

In the Matter of ALUMINUM COMPANY OF AMERICA and UNITED
STEELWORKERS OF AMERICA, C. I. O.

Case No. 19-R-1531.—Decided July 28, 1945

Mr. J. P. Haight, of Spokane, Wash., and *Messrs. R. W. Bucklin* and *J. J. Meek*, of Trentwood, Wash., for the Company.

Messrs. John M. Glenn, *P. R. Schermerhorn*, and *R. E. Engelking*, of Spokane, Wash., for the Union.

Miss Katharine Loomis, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Company of America, Trentwood, Washington, 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 Spokane, Washington, on May 3, 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 Company of America is a corporation engaged in the manufacture and fabrication of aluminum, with plants and offices in several States of the United States. We are here concerned with employees of the Com-

pany at the plant known as Trentwood Rolling Mill, at Trentwood, Washington. This plant is owned by the Defense Plant Corporation, an agency of the Federal Government, but is operated by the Company. The principal raw materials used at the plant are pig aluminum and coal. Most of the aluminum so used is received at the plant from points inside Washington and varying percentages of the aluminum fabricated are shipped from the plant to points outside Washington. The plant, which is entirely devoted to war production, produces annually over 200,000,000 pounds of finished aluminum aircraft sheets.

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

II. THE ORGANIZATION INVOLVED

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

In February 1945 the Union requested recognition of the Company as the bargaining agent for the guards employed by the Company at its Trentwood plant. The Company stated that it would not recognize the Union until certified by the Board.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 patrolmen in the guard force at the Company's Trentwood, Washington, plant, excluding supervisory employees. The Company's guard force is completely militarized. It consists of a chief, lieutenants, corporals, sentries, and guards, the three latter categories being designated as patrolmen. The Company and the Union agree that the chief and lieutenants should be excluded as supervisory employees and that the corporals should not. The Company, however, takes the position that no unit of patrolmen is appropriate. It seems to contend that the patrolmen are identified with management, that they are not in fact its employees, but servants of the United States Government which derives the principal benefit of their services; and that their membership in a union, and espe-

¹ The Field Examiner reported that the Union submitted 30 designation cards; that there were 42 employees in the alleged appropriate unit; and that the cards were dated between August 1944 and March 1945.

cially in the same union which now represents other employees of the Company,² is incompatible with their obligations both to the Company and to the Government.

All members of the guard force are armed and uniformed. Each has signed an agreement with the United States stating that the appropriate Articles of War have been read and explained to him and promising faithful performance of his duties as a civilian auxiliary to the military police. The guard force, including its chief and lieutenants, is under the supervision of the Company's personnel director and also its works manager. The patrolmen are directly supervised by the chief and lieutenants. They are hired through the Company's employment office, their appointments being subject to the approval of the chief. All members of the guard force are carried on the Company's pay roll and the Company's personnel director admits that they are employees of the Company.

The principal function of the members of the guard force is to protect the plant from acts of sabotage and espionage. They also enforce company regulations and, in particular, the regulation forbidding employees to bring liquor into the plant. In general, it is the duty of the supervisors of production and maintenance employees to quell disturbances caused by drinking, gambling, or fighting among these employees. Members of the guard force are occasionally called upon by the supervisors to aid in eliminating such disturbances. It is the function of the corporals to see that the orders of the chief and lieutenants are carried out. There is little distinction between the duties of the sentries and guards. The former are generally stationed at gates where they require identification of employees and visitors entering the plant, while the latter perform work demanding less experience, such as routine patrol duty. Patrolmen also operate the plant ambulance and carry mail.

The record does not uphold the Company's position that the patrolmen are identified with management. They do not formulate or determine the Company's labor policy. They are without authority to hire or discharge other employees or recommend such action. Nor do they have the power to excuse or penalize other employees guilty of wrongdoing. In enforcing the Company's regulations, as in the performance of their other duties, they are merely carrying out company orders without discretion and in accordance with specific instructions. Their duties in relation to other employees are purely monitorial and in none of their duties are they in any manner identified with management.³

It is obvious that the protection of the goods manufactured by the Company redounds to its direct benefit. Moreover, the paramount authority

² Local 338 of the Union represents the production and maintenance employees of the Trentwood plant

³ See *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892

which the Army exercises over the patrolmen in the military sphere has not deprived them of their status as employees of the Company. Army regulations introduced into evidence at the hearing indicate that the Army did not contemplate the abolition of the existing employer-employee relationship.⁴ In addition, it is clear from the record that the patrolmen are hired and paid by the Company, are directly supervised by individuals who are hired and paid by the Company, and that it exercises day to day control over their tenure of employment, their working conditions, and their duties.⁵ Furthermore, they are admittedly employees of the Company.

