

In the Matter of ALUMINUM ORE COMPANY *and* INTERNATIONAL UNION,  
ALUMINUM WORKERS OF AMERICA, AFFILIATED WITH CONGRESS OF  
INDUSTRIAL ORGANIZATIONS

*Case No. 15-R-1107.—Decided May 13, 1944*

*Mr. D. C. Smith and Mr. L. A. Moreland*, both of Mobile, Ala., and  
*Mr. Walter Carroll*, of New Orleans, La., for the Company.

*Mr. James Dickerson*, of Mobile, Ala., for the C. I. O.

*Mr. Eddie R. Stahl*, of Pittsburgh, Pa., and *Mr. R. O. Ross*, of Knoxville, Tenn., for the A. F. L.

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

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, Aluminum Workers of America, affiliated with Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Ore Company, Mobile, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice, before Marcel Mallet-Prevost, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on April 1, 1944. The Company, C. I. O., and Aluminum Workers Local #22438 and #23313, herein called the A. F. L., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The A. F. L.'s motion to dismiss was referred to the Board by the Trial Examiner. For reasons hereinafter set forth, the motion is denied. 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. 95.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Aluminum Ore Company, a Delaware corporation and a wholly-owned subsidiary of Aluminum Company of America, having its principal executive offices at St. Louis, Missouri, operates a plant at Mobile, Alabama, where it is engaged in processing natural bauxite into aluminum oxide. The principal raw materials used by the Company consist of bauxite and soda ash. Approximately 80 percent of raw materials is shipped in from points outside the State of Alabama and approximately 90 percent of the finished products is shipped to points outside the State of Alabama.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

International Union, Aluminum Workers of America, affiliated with the Congress of Industrial Organizations, and Aluminum Workers, Local #22438 and #23313, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On April 19, 1941, the Board certified the A. F. L. as the exclusive representative of the Company's production and maintenance employees.<sup>1</sup> On March 24, 1943, the Company and the A. F. L. executed an exclusive bargaining contract, which provided that it was to remain in effect for a period of 1 year and indefinitely thereafter until modified upon 30 days notice. On February 10, 1944, the A. F. L. submitted to the Company a written request for the extension of the agreement for the year 1944. On February 14, 1944, the Company replied in writing that the request was acceptable to the Company. The C. I. O., on March 4, 1944, filed the present petition for investigation and certification of representatives, and on March 7, 1944, requested the Company to bargain with it as the exclusive collective bargaining representative of the employees within the alleged appropriate unit. On March 10, 1944, the Company refused to bargain with the C. I. O. on the ground that the Company was under contract with the A. F. L.

As noted above, the A. F. L. moved at the hearing to dismiss the petition herein because of its existing contract with the Company.

<sup>1</sup> See *Matter of Aluminum Ore Company*; 31 N. L. R. B. 99.

Since the contract of March 24, 1943, by its terms became one of indefinite duration upon the expiration of one year, it is clear that, as such, it is no bar to a present determination of representatives.<sup>2</sup> The A. F. L. contends, however, that inasmuch as the representation claim of the C. I. O. was not presented to the Company until March 7, 1944, approximately one month subsequent to the agreement of February 14, 1944, which extended the terms of the original contract to March 24, 1945, such claim was not timely made. We have heretofore held that the extension of an automatically renewable contract prior to the automatic renewal date set therein cannot operate as a bar to a rival claim of representation made prior to the expiration date of such contract.<sup>3</sup> The foregoing principle is equally applicable to the extension of a contract which contains no-automatic renewal clause where such extension is made in advance of the expiration date.<sup>4</sup> In either case, to permit the extension agreement to act as a bar to a determination of representatives would, as we stated in the *Wichita* and *Memphis Cases, supra*, require employees seeking to change their bargaining representative to accelerate their organizing activities so as to be ready to assert a claim of majority representation prior to any time the contracting parties might elect to extend the existing agreement, thus creating unrest under such agreement and operating to the detriment of stabilized labor relations. It follows here that notwithstanding the prior extension agreement executed on February 14, 1944, the claim to representation made by the C. I. O. prior to March 24, 1944, the date on which the first definite term of the contract was to expire, was clearly timely. Accordingly, we find that neither the contract of March 24, 1943, nor its extension on February 14, 1944, operates as a bar to the present proceeding.

A statement of the Field Examiner of the Board, introduced into evidence at the hearing indicated that the C. I. O. represents a substantial number of employees within the unit hereinafter found to be appropriate.<sup>5</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

We find, substantially in accordance with the stipulation of the parties, that all production and maintenance employees at the Com-

<sup>2</sup> *Matter of Link-Belt Speeder Company*, 37 N. L. R. B. 889; *Matter of The American Coach and Body Co.*, 28 N. L. R. B. 508.

<sup>3</sup> *Matter of Memphis Furniture Manufacturing Co.*, 51 N. L. R. B. 1447.

<sup>4</sup> *Matter of Wichita Union Stockyards Company*, 40 N. L. R. B. 369.

<sup>5</sup> The report of the Field Examiner shows that the C. I. O. submitted 420 authorization cards, of which 391 of the cards bear names appearing on the March 13, 1944, pay roll of the Company, which contains the names of 793 persons within the alleged appropriate unit.

pany's Mobile plant, including analysts, order clerks, and head janitor, but excluding watchmen, meter helpers, head oiler, bricklayers, plumbers, dispensary attendants, office employees, hourly paid plant administrative employees other than analysts, and order clerks, and all 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>6</sup>

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of 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 the 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 Aluminum Ore Company, Mobile, Alabama, 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 Fifteenth 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 election, to determine whether they desire to be represented by International Union, Aluminum Workers of America, Local 20, C. I. O., or by Aluminum Workers Union #22438 and #23313, A. F. of L., for the purposes of collective bargaining, or by neither.

<sup>6</sup> This is substantially the same unit as previously found appropriate by the Board See footnote 1 *supra*.