In the Matter of ALUMINUM COMPANY OF AMERICA (NEWARK WORKS) *and* AMERICAN FEDERATION OF LABOR

Case No. 8–R–1663.—Decided March 31, 1945

Mr. E. B. Fassel, of Newark, Ohio, and *Mr. Paul G. Rodewald*, of Pittsburgh, Pa., for the Company.

Mr. Joseph R. Padway, by *Mr. James A. Glenn*, of Washington, D. C., *Mr. T. C. Dethloff*, of Akron, Ohio, and *Mr. L. T. Gourley*, of Mobile, Ala., for the AFL.

Mr. Philip M. Curran, of Pittsburgh, Pa., and *Mr. Albert J. Marsh*, of Zanesville, Ohio, for the CIO.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Federation of Labor, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Company of America, (Newark Works), Newark, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Newark, Ohio, on November 2, 1944. The Company, the AFL, and United Steelworkers of America, CIO, herein called the Steelworkers, 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.[1]

At the hearing, the Steelworkers moved the dismissal of the petition on the grounds that a contract between the Company and the Steelworkers is a bar to a present determination of representatives, and

[1] By stipulation of the parties, approved by the Trial Examiner at the hearing, the record and exhibits in Case No. 8–R–1493, cited in footnote 3, *infra*, concerning the employees involved herein, were incorporated by reference into the record in the instant case. The parties stipulated that the witnesses called in that case, if called herein, would, in respect to facts up to June 13, 1944, testify now as they did at that time. The parties agreed, however, that evidence supplementary to or contradictory of that presented in the prior case might be introduced herein.

that the Steelworkers "has not had an opportunity to operate under a collective bargaining agreement and gain the fruits of collective bargaining thereunto appertaining for a period of a year." For reasons hereinafter set out, the motion is hereby denied. On December 14, 1944, the Steelworkers moved the Board to reopen the record to permit the introduction of further evidence on the issue of the appropriate unit. For reasons hereinafter given, the motion was denied by Board Order dated March 10, 1944.

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 having its principal office and place of business at Pittsburgh, Pennsylvania. It is engaged in the production and sale of aluminum and aluminum alloys. The Company operates several plants, including one plant located at Newark, Ohio, with which this proceeding is concerned. The Newark plant produces aluminum alloys and materials fabricated therefrom. A large portion of the raw materials used at the Newark plant is shipped there from points outside the State of Ohio, and a large portion of the materials produced there is shipped to places outside the State.

The Company admits that its operations affect commerce within the meaning of the National Labor Relations Act, and we so find.

II. THE ORGANIZATIONS INVOLVED

American Federation of Labor is a labor organization admitting to membership employees of the Company.

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the AFL as exclusive bargaining representative of employees at its Newark, Ohio plant, unless and until the AFL has been certified by the Board in an appropriate unit.

On November 1, 1942, the Company and Aluminum Workers of America, CIO, herein called the AWA, executed a contract herein

called the Master Agreement, covering employees at various of the Company's plants. The said agreement was made effective for a term of 18 months, and thereafter until modified after at least 30 days' notice. On November 15, 1943, following a consent election in which employees at the Newark plant designated the AWA as their collective bargaining representative,[2] the Company and the AWA executed a Memorandum of Understandings, which incorporated by reference the provisions of the Master Agreement (including term), except for a minor revision relating to factors to be taken into consideration in reduction of forces. In negotiations not pertaining to the contract, the Company and the AWA agreed upon a schedule of wages for employees at Newark, and submitted it to the Regional War Labor Board for approval. In April 1944, the AFL filed a petition for investigation and certification of representatives which the Board dismissed, despite the fact that at the time the case was decided, the Memorandum of Understanding had expired, because a reasonable time had not yet elapsed since the AWA had been designated as collective bargaining representative of employees at Newark.[3]

During the term of the Master Agreement, the AWA made demands upon the Company for a general wage increase. On January 27, 1944, the setting of a retroactive date from which any wage increase granted should become effective was referred to the National War Labor Board. On March 28, 1944, a second case was certified to the National War Labor Board involving wage demands covering all of the plants of the Company wherein employees were then represented by the AWA. On March 14, 1944, the AWA requested a conference for the purpose of negotiating a new master agreement to succeed the one which would terminate May 1, 1944. The Company entered into such negotiations and the parties agreed that the Master Agreement of 1942 should remain in effect until a new Master Agreement should be executed. On May 19, 1944, the parties certified to the National War Labor Board 17 non-wage contract issues. On September 12, 1944, when the AFL filed its petition in the instant case, the three proceedings above-mentioned were pending before the National War Labor Board, the matter submitted to the Regional War Labor Board had not been completely disposed of, and neither the proposed master agreement, nor a new local agreement for employees at Newark had been signed. In June 1944, the AWA merged with the Steelworkers and the Company recognized the Steelworkers as exclusive bargaining representative of its employees at all plants where the AWA had been certified. For purposes of convenience in the discussion which follows, the AWA and

[2] Case No. 8–R–1231.
[3] *Matter of Aluminum Company of America, Newark Works*, 57 N. L. R. B. 913.

its successor, the Steelworkers, are indiscriminately referred to as the CIO.

