

In the Matter of ALUMINUM ORE COMPANY, EMPLOYER and LOCAL UNION 505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, PETITIONER

Cases Nos. 15-RC-212 and 15-RC-223.—Decided July 8, 1949

DECISION
AND
DIRECTION OF ELECTIONS

Upon petitions duly filed, a consolidated hearing was held before C. Paul Barker, hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the Intervenor's request, the Board heard oral argument,¹ in which all parties participated.

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent employees of the Employer.²

3. The Intervenor and the Employer contend that their current collective bargaining agreement, dated May 8, 1947, and effective until May 31, 1949, but extended to May 31, 1950, by separate agreement dated June 25, 1948, constitutes a bar to a present determination of representatives. Although the petitions in this proceeding were timely filed on February 16, 1949, the Employer and Intervenor argue that the original agreement was not prematurely extended so as to preclude its operating as a bar, because it was executed during the certification year.

Assuming, *arguendo*, the validity of this contention, the record discloses that the contract provides, among other things,³ that all employees who are members of the Intervenor in good standing 15 days

¹ Oral argument was heard simultaneously in the instant case and in *Matter of Reynolds Metals Company*, 85 N. L. R. B. 110.

² United Steel Workers of America, CIO, Local 320, and United Steel Workers of America, CIO, District 36, were permitted to intervene on the basis of current contractual interests.

³ The agreement contains a compulsory check-off provision which is proscribed by Section 302 of the Act. See *Matter of C. Hager & Sons Hinge Manufacturing Company*, 80 N. L. R. B. 163.

after the execution of the agreement and all employees who become members thereafter shall, as a condition of employment, maintain in good standing their membership in the Intervenor. The Intervenor, however, has not been certified by the Board under Section 9 (e) (1) of the Act as being authorized to execute such a union-security provision, and, in fact, cannot be so certified because it has failed to comply with the filing requirements of Section 9 (f), (g), and (h) of the Act. Although the absence of Board authorization for a union-security provision in a contract executed before enactment of the Labor Management Relations Act of 1947 would not prevent such contract from operating as a bar during its original term,⁴ any renewal of the original contract after the effective date of the Act, is subject to the requirement of Board authorization of a union-security provision.⁵ Because the contract, as renewed on June 25, 1948, contains an unauthorized union-security provision, we find, for this reason and without regard to other considerations, that the contract, even as renewed during certification year, cannot serve as a bar to a present determination of representatives.⁶ Nor is our conclusion with respect to the validity of the contract as a bar affected by the language of the saving provisions therein.⁷

We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

4. The Petitioner, in Case No. 15-RC-212, seeks a unit of all maintenance electricians, helpers, and apprentices, excluding all other employees. In Case No. 15-RC-223, the same Petitioner asks for a unit of all switchboard operators and turbine operators, all boiler operators, all operators and assistant helpers employed in the powerhouse, excluding all other employees. The Employer and the Intervenor oppose the severance of these units primarily upon the basis of the Employer's history of collective bargaining,⁸ upon the ground that the work performed by these employees is an essential and integral

⁴ *Matter of Cribben & Sexton Company*, 82 N. L. R. B. 1409.

⁵ *Matter of Joseph A. Goddard Company*, 83 N. L. R. B. 605.

⁶ *Matter of General Electric Company*, 80 N. L. R. B. 169; *Matter of General Electric Company, Plastic Division of the Chemical Department*, 81 N. L. R. B. 476; *Matter of Joseph A. Goddard Company*, *supra*.

⁷ The language of these provisions, reasonably construed, cannot be said to defer the applicability of the unauthorized union-security provision, nor to negative the restraint exercised by such provision. These provisions, therefore, cannot serve to validate the agreement as a bar to a present determination of representatives. See *Matter of Lykens Hosiery Mills, Inc.*, 82 N. L. R. B. 981; *Matter of Unique Art Manufacturing Company*, 83 N. L. R. B. 1250.

⁸ In 1941, upon a plant-wide basis, Aluminum Workers Union, AFL, was first certified as a bargaining representative for a unit of production and maintenance employees, to be ultimately succeeded by the Intervenor as the unit representative.

part of the Employer's production process,⁹ and, more particularly, that the Employer's production process is a continuous one which cannot be interrupted without serious consequences to the Employer's operations.

The Employer is a subsidiary of the Aluminum Company of America, with plants at East St. Louis, Illinois, and Mobile, Alabama. Only its plant at Mobile, Alabama, is involved in this proceeding. The Employer is engaged in the processing and conversion of bauxite ore into alumina, which is an intermediate product in the manufacture of aluminum. The process used involves the chemical treatment of the bauxite ore under the application of pressure, and heat in the form of steam furnished by the powerhouse. The resultant mass of the initial reaction, liquid in form, circulates through a series of pipes, tanks, and containers until the various phases of the process are all completed and the alumina in hydrous form is removed at one point and converted into powder by calcination in kilns. As previously stated, the process is a continuous one. The materials are kept in circulation by means of pumps and conveyors that are electrically driven with current principally supplied by the powerhouse. The powerhouse also produces the compressed air used to agitate the materials at one stage of the process.

