

In the Matter of ALUMINUM COMPANY OF AMERICA and INTERNATIONAL UNION, ALUMINUM WORKERS OF AMERICA

Case No. R-649.—Decided July 8, 1938

Aluminum Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union until question concerning representation is determined by Board—Unit Appropriate for Collective Bargaining: production and maintenance employees, including scale clerks, tally clerks, and timekeepers who are paid on an hourly basis and whose duties are wholly confined to the factory buildings, but excluding other clerical employees and supervisors—Representatives: eligibility to participate in choice: persons who have seniority standing, though not at work at present time—Election Ordered—Certification of Representatives.

Mr. George J. Bott, for the Board.

Beaumont, Smith & Harris, by Mr. Albert E. Meder, of Detroit, Mich., for the Company.

Mr. J. Alfred Wilner, of Pittsburgh, Pa., for the Union.

Mr. Richard H. Meigs, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On February 8, 1938, International Union, Aluminum Workers of America, herein called the Union, filed with the Regional Director for the Seventh Region (Detroit, Michigan) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Company of America, Pittsburgh, Pennsylvania, herein called the Company, at its Detroit, Michigan, plant, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On March 11, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it, and to provide for an appropriate hearing upon due notice.

On March 11, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to the notice, a hearing was held on March 18 and 19, 1938, at Detroit, Michigan, before Bernard A. Clark, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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, is engaged, together with approximately 17 subsidiaries, in the mining, reduction, refining, manufacturing, and fabricating of aluminum. It owns and operates 13 plants throughout the United States. The present proceeding involves only the plant of the Company at Detroit, Michigan, which engages principally in the fabrication of metallic aluminum into castings and extruded mouldings or shapes.

During the 14 months' period ending February 1938, approximately 10,800 tons of fabricated products were shipped from the Detroit plant. Approximately 25 per cent of this amount was shipped out of the State of Michigan.

Raw materials used in the manufacturing operations of this plant during the same period aggregated 26,000 tons, variously composed of aluminum ingot, coal, fuel oil, iron, steel, alloying materials, etc., having a total value of approximately \$5,600,000. Approximately 77 per cent of said raw materials were shipped to the plant from points outside the State of Michigan.

II. THE ORGANIZATION INVOLVED

International Union, Aluminum Workers of America, Local 11, is a labor organization affiliated with the Committee for Industrial Organization. It admits to its membership all production and maintenance workers, exclusive of supervisors and clerks, employed in the Company's plant at Detroit, Michigan.

III. THE QUESTION CONCERNING REPRESENTATION

On December 2, 1936, the Company entered into an agreement with various Aluminum Workers' locals affiliated with the American Federation of Labor, herein called the A. F. of L. The agreement covered six plants of the Company and its subsidiaries, and by its terms was to remain in effect "until November 1, 1937, and thereafter until modified after at least thirty (30) days notice."

Thereafter, dissension arose between the A. F. of L. and the aforesaid locals, and in April 1937, a majority of the members of the locals transferred their affiliation from the A. F. of L. to International Union, Aluminum Workers of America. The Company was notified of this transfer of affiliation, and thereafter the terms of the A. F. of L. contract were extended to apply to the Union as the representative of its members in the plants previously covered by said contract. The Company also bargained with the Union as the representative of its members in several plants, including the Company's Detroit, Michigan, plant, which had not been included in the A. F. of L. contract.¹ The evidence indicates that the terms of the contract were voluntarily observed by the Company in such plants as well as in those which had been specifically covered by the A. F. of L. contract.

In a series of letters, the first of which was dated September 30, 1937, the Union called the Company's attention to the fact that the contract under which they had been bargaining would expire on November 1, 1937, and submitted a copy of a revised contract for consideration. The letters also stated that the Union represented a majority of the employees in all the plants of the Company and its subsidiaries, including the Detroit, Michigan, plant, and requested that the Company conduct all negotiations with the Union, exclusively. In reply, the Company refused to negotiate any agreement with the Union unless and until it has been established that, under the Act, the employees of each plant have designated the Union as their representative.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION
UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial

¹ Local 11, of International Union, Aluminum Workers of America, was known as Local 204, of United Automobile Workers of America prior to July 27, 1937.

relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Union claims that the production and maintenance employees, exclusive of supervisory and office employees, of the Company's plant at Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining. The Union further claims that all clerical employees who are paid on an hourly basis and whose duties are wholly confined to the factory buildings should be included in the aforesaid unit. There are three such groups of clerks employed in the Company's Detroit plant, namely: scale clerks, tally clerks, and timekeepers. The Company concedes that the scale clerks can be properly included within the unit, but insists that tally clerks and timekeepers are confidential employees who should be excluded from the unit claimed by the Union to be appropriate. There is some evidence that in the past the Union has settled grievances of its members from all three groups of clerks without objection from the Company.

An investigation of the duties of tally clerks and timekeepers reveals that approximately 90 per cent of the employees at the Company's Detroit plant work under a bonus system, i. e., a certain length of time is set by the Company as a standard for the performance of each job. If the employee completes it in less than the standard time, he receives a bonus in addition to his hourly rate of pay. Thus, in order to determine the wages that are to be paid, two factors must be considered: time at the standard rate and bonus. Under this system it is the duty of tally clerks to record the number of pieces, or units, made by each employee and the time required to make them. These reports are then turned over to the timekeepers who allocate them to the job numbers by which cost records are kept. The timekeepers also extend the hours each man works as computed from the time cards. Ultimately the complete records reach the bonus department where the actual determination is made from the records of both tally clerks and timekeepers as to whether or not the standard number of pieces per hour has been exceeded, and where the amount due to each employee is computed.

