of MacAndrews & Forbes Company*, 39 N. L. R. B. 699.

We find that all production and maintenance employees, including regular part-time employees, watchmen, and laboratory assistants, but excluding office and clerical employees, timekeepers, technical employees, guards, and supervisors 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 employees 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Monarch Aluminum Mfg. Company, Cleveland, 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 Eighth 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 employees 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 they desire to be represented by the International Union of Mine, Mill & Smelter Workers, Casting Division C. I. O., or by Aluminum Workers Organization, Inc., for the purposes of collective bargaining, or by neither.