Employed throughout the plant are approximately 500 production and maintenance employees, of whom 200 are classified as maintenance employees distributed principally among various craft groups. Among these employees, and constituting the electrical department, are approximately 19 electricians, apprentices, and helpers. It is conceded that the electricians serve the regular 4-year apprenticeship and possess all of the requisite skills customarily exercised by members of their craft. The electricians are primarily responsible for the maintenance and repair of all electrical equipment not only at the Employer's plant but also at a waste disposal area located across the river. As the Intervenor itself points out, the electricians as such are not assigned to any particular piece of equipment or to any single department of the plant. The electricians spend approximately one-third of their time in the electrical shop which is separately located. They work under the immediate and separate supervision of an electrical department foreman and assistant foreman. Although they may, on occasion, work on some particular piece of electrical equipment in close connection with other maintenance or pro-

⁹ The further contention of the Employer and the Intervenor that the powerhouse employees do not constitute a separate craft is irrelevant, because the Board has frequently permitted severance of powerhouse employees without requiring that they constitute a group of craft employees. See *Matter of Baugh and Sons Company*, 82 N. L. R. B. 1399.

duction employees, the work of the electricians is restricted to the exercise of their craft skills. Moreover, there is no interchange between other employees and the electricians, who remain subject only to the authority of their own supervisors throughout their association with the production and maintenance groups.

Although the facts in this case show the normal degree of integration of the work of the electricians with the production process, it does not appear, as was true in the *National Tube Company*¹⁰ and *Ford Motor Company*¹¹ cases, that their function is so intimately related with that of the production workers or so confined to indispensable assembly line operations that such integration should preclude the severance or separation of the craft groups.¹² Nor is the fact that the process is a continuous one necessarily determinative of the issue of craft severance.¹³ Accordingly, we find that the electricians involved herein are a skilled, well-defined, and homogeneous craft group, who, notwithstanding a history of collective bargaining on a broader basis¹⁴ and other factors previously considered, may constitute a separate unit for the purposes of collective bargaining.

The Employer and the Intervenor, in opposing a separate unit for powerhouse employees, contend that the latter are highly integrated with the production process because steam and compressed air supplied by the powerhouse in substantial amounts are an essential part of the production process itself.¹⁵

Approximately 14 powerhouse employees,¹⁶ consisting of 4 switchboard and turbine operators, 4 boiler operators, 4 boiler operator assistants, 1 swing operator, and 1 helper are under the immediate and separate supervision of the shift engineer, and work only in the powerhouse which is located in a separate building. In addition to their customary duties, they may on occasions perform minor repair jobs

¹⁰ *Matter of National Tube Company*, 76 N. L. R. B. 1199.

¹¹ *Matter of Ford Motor Company (Maywood Plant), et al.*, 78 N. L. R. B. 887.

¹² See *Matter of Tin Processing Corporation*, 80 N. L. R. B. 1369; *Matter of Roane-Anderson Company*, 83 N. L. R. B. 30; *Matter of Aluminum Company of America*, 83 N. L. R. B. 389; *Matter of Eagle Pencil Company*, 82 N. L. R. B. 263; *Matter of United States Rubber Company*, 81 N. L. R. B. 17.

¹³ See *Matter of B. F. Goodrich Chemical Company*, 84 N. L. R. B. 429.

¹⁴ The bargaining history in the present instance does not present as complete an industry pattern as was found in the *National Tube Company* case; we note that in several instances there has been craft bargaining in the reduction branch of the aluminum industry. See *Matter of Aluminum Company of America*, 50 N. L. R. B. 380. See also *Matter of Reynolds Metals Company*, *supra* note 1, wherein it appears that craft bargaining has existed for several years at the Sheffield, Alabama, plant of the Reynolds Metals Company.

¹⁵ In support of their contention that the powerhouse employees are a highly integrated part of the production process, the Employer and Intervenor emphasized both in their briefs and at the oral argument that any interruption in the supply of compressed air to the production department would result in extensive damage to plant equipment and cause serious delay in the resumption of operations.

¹⁶ The petition was amended at the hearing to include the janitor at the powerhouse.

on the equipment in the powerhouse; however, major repairs are performed by representatives of the manufacturers of the equipment or by the skilled employees among the maintenance employees. It appears that these employees are a distinct and homogeneous group and their work is essentially the same as that generally performed by powerhouse employees in other industrial plants: Although large quantities of steam and compressed air supplied by the powerhouse are used directly in the production process, neither steam nor compressed air is a component of the end product itself. This fact has served to distinguish such cases as *Matter of Lynn Gas & Electric Company*¹⁷ and *Matter of Boston Consolidated Gas Company*,¹⁸ relied upon by the Employer and the Intervenor. Therefore, despite such factors of integration, we do not consider the powerhouse employees to be an inseparable part of the over-all production unit.¹⁹

Upon the basis of the foregoing facts and upon the entire record in the case, we find that the electricians and the powerhouse employees may, if they so desire, constitute separate bargaining units. We shall, however, make no final determination with respect to the appropriate unit or units pending the outcome of the elections hereinafter directed.

We shall direct separate elections among the following groups of employees at the Employer's Mobile, Alabama, plant, excluding all other employees and supervisors as defined in the Act:

- (a) All maintenance electricians, helpers, and apprentices;
- (b) All switchboard operators and turbine operators, all boiler operators, all operators and assistant helpers, and the janitor employed at the powerhouse.

If in these elections a majority of the employees in either of the voting groups select the Petitioner, they will be taken to have indicated their desire to constitute a separate bargaining unit.

DIRECTION OF ELECTIONS²⁰

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, separate elections by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of Na-

¹⁷ 78 N. L. R. B. 3.

¹⁸ 79 N. L. R. B. 337.

¹⁹ *Matter of Swift and Company, d/b/a H. L. Handy Company*, 81 N. L. R. B. 425; *Matter of Crocker Burbank & Co., Assn.*, 80 N. L. R. B. 774; *Matter of Worthy Paper Company Association*, 80 N. L. R. B. 19.

²⁰ We shall omit the name of the Intervenor because of its failure to comply with the filing requirements of Section 9 (f), (g), and (h) of the Act.

tional Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the voting groups described in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Elections, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement to determine whether or not, in each group, they desire to be represented, for the purposes of collective bargaining, by Local Union 505, International Brotherhood of Electrical Workers, AFL.