We perceive no necessary conflict between membership in the Union and the faithful performance by the patrolmen of their obligations both to the Company and to the Government. "Self-organization for collective bargaining is not incompatible with efficient and faithful performance of duty," nor is militarization an obstacle to unionization.⁶ Although Local 338 of the Union now represents other employees of the Company at its Trentwood plant, a separate unit for the patrolmen will, if established, insulate their collective bargaining from that of other employees. Thus, their separate problems and interests growing out of their peculiar occupation, will be recognized, and will not be merged with or subordinated to any interests of the production and maintenance employees which may be in conflict.⁷ Since all the patrolmen are militarized, the establishment of such a unit will be in conformity with our practice of placing militarized plant-protection employees in units separate from non-militarized employees to the end that they may be better able to function within the military sphere, and to permit the military authorities to exercise greater control over them,⁸ The Union here requests such a unit and we shall grant it. The Union's representative stated at the hearing that it plans to represent the patrolmen either by a separate local organization or by Local 338 which now represents the production and maintenance workers. In either event, it plans that the patrolmen will comprise a separate unit, will have separate officers, hold separate meetings, and that the bargaining agent of these employees will negotiate for a separate contract for them. The Company opposes the plan proposed by the Union insofar as one local organization may represent both the production and maintenance unit and the unit of militarized

⁴ War Department Circular No 15, dated March 17, 1943, and headed "Auxiliary Military Police", provides

Employer-employee relationship

- (1) Basically, the militarization of plant guard forces does not change the existing systems of hiring, compensation, and dismissal, all remain primarily a matter between the guards and the plant managements. Guards in the employ of a private employer may, as heretofore, be dismissed by the employer, and those who are Civil Service employees in the employ of the War Department may be dismissed by the local commanding officer in accordance with Civil Service Regulations. In neither case is a court martial necessary.

⁵ See *Matter of International Harvester Company, Milwaukee Works*, 61 N. L. R. B. 912.

⁶ See *Matter of Diavo Corporation*, 52 N. L. R. B. 322, at 327, 328.

⁷ See *Matter of Bethlehem Steel Company*, *supra*.

⁸ See *Matter of Diavo Corporation*, *supra*.

patrolmen. Nevertheless, we are convinced that our practice of segregating militarized plant-protection personnel in separate units is sufficient to insulate their collective bargaining from that of other employees.⁹ Moreover, we contemplate that the separation of the bargaining units in their negotiations with the Company and their day to day activities will be one of fact, not merely form, and shall be reflected in all bargaining between the Company and any duly designated bargaining representative.

Accordingly, we find that all patrolmen in the guard force at the Company's plant at Trentwood, Washington, including corporals, sentries and guards, but excluding the chief, lieutenants, and all other 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.

At the hearing the Company requested that three former guards, whom it classified as being "on detached service," be permitted to vote in the election. The Union opposed this request. It appeared that the three former

⁹ The Company, in opposing the plan of the Union, calls our attention to Section 6 (h) (2) of War Department Circular Uo 15, dated March 17, 1943, and headed "Auxiliary Military Police," which reads, in part, as follows

- (2) Auxiliary Military Police are permitted to bargain collectively but no such activity will be tolerated which will interfere with their obligations as members of the Auxiliary Military Police . . . The Auxiliary Military Police should be represented in collective bargaining with the management by a bargaining unit other than that composed of the production and maintenance workers, although both units may be affiliated with the same labor organization. Where the guards are not now included in the same bargaining unit, this is mandatory, where the guards are included in such unit, serious consideration will be given to effect a change to conform to the foregoing policies

That the War Department recognizes that our practice of segregating militarized personnel in separate units is sufficient to insulate their collective bargaining from that of other employees is made clear in its Memorandum of July 10, 1943, issued as a supplement to Circular No 15, which states, in part, as follows

Subject Plant guards

- 1 It has been reported to this headquarters that labor officers are interpreting Circular No 15, this headquarters, 17 March 1943, Subject, "Auxiliary Military Police," as prohibiting membership of plant guards enrolled as Auxiliary Military Police in the same trade union local as that representing production and maintenance workers
- 2 Paragraph 6 (h) (2), Circular No 15, presents applicable War Department policy on plant guard labor representation.
3. In the event that plant guards enrolled as Auxiliary Military Police desire to be represented in collective bargaining with management, they should be represented by a bargaining unit other than that representing the production workers. However, in such event, both bargaining units may be affiliated with the same trade union local, provided they are, in fact, separate bargaining units.

guards no longer performed guard force duties and were under the supervision of the Company's personnel director, performing services of a wartime emergency nature which included recruiting manpower and assisting in arranging housing and transportation for company employees. The Company stated that it regarded the assignments of these employees as merely temporary, as evidenced by their continued militarization and the fact that it still retained them on the guard force pay roll, and that it planned to return them to guard force duty as soon as it could release them from their present work. However, as of the time of the hearing, the Company could set no definite date for their release; it appeared that there would probably be a continued need for the type of services they were performing; and it seemed doubtful whether the assignments were merely temporary. Therefore, the three former guards¹⁰ shall not be permitted to cast ballots unless they were engaged in guard force duties during the eligibility period described above.

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, Trentwood, Washington, 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 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 those 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 or not they desire to be represented by United Steelworkers of America, C. I. O., for the purposes of collective bargaining.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.

¹⁰ The names of the three former guards are Bowker, Walker, and Quinn.