

In the Matter of ALUMINUM COMPANY OF AMERICA and NEW CASTLE
LODGE #360¹ OF THE INTERNATIONAL DIE SINKERS CONFERENCE

Case No. 6-R-1058.—Decided January 30, 1945

Mr. Harry Flynn, of Pittsburgh, Pa., and Messrs. H. J. Morrison and Thomas D. Jones, both of New Castle, Pa., for the Company.

Messrs. J. G. Meiner and Walter T. Lynch, both of Cleveland, Ohio, for the Die Sinkers.

Mr. Max W. Johnstone, of Akron, Ohio, and Mr. Reuben Peters, of Cleveland, Ohio, for the U. A. W.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by New Castle Lodge #360² of the International Die Sinkers Conference, herein called the Die Sinkers, alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Company of America, New Castle, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen S. Sinsheimer, Jr., Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on December 19, 1944. The Company, the Die Sinkers, and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, and its Local 219, herein collectively called the U. A. W., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing the U. A. W. moved for a dismissal of the petition herein. The Trial Examiner reserved ruling on this motion for the Board. For reasons stated in Sections III and IV, *infra*, the

¹ The record indicates that #360 is the correct designation of the Lodge concerned herein.

² The petition recites that it was filed by "New Castle Lodge #350 . . ." However, as previously indicated, the record discloses that #360 is the correct designation.

motion is hereby 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.

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 with its principal offices located in Pittsburgh, Pennsylvania. The Company owns and operates numerous plants and warehouses located in 20 States of the United States. In addition, the Company operates a plant located at New Castle, Pennsylvania, under lease from the Defense Plant Corporation, with which we are concerned herein. The New Castle plant, which commenced operations in February 1943, is engaged in the manufacture of forgings. During the year 1943, the approximate value of raw materials and other items purchased for use at said plant was in excess of \$2,000,000, of which amount 39 percent was received from points outside the Commonwealth of Pennsylvania. During the same period, the Company manufactured forgings at this plant valued in excess of \$3,000,000, of which 94 percent was shipped to points outside the Commonwealth. The Company's purchases and sales with respect to the New Castle plant during the year 1944 were in approximately the same amounts and proportions.

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

II. THE ORGANIZATIONS INVOLVED

New Castle Lodge #360 of the International Die Sinkers Conference is an unaffiliated labor organization, admitting to membership employees of the Company.

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, and its Local 219, are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated October 27, 1944, the Die Sinkers requested recognition from the Company as the collective bargaining representative of certain of its employees engaged in the New Castle plant.³ The Com-

³ This was the third such request. The prior requests were made by the Die Sinkers in letters dated June 1 and July 25, 1944, respectively.

pany replied by letter dated November 2, refusing to grant such recognition in the absence of certification by the Board.

On December 2, 1943, following the designation of the U. A. W. by the Regional Director as collective bargaining representative of the production and maintenance employees of the New Castle plant (including die room employees), the Company and the U. A. W. executed a collective bargaining agreement which provided that it was to remain in effect for a period of 1 year and for yearly periods thereafter "until modified, after at least thirty (30) days' notice before the expiration date." Prior to November 2, 1944, the U. A. W. notified the Company that it desired to modify this agreement in certain respects, and, at the time of the hearing, these parties, then in the process of negotiating, were operating under a 30-day extension of the 1943 agreement.

The U. A. W. contends that the 1943 agreement constitutes a bar to a current determination of representatives. We do not agree. Since the Die Sinkers gave timely notice of its claim, the contract cannot be asserted as a bar. Furthermore, even if the extension of this contract had been entered into prior to August 27, 1944, and even if such extension had been reduced to writing (facts not disclosed by the record), the 1943 agreement, as extended, has already expired, and is, therefore, no bar.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Die Sinkers represents a substantial number of the employees in the unit it alleges as appropriate.⁴

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 DETERMINATION OF REPRESENTATIVES

The Die Sinkers seeks a unit comprised of all employees of the Company working on dies or parts of dies, including final inspectors, process inspectors, steel power saw operators, tool grinders, heat treaters—Class A, die room trainees, machine operators—Classes A and B, bench hand-sheer tool operators—Classes A and B, sand blasters—Class B, die sinker operators—Classes A and B, and squad leaders, but excluding sweepers, die room helpers, tool crib attendants, tool inspector helpers, pattern makers, pattern maker helpers,⁵ super-

⁴ The Field Examiner reported that the Die Sinkers submitted 55 designations which "checked on" the Company's pay roll for the period ending October 21, 1944, and that there were 89 employees in the alleged appropriate unit.

The U. A. W. relies upon its 1943 contract with the Company for the establishment of its interest.

⁵ The employees in these six classifications are attached to the die room but do not work directly on dies or parts of dies.

intendents, foremen, 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, and all other employees of the Company. The U. A. W. raises no substantial issue with respect to the specific classifications set forth above, but contends that the unit is inappropriate in view of the Company's past history of collective bargaining and because it does not encompass a distinct craft group. The Company takes no position with respect to the propriety of the proposed unit.

