

In the Matter of ALUMINUM COMPANY OF AMERICA, NEWARK WORKS
and AMERICAN FEDERATION OF LABOR

Case No. 8-R-1493.—Decided August 4, 1944

Messrs. E. B. Fassel, W. T. Ennor, and L. C. Acklin, all of Newark, Ohio, for the Company.

Mr. T. C. Dethloff, of Akron, Ohio, for the A. F. L.

Mr. James Dickerson, of New Kensington, Pa., Messrs. Vernon L. Tium and John Violet, both of Newark, Ohio, for the C. I. O.

Mr. Joseph C. Wells, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by 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, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Newark, Ohio, on June 13, 1944. The Company, the A. F. L., and International Union, Aluminum Workers of America, Local 41, (CIO), herein called 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.

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 having its principal office and place of business at Pittsburgh, Pennsylvania, 57 N. L. R. B., No. 148.

vania, is engaged in the production and sale of aluminum and aluminum alloys. The Company operates several plants, including one located at Newark, Ohio. The Newark plant produces aluminum alloys and materials fabricated therefrom. A large portion of the raw materials used at the Newark plant is shipped there from points outside the State of Ohio, and a large portion of the materials produced there is shipped to places outside the State.

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

II. THE ORGANIZATIONS INVOLVED

American Federation of Labor is a labor organization admitting to membership employees of the Company.

International Union, Aluminum Workers of America, Local 41, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On March 30, 1944, the A. F. L., in a letter to the Company, claimed to represent a majority of the employees at the Company's Newark plant, and requesting bargaining conferences. On April 3, 1944, the Company notified the A. F. L. that the C. I. O. was the certified bargaining representative of these employees and that the Company was required, therefore to bargain with the C. I. O. On April 3, 1944, the A. F. L. filed the petition in this proceeding.

The Company commenced production at its Newark plant during the first half of 1943. On October 19, 1943, the Board, acting pursuant to the results of a consent election and run-off election in which the A. F. L. and the C. I. O. were participants, certified the C. I. O. as the exclusive representative of employees concerned.¹ On November 15, 1943, the Local C. I. O. and the Company executed an agreement wherein they incorporated by reference the provisions of a master contract previously entered into by the Company and the International C. I. O. respecting employees employed at other plants of the Company. The November 15, 1943, agreement covered, except for the matter of wages, all phases of labor relations between the Company and the employees at the Newark plant. The master contract which the parties had incorporated into the November 15, 1943, agreement had been executed on November 1, 1942, and provided that it should

¹The C. I. O. was certified as the exclusive bargaining representative of all production and maintenance employees, excluding office and clerical employees, administrative, supervisory, technical and laboratory employees, office janitors, matrons, time cost clerks, fire protection inspectors, and guards. All parties agree that these employees constitute an appropriate bargaining unit.

be in effect for a period of 18 months, that is, until May 1, 1944, and thereafter until modified, upon at least 30 days notice. This provision for contract termination was incorporated into the November 15, 1943, agreement. From about November 15, 1943 to February 5, 1944, the Company and the C. I. O. negotiated with respect to wages for employees at the Newark plant, and on February 5, 1944, submitted their agreement which had resulted from these negotiations to the National War Labor Board for approval. Meanwhile, the International C. I. O., the Local C. I. O., and the Company, early in April 1944, began negotiations for a new master contract to replace the one mentioned above which was to expire on May 1, 1944. These negotiations concerned employees represented by the International and Local C. I. O. at several of the Company's plants, including the Newark plant. The negotiations did not produce an agreement, and, before the date of the hearing in this proceeding, 17 points in dispute between the parties were submitted to the National War Labor Board for arbitration. The parties agreed that, pending the decision of the National War Labor Board, the provisions of the old master contract were to remain in effect. At the date of the hearing in the instant proceeding, the National War Labor Board had not rendered its decisions with respect to either of the matters mentioned above.

It is obvious that there is no contractual relationship between the C. I. O. and the Company which bars a determination of representatives at this time. However, we are of the opinion that it will not effectuate the policies of the Act to order an election among the employees of the Company at its Newark plant at this time.² The certification of the Local C. I. O. issued by the Board on October 19, 1943, is less than a year old. In order to stabilize conditions essential to collective bargaining, the Board will not hold an election less than a year after its prior certification in the absence of particularly persuasive circumstances.³ There is nothing in the record to indicate that the Local C. I. O. is not actively functioning as the bargaining repre-

² An agent of the Board reported that the A. F. L. submitted 346 cards of which 258 bore names of the Company's employees listed on its April 1, 1944, pay roll. There are approximately 842 employees in the appropriate unit.

³ The A. F. L. contends that the agreement of November 15 between the Company and the C. I. O. operates as a waiver of the C. I. O.'s right to a period of 1 year following certification during which it may function without interruption as the exclusive bargaining representative of the employees identified by the certification. The Board finds no merit in this contention inasmuch as its policy in this respect is not designed to confer upon the certified union a right or privilege, but, as stated above, to stabilize conditions surrounding collective bargaining. Cf. *Matter of Thompson Products, Inc.*, 47 N. L. R. B. 619, where the employer and the certified union having entered into a contract after a Board election but 7 months prior to the certification, the Board directed an election at the end of the contract term but only 5 months after its certification. There the parties to the contract, by anticipating the certification, demonstrated that in the particular circumstances the certification was not the factor upon which the existence of conditions conducive to stabilized bargaining relations depended. See also *Matter of Trackson Company*, 56 N. L. R. B. 917.

sentative of the Company's employees at the Newark plant. Upon the entire record, therefore, we find, that the prior certification of the C. I. O. operates as a bar to a determination of representatives of the Company's maintenance and production employees at the Newark plant. We shall, accordingly dismiss the petition filed herein.⁴

ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record of the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Aluminum Company of America, Newark Works, Newark, Ohio, filed by American Federation of Labor, be, and it hereby is, dismissed.

⁴In support of its motion to dismiss the petition in this proceeding, the C. I. O. cites *Matter of Aluminum Company of America, Vancouver, Washington*, 53 N. L. R. B. 593, where the Board dismissed a petition for investigation and certification of representatives on the grounds that the Board's prior certification of the intervening union had been made only 11 months prior to the dismissal, and, through no fault of the parties, no contract had been entered into because of the pendency before the National War Labor Board of matters the determination of which was a prerequisite to any contract between the certified union and the employer. In view of our determination that the Board's certification of the C. I. O. on October 19, 1943, operates as an effective bar, at this time, to a determination of representatives of the Company's employees at the Newark plant, we find it unnecessary to consider here whether the pendency of matters before the National War Labor Board, as stated above, also precludes a present determination of representatives.