

In the Matter of ALUMINUM COMPANY OF AMERICA, CHICAGO WORKS  
and BRICKLAYERS, MASONS, AND PLASTERERS INTERNATIONAL UNION  
OF AMERICA, LOCAL 21, A. F. OF L.

*Case No. 13-R-2327.—Decided May 2, 1944*

*Messrs. Malcolm H. Freeman and Lyle R. Mercer, of Brookfield, Ill., for the Company.*

*Mr. Wm. J. Harrigan, of Hammond, Ind., for the A. F. L.*

*Messrs. Leon M. Despres and James T. Gilmore, of Chicago, Ill., for the C. I. O.*

*Mr. Max M. Goldman, of counsel to the Board.*

## DECISION

AND

## CERTIFICATION OF REPRESENTATIVES

### STATEMENT OF THE CASE

Upon a petition duly filed by Bricklayers, Mason, and Plasterers International Union of America, Local 21, affiliated with the American Federation of Labor, herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Company of America, Chicago Works, McCook, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert R. Rissman, Trial Examiner. Said hearing was held at Chicago, Illinois, on March 24, 1944. At the hearing the Trial Examiner granted a motion to intervene made by International Union, Aluminum Workers of America, Local 42, affiliated with the Congress of Industrial Organizations, herein called the C. I. O. The Company, the A. F. L., and the C. I. O. appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

56 N. L. R. B., No. 43.

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 is a Pennsylvania corporation engaged in the production of aluminum and aluminum products. The Company operates approximately 40 plants located in 17 different States of the United States. The present proceedings involve only the Chicago Works of the Company.

The Chicago Works, which is located at Brookfield, Illinois, is one of 11 plants comprising the Company's fabricating division. It is a rolling mill devoted solely to the production of aluminum sheet and plate. The Chicago Works is owned by Defense Plant Corporation, a subsidiary of the Reconstruction Finance Corporation, and is operated by the Company under lease from Defense Plant Corporation.

The Chicago Works uses annually raw materials valued in excess of \$5,000,000, 90 percent of which is secured from sources outside the State of Illinois. It produces annually finished products valued in excess of \$10,000,000, approximately 75 percent of which is shipped to points outside the State of Illinois.

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

#### II. THE ORGANIZATIONS INVOLVED

Bricklayers, Masons, and Plasterers International Union of America, Local 21, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

International Union, Aluminum Workers of America, Local 42, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On December 13, 14, and 15, 1943, the Board held a consolidated hearing on the petitions filed by various labor organizations for investigation and certification of representatives of employees of the Company at its Chicago Works. Among these organizations was the C. I. O. No notice of the hearing was given to the A. F. L., and it did not appear or participate. On February 3, 1944, a Decision and Direction of Elections was issued in that proceeding by the Board,<sup>1</sup> and on February 16, 1944, the petition in the present case was filed by

<sup>1</sup> 54 N. L. R. B. 1043.

the A. F. L. The Company has refused to grant recognition to the A. F. L. as the exclusive bargaining representative of its bricklayers until the A. F. L. has been certified by the Board in an appropriate unit.

The elections directed on February 3, 1944, were held on February 22 and 23, and the ballots cast by the bricklayers in a residual voting group of production and maintenance employees were challenged and impounded. On March 20, 1944, the Board issued a Supplemental Decision and Certification of Representatives wherein it stated that since the A. F. L.'s "petition is presently pending before the Board, we shall refrain, at this time, from certifying the C. I. O. as bargaining representative of this group of employees [the bricklayers], without prejudice, however, to a later determination that such employees should not be set apart from the production and maintenance employees."

