

In the Matter of ALUMINUM COMPANY OF AMERICA and FOREMEN'S  
ASSOCIATION OF AMERICA (INDEPENDENT), CHAPTER No. 254

*Case No. 2-C-6506.—Decided October 14, 1947*

*Mr. George Turitz*, for the Board.

*Messrs. Leon E. Hickman and David B. Buerger*, of *Smith, Buchanan and Ingersoll*, of Pittsburgh, Pa., and *Mr. Arthur E. Reyman*, of New York, New York, for the Respondent.

*Mr. Peter Willing*, of Newark, N. J., for the Union.

DECISION

AND

ORDER

On November 25, 1946, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had unlawfully refused to bargain with the Union as the collective bargaining representative of a unit of its supervisory employees previously found appropriate by the Board,<sup>1</sup> and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report, a supporting brief, and a request for oral argument. In view of our disposition of the case, the Board deems oral argument unnecessary, and hereby revokes its previous actions granting the respondent's request and denying the Union's "Motion to Deny Company's Request for Oral Argument."

Since the issuance of the Intermediate Report herein, the National Labor Relations Act has been amended so as to exclude "any individual employed as a supervisor" from the definition of "employee" contained in the Act.<sup>2</sup> Supervisory employees are, therefore, now outside the coverage of the Act. We are therefore of the opinion, without considering the merits of the case, that it would not effectuate the policies of the Act, as amended, to require the respondent to take any reme-

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<sup>1</sup> *Matter of Aluminum Company of America*, 67 N. L. R. B. 958. The Union won the election and was certified by the Board on June 15, 1946.

<sup>2</sup> Section 2 (3) and (11).

75 N. L. R. B., No. 3.

dial action in this case, which involves nothing except a refusal to bargain.<sup>3</sup> Accordingly, we shall dismiss the complaint.

### ORDER

IT IS HEREBY ORDERED that the complaint against the respondent, Aluminum Company of America, Edgewater, New Jersey, be, and it hereby is, dismissed.

#### INTERMEDIATE REPORT

*Mr. George Turitz*, for the Board.

*Messrs. Leon E. Hickman and David B. Buejger of Smith, Buchanan and Ingersoll*, of Pittsburgh, Pa., and *Mr. Arthur E. Reyman*, of New York, N. Y., for the respondent.

*Mr. Peter Wulling*, of Newark, N. J., for the Union.

#### STATEMENT OF THE CASE

Upon a charge filed on August 19, 1946, by Foreman's Association of America (Independent), Chapter No. 254, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York, New York), issued a complaint dated October 16, 1946, against Aluminum Company of America, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat 449, herein called the Act.

With respect to the unfair labor practices, the complaint alleged that on or about July 3, 1946, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of employees in an appropriate unit, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On November 4, 1946, the respondent filed an answer admitting some of the allegations of the complaint with respect to the nature of its business, but denying that it had engaged in any unfair labor practices. As affirmative defenses the respondent's answer alleged, in substance, and this is the sole issue in the case, that the unit contended for is not appropriate for the purposes of collective bargaining, because (1) the employees included therein are not employees within the meaning of the Act, but are supervisory employees who formulated and effectuate management policies, and hence are a part of management, and (2) because the Union is not independent of the labor organization which represents production and maintenance employees.

Pursuant to notice, a hearing was held on November 4, 1946, at New York, New York, before Horace A. Ruckel, the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. The Union was represented by its Regional Director. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

<sup>3</sup> *Matter of Westinghouse Electric Corporation*, 75 N. L. R. B. 1; *L. A. Young Spring & Wire Corporation v. N. L. R. B.*, 163 F. (2d) 905 (C. A.—D. C.).

Upon the conclusion of the hearing the parties were afforded an opportunity to argue orally before the Trial Examiner and to file briefs and/or proposed findings of fact and conclusions of law with the Trial Examiner by November 19. None of the parties argued orally. On November 19 the respondent filed a brief together with proposed findings of fact.<sup>1</sup>

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

## FINDINGS OF FACT

### I THE BUSINESS OF THE RESPONDENT

Aluminum Company of America, a Pennsylvania corporation, operates a plant at Edgewater, New Jersey, where it is engaged in the manufacture, sale, and distribution of aluminum sheet, press forgings, screw machine products, and foil. During the year 1945, substantially all the raw materials used by the respondent in its operations were shipped to its Edgewater plant from points outside the State of New Jersey. Raw materials purchased by the respondent and sales of products by it each exceeded \$100,000 in that year.

### II. THE ORGANIZATION INVOLVED

Foreman's Association of America (Independent), Chapter No. 254, is an unaffiliated labor organization admitting to membership supervisory employees of the respondent.

### III THE UNFAIR LABOR PRACTICES

#### A. *The refusal to bargain*

##### 1 The appropriate unit

The Board's decision in a previous representation case,<sup>2</sup> dated April 29, 1946, found that all foreladies, the assistant composition supervisor, the composition supervisor, assistant unit foremen, unit foremen, assistant shift foremen or assistant foremen, shift foreman or foremen, assistant general foremen, general foremen, assistant supervisors and supervisors, in the production, inspection, and maintenance departments of the respondent's Edgewater plant, including the supervisor in the planning department of the sheet mill who is in charge of the pre-heat furnaces, but excluding all other supervisors, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The respondent here makes the same contention with respect to the appropriateness of the unit which it made in the prior representation case. In support of its contention that the unit as found by the Board is not appropriate, the respondent offered in evidence the testimony of certain witnesses whose evidence was substantially<sup>3</sup> excluded by the Trial Examiner and the Board in the representation case, (1) to show that the persons included in the appropriate unit are supervisory employees who are in a position to formulate, and effectuate, and

<sup>1</sup> The Trial Examiner accepts proposed findings 1, 13, and 20. He rejects 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, and 21.