As hereinbefore indicated, the Company's operations at the New Castle plant commenced in February 1943. On September 2 of that year, the U. A. W. filed a representation petition with the Board, seeking a unit of production and maintenance employees of that plant.⁶ Following this action, the Company and the U. A. W. entered into a consent election agreement, and the U. A. W. was subsequently designated by the Regional Director as the collective bargaining representative of the employees in the unit set forth in the consent election agreement, which included, among others, die room employees. Thereafter, on December 2, the U. A. W. executed the 1943 collective bargaining agreement with the Company referred to above. This contract contained a maintenance of membership provision.

The record indicates that in April 1944, the Die Sinkers became aware of the fact that the Company engaged die sinking employees at the New Castle plant,⁷ and started its organizational activities. On June 22, it filed a representation petition, seeking a unit of die sinking employees, which it withdrew at the instance of the Regional Director because of the 1943 agreement between the Company and the U. A. W.⁸ On or about June 24, following a request of the U. A. W. that delinquent members in the die room be discharged, a Federal conciliator conferred with the two labor organizations and the Company. Subsequently, two employees of the die room were discharged, pursuant to the provisions of the maintenance of membership clause in the 1943 agreement, and on June 26, the die room employees "walked out." On July 1, most of these employees returned to work since arbitration of the matter had been agreed upon by all concerned. A decision was rendered by the arbitrator on July 22, in which he found that approximately 40 employees in the die room were delinquent members of the U. A. W. These employees were subsequently discharged, and

⁶ Case No. 6-R-806. An amended petition was subsequently filed on September 10, 1943.

⁷ There is some indication that the Die Sinkers was cognizant of this fact on December 17, 1943. However, it is clear that the Die Sinkers first evinced an interest in employees of the New Castle plant only after the 1943 agreement had been consummated.

⁸ Case No. 6-R-984.

again the die room employees "walked out." On July 31, the Regional War Labor Board issued a directive, ordering these employees to return to work, and also requested assistance of the Die Sinkers in effecting this return. The Die Sinkers gave such assistance, paying the U. A. W. the dues of some employees in order to keep them in good standing. Furthermore, it thereafter urged its members, who were also members of the U. A. W., to remain in good standing with that organization, and assisted them financially in doing so when necessary. On October 19, the Die Sinkers sent the Company petitions signed by 70 die room employees, requesting that, if the current contract between the Company and the U. A. W. were renegotiated or extended, an "escape clause" be placed in the maintenance of membership provision so that members of the Die Sinkers could withdraw from the U. A. W.

In view of all of the foregoing circumstances, we are of the opinion that the history of collective bargaining is not determinative of the unit issue in this proceeding. The established bargaining unit was not predicated upon any finding of the Board, and there has not been a sufficiently long history of collective bargaining premised upon this unit to preclude a finding that a smaller unit is appropriate.⁹ Nor do we attach any weight to the U. A. W.'s contention that the employees sought by the Die Sinkers do not constitute an identifiable craft. This contention was rejected by us in a prior proceeding involving similar employees engaged at another plant of the Company.¹⁰ We are persuaded that all employees of the Company at the New Castle plant working on dies or parts of dies may properly constitute a separate unit or be represented as part of the existing production and maintenance unit.

Accordingly, before making a final determination as to the propriety of the unit proposed by the Die Sinkers, we shall first ascertain the desires of the employees themselves. We shall direct an election by secret ballot to be conducted among all employees of the Company at the New Castle plant working on dies or parts of dies, including final inspectors, process inspectors, steel power saw operators, tool grinders, heat treaters—Class A, die room trainees, machine operators—Classes A and B, bench hand-shear tool operators—Classes A and B, sand blasters—Class B, die sinker operators—Classes A and B, and squad leaders, but excluding sweepers, die room helpers, tool crib attendants, tool inspector helpers, pattern makers, pattern maker helpers, superintendents, foremen, 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, and all

⁹ See *Matter of Federal Telephone and Radio Corporation*, 49 N. L. R. B. 938.

¹⁰ See *Matter of Aluminum Company of America (Canonsburg Plant)*, 55 N. L. R. B. 407.

other employees of the Company, who were employed during the pay-roll period immediately preceding the date of the Direction, herein, subject to the limitations and additions set forth in the Direction, to determine whether they desire to be represented by the Die Sinkers or by the U. A. W. Upon the results of the election will depend, in part, our determination of the appropriate unit. If the employees in this voting group select the Die Sinkers as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, these employees choose the U. A. W., they will have thereby indicated their desire to be part of the existing production and maintenance unit.

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, 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, New Castle, Pennsylvania, 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 Sixth 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 of the Company at its **New Castle, Pennsylvania**, plant, working on dies or parts of dies including final inspectors, process inspectors, steel power saw operators, tool grinders, heat treaters—Class A, die room trainees, machine operators—Classes A and B, bench hand-shear tool operators—Classes A and B, sand blasters—Class B, die sinker operators—Classes A and B, and squad leaders, but excluding sweepers, die room helpers, tool crib attendants, tool inspector helpers, pattern makers, pattern maker helpers, superintendents, foremen, 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, and all other employees of the Company, 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 those 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 New Castle Lodge #360 of the International Die Sinkers Conference, or by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.