

In the Matter of ALUMINUM ORE COMPANY, EMPLOYER and FOREMEN'S
UNION No. 23882, AMERICAN FEDERATION OF LABOR, PETITIONER

Case No. 15-R-1504.—Decided August 22, 1946

Mr. Charles G. Kessler, of New Orleans, La., for the Board.

Mr. Harold F. Hecker, of St. Louis, Mo., *Mr. Robert K. Heineman*,
of Pittsburgh, Pa., and *Mr. Walter Carroll*, of New Orleans, La., for
the Employer.

Mr. J. D. Turner, of Spring Hill, Ala., for the Petitioner.

Mr. Herbert J. Nester, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon an amended petition duly filed,¹ hearing in this case was held at Mobile, Alabama, on June 5 and 6, 1946, before Charles W. Schneider, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing, the Employer moved to dismiss the petition, which motion was referred to the Board by the Trial Examiner. For reasons hereinafter stated, the motion is denied. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Aluminum Ore Company, a wholly owned subsidiary of the Aluminum Company of America, is a Delaware corporation with its principal office in St. Louis, Missouri, and maintaining plants in Alabama, Arkansas, and Illinois. The Mobile, Alabama, plant, which alone is involved in this proceeding, is engaged in the refining of

¹ At the commencement of the hearing the Petitioner moved to amend the petition herein by individually naming the supervisory classifications comprising the unit sought. The motion was referred to the Board by the Trial Examiner.

The Petitioner's motion is hereby granted.

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bauxite by chemical process, an operation incidental to the manufacture of alumina. During the calendar year of 1945, the Mobile plant utilized raw materials valued in excess of \$100,000, substantially all of which was shipped from points outside the State of Alabama. During the same period, the plant manufactured alumina valued in excess of \$100,000, over 90 percent of which was shipped to points outside the State of Alabama.

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

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with The American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of certain supervisory employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner urges as appropriate a unit composed of all department foremen, assistant department foremen, general shift foremen, assistant shift foremen, and foremen in the production department and the mechanical department (except the industrial engineering, electrical engineering, and designing subdivisions) of the Employer's Mobile plant, but excluding all other supervisory employees.² Although the Employer does not contest the composition of the unit, or the supervisory grouping sought therein, it asserts that these supervisors constitute an inseparable part of management, are not "employees" within the meaning of the Act, and are therefore incapable of forming the basis of an appropriate unit.

In support of its contention that the supervisors herein concerned are not employees within the meaning of the Act, the Employer has set forth no compelling argument which has not been fully considered

²The supervisory grouping petitioned for is consonant in scope with the presently existing unit of rank and file employees. There are approximately 52 employees in the appropriate unit.

by the Board in recent similar cases³ wherein the Board held that comparable supervisory employees are "employees" as defined in Section 2 (3) of the Act. We therefore find, in accordance with the determination made in those cases, that the supervisors sought herein are "employees" within the meaning of the Act.

The record discloses that the production department consists of five subdivisions collectively supervised by an assistant superintendent and a general foreman, who coordinate the activities of the subdivisions. The mechanical department is comprised of seven subdivisions collectively supervised by a general foreman, who is technically designated as a "master mechanic." Each subdivision in these departments is under the supervision of a department foreman who directs all operations within the subdivision. Subordinate to the department foreman, in their respective levels of authority, are the assistant department foremen, general shift foremen, assistant general shift foremen, and foremen. The authority of the supervisors petitioned for is limited exclusively to the individual subdivisions as distinguished from the departmental and plant-wide authority exercised respectively by the general foremen, assistant superintendent, and the superintendent, whom the petitioner would exclude.

The Employer contends that the nature of the duties and responsibilities vested in the supervisors herein render them an inseparable part of management and incapable of forming the basis for a bargaining unit. In view of the decisions in the *Goodrich* and *Young* cases⁴ it is apparent that this contention is without merit. The record evinces a definite community of interest among the supervisory levels sought herein, based on a common background and a comparable subdivisional limitation of authority, which we consider determinative of proper grouping in a bargaining unit. We, therefore, are of the opinion that the supervisory personnel herein involved are sufficiently distinguishable from higher level management to warrant their inclusion in a separate unit appropriate for collective bargaining.⁵

We find that all department foremen, assistant department foremen, general shift foremen, assistant general shift foremen, and foremen employed in the production department and the mechanical

³ See *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N L R B 997, *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N L R B 386; *Matter of Aluminum Company of America*, 67 N L R B 958; *Matter of Carnegie Illinois Steel Corporation*, 67 N L R B 1238

⁴ In *Matter of The B. F. Goodrich Company*, 65 N L R B 294 and *Matter of L. A. Young Spring & Wire Corporation*, 65 N L R B 298, a majority of the Board held that the nature of the duties and responsibilities of supervisory personnel are relevant only insofar as they pertain to the question of proper grouping for bargaining purposes.

⁵ See *Matter of L. A. Young Spring & Wire Corporation*, *supra*, *Matter of Jones & Laughlin Steel Corporation*, *supra*; *Matter of General Mills, Inc.*, 66 N L R B 1423; *Matter of Columbia Steel Company*, 67 N L R B 529; and *Matter of Aluminum Company of America*, *supra*.

department (except in the industrial engineering, the electrical engineering, and the designing subdivisions) of the Employer's Mobile plant, but excluding all other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Aluminum Ore Company, Mobile, Alabama, 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 Fifteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, as amended, 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 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 Foremen's Union No. 23882, American Federation of Labor, for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For reasons stated in my dissenting opinions in *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, and *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386, I am constrained to dissent from the majority opinion in this case.