

In the Matter of ALUMINUM AND MAGNESIUM, INCORPORATED and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, C. I. O.

Case No. 8-R-1801.—Decided June 16, 1945

Mr. Wilbert G. Schwer, of Sandusky, Ohio, for the Company.

Mr. Admiral Kilpatrick, of Cleveland, Ohio, for the Union.

Miss Aida Casanas, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Mine, Mill and Smelter Works, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum and Magnesium, Incorporated, Sandusky, 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 Sandusky, Ohio, on April 26, 1945. The Company and the Union 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. 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 and Magnesium, Incorporated, is an Ohio corporation, operating a plant at Sandusky, Ohio, where it is engaged in the manufacture of magnesium and aluminum ingots. Its annual volume of business exceeds

\$1,000,000 in value. Over 50 percent of its products passes in interstate commerce and over 50 percent of its raw materials is received from outside the State of Ohio.

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

II. THE ORGANIZATION INVOLVED

International Union of Mine, Mill and Smelter Workers, 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 grant recognition to the Union as the exclusive bargaining representative of the Company's employees because it does not agree to the unit sought by the Union and in view of the short lapse of time since a prior election was conducted. On July 25, 1944, the Union lost a consent election among the Company's employees. However, the record discloses that the Union has submitted membership application cards bearing the names of a substantial number of employees in the same unit, and that virtually all these cards are dated subsequent to the last election.¹ Under these circumstances, inasmuch as no collective bargaining representative was chosen as a result of the last election, we believe that the policies of the Act will be best effectuated by conducting an election at the present time.²

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 Union seeks a unit of all production and maintenance employees of the Company, excluding laboratory workers, scale house workers, office clerical workers, plant guards, and supervisory employees, such as foremen, assistant foremen, master furnaceman, and assistant master furnaceman. The Company's position is that the following disputed categories should be included in the appropriate unit on the ground that they were included

¹ The Field Examiner reported that the Union submitted 104 authorization cards, that the names of 90 persons appearing on the cards were listed on the Company's pay roll of March 31, 1945, which contained the names of 187 employees in the unit which was deemed appropriate for purposes of the 1944 consent election. This group of employees includes laboratory and scale house workers, whom the Union seeks to exclude in the present proceeding. The cards submitted were dated as follows: 58 in February 1945 and 46 in March 1945. The Union polled 60 votes in the consent election, 92 having been cast against the Union.

² See *Matter of Le Tournau Company of Georgia*, 60 N. L. R. B. 810, *Matter of Atlas Fence Company, Industrial Fabricated Metals Division*, 61 N. L. R. B. 984.

in the consent election,³ conducted among the employees of the Company in 1944.

Laboratory workers Except for three college-trained chemists, the laboratory employees are trained on the job, and are engaged in routine technical work which does not require professional qualifications. Their basis of pay is the same as the production and maintenance employees, but with different rates. The laboratory workers are engaged in analysis and testing of the Company's products at various stages. They work in two plant laboratories, apart from the production workers, and there is virtually no interchange between the laboratory workers and production workers. Laboratory workers are generally recruited from outside. Laboratory employees, except for the college-trained chemists, were included in the consent election unit, but that circumstance is not decisive inasmuch as no bargaining representative was chosen and no collective bargaining has ensued. The laboratory employees are a distinct functional group, and we are of the opinion that the difference in their working conditions and interests supports the Union's desire to exclude them from the unit of production and maintenance workers. We shall exclude them.⁴

Shipping and receiving clerks. These employees are referred to in the record as scale house workers. The Company has seven scale houses located throughout the plant. These scale houses are partitioned off from the rest of the plant building. All materials passing into or out of the plant go over these scales and their weights are recorded in proper books by the scale house employees, whose manual work consists in operating levers which control the scales. These employees also direct where to deliver the materials within the plant. There is only one employee on duty at a time in each scale house. All these employees are women. They are paid on an hourly basis and at a higher rate than the stenographers in the Company's main office.⁵ They are supervised by the traffic manager who has no other employees under his supervision. Since it appears that the interests and contacts of these employees ally them more closely to the production workers than to the employees who are a part of the Company's office clerical staff, we shall include them in the unit.

