

**Amax Aluminum Extrusion Products, Inc. and
Aluminum Workers International Union,
AFL-CIO.** Case 26-CA-3192

March 11, 1969

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On January 3, 1969, Trial Examiner David London issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

REMEDY

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial year of certification as beginning on the date the Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See: *Mar-Jac Poultry Company Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enf'd. 328 F.2d 600 (C.A. 5) cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enf'd 350 F.2d 57 (C A 10).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Amax Aluminum Extrusion Products, Inc., Hernando, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified.¹

¹Insert as the last indented paragraph in the notice the following

WE WILL NOT, by refusing to bargain, interfere with the efforts of Aluminum Workers International Union, AFL-CIO, to negotiate for or to represent the employees in the said appropriate unit as their exclusive bargaining agent

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

The Representation Proceeding

DAVID LONDON, Trial Examiner Upon a petition filed February 21, 1968, in Case 26-RC-3114 by Aluminum Workers International Union, AFL-CIO (the Union) seeking certification as collective-bargaining representative of specified employees of Amax Aluminum Extrusion Products, Inc. (Employer or Respondent), the Union and the Employer, on or about March 6, 1968 entered into a stipulation for certification upon consent election. By that stipulation, approved by the Board's Regional Director for Region 26, the parties agreed that an election be conducted by the Board on April 10, 1968, among the following described employees constituting an appropriate collective-bargaining unit. All production and maintenance employees of the Employer at its Hernando, Mississippi, plant, including general plant employees and die repairmen, excluding metallurgical inspectors, office clerical employees, factory and receiving clerical employees, shipping clerical employees, technical and professional employees, guards and supervisors as defined in the Act. At that election, 35 employees voted for the Union, 25 against that organization, and 5 ballots were challenged.

On April 17, 1968, the Employer filed six detailed objections to that election and requesting that by reason thereof the election be set aside or, in the alternative, that its objections not be dismissed without a hearing thereon.

Objection I reads as follows: "The Greater Hernando-Memphis Community climate during the period on or about March 1, 1968 through April 10, 1968, the election date, was such that a free and fair election as required by the Board in its many decisions relating to community environment and the need for proper 'laboratory conditions' was not possible and did not, in fact, exist." In support of this objection, the Employer specified six events (a)-(f) inclusive which, it contended, "created such a community climate in Hernando, Mississippi that an election under laboratory conditions were impossible." All of these incidents pertained to the atmosphere created in the Hernando-Memphis area arising out of the assassination of Dr. Martin Luther King, Jr., on April 4, 1968.¹

Objection II is grounded on the "conduct of the election and that of the Board agent Mr. D. Bruce Baldwin." In support thereof, the Objections specified four incidents which, the Employer contended, requires setting the election aside.

Objection III deals with the "Union's publication of the Company's St. Charles, Illinois, pay rates on or about April 9, 1968. Employer first obtained a copy of this publication subsequent to the election." With respect thereto, the Employer contends "said publication contained a misrepresentation of material facts and was timed to prevent the Company from making an effective rebuttal."

Objection IV charges that "a Union publication distributed on or about April 8, 1968 contained a material misrepresentation which the Union agent, Mr. Gene Foster, had personal knowledge of."

¹Hernando, Mississippi, is approximately 30 miles south of Memphis, Tennessee.

Objection V charged that by a Union letter dated February 16, 1968, "the Union impliedly had agreed to a waiver of fees if the employees voted for the Union"

Objection VI charges "threats and intimidation, expressed and implied by Union agents which prohibited a free and fair election."

Pursuant to Section 102.69 of the Board's Rules and Regulations, its Director for Region 26 caused an investigation of the foregoing Objections to be made, during which the Employer and the Union were afforded an opportunity, and submitted, evidence bearing on the issues. On May 23, 1968, the said Regional Director filed his report on said objections in which he recommended that all of the objections be overruled and that the Union be certified as exclusive representative of the employees in the unit described above.