The CIO contends that because it submitted disputes to the National and Regional War Labor Boards, which have been pending before those Boards for an unusual length of time, under the doctrine enunciated by the Board in *Matter of Allis-Chalmers* and related cases,[4] no present determination of representatives should be made.[5] However, it appears that the contracting union, since its designation by the Board as exclusive bargaining representative, obtained many substantial benefits for the employees at Newark, and fully enjoyed its rights under the certification.[6] It cannot be argued that the CIO's adoption for a short term of the Master Agreement was merely an interim device for achieving a measure of stability until the CIO's initial bargaining program could be consummated, for the union did not commence negotiations for the new agreement until March 1944, about 5 months after its certification.[7] Consequently, we find the argument of the CIO, supporting its motion to dismiss the petition, to be without merit, and that an election at the present time will best effectuate the policies of the Act.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.[8]

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 parties stipulated at the hearing that all production and maintenance employees except for office and clerical employees, administrative, supervisory, technical and laboratory employees, office jani-

[4] *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306; *Matter of Aluminum Company of America, Vancouver, Washington*, 53 N. L. R. B. 593, 58 N. L. R. B. 24. *Matter of Taylor Forge & Pipe Works*, 58 N. L R. B. 1375.

[5] The AFL contends that the case is not subject to the rule established in the *Allis-Chalmers* case, *supra*, because the organization which was certified has ceased to exist Inasmuch as we hereinabove find that for other reasons the rule invoked by the CIO is inapplicable, we shall not examine the merit of the AFL's contention.

[6] See *Matter of International Harvester Company*, 55 N. L. R. B. 497.

[7] See *Matter of Diamond Magnesium Company*, 57 N. L. R. B. 393. Cf. *Matter of Taylor Forge & Pipe Works, supra*. The fact that wage schedules for employees at Newark were promptly negotiated after certification, and their approval has been delayed in part by the War Labor Board, does not distinguish this case from the *Diamond Magnesium* case, *supra*. Since wages will be incorporated into no term contract, it may be assumed that the contracting parties herein are satisfied with instability on that subject, and that a present determination of representatives would disturb no equities with relation thereto. See *Matter of Thompson Products, Inc.*, 60 N. L. R. B. 885.

[8] The Field Examiner reported that the AFL submitted 414 authorization cards, 320 of which bore signatures of persons listed on the Company's pay roll for the period ending September 30, 1944, which contained the names of 763 employees in the appropriate unit; and that the cards were dated in March through October 1944. The CIO relies upon its contract to show its interest in the proceeding.

tors, matrons, time cost clerks, fire protection inspectors and guards [9] constitute an appropriate unit. The AFL and the Company would confine such a unit to the named employees at the Company's Newark plant. The CIO contends that employees of the Company at all plants wherein the CIO is recognized as collective bargaining representative, comprise a single unit including employees at Newark. This contention was not raised at the hearing, but was incorporated in a motion filed by the CIO subsequent to the hearing, requesting the Board to reopen the records in the instant case and in Case No. 10–R–1290, concerning employees at the Alcoa, Tennessee plant of the Company, to permit the introduction of evidence to prove the impropriety of single plants units. In Case No. 19–R–1381, decided this day, the contention was raised at the hearing that employees at the Company's Troutdale, Oregon, plant, who had previously designated the CIO as their exclusive bargaining representative, constituted a part of the same multi-plant unit which the CIO now contends encompasses employees at Newark. Evidence to support the contention was adduced at the hearing in Case No. 19–R–1381, but established no actual bargaining on a multi-plant basis, stabilized by agreement. Accordingly, the Board in that case rejected the assertion that a multi-plant unit had been created and found a single plant unit of the Company's employees to be appropriate. Since the evidence which the CIO would present at a rehearing of the instant matter is presumably the same as that offered at the hearing in the *Troutdale* case, above mentioned, we have heretofore denied the request for a rehearing.[10]

We find that all production and maintenance employees at the Company's Newark plant, excluding office and clerical employees, administrative, supervisory, technical and laboratory employees, office janitors, matrons, time cost clerks, fire-protection inspectors and guards constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

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

[9] The AWA was designated as representative of employees in such a unit in Case No. 8–R–1231 and in Case No. 8–R–1493 the parties stipulated that such a unit is appropriate.

[10] Order issued March 10, 1945.

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 (Newark Works), Newark, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth 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 unit 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 election, to determine whether they desire to be represented by American Federation of Labor (AFL) or by United Steelworkers of America (CIO), for the purposes of collective bargaining, or by neither.