Assistant shift foreman Under the supervision of the shift foreman,⁶ the assistant shift foreman is responsible for the loading and unloading of the

³ The unit as voted in the consent election of July 25, 1944, consisted of "all production and maintenance employees, including clerks and laboratory workers, but excluding guards, office employees, industrial engineers, laboratory technicians, industrial relations personnel, and supervisors with the authority to hire, discharge, transfer, or otherwise effectively change the status of other employees."

⁴ See *Matter of Southern Extract Company*, 54 N. L. R. B. 1146; *Matter of Chicago Rawhide Manufacturing Company*, 59 N. L. R. B. 1234.

⁵ The Company states that the higher rate is an incentive to get employees willing to perform this work, which, apparently is not attractive to the office employees.

⁶ The parties agree, and we find, that the shift foreman is a supervisory employee in charge of the entire plant.

freight cars and trucks. He shovels and pushes wheelbarrows along with the six or eight laborers in his crew, acting as their gang leader or pusher. He has no authority to recommend hire, discharge, discipline, or change the status of employees. We find that the assistant shift foreman is not a supervisory employee and we shall include him in the unit as a production employee.

Master furnaceman. The master furnaceman⁷ is responsible to the shift foreman. He is in charge of six open-hearth aluminum producing furnaces. Such an employee ought to be first a furnace operator for a considerable time, so he thoroughly understands, from a technical angle, the operation of an open-hearth furnace. His duty is to aid in every way and see that the furnace operators are charging the right materials into their furnaces, that they take the necessary samples or buttons at determined times throughout the heats, and also to oversee the pouring of the metal from the furnaces. He supervises the furnace operators, but does not have the authority to hire or discharge. If the master furnaceman knows of a furnace operator who has broken some rule, he reports the fact to his shift foreman, and the shift foreman or the plant superintendent are the ones who sign warning notices⁸ when necessary. The master furnaceman was included in the unit set up in the 1944 consent election. Since he appears to have no supervisory authority within the meaning of our usual definition, we shall include him in the unit as a production employee.

Assistant master furnaceman. There is one assistant master furnaceman⁹ working on each shift. His duties are generally to operate an open-hearth furnace. He checks to see that necessary supplies are on hand for machine heats, assists the master furnaceman in starting the pouring of machine heats and takes over the responsibility for this operation after it has been started. He also assists the master furnaceman in overseeing the tapping of ingot type furnaces and cleaning of furnaces during pouring operations. This employee spends about 75 percent of his time operating one of the six furnaces. We find that the assistant master furnaceman is not a supervisory employee. He will, therefore, be included in the unit.

We find that all production and maintenance employees at the Company's Sandusky plant, including scale house office workers, but excluding laboratory employees, office clerical workers, plant guards,¹⁰ foremen, and

⁷ There are two master furnacemen on each shift. Although the work is performed during three shifts, the midnight shift is lighter than the others because no loading or unloading is done. As the foreman of the third shift does not have very many workers to supervise, he is able to take care of the master furnaceman's responsibilities on this third shift.

⁸ This is a system used by the Company to warn delinquent employees.

⁹ There was no such category at the time of the previous election.

¹⁰ The Company employs four guards, three of whom have been sworn in as special police by the city of Sandusky. They have been demilitarized by the Army but still wear uniforms and carry guns. The duties of these employees have not changed substantially since they were auxiliary police. The parties agree, and we find, that the guards should be excluded from the appropriate bargaining unit.

all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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.

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 and Magnesium, Incorporated, Sandusky, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) 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 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, to determine whether or not they desire to be represented by International Union of Mine, Mill and Smelter Workers, C. I. O., for the purposes of collective bargaining.