On or about June 3, 1968, the Employer filed with the Board its exceptions to the Regional Director's report last aforementioned together with its argument in support of said exceptions. The Board, having considered the Employer's objections and its brief in support thereof, on July 30, 1968 issued its Decision and Certification (172 NLRB No. 149) by which it adopted the Regional Director's critical and ultimate findings that all the objections were without merit and "raise no material or substantial issues of fact or law which would warrant reversal of the Regional Director's findings or recommendations, or require a hearing." Accordingly, it certified the Union as collective-bargaining representative of the employees in the appropriate unit heretofore described.²

The Unfair Labor Practice Proceeding

On October 14, 1968, the Union filed the unfair labor practice charge in Case 26-CA-3192, the instant case, alleging that Respondent, in violation of Section 8(a)(1) and (5) of the Act, refused to bargain with it. On November 1, 1968 the Board's Regional Director for Region 26 issued the complaint herein alleging that commencing on or about July 31, 1968 and continuing to date, the Union, as the duly designated representative of the employees of the appropriate unit described above, requested Respondent to bargain collectively with it with respect to rates of pay, wages, hours of employment and other terms and conditions of employment of said employees, and that commencing on or about August 13, 1968, and at all times thereafter, Respondent refused to bargain collectively with the Union.

On or about November 11, 1968, Respondent filed its answer to the complaint in which it admitted most of the material allegations of the complaint, but denied that it had unlawfully refused to bargain with the Union.

In that Answer, Respondent admitted (1) the jurisdictional allegations of the complaint, (2) the status of the Union as a labor organization, (3) the appropriateness of the unit described in the representation proceeding, (4) that following the election of April 10, 1968, the Board, on July 30, 1968, certified the Union as collective-bargaining representative of the employees in that unit, and (5) that since on or about August 13, 1968,

Respondent has refused to bargain with the Union as such representative. It denied that the aforementioned election and certification are valid determinations. In addition, it pleaded eight affirmative defenses which, however, are substantially the same defenses that were pleaded by the Employer in its exceptions to the Regional Director's report on objections in the representation proceeding and were ruled upon, adversely to the Employer, by the Board in its Decision and Certification of July 30, 1968.

On or about November 15, 1968, the General Counsel filed its motion herein, entitled "Motion for Judgment on the Pleadings." He contends therein that by reason of the admissions contained in Respondent's Answer to the complaint and the Board's decision and certification in the representation proceeding, no litigable issue remains and that the remedy sought by his complaint should be summarily granted. On or about November 19, 1968, Trial Examiner Charles Schneider issued an order requiring all parties to the proceeding to show cause, on or before December 6, 1968, whether or not the aforesaid motion for judgment on the pleadings should be granted.

On or about December 5, 1968, Respondent filed its answer to said order to show cause. In substance, it pleads (a) that neither the Act, the Board's Rules and Regulations and its Statement of Procedure, nor the Administrative Procedure Act, permit grant of a motion for judgment on the pleadings, and (b) that Respondent's constitutional right to due process requires that it be given a full evidentiary hearing on the issues raised by its objections to the Regional Director's report in the representation proceeding and the affirmative defenses pleaded in its answer to the complaint.³

With respect to (a) immediately above, I find no merit to that contention. While neither the Act, the Board's Rules and Regulations and its Statement of Procedure, nor the Administrative Procedure Act, specifically authorize or mention motions for judgment on the pleadings, it does not necessarily follow that resort to such a motion is unauthorized or inappropriate. In any event, the *procedure* here invoked has met with court approval. See *N.L.R.B. v. Neuhoff Bros Packers, Inc.*, 362 F.2d 611 (C.A. 5); *N.L.R.B. v. Ortronix, Inc.*, 380 F.2d 737 (C.A. 5); *N.L.R.B. v. Carolina Natural Gas Corp.*, 386 F.2d 571 (C.A. 4).

A more appealing argument is presented by Respondent in support of contention (b), that due process requires that it be given a hearing on its Objections to the election and the affirmative defenses pleaded in its Answer. With respect thereto, however, and regardless of what misgivings may be entertained arising out of Respondent's failure to secure the requested hearing, as an arm of the Board, I am constrained to adhere to the Board's prior decision in the representation proceeding that Respondent's Objections are without merit and do not "require a hearing." See *Carolina Natural Gas Corporation*, 157 NLRB 674, enfd 386 F.2d 571 (C.A. 4); *Goldspot Dairy, Inc.*, 173 NLRB No. 151; *Iowa Beef Packers, Inc.*, 144 NLRB 615.

By reason of all the foregoing, and upon the entire record in both proceedings, the Trial Examiner to whom the aforesaid motions have been referred for disposition, hereby grants the General Counsel's Motion for Judgment on the Pleadings and makes the following further

²Administrative or official notice is taken of the record in the representation proceeding, Case 26-RC-3114. See Rules and Regulations and Statements of Procedure, National Labor Relations Board, Series 8, as revised January 1, 1965, Sections 102.68 and 102.69 (f). See also *LTV Electro Systems, Inc.*, 166 NLRB No. 81; *Golden Age Beverage Company*, 167 NLRB No. 24; *Intertype Co v Penello*, 269 F Supp 573; *Follett Corporation, et al.*, 164 NLRB No. 47, enfd 397 F.2d 91 (C.A. 7).

³The General Counsel's motion of December 19, 1968, to strike Respondent's answer to the aforesaid Order to Show Cause is hereby denied.

FINDINGS AND CONCLUSIONS

I THE BUSINESS OF RESPONDENT

Respondent is now, and has been at all times material herein, a Delaware corporation with a place of business located at Hernando, Mississippi, where it is engaged in the manufacture of custom aluminum extrusions. During the year preceding the issuance of the complaint herein, Respondent, in the course and conduct of its business operation at its Hernando, Mississippi location, purchased and received goods and products valued in excess of \$50,000 directly from points outside the State of Mississippi and, during the same period, sold and shipped goods and materials valued in excess of \$50,000 directly to points outside the State of Mississippi. Respondent admits, and I find, that during all times relevant herein it was, and is, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

All production and maintenance employees of Respondent at its Hernando, Mississippi, plant, including general plant employees and die repairmen, excluding metallurgical inspectors, office clerical employees, factory and receiving clerical employees, shipping-clerical employees, technical and professional employees, guards 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.

On or about April 10, 1968, a majority of the employees of Respondent in the unit described above, by a secret ballot election conducted under the supervision of the Board's Regional Director for Region 26 in Case 26-RC-3114, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent. On or about July 30, 1968, the Board issued its Decision and Certification of Representative, 172 NLRB No 149, and certified the Union as the exclusive bargaining representative of the employees in said unit. At all times since April 10, 1968, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above and has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

Commencing on or about July 31, 1968, the Union requested Respondent to bargain collectively with respect to rates of pay, wages, hours of employment and other terms and conditions of employment as the exclusive bargaining representative of all of the employees of Respondent in the unit described above.

Commencing on or about August 13, 1968, and at all times thereafter, Respondent refused and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring with the operations of Respondent 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 thereof.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, including the representation proceeding aforementioned, I make the following:

CONCLUSIONS OF LAW

1. Amax Aluminum Extrusion Products, Inc., is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Aluminum Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of Respondent at its Hernando, Mississippi plant, including general plant employees and die repairmen, excluding metallurgical inspectors, office clerical employees, factory and receiving clerical employees, shipping clerical employees, technical and professional employees, guards 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.

4. On and at all times since April 10, 1968, the Union has been, and now is, the exclusive representative of the employees in the above-described unit for the purposes of collective bargaining.

5. By refusing on and after August 13, 1968, to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

THE REMEDY

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record in this proceeding and in Case 26-RC-3114, and pursuant to Section 10(c) of the Act, it is hereby ordered that Respondent Amax Aluminum Extrusion Products, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing to bargain collectively with Aluminum Workers International Union, AFL-CIO, as the exclusive collective-bargaining representative of its employees in the appropriate unit.

(b) Interfering with the efforts of Aluminum Workers International Union, AFL-CIO, to negotiate for, or to represent, the employees in the said appropriate unit as

their exclusive bargaining agent.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Aluminum Workers International Union, AFL-CIO, as the exclusive representative of all the employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its places of business at Hernando, Mississippi, copies of the notice attached hereto and marked "Appendix" Copies of said notice, on forms provided by the Regional Director for Region 26, shall, after being duly signed by an authorized representative of Respondent, be posted by it immediately upon receipt thereof and maintained by it for a period of 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 Region 26, in writing, within 20 days from the receipt of this Decision and Recommended Order, what steps it has taken to comply herewith ⁵

⁴In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order"

⁵In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 26, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner 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, upon request, bargain with Aluminum Workers International Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the appropriate unit described below, with respect to rates of pay, wages, hours of employment and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement

The appropriate unit is:

All production and maintenance employees of Amax Aluminum Extrusion Products, Inc, at its Hernando, Mississippi plant, including general plant employees and die repairmen, excluding metallurgical inspectors, office clerical employees, factory and receiving clerical employees, shipping clerical employees, technical and professional employees, guards and supervisors as defined in the Act.

AMAX ALUMINUM
EXTRUSION PRODUCTS,
INC.
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

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

If members have any question concerning this notice or compliance with its provisions they may communicate directly with the Board's Regional Office, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee, Telephone 901-534-3161