The record in the instant proceeding reveals, and we find, that the A. F. L. represents all the bricklayers at the Company's Chicago Works, and that all but one have been members of that organization during the past several years.<sup>2</sup>

The C. I. O. contends that no question concerning representation exists because the A. F. L.'s petition was filed subsequent to the issuance of the Decision and Direction of Elections in the prior representation proceeding involving the Company's Chicago Works' employees, and it urges that the petition be dismissed. The A. F. L., however, had a substantial membership in the alleged appropriate unit prior to the date of the hearing in the previous case and should, therefore, have been served with a copy of the Notice of Hearing therein and made a party to that proceeding so that it could have presented its claim with respect to the Company's bricklayers.<sup>3</sup>

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 A. F. L. seeks a unit of all the bricklayers employed by the Company at its Chicago Works, including the bricklayer foreman. The C. I. O. and the Company contend that a unit of bricklayers is inappropriate, and that a plant-wide unit is appropriate. The Company also takes the position that in any case the bricklayer foreman should be excluded as a supervisory employee.

<sup>2</sup> The A. F. L. adduced evidence showing that the five bricklayers employed by the Company at the Chicago Works were its members at the time of the hearing. The Company concedes, and the C. I. O. does not contest, this fact.

<sup>3</sup> See *Matter of Dodge Chicago Plant, Division of Chrysler Corporation*, 55 N. L. R. B. 1296.

There are five bricklayers and a bricklayer foreman employed by the Company in the mechanical department at its Chicago Works. The bricklayers are skilled employees whose trade requires an apprenticeship of several years. We have recognized the right of such employees to separate representation, if they so desired.<sup>4</sup> Their primary function is to keep the Company's 90 furnaces in repair by relining or rebuilding them as they burn out. They also have the duty to do repair work on the Company's brick buildings.

The bricklayer foreman is in charge of the bricklayers and the yard crew in the mechanical department. In all, there are approximately 35 employees under his supervision. The yard crew, not involved in this proceeding, performs miscellaneous maintenance work of an unskilled nature. There is an assistant foreman over this crew, and he reports to the bricklayer foreman. The bricklayer foreman performs no manual labor, and all his time is spent directing and supervising the work of others. He attends the foremen's meetings, wears a foreman's badge, and recommends increases in pay for his men to the master mechanic, the head of the mechanical department. There are about 25 foremen under the master mechanic. These foremen have approximately the same supervisory status as the bricklayer foreman, and have been excluded as supervisory employees in the Board's prior decision involving the Chicago Works.<sup>5</sup> Although the Company's employment office actually hires and discharges, it depends to a large extent on the bricklayer foreman's interviews and judgment. We are of the opinion that the bricklayer foreman falls within our customary definition of supervisory employees, and we shall accordingly exclude him.

We are of the opinion that the bricklayers could either be part of the larger production and maintenance unit or function as a separate unit. Ordinarily we would direct an election to ascertain their desires before determining the appropriate unit.<sup>6</sup> The C. I. O., however, stated on the record that it did not wish to participate in any election which might be directed in this proceeding. We conclude, therefore, that the bricklayers constitute an appropriate unit.

In accordance with the foregoing, we find that all bricklayers employed by the Company at its Chicago Works, excluding the bricklayer foreman, and all 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.

<sup>4</sup> See *Matter of Aluminum Company of America*, 42 N. L. R. B. 772, and 43 N. L. R. B. 1275; *Matter of Wisconsin Steel Works, International Harvester Company*, 42 N. L. R. B. 1276 and 44 N. L. R. B. 68.

<sup>5</sup> See footnote 1, *supra*.

<sup>6</sup> See, for example, cases cited in footnote 4, *supra*.

## V. THE DETERMINATION OF REPRESENTATIVES

As noted above, the A. F. L. represents all the employees within the unit found appropriate in Section IV, *supra*. Both the Company and the C. I. O. consented to certification of the A. F. L. on the record in the event the Board found a unit of bricklayers to be appropriate. In the circumstances, we shall not direct an election in accordance with our usual procedure, but shall certify the A. F. L.

## 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 9, of National Labor Relations Board Rules and Regulations—Series 3,

IT IS HEREBY CERTIFIED that, Bricklayers, Masons, and Plasterers International Union of America, Local 21, affiliated with the American Federation of Labor, has been designated and selected by a majority of the bricklayers of Aluminum Company of America, Chicago Works, McCook, Illinois, but excluding the bricklayer foreman, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.