

In the Matter of ALUMINUM COMPANY OF AMERICA and FOREMAN'S
ASSOCIATION OF AMERICA (INDEPENDENT), CHAPTER #254

Case No. 2-R-5560.—Decided April 29, 1946

Isseks & Reyman, by Messrs. Arthur E. Reyman and Leonard Franklin, of New York City, for the Company.

Mr. William Vallance, of Detroit, Mich., for the Union.

Mr. Richard J. Hickey, of New York City, for the Board.

Mr. C. G. Kessler, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Foreman's Association of America (Independent), Chapter #254, herein called the Union, 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 Arthur Leff, Trial Examiner. The hearing was held at New York City on January 15, 1946. 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. At the hearing the Company, in support of its position that the supervisory personnel covered by the amended petition could not comprise any appropriate bargaining unit, offered to prove, in effect, that these persons were an integral part of management and were therefore "employers" and not "employees" within the meaning of the Act. For reasons stated hereinafter, we find that this evidence was proffered for an inadmissible purpose and that the Trial Examiner's ruling was to that extent proper. However, inasmuch as an examination of the offers of proof show that they are informative with respect to such relevant matters as the functional groupings of these supervisors and the levels of supervision,¹ we shall overrule the Trial Examiner and admit the offers

¹ In this connection, we regard as significant the material in the offers of proof bearing on the nature of the duties, functions, and responsibilities of the Company's supervisory personnel

of proof for that purpose. We accordingly accept the facts stated in the offers of proof as true and consider them as part of the record and give them the same force and effect as if they had been established by competent testimony.

The Board has considered the Trial Examiner's rulings on motions and on objections to the admission of evidence and finds that no prejudicial error was committed.² The rulings, with the exception noted above, are hereby affirmed. At the commencement of the hearing the Union moved to amend its amended petition by including assistant department heads in the proposed unit. The Trial Examiner referred the motion to the Board for determination. The Union's motion is hereby granted. All parties were afforded opportunity to file briefs with the Board. The Company's request for oral argument is hereby denied.

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, a Pennsylvania corporation, operates a plant at Edgewater, New Jersey, where it is engaged in the manufacture, sale, and distribution of aluminum sheet, press forgings, screw machine products, and foil. During 1945, substantially all the raw materials used by the Company in its operations were shipped to its Edgewater plant from points outside the State of New Jersey, and approximately 90 percent of the finished products manufactured by this plant was shipped to points outside the State. Raw materials purchased by the Company and sales of products by the Company each exceeded \$100,000. in that year.

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

Foreman's Association of America (Independent), Chapter #254, is an unaffiliated labor organization admitting to membership supervisory employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In a letter dated October 22, 1945, the Union asked the Company for recognition as bargaining representative of the Company's super-

² We are satisfied that the Company is in no sense, prejudiced by our acceptance of the detailed facts contained in its offers of proof as true, instead of requiring it to establish them by testimony which might be rebutted by the Union

visory employees. The Company received the letter in due course of mail, but did not reply. From the position taken by the Company at the hearing, it is evident that it refuses to recognize the Union.

As noted above, the Company contends, in effect, that the supervisory employees involved in this proceeding are an integral part of management and are therefore "employers" and not "employees" within the meaning of the Act. The status of foremen and comparable supervisors under the Act has been considered in a number of Board³ and court⁴ decisions. Both the Board and the courts have concurred in holding that foremen have a dual aspect under the definitions of "employer" and "employee" contained in the Act. When he acts in the interest of his employer, a foreman is an "employer"; but when he acts in his own interest, as when he seeks to better the terms and conditions of his employment, he is an "employee." There is no inconsistency in recognizing such duality of status. Accordingly, we find that for the purposes of this proceeding the supervisors herein considered are employees within the meaning of Section 2 (3) of the Act.

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.⁵

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 foreladies, assistant composition foreman, composition foreman, supervisor lieutenant, sergeant shift foremen, assistant unit foremen, unit foremen, assistant shift foremen or assistant foremen, shift foremen or foremen, assistant general foremen, general foremen, assistant supervisors, supervisors, and assistant department heads of the production, inspection and maintenance departments at the Edgewater plant of the Company, including the supervisor in the planning department of the sheet mill, who is in charge of the pre-heat furnaces, but excluding all other supervisory employees. The Company raised no issue as to the composition of

³ *Matter of Soss Manufacturing Company, et al.*, 56 N L R B 348; *Matter of Packard Motor Car Company*, 61 N L R B 4, and 64 N L R B 1212, *Matter of L. A. Young Spring & Wire Corporation*, 65 N L R B 298, *Matter of The B F Goodrich Company*, 65 N L R B 294, *Matter of Simmons Company*, 65 N L R B 984, *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N L R B 997

⁴ *N L R B v Armour and Co*, 154 F (2d) 570 (C C A 10, Nov 5, 1945); *Jones & Laughlin Steel Corporation v N L R B*, 146 F (2d) 833 (C C A 5), *N L R B. v. Skinner & Kennedy Stationery Company*, 113 F (2d) 667 (C C A 8)

⁵ The Field Examiner reported that the Union submitted 106 authorization cards and that there are approximately 148 supervisory employees in the appropriate unit.

the unit, subject to the reservation that it did not thereby waive the position that the employees sought therein are part of management and therefore cannot constitute an appropriate unit.

In support of its argument that supervisors here involved are part of management, the Company apparently attempts to distinguish the instant case from the *Packard*⁶ case on the grounds that the supervisors in this proceeding have duties, powers, and responsibilities greater than those of the supervisors in that case and that the plant is a jobbing plant rather than a mass producing assembly line plant. In the recent *Young*⁷ case where similar issues were raised, we held, as we do here, that foremen are employees within the meaning of Section 2 (3) of the Act; that, as employees, they are entitled to be placed in some appropriate unit under Section 9 (b); that the type of industry in which they are employed is immaterial; and that the nature of the duties and responsibilities of foremen is relevant only insofar as it bears on the question of their proper grouping for collective bargaining purposes.

