

3. The Board would assert jurisdiction over the Superior multi-employer association or individual members thereof if the total inflow or outflow, direct or indirect, of all the members amounted to \$50,000 or more and legal jurisdiction existed over the association or one or more members thereof.

4. The Board expressly does not pass on the question of whether the multiemployer units have merged or the effect, if any, the petitions of Local 1116 would have on the same.

Washington Aluminum Company, Inc. and Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO.
Case No. 5-CA-1696. August 16, 1960

DECISION AND ORDER

Upon charges duly filed by Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO (herein called the Union), the General Counsel of the National Labor Relations Board, by the Regional Director for the Fifth Region, issued a complaint dated May 5, 1960, against Washington Aluminum Company, Inc. (herein called the Respondent), alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served upon the Respondent and the Charging Party, herein called the Union.

With respect to the unfair labor practices, the complaint alleges, in substance, that the Union was and is the exclusive representative of all production and maintenance employees of the Respondent in an appropriate unit, and that on April 21, 1960, and at all times thereafter, Respondent unlawfully refused to bargain collectively with the Union.

Respondent's answer, filed May 9, 1960, admits certain jurisdictional and factual allegations of the complaint, but denies the commission of unfair labor practices.

On June 9, 1960, all parties to the proceeding entered into a stipulation of facts, and on the same date jointly agreed to transfer this proceeding directly to the Board for finding of fact, conclusions of law, and decision and order. The stipulation states that the parties have waived their rights to a hearing before a Trial Examiner, and to the issuance of an Intermediate Report. The stipulation provides in substance that the entire record in this case shall consist of the formal pleadings herein together with the entire record in Case No. 5-RC-2682, the Board's Decision, Direction, and Order in the con-

solidated Cases Nos. 5-CA-1498 and 5-RC-2682,¹ and copies of three letters representing correspondence between the Respondent and the Union following the latter's certification by the Board.

On June 14, 1960, the Board granted the parties' motion to transfer the case to the Board. Upon the basis of the parties' stipulation and the entire record in the case, the Board² makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Delaware corporation, is engaged in the fabrication of aluminum products at its Baltimore, Maryland, plant. During a 1-year period, being representative of its operations at all times material herein, Respondent shipped products valued in excess of \$50,000 to points outside the State of Maryland. Accordingly, we find that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The facts as stipulated show that the Union was certified as bargaining agent for the production and maintenance employees of the Respondent on April 13, 1960,³ and that the Respondent, by letter dated April 21, 1960, refused and continues to refuse to bargain with the certified bargaining agent of its employees.

The Union filed its petition for certification of representatives⁴ on February 2, 1959, and an election was held on March 17, 1959, pursuant to a stipulation for certification upon consent election. On May 15, 1959, the Regional Director for the Fifth Region issued a complaint in Case No. 5-CA-1498, alleging, *inter alia*, that four individuals, who had cast ballots subject to challenge in the earlier election, were discriminatorily discharged on or about January 5, 1959, for engaging in protected concerted activity. As the challenges were sufficient in number to affect the results of the election, and the eligibility of the individuals who cast the challenged ballots depended upon the resolution of the unfair labor practice case, the Board directed that the two cases be consolidated and heard before a Trial Examiner. The

¹ *Washington Aluminum Company, Inc.*, 126 NLRB 1410.

² Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Jenkins and Fanning].

³ The complaint alleges, and Respondent admits, that the appropriate unit consists of all production and maintenance employees, including working leaders employed at the Company's Baltimore, Maryland, plant, excluding all office clerical employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

⁴ Case No. 5-RC-2682.

Trial Examiner, after a hearing, found that the four individuals had been unlawfully discharged and that they were therefore entitled to vote; the Board agreed.⁵ The challenged ballots were opened, a revised tally of ballots was issued on April 7, 1960, and the Union, having received a majority of the valid votes, was certified as exclusive bargaining representative on April 13, 1960.

The Respondent's position, as reflected in its answer to the complaint and in letters dated April 21, 1960, responding to the Union's request to bargain, is essentially that the findings of the Board in the earlier consolidated representation and complaint case are erroneous, that it is taking steps to review that case in the Court of Appeals for the Fourth Circuit, and that the "Company is not in a position to sit down with the Union and negotiate a contract covering wages and working conditions for the reason that, if the Fourth Circuit ultimately decides the case in favor of the Company, the Company would be under no duty to recognize the Union as the bargaining representative for the Company's employees."

Under these circumstances and upon the basis of the entire record, we find that the Respondent, by its admitted refusal to bargain with the Union, as the certified bargaining representative of its employees, on and after April 21, 1960, has violated Section 8(a)(5) and (1) of the Act.⁶

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent refused to bargain collectively with the Union as the exclusive representative of employees in the appropriate unit, we shall order that the Respondent bargain collectively with the Union, upon request, as the statutory representative of the employees in the unit, and, if an understanding is reached, embody such understanding in a signed agreement.

⁵ *Washington Aluminum Company, Inc., supra.*

⁶ *The Cross Company*, 127 NLRB 691; *Old King Cole, Inc.*, 119 NLRB 837, enf. 260 F. 2d 530 (C.A. 6).

CONCLUSIONS OF LAW

1. Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act.

2. All production and maintenance employees employed at the Company's Baltimore, Maryland, plant, including working leaders, but excluding all office clerical employees, guards, watchmen, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. The above-named labor organization was on April 21, 1960, and has been at all times thereafter the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing to bargain collectively with the above-named labor organization, as the exclusive representative of all the employees in the unit described above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By the aforesaid conduct, Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Washington Aluminum Company, Inc., Baltimore, Maryland, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, as the exclusive bargaining representative of employees in the appropriate unit.

The appropriate bargaining unit is: All production and maintenance employees employed at the Company's Baltimore, Maryland, plant, including working leaders, but excluding all office clerical employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, as the exclusive representative of the employees in the appropriate unit, as found above, and, if, an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Baltimore, Maryland, plant, copies of the notice attached hereto marked "Appendix."⁷ Copies of such notice to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁷In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate unit.

The appropriate bargaining unit is:

All production and maintenance employees employed at the Company's Baltimore, Maryland, plant, including working leaders, but excluding all office clerical employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

WE WILL, upon request, bargain collectively with the aforesaid labor organization as the exclusive representative of the em-

ployees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WASHINGTON ALUMINUM COMPANY, INC.,
Employer.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Duralite Co., Inc. and Local 485, International Union of Electrical, Radio and Machine Workers, AFL-CIO. Case No. 2-CA-6927. August 16, 1960

DECISION AND ORDER

On April 28, 1960, Trial Examiner Wellington A. Gillis issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Charging Party filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, and Fanning].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations

¹In the sole exception filed in this proceeding, the Charging Party urged that the Trial Examiner's recommended order herein and the related notice provision be broadened to require the Respondent to inform the employees who had been threatened with discharge if they testified in Cases Nos. 2-CA-6416, et al., and 2-CB-2518, et al, that Respondent has no objection to their testifying in those cases pursuant to the subpoenas served upon them. We find merit in the exception and shall broaden the Order and related notice herein accordingly.