

In the Matter of ALUMINUM COMPANY OF AMERICA and METAL TRADES  
COUNCIL OF PORTLAND AND VICINITY, AFL

*Case No. 19-R-1381.—Decided March 31, 1945*

*Mr. David L. Davies, of Portland, Oreg., and Messrs. George R. Stout and J. G. Gough, of Troutdale, Oreg., for the Company.*

*Messrs. Edwin D. Hicks and Henri Nordahl, of Portland, Oreg., for the AFL.*

*Messrs. A. F. Hartung and James Menzie, of Portland, Oreg., for the Steelworkers.*

*Miss Frances Lopinsky, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Metal Trades Council of Portland and Vicinity, AFL, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Company of America, Troutdale, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Portland, Oregon, on November 10, 1944. The Company, the AFL, and United Steelworkers of America, CIO,<sup>1</sup> 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. At the hearing the CIO moved the dismissal of the petition on the grounds that (1) a contract between the CIO and the Company is a bar to a present determination of representatives; (2) that the employees at Troutdale are but part of a multi-plant unit consisting of employees at all of the Company's

<sup>1</sup>The motion to intervene names Aluminum Workers of America, CIO, as intervenor. It recites that Aluminum Workers of America, CIO, is now the United Steelworkers of America, and is signed by United Steelworkers. We take official notice that in June 1944 the former organization was merged into the latter.

plants where the CIO has been designated as collective bargaining representative, and that the unit requested by the AFL, confined to employees at Troutdale, is, therefore, inappropriate. For reasons hereinafter given, the motion is hereby denied. 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 Troutdale, Oregon, with which this proceeding is concerned. A large portion of the raw materials used at the Troutdale plant is shipped there from points outside the State of Oregon, and a large portion of the materials produced there is shipped to places outside the State.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act and we so find.

### II. THE ORGANIZATIONS INVOLVED

Metal Trades Council of Portland and Vicinity, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Steelworkers of America, successor to Aluminum Workers of America, both 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 Troutdale, Oregon, plant, unless and until it has been certified by the National Labor Relations Board in an appropriate unit.

On November 1, 1942, the Company and representatives of various locals of Aluminum Workers of America, herein called the AWA, executed a contract, herein called the Master Agreement, covering employees at various plants of the Company. The Master Agreement, by its terms, was effective until May 1, 1944, and thereafter until modified after at least 30 days' notice. On June 16, 1943, pursuant to

the results of a consent election conducted by the Board,<sup>2</sup> the AWA was designated as exclusive bargaining representative for the Company's employees at Troutdale. On August 19, 1943, the Company, and Local No. 30 of the AWA signed a contract identical to the Master Agreement, in terms and provisions, covering the Company's employees at Troutdale. Neither of the contracts covered the subject of wages, which was left for separate negotiations at each of the Company's plants.

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 August 4, 1944, when the AFL filed its petition in the instant case, the 3 proceedings above-mentioned were pending before the National War Labor Board, and neither the proposed master agreement, nor a local agreement for employees at Troutdale 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 its successor, the Steelworkers, are indiscriminately referred to as the CIO.

The Steelworkers contends that because it submitted disputes to the National War Labor Board, which have been pending before that Board for an unusual length of time, under the doctrine enunciated by the Board in *Matter of Allis-Chalmers* and related cases,<sup>3</sup> no present determination of representatives should be made.

However, it appears that the contracting union has, since its designation by the Board as exclusive bargaining representative, obtained many substantial benefits for the employees at Troutdale, and fully enjoyed its rights under the certification.<sup>4</sup> It cannot be

<sup>2</sup> Case No. 19-R-1047.

<sup>3</sup> *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, and 58 N. L. R. B. 24. *Matter of Taylor Forge & Pipe Works*, 58 N. L. R. B. 1375.

<sup>4</sup> See *Matter of International Harvester Company*, 55 N. L. R. B. 497.

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 9 months after its certification.<sup>5</sup>

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.<sup>6</sup>

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 AFL requests a unit composed of all production and maintenance employees at the Company's Troutdale plant, excluding building construction workers, supervisors, technical, laboratory, office, clerical, fire protection, and custodial employees, police, office janitors, and watchmen.<sup>7</sup> The CIO does not dispute the propriety of the inclusions and exclusions listed by the AFL. It contends, however, that a unit confined to employees at the Troutdale plant is inappropriate, and that the employees constitute only part of a multi-plant unit composed of employees of the Company at all plants wherein the CIO has been designated as exclusive bargaining representative. The AFL insists that no such broad unit exists. The Company takes no position in the matter.

The CIO bases its contention mainly upon the following facts: The Master Agreement, executed in November 1942, specifies that the Company recognizes the CIO as the exclusive representative of its employees at eight named plants wherein the CIO has been certified or designated by the Board as such representative, and that the Company will further recognize the CIO as exclusive bargaining representative for similar employees at other plants of the Company, where employees may, in Board conducted proceedings, select the CIO as their bargaining representative. When the CIO was recognized by the Company as bargaining representative of its employees at Troutdale, the local manager at Troutdale and representatives of the local union there, held conferences and negotiated the terms of

<sup>5</sup> See *Matter of Diamond Magnesium Company*, 57 N. L. R. B. 393; cf. *Matter of Taylor Forge & Pipe Works*, *supra*.

