In the Matter of ACME ALUMINUM ALLOYS, INC. *and* UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Case No. 9-R-1648.—Decided January 30, 1945

Mr. Henry G. Hodges, of Dayton, Ohio, for the Company.
Mr. Max W. Johnstone, of Akron, Ohio, and *Mr. George Wilkin*, of Dayton, Ohio, for the UAW-CIO.
Mr. Robert Wilson, of Washington, D. C., for the Molders.
Miss Melvern R. Krelow, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), herein called the UAW-CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Acme Aluminum Alloys, Inc., Dayton, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James A. Shaw, Trial Examiner. Said hearing was held at Dayton, Ohio, on January 17, 1945. The Company, the UAW-CIO, and International Molders and Foundry Workers of North America, A. F. of L., herein called the Molders, 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. At the commencement of the hearing, the UAW-CIO moved to amend its petition to exclude core makers, molders, and their apprentices. The Trial Examiner granted the motion. Subsequent to the hearing, the UAW-CIO filed a motion requesting withdrawal of the foregoing motion to amend, and further requesting that the Board find appropriate two separate units, as more specifically defined hereinafter. The Molders also filed a motion subsequent to the hearing similarly requesting that the Board find appropriate two separate units as requested by the UAW-CIO. In view of our unit find-

ings hereinafter set forth in Section IV, the motions are hereby granted. 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

Acme Aluminum Alloys, Inc., an Ohio corporation with its principal offices and place of business in Dayton, Ohio, operates two plants where it is engaged in the manufacture of aluminum castings, wood and steel patterns, tools, dies, jigs, and fixtures. The only plant involved herein is the foundry. During 1943, the Company purchased raw materials valued in excess of $1,000,000, of which 75 percent was shipped from points outside the State of Ohio. During the same period, the Company manufactured finished products valued in excess of $8,000,000, of which 80 percent was 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

United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Molders and Foundry Workers of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the UAW-CIO as the exclusive bargaining representative of certain of the Company's employees on the ground that it has a collective bargaining contract with the Molders covering such employees.

The Molders has been representing the employees in the Company's foundry since 1941, the latest contract having been executed on January 1, 1944, to remain in full force and effect until December 31, 1944, with the provision that if neither party gave notice of any desired change 30 days prior to December 1944, the contract would auto-

matically renew itself.[1] Since the UAW-CIO filed its petition with the Board prior to the 30-day automatic renewal period, and further, since by its terms the contract is, in effect, now terminable by either party upon 30 days' notice, we find that the contract is not a bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the UAW-CIO represents a substantial number of employees in the units hereinafter found appropriate.[2]

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 UNITS

The UAW-CIO and the Molders request that the Board find appropriate (1) a unit composed of journeymen molders, journeymen core makers, and molders and core makers apprentices of the Company in its foundry in Dayton, Ohio, excluding foremen, assistant foremen, and other supervisory employees; and (2) a unit comprising all employees of the Company in its foundry in Dayton, Ohio, excluding militarized guards, maintenance machinists, timekeepers, office and clerical employees, journeymen core makers, journeymen molders, and molders and core makers apprentices, foremen, assistant foremen, job bosses (also known as group leaders), and all other supervisory employees. The Company takes no position with respect to the appropriate unit or units.

We find the following units, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(1) All journeymen molders, journeymen core makers, and molders and core makers apprentices of the Company in its foundry in Dayton, Ohio, excluding foremen, and assistant foremen;

(2) All employees of the Company in its foundry in Dayton, Ohio, excluding militarized guards, maintenance machinists, timekeepers,

[1] The contract provides that, "If neither party to this agreement notifies the other party thirty days prior to December 31, 1944, of a desired change, the agreement will continue in effect until such time as thirty days notice of a desired change is given."

[2] The Field Examiner reported that the UAW-CIO submitted 377 authorization cards; that the names of 322 persons appearing on the cards were listed on the Company's pay roll of November 1, 1944, and that the cards were dated as follows 84 in October 1944; 29 in November 1944; and 209 were undated. There are approximately 1,037 employees in the units

The Molders relies upon its contract as evidence of its representation among the employees.

The United Steelworkers of America, although having submitted evidence of representation among the employees, and having been served with notice, did not appear at the hearing

office and clerical employees, journeymen molders, journeymen core makers, and molders and core makers apprentices, foremen, assistant foremen, and job bosses (also known as group leaders).

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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 Acme Aluminum Alloys, Inc., Dayton, Ohio, elections 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 Ninth 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 units 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 the 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 elections, to determine whether they desire to be represented by UAW-CIO Aircraft, or by International Molders and Foundry Workers Union, A. F. of L.,[3] for the purposes of collective bargaining, or by neither.

[3] The request of the Unions to appear on the ballot in the manner set forth above is hereby granted.