

In the Matter of ALUMINUM COMPANY OF AMERICA and UNITED STEEL-
WORKERS OF AMERICA, LOCAL 316, C. I. O.

Case No. 2-R-5628.—Decided September 10, 1945

Isseks & Reyman, by *Mr. Arthur E. Reyman*, of New York City, and *Mr. O. V. Peterson*, of Edgewater, N. J., for the Company.

Rothbard, Harris & Talisman, by *Mr. Clarence Talisman*, of Newark, N. J., and *Mr. George Binsted*, of Newark, N. J., for the C. I. O.
Mr. Donald H. Frank, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, Local 316, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Company of America, Edgewater, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jerome I. Macht, Trial Examiner. The hearing was held at New York City, on June 25, 1945. The Company and the CIO 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 and in its brief, the Company moved the dismissal of the petition upon the grounds discussed in Section IV, *infra*. Ruling on the motion was reserved for the Board. For the reasons stated in Section IV, 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.¹ The Company's request for oral argument is hereby denied.

¹ The Company filed with the Board, and served on the CIO, on July 7, 1945, a brief containing a request in the nature of a motion, to correct certain clerical errors in the record. Thereafter, the CIO was advised to file with the Board, by July 19, 1945, any objections to the Company's motion. No objections having been received, the record has been corrected.

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 with its principal office and place of business at Pittsburgh, Pennsylvania. It operates plants in several States of the United States, including the Edgewater, New Jersey, Works, the sole operation of the Company involved in this proceeding. At the Edgewater Works, the Company is engaged in the manufacture, sale, and distribution of aluminum sheet, press forgings, screw machine products, rivets, and foil in aluminum alloys. At the time of the hearing, approximately 97 percent of the output of the Edgewater Works was produced for the United States Government and its allies. During the fiscal year 1945, the Edgewater Works used in its manufacturing processes raw materials valued in excess of \$100,000, shipped to it from points outside the State of New Jersey. During the same period, it shipped 90 percent of its finished products, valued in excess of \$100,000, to points outside the State of New Jersey.

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

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, Local 316, 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 CIO as the exclusive bargaining representative of the Company's plant-protection employees until the CIO has been certified by the Board in an appropriate unit.

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

² The Trial Examiner reported that the CIO submitted 29 dues-ledger cards, 28 of which bore the names of persons appearing on the Company's pay roll of May 5, 1945, which contained the names of 43 employees in the appropriate unit; and that 27 of the cards were dated in March, April, and May 1945.

IV. THE APPROPRIATE UNIT

The CIO seeks a unit of all the Company's plant-protection guards at the Edgewater Works, including corporals, but excluding fire-patrolmen, and sergeants and lieutenants, and all other supervisory employees. The Company agrees to the propriety of the inclusion and the exclusion sought.

All of these employees, about 40 in number, are uniformed; all but 4 of them are deputized; and all but 2 are armed. In general, it is their duty to protect the property and employees of the Company. In carrying out this duty, the guards at the company gates inspect all employees as they enter and leave the area, keep a list of all visitors entering the area, and escort these visitors to the proper offices. They examine all packages brought onto the premises, as well as keeping records of all deliveries made to the Company, and checking the removal of any company property from the plant. The guards who make the rounds, on the look-out for all unusual or dangerous circumstances, punch the clocks, close windows and doors, and inspect the premises for signs of sabotage and espionage. When they apprehend a disorderly or intoxicated employee, or one who is outside the areas he is authorized to visit, they report the offender to his foreman. They are authorized to quell all disturbances. They are entrusted with keys to managerial offices, but are not authorized to use those keys for the purpose of examining company files. All guards receive, on occasion, certain confidential reports from the management which do not appear to be concerned with the Company's labor relations policies. They have, over a period of years, received from time to time special instructions aiding them in the protection of persons and property. When anything unusual is observed, they make a secret report to their lieutenant concerning it.

The Company's motion to dismiss the petition is based on the contentions (1) that recognition of a collective bargaining agent for plant-protection employees is contrary to the public interest; (2) that the deputization of these employees makes them the employees of the Borough of Edgewater and, as such, not within the purview of the Act;³ (3) that the managerial and confidential nature of their work makes any unit for them inappropriate; and (4) that they cannot be represented by the CIO since that organization at present represents the Company's production and maintenance employees, over whom

³ The guards are hired, paid, and discharged by the Company, which also furnishes their uniforms. They receive no compensation from the Borough. The Resolution of the Borough, authorizing the appointment of Special Policemen, recites that their powers and duties shall be limited to the plants, structures, vehicles, and grounds of the companies, and the streets immediately adjacent thereto.

the plant-protection force exercises some authority.⁴ Each of these contentions has been considered in numerous previous cases which involved plant-protection employees similarly situated and with similar duties, and were found to be without merit.⁵ Moreover, these employees are performing the same duties as they were performing at the time of our previous decision concerning them in which we determined that a separate unit of these employees was appropriate.⁶ It is clear that a separate unit for these employees is appropriate, inasmuch as they exercise monitorial authority.⁷

We find that all the Company's plant-protection employees at the Edgewater Works, including corporals, but excluding fire patrolmen, and sergeants and 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 payroll 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 Rela-

⁴The Company points to the decision of the United States Circuit Court of Appeals for the Sixth Circuit in *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 146 F. (2d) 718 (C. C. A. 6), cert. granted, remanded for further consideration June 4, 1945, 65 S. Ct. 1413. We do not acquiesce in the doctrine enunciated in that decision, which has not yet been passed upon by the Court of last resort.

⁵*Matter of National Lead Company, Titanium Division*, 62 N. L. R. B. 107; *Matter of Sealed Air Corporation*, 61 N. L. R. B. 1639; *Matter of Lockheed Aircraft Corporation, Lockheed Modification Center*, 61 N. L. R. B. 1336; *Matter of Aluminum Company of America*, 61 N. L. R. B. 1066; *Matter of International Harvester Company, Milwaukee Works*, 61 N. L. R. B. 912; *Matter of Bethlehem-Fairfield Shipyard, Inc.*, 61 N. L. R. B. 901; *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892; *Matter of The Babcock & Wilcox Company*, 61 N. L. R. B. 529; *Matter of Rohm & Haas Company*, 60 N. L. R. B. 554; *Matter of Budd Wheel Company*, 52 N. L. R. B. 666; *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Chrysler Corporation*, 44 N. L. R. B. 881. See also *Matter of Tampa Shipbuilding Company, Incorporated*, 62 N. L. R. B. 954.

⁶*Matter of Aluminum Company of America*, 57 N. L. R. B. 1216. The single change which has occurred in their status since that decision, a change which has not affected their duties, was their demilitarization. They had been deputized prior to their militarization, and were redeputized immediately after the demilitarization in order to allow them to continue to carry arms.

⁷*Matter of Standard Steel Spring Company*, 62 N. L. R. B. 660; *Matter of Kelsey-Hayes Wheel Company*, 62 N. L. R. B. 421.

tions 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 the collective bargaining with Aluminum Company of America, Edgewater, New Jersey, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date this Direction, under the direction and supervision of the Regional Director for the Second 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 or not they desire to be represented by United Steelworkers of America, Local 316, 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.