<sup>6</sup> The Field Examiner reported that the AFL submitted 247 designation cards, 151 of which bore signatures of persons listed on the Company's pay roll of September 23, 1944, which contained the names of 462 employees in the appropriate unit; and that the cards were dated August and September 1944. The CIO relies upon its contract to indicate its interest in the proceeding.

<sup>7</sup> This is the unit described in the consent election agreement in Case No. 18-R-1047. See footnote 2, *supra*.

a collective bargaining contract, emerging August 19, 1943, with a virtual facsimile of the Master Agreement, providing for a term of 10½ months for the apparent purpose of achieving complete uniformity with the Master Agreement. Negotiations for a new contract, ending in the submission of disputed items to the National War Labor Board, as hereinabove mentioned, have been carried on at the Company's central office between officials of the Company and representatives of each of the Locals representing the Company's employees at its various plants, and representatives of the CIO international. Apparently no negotiations on a local level have been conducted since August 1943.

These facts bear some resemblance to those in *Matter of Bethlehem-Fairfield Shipyard, Inc.*,<sup>8</sup> in that in both cases the employees involved had on a single-plant basis selected the same bargaining representative; in both, a writing named a nucleus of plants at which the contracting party had been designated as collective bargaining representative of employees, and provided for the contingency of certain other employees making a like designation; in both, negotiations have been carried on at a central point for employees at all plants wherein the contracting union was recognized as the collective bargaining representative. There are, however, several factors in the instant case which differentiate it from the *Bethlehem-Fairfield* case and require a contrary result herein.

The agreement to which the Board gave weight in *Bethlehem-Fairfield*, provided, *inter alia*, that employees at all plants where the contracting union should be selected by employees as their bargaining representative, should be governed by the terms of a master agreement therein provided for. The agreement upon which the CIO in the instant case relies provides only that as the CIO is selected by employees at plants other than the ones mentioned in the agreement, the CIO will be recognized by the Company as representative of the employees at those plants. Although the respective clauses adverted to may be interpreted as identical in effect, it is clear from the actions of the parties that they were not so intended. Employees at individual plants concerned in the *Bethlehem-Fairfield* case were considered as automatically covered by the master agreement upon their designation of the contracting union as their representative; employees at Troutdale negotiated with the local manager at that plant for 3 days before withdrawing demands for terms and conditions not appearing in the Master Agreement, and agreeing to execute a contract identical therewith. The fact that the CIO attempted to obtain, at Troutdale, a contract different in terms from the Master Agreement forecloses an interpretation that the CIO, at the time it conducted the negotiations,

<sup>8</sup> 58 N. L. R. B. 579.

considered the employees at Troutdale as part of a multi-plant unit governed by the Master Agreement.

Furthermore, although representatives of the Troutdale and other locals met with the Company at its central office to negotiate a master agreement to succeed the one which terminated May 1, 1944, there is no evidence that they, as a group, constitute an authorized representative binding all locals, as was the case in *Bethlehem-Fairfield*. Inasmuch as the Troutdale employees apparently had the alternative of accepting the terms of the Master Agreement or some other contract, it may be inferred that the joint representation is an expedient of the Company's and that individual locals may accept or reject the results of the negotiations at the central office. Moreover, certain provisions of the Master Agreement are illustrative of an intent in the parties thereto to treat the employees at the plants at which it is applied as separate bargaining units; for example, the section on grievance procedure provides that grievances shall progress from discussions between the employee or his representative and his immediate supervisor, through the hierarchy of local supervisors, to the president or other general executive of the Company, at which step discussions are still between a company official and the employee or his representative. Conceivably, the representative function may be taken from the local when the grievance reaches the central office; the contract, however, leaves the choice of accepting aid from the international, with the aggrieved or his local.<sup>9</sup> The section of the contract on seniority provides for seniority on a city-wide basis; employees transferring from plant to plant within the alleged multi-plant unit lose seniority.

The plants within the alleged unit are functionally dissimilar and widely scattered throughout the country. Since we are not persuaded that the CIO "by actual bargaining on a multi-plant basis, stabilized by agreement"<sup>10</sup> created a multi-plant unit, we find that all production and maintenance employees of the Company, at its Troutdale, Oregon, plant, excluding building construction workers, supervisors, technical, laboratory, office, clerical, fire protection and custodial employees, police, office janitors, and watchmen, 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

<sup>9</sup> Cf. *Matter of Bethlehem-Fairfield Shipyard, Inc.*, *supra*, and *Matter of P. Lorillard Company, Louisville Plant*, 58 N. L. R. B. 1112.

<sup>10</sup> Quotation from cases cited in footnote 9, *supra*.

period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

### 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, Troutdale, Oregon, 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 Nineteenth 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 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 any 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 Metal Trades Council of Portland and Vicinity, AFL, or by United Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither.