

**Alson Manufacturing Aerospace Division of Alson Industries, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W., Local 509.**  
Case 21-CA-12363

June 24, 1974

### DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND  
PENELLO

Upon a charge filed on January 16, 1974, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W., Local 509, herein called the Union, and duly served on Alson Manufacturing Aerospace Division of Alson Industries, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on February 20, 1974, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 4, 1973, following a Board election in Case 21-RC-13252, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about January 11, 1974, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 4, 1974, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and alleging one affirmative defense.

On March 21, 1974, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 27, 1974, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respon-

dent thereafter filed a response to Notice To Show Cause, entitled "Opposition to Counsel for the General Counsel's Motion for Summary Judgment and Show of Cause Why Said Motion Should Not be Granted."

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

Upon the entire record in this proceeding, the Board makes the following:

#### Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause the Respondent contends that the certification of the Union was improper because the Union's preelection conduct, as set forth in its objections to the election and exceptions to the Regional Director's report on these objections, invalidated the election as an expression of employee free choice. The Respondent, in the alternative to setting aside the election, requests a hearing to resolve the issues raised by its objections.

Review of the record herein, including the record in Case 21-RC-13252, reveals an election conducted pursuant to a Stipulation for Certification Upon Consent Election on June 28, 1973, which resulted in a 27 to 17 vote in favor of the Union, with 6 challenged ballots. The Respondent filed timely objections to conduct affecting the results of the election, alleging in substance that the Union (1) was electioneering in the vicinity of the polls on election day, (2) had made misrepresentations concerning the Respondent's honesty and income, the applicability of the terms of a contract the Union had with another employer, and the filing of charges with the Board prior to the election, (3) threatened employees and created an aura of fear prior to the election, (4) represented and otherwise created an impression that cards would be needed to vote in the election, and that once an employee had signed a card he was obligated to vote for the Union, and (5) denied it had a contract with another employer. The Regional Director investigated these objections and, on September 24, 1973, issued a Report on Objections, in which he recommended overruling the objections in their entirety and certifying the Union.

The Respondent filed timely exceptions, with supporting brief and affidavits, to the Regional Director's report, reasserting its objections and submitting that the Regional Director, in refusing to

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 21-RC-13252, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV ElectroSystems, Inc.*, 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4, 1968);

*Golden Age Beverage Co.*, 167 NLRB 151, enfd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1967); *Follett Corp.*, 164 NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

set aside the election, had misapplied the facts and not considered certain factors allegedly having a bearing on the issues. The Respondent also requested a hearing on its objections to resolve the issues raised thereby. The Board issued its Decision and Certification of Representative on December 4, 1973, in which, after consideration of the entire record, it adopted the findings, conclusions, and recommendations of the Regional Director, finding that the Respondent's exceptions raised no substantial or material issues of fact or law which warranted reversal of the Regional Director or required a hearing and, accordingly, certified the Union.

It thus appears that the Respondent is attempting, in this unfair labor practice proceeding, to relitigate issues, including the requirement of a hearing, that have been litigated in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>2</sup>

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

Respondent, a California corporation, is engaged in the manufacture of aerospace components at its facilities located at 400 West Rosecrans Avenue, 422 West Rosecrans Avenue, and 14901 South Broadway, in Gardena, California.<sup>3</sup> Respondent, in the normal course and conduct of its operations described above, annually sells and ships goods and products in excess of \$50,000 directly to customers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material

herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W., Local 509, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Representation Proceeding*

##### 1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent at its facilities set forth above; excluding office clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act.

##### 2. The certification

On June 28, 1973, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 21 designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on December 4, 1974, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

#### B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about December 12, 1973, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about January 11, 1974, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

<sup>2</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

<sup>3</sup> The parties, by stipulation dated January 25 and March 1, 1974,

amended the address of Respondent's facilities to substitute "Avenue" for "Boulevard," wherever appearing in any document in this proceeding.

Accordingly, we find that the Respondent has, since January 11, 1974, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship 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 Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

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 period of certification as beginning on the date 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, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### CONCLUSIONS OF LAW

1. Alson Manufacturing Aerospace Division of Alson Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W., Local 509, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by Respondent at its facilities set forth above; excluding office clerical employees, professional employees, watchmen, 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. Since December 4, 1973, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 11, 1974, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Alson Manufacturing Aerospace Division of Alson Industries, Inc., Gardena, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W., Local 509, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed by Respondent at its facilities set forth above; excluding office clerical employees, professional employees, watchmen, guards, 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 them in 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 with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facilities located at 400 West Rosecrans Avenue, 422 West Rosecrans Avenue, and 14901 South Broadway, Gardena, California, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 21 after being duly signed by Respondent's representative, shall be posted by 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 Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>4</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace

and Agricultural Implement Workers of America, U.A.W., Local 509, as the exclusive representative of the employees in the bargaining unit described below.

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

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by Respondent at its facilities set forth above; excluding office clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act.

ALSON MANUFACTURING  
AEROSPACE DIVISION OF  
ALSON INDUSTRIES, INC.  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_ (Representative) \_\_\_\_\_ (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Eastern Columbia Building, 849 South Broadway, Los Angeles, California 90014, Telephone 213-688-5254.