In the Matter of ALUMINUM COMPANY OF AMERICA AND THE ALUMINUM COOKING UTENSIL COMPANY, ITS WHOLLY-OWNED SUBSIDIARY, EMPLOYER *and* AMERICAN FEDERATION OF LABOR, PETITIONER

Case No. 6-RC-359.—Decided August 26, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Erwin Lerten, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

Upon the entire record in this case, the Board finds:

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

2. The Petitioner, American Federation of Labor, United Steelworkers of America, CIO, hereinafter called the Steelworkers, and the Pattern Makers League of North America, hereinafter called the Pattern Makers, are labor organizations claiming to represent certain employees of the Employer. The Petitioner objected to the hearing officer's ruling permitting the Steelworkers to intervene. Petitioner based its objection on the ground that because the Steelworkers' contract with the Employer contained a union-security clause in violation of Section 8 (a) (3) of the Act, that contract was unlawful and therefore no legal basis existed on which the Steelworkers, which had failed to comply with Section 9 (h) of the Act,[1] could intervene. The legality of the contract between the Employer and the Steelworkers is one of the issues to be resolved at the hearing. In accordance with our established policy permitting noncomplying unions which enjoy contractual relations with the Employer to intervene for *all* purposes, the hearing officer's ruling permitting the Steelworkers to intervene is affirmed.[2]

[1] The Steelworkers has since complied with Section 9 (h).

[2] *Matter of Campbell Soup Company*, 76 N. L. R. B. 950.

3. The question concerning representation:

The Steelworkers contends that its agreement with the Employer executed May 8, 1947, and extended on June 25, 1948, to May 31, 1950, constitutes a bar to this proceeding. We do not agree. The agreement of May 8, 1947, provides that all employees who were members of the Steelworkers 15 days after the signing of the agreement or who became members thereafter, should, as a condition of employment, maintain their membership in the Steelworkers. No provision was made for ratification of this clause in accordance with Section 9 (e) of the Act and no authorization election has been held. Accordingly, for the reasons set forth in *C. Hager & Sons Hinge Manufacturing Company*,[3] the contract does not constitute a bar.[4] We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Employer and the Petitioner agree that the appropriate unit should consist of all production and maintenance employees of the Aluminum Company of America and the Aluminum Cooking Utensil Company, its wholly-owned subsidiary, at their New Kensington, Pennsylvania, Works, excluding office clerical employees, wood and metal pattern makers and apprentices, watchmen and guards, professional employees, and supervisors. The Steelworkers contends that the appropriate unit consists not only of all the production and maintenance employees at the Employer's New Kensington Works including the pattern makers, but also of the production and maintenance employees of the Employer's plants in Alcoa, Tennessee; Badin, North Carolina; Bauxite, Arkansas; Detroit, Michigan; Drury, Arkansas; Edgewater, New Jersey; Fairfield-Bridgeport, Connecticut; Mobile, Alabama; and Richmond, Indiana.

The unit sought by the Steelworkers consists of those 10 of the Employer's 23 plants which are presently covered by a master agreement between the Employer and the Steelworkers. The plants covered by this agreement are widely separated geographically and produce a great variety of products. Employees do not transfer between plants, and seniority is only plant-wide. Labor policy is determined locally with the help of a central personnel office in Pittsburgh, which, however, acts in an advisory capacity only. The agreement itself does not cover wage rates, which are left for local determination, as are several other bargainable issues such as shift arrangements and

[3] 80 N. L. R. B. 163.

[4] In view of this disposition we do not pass upon the question of whether the contract was prematurely extended.

apprentice programs. If the Steelworkers is recognized as the bargaining representative for a plant not covered by the master agreement, such a plant does not become automatically covered by that agreement. The master agreement does not become binding on the employees of any particular plant until it has been ratified by the membership of the local affected. The first three steps of the grievance machinery which dispose of most grievances are undertaken at the plant involved and only the relatively rare fourth and final step involves the central personnel office at Pittsburgh. It is evident that these same facts, which caused us to deny the Steelworkers' request for a similar multiple-plant unit in an earlier decision involving the same Employer,[5] are operative at the present time. Accordingly, we find, as we did in the earlier case, that the Intervenor has not by actual bargaining, stabilized by agreement, created a multiple-plant unit. We therefore find a single-plant unit consisting of the Employer's New Kensington Works appropriate.

The Steelworkers contends that the pattern makers should be included in the plant-wide unit, and Petitioner and the Pattern Makers contend that they should be excluded.[6] In an earlier decision[7] the Board found that the pattern makers at the Employer's Kensington Works could be separately represented if they so desired and the record in that proceeding was by stipulation included in the instant case.[8] As there has been no change in the situation of the pattern makers since our earlier decision, we find that they may continue to be separately represented if they so desire. However, we shall make no unit determination at present, but shall direct an election among the following groups of employees at the Employer's New Kensington, Pennsylvania Works, including their Arnold, Pennsylvania, New Kensington, Pennsylvania, and Logan's Ferry, Pennsylvania, plants:

(a) All production and maintenance employees excluding all office clerical employees, wood and metal pattern makers, and their apprentices, watchmen and guards, professional employees, and supervisors as defined by the Act.

(b) All wood and metal pattern makers and their apprentices excluding the pattern maker foreman and other supervisors as defined by the Act.

[5] *Matter of Aluminum Company of America*, 61 N. L. R. B. 251.

[6] While the amended petition of the Petitioner excludes the pattern makers, the Petitioner indicated at the hearing that it would be willing to include the Pattern Makers in the unit in the event the Board found such inclusion appropriate.

[7] *Matter of Aluminum Company of America*, 76 N. L. R. B. 510.

[8] On April 23, 1948, the Pattern Makers was certified as the collective bargaining representative for the pattern makers at the Employer's New Kensington Works. No contract has resulted from the negotiations between the Employer and the Pattern Makers.

If a majority of the employees in voting group (b) select the Pattern Makers they will be taken to have indicated their desire to continue bargaining as a separate unit.

DIRECTION OF ELECTION[9]

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election 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 National Labor Relations Board Rules and Regulations, 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 Election, 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 election, and also excluding employees on strike who are not entitled to reinstatement, to determine

(1) Whether the employees in voting group (a) desire to be represented for purposes of collective bargaining by United Steelworkers of America, CIO,[10] or by American Federation of Labor, or by neither;

(2) Whether the employees in voting group (b) desire to be represented for purposes of collective bargaining by United Steelworkers of America, CIO, or by American Federation of Labor, or by Pattern Makers League of North America, or by none of these.

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[9] Any participant in the elections ordered herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

[10] Although the record is not entirely clear, it appears that a local of the Steelworkers may be in existence at the Employer's New Kensington Works. If such a local does in fact exist, it must comply with Sections 9 (f), (g), and (h) of the Act, or the Regional Director will be instructed to remove the name of United Steelworkers of America, CIO, from the ballot.