<sup>2</sup> *Aluminum Company of America and Foreman's Association of America (Independent)*, Chapter No. 254, 67 N. L. R. B. 958.

<sup>3</sup> The Board, in its decision, admitted the offers of proof on the excluded testimony for the limited purpose of showing the functional grouping of supervisors and the levels of supervision. The respondent in making its offer here stated specifically that it was not for the purpose of showing such functional grouping or levels of supervision, but for the purposes here set forth.

do formulate and effectuate, management policies, and (2) to show certain statements of policy allegedly formulated by the executive board of the Union respecting its relationship with non-supervisory employees in the event of strikes,<sup>4</sup> and to show a connection with and between the Union and United Steelworkers of America, affiliated with the Congress of Industrial Organizations.<sup>5</sup>

The undersigned, upon the objection of counsel for the Board, rejected offers of proof made on the proffered testimony and refused a request for subpoenas directed to certain officers of the Union whose testimony was sought to establish the facts pertaining to the respondent's second affirmative defense.

The undersigned finds that the above-described unit constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

### 2. Representation by the Union of a majority in the appropriate unit

On June 15, 1946, pursuant to an election held on May 28, 1946, among the employees in the appropriate unit, the Board certified the Union as the exclusive representative of all employees within the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The undersigned finds, that at all times material herein, the Union was the duly designated representative of a majority of the employees in the said appropriate unit within the meaning of Section 9 (a) of the Act.

### 3. The refusal to bargain

The respondent admits, and the undersigned finds, that on June 28, 1946, the Union wrote the respondent requesting a meeting for the purposes of collective bargaining, and that on July 3, 1946, the respondent replied refusing the request, advancing as its reason that the Board's decision in the representation case was erroneous, and that the respondent intended to seek a review of the decision. The respondent admits, and the undersigned finds, that at all times since July 3, the respondent has continued to refuse to meet with representatives of the Union for the purposes of collective bargaining, or to recognize the Union as the bargaining representative of the employees within the unit.

The undersigned finds that on July 3, 1946, and at all times material thereafter, the respondent failed and refused to bargain collectively with the duly designated representative of a majority of its employees within an appropriate unit, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operation of the respondent as described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

<sup>4</sup> To show, for example, that the supervisory employees agreed not to take the places of strikers

<sup>5</sup> The Board in *Packard Motor Car Company* and *Foreman's Association of America*, 61 N. L. R. B. 4, considered this and similar contentions of the employer, and rejected them

## V THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action which the undersigned finds will effectuate the policies of the Act.

It has been found that the respondent has refused to bargain collectively with the Union as the representative of its employees in an appropriate unit. In order to effectuate the policies of the Act, the undersigned will recommend that, upon request, the respondent bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit in respect to rates of pay, wages, hours, and other terms and conditions of employment.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

## CONCLUSIONS OF LAW

1. Foreman's Association of America (Independent), Chapter No. 254, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All foreladies, the assistant composition supervisor, the composition supervisor, assistant unit foremen, unit foremen, assistant shift foremen or assistant foremen, shift foremen or foremen, assistant general foremen, general foremen, assistant supervisors and supervisors, in the production, inspection, and maintenance departments of the respondent's Edgewater plant, including the supervisor in the planning department of the sheet mill who is in charge of the pre-heat furnaces, but excluding all other supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Foreman's Association of America (Independent), Chapter No. 254, was on May 28, 1946, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with Foreman's Association of America (Independent), Chapter No. 254, as the exclusive representative of the employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By said acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

## RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Aluminum Company of America, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America (Independent), Chapter No. 254, as the exclusive representative of the employees in the aforementioned appropriate unit;

(b) Engaging in any other acts in any manner interfering with the efforts of Foreman's Association of America (Independent), Chapter No. 254, to negotiate for or represent the employees as the exclusive bargaining agent in the aforesaid unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Foreman's Association of America (Independent), Chapter No. 254, as the exclusive representative of the employees in the appropriate unit, and if an understanding is reached embody such understanding in a signed agreement;

(b) Post at its plant in Edgewater, New Jersey, copies of the notice attached hereto and marked "Appendix A" Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and be maintained by it for at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Second Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of the Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statements of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

HORACE A. RUCKEL,  
*Trial Examiner.*

Dated November 25, 1946.

#### APPENDIX A

##### NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with Foreman's Association of America (Independent), Chapter No. 254, as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All foreladies, the assistant composition supervisor, the composition supervisor, assistant unit foremen, unit foremen, assistant shift foremen or assistant foremen, shift foremen or foremen, assistant general foremen, general foremen, assistant supervisors and supervisors in the production, inspection, and maintenance departments of the respondent's Edgewater plant, including the supervisor in the planning department of the sheet mill who is in charge of the pre-heat furnaces, but excluding all other supervisors.

We will not engage in any acts in any manner interfering with the efforts of the above-named union to negotiate for or represent the employees in the aforesaid bargaining unit.

ALUMINUM COMPANY OF AMERICA,

By \_\_\_\_\_  
 (Representative) (Title)

Dated \_\_\_\_\_

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.