The unit sought by the Union is essentially a unit of production, inspection, and maintenance supervisory personnel. It is apparent, as is admitted by the Company, that below the level of assistant department heads there is no rigid fixed hierarchy of jobs, job nomenclature or levels of authority. Except for the assistant department heads, all the included supervisors have substantially the same powers, duties, and responsibilities. Each department is in charge of a department head who may have an assistant department head to assist him in the supervision of that department. These departments are divided into sections which are further subdivided into subsections. All supervisory personnel sought to be included in the proposed unit below the level of assistant department heads either supervise or assist in the supervision of sections or subsections. Some subsections of the larger departments are more extensive than some sections of smaller departments, and as a consequence the responsibilities of the supervisory personnel in each classification varies with the size of the section or subsection involved. Thus, the shift foremen and unit foremen of these larger subsections appear to have authority and responsibility approaching that of a supervisor or general foreman; such difference in responsibility as does exist is only one of degree. All the supervisory personnel below the level of assistant department heads devote some of their time to matters of supervision of rank and file workers in these sections or subsections; none of them have the authority to hire, discharge or promote rank and file workers, or change operation schedules. That authority is apparently vested in higher supervision and

⁶ See *Matter of Packard Motor Car Company, supra*.

⁷ See *Matter of L. A. Young Spring & Wire Corporation, supra*

is relayed to those here involved and given effect by them.⁸ It further appears that the supervisory personnel here involved have authority to investigate causes for grievances and to handle minor grievances. With respect to the "management of machinery and equipment" and in the "management of administrative matters" they serve only in a consultative capacity, if at all. Even though the levels of supervision are not clear, we are of the opinion that with the exception of the assistant department heads, the supervisory personnel here involved fall within a group at or toward the bottom of the Company's supervisory hierarchy and are themselves subject to the supervision of either the department heads or the assistant department heads, who are excluded from the unit hereinafter found appropriate. In view of the similarity in their powers and duties, we conclude that all the supervisors sought herein below the level of assistant department heads comprise an appropriate bargaining unit.

There remains for consideration the disposition to be made of certain supervisory categories about which some question exists.

Supervisors of Sheet Mill Planning department: There are two supervisors in the planning department of the sheet mill. The Union seeks to exclude one because he supervises clerical workers, and to include the other,⁹ who supervises three checkers on pre-heat furnaces. These checkers on pre-heat furnaces are rank and file employees and are attached to the operating department. In view of the fact that the employee sought to be included is located in the mill and supervises rank and file production employees, we find him to be a supervisor of production. Accordingly we shall include in the unit the supervisor in the planning department of the sheet mill who is in charge of the pre-heat furnaces, and shall exclude the other supervisor in that department.

*Composition supervisor and assistant composition supervisor:*¹⁰ These two men direct and supervise the work of nine scalemen who are in charge of setting up the composition furnaces. The supervisors make sure that the proper quantity and grade of metal are brought up for each day's work. The Company stated that these men were not eligible for membership in the rank and file production, inspection, and maintenance unit. In view of the fact that they do supervise rank and file production workers as do many of the other categories of supervisory personnel in the unit hereinafter found appropriate, we shall include them.

⁸ Like the foremen in the *Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386, these supervisory employees do not have any policy making functions, although the Company sought to prove otherwise.

⁹ Harry Schrieber

¹⁰ Counsel for the Company stated at the hearing that these designations are designations of the Union's origination. However, in any event, it is clear that the two employees concerned are J. Russo and J. Di Sciascio.

Supervisor lieutenant and sergeant shift foremen: It would appear that these employees are supervisors of plant-protection employees. The plant-protection employees are represented by the same local that represents the production, inspection, and maintenance workers, but they are covered by a separate Board certification. In accordance with our holding in the *Jones & Laughlin* case,¹¹ that the same bargaining patterns established for rank and file employees should be followed for supervisory employees, we shall exclude the supervisor lieutenant and the sergeant shift foremen from the unit.

Assistant department heads: There are three assistant department heads, two of whom are in the sheet mill division while the third is in the maintenance subdivision of the engineering division. Each acts as an assistant to a department head and apparently substitutes for the department head in the absence of the latter. The department heads are each in charge of a department. The duties, powers, and responsibilities of the department heads and of the assistant department heads are substantially the same; in those instances where action can be taken only by the department heads, the assistant department heads can make effective recommendations to their department heads.

We are of the opinion that the interests of the assistant department heads are more closely linked with those of the department heads than with those of the supervisors sought to be included in the proposed unit and therefore believe that they do not belong in the unit petitioned for. We shall exclude them.

We find, in accordance with our foregoing determinations, that all foreladies, the assistant composition supervisor,¹² the composition supervisor,¹³ assistant unit foremen, unit foremen, assistant shift foremen or assistant foremen, shift foremen or foremen, assistant general foremen, general foremen, assistant supervisors and supervisors, in the production, inspection, and maintenance departments of the Company's Edgewater plant including the supervisor in the planning department of the sheet mill who is in charge of the pre-heat furnaces,¹⁴ but excluding all other supervisors, 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 employees in the appropriate unit who were employed during the pay-roll period

¹¹ See *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannon Coal Division*, *supra*

¹² J Russo.

¹³ J Di Sciascio

¹⁴ Harry Schrieber

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, 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 of 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 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 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 or not they desire to be represented by Foreman's Association of America (Independent), Chapter #254, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.