Although timekeepers and tally clerks require no special skill, act in no supervisory capacity, and perform the greater part of their work in the factory, their records are used to determine the hourly pay and bonuses of the men in the departments to which they are assigned. On this ground the Company claims that it must rely upon the integrity of said clerks and timekeepers, and that they are

therefore confidential employees and should be excluded from the appropriate unit. The Company's contention, however, is not persuasive. The fact that greater reliance is placed upon the character of this group of employees for integrity is not such a factor as will warrant our denial of the Union's request to include them in the bargaining unit.

We find that the production and maintenance employees at the Company's Detroit, Michigan, plant, excluding clerks and supervisors, but including scale clerks, tally clerks, and timekeepers who are paid on an hourly basis and whose duties are wholly confined to the factory buildings, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The Union claims to represent a majority of the production and maintenance employees in the Company's Detroit plant. At the hearing it introduced a list of members prepared from financial records of the Union. Two lists of the Company's employees were also introduced, one prepared from the pay roll for the week ending September 4, 1937, and the other from the pay roll for the week ending February 5, 1938. A comparison of these lists indicates that on September 4, 1937, a period of peak employment, the Union had a clear majority of the 659 production and maintenance workers then employed. The Company's business at its Detroit plant has since fallen off until, on February 5, 1938, it employed only 260 production and maintenance workers, of which approximately 111 appear on the Union's list as members in good standing and 40 as members delinquent in payment of dues.

There is some evidence that the Union has used coercive tactics in obtaining some of its members.

We find that an election by secret ballot is necessary to resolve the question concerning representation.

The Union urges that, in the event of an election, September 4, 1937, be selected as the date for determining eligibility to vote, claiming that the names of the men who have been laid off since that date are retained in the Company's "dead" file to be called back in order of their seniority when production warrants their reemployment, and for this reason they are still to be considered as employees of the Company. The Company claims that September 4, 1937, was a peak period of employment which will probably never occur again due to the fact that a new plant has been erected at Lafayette, Indiana, to

serve the geographical area previously served by the Detroit plant. It further contends that the laid-off employees turned in their badges, that their cards are retained in the "dead" file for rehiring purposes only, and that it does not consider them employees. It urges that, if an election is held, the eligibility date of February 5, 1938, should be adopted as representing more accurately the number of men employed at present and to be employed in the future.

The testimony of the Company's plant manager to the effect that the Detroit plant will never again employ as many men as were employed on September 4, 1937, is conjectural at best. It was admitted at the hearing that, should production warrant it, the employees who have been laid off since that date will be reemployed in accordance with the Company's conceded policy of rehiring such employees in order of their seniority as it appears on their cards which are retained in the "dead" file. It is evident, therefore, that these men, during the period in which they are laid off, retain an interest in working conditions which may be determined at this factory. It is our opinion that all persons who were employees of the Company within the appropriate unit during the pay-roll period ending September 4, 1937, including those who, though not at work at the present time, have seniority standing, are entitled to participate in the election. We hold that all such persons shall be eligible to vote in the election ordered herein.

On the basis of the above findings of fact, and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Aluminum Company of America at its Detroit, Michigan, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of the Company at its Detroit, Michigan, plant, including scale clerks, tally clerks, and timekeepers who are paid on an hourly basis and whose duties are wholly confined to the factory buildings, but excluding other clerical employees and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

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 Rela-

tions Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as a part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Aluminum Company of America, Detroit, Michigan, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees of Aluminum Company of America at its Detroit, Michigan, plant, who were employed by it during the pay-roll period ending September 4, 1937, including scale clerks, tally clerks, and timekeepers who are paid on an hourly basis and whose duties are confined wholly to the factory, but excluding other clerical employees, supervisors, and any employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by International Union, Aluminum Workers of America, Local 11, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

July 19, 1938

On July 8, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding, the election to be held within fifteen (15) days from the date of the Direction, under the supervision of the Regional Director for the Seventh Region (Detroit, Michigan).

A motion has been filed by International Union, Aluminum Workers of America, the petitioner herein, to defer the election. We shall not pass on the said motion at this time. The Regional Director has informed the Board that additional time is necessary in which to conduct the election and has recommended that the period designated by the Board in its Direction be extended twenty (20) additional days. Upon the basis of the recommendation of the Regional Director, we shall defer the election as requested.

The Board hereby amends its Direction of Election by striking out the words "within fifteen (15) days" and substituting therefor the words "within thirty-five (35) days."

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

August 30, 1938

On July 8, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot be conducted among the production and maintenance employees of Aluminum Company of America at its Detroit, Michigan, plant, who were employed by it during the pay-roll period ending September 4, 1937, including scale clerks, tally clerks, and time-keepers who are paid on an hourly basis and whose duties are confined wholly to the factory, but excluding other clerical employees and supervisors and any employees who had since quit or been discharged for cause, to determine whether or not they desire to be represented by International Union, Aluminum Workers of America, Local 11, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining. On July 19, 1938, pursuant to the recommendation of the Regional Director, the Board issued an Amendment to Direction of Election, postponing the election for twenty (20) additional days.

Pursuant to the Direction of Election and the Amendment to Direction of Election, an election by secret ballot was conducted on August 9, 1938, under the direction and supervision of Harold A. Cranefield, the Acting Regional Director for the Seventh Region (Detroit, Michigan). On August 10, 1938, the said Acting Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the election. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Acting Regional Director reported as follows:

Total number eligible to vote.....	689
Total number of ballots cast.....	464
Total number of blank ballots.....	0
Total number of void ballots.....	3
Total number of challenged ballots.....	17
Total number of votes in favor of International Union, Aluminum Workers of America, Local No. 11, affiliated with the Committee for Industrial Organization.....	344
Total number of votes against International Union, Aluminum Workers of America, Local No. 11, affiliated with the Committee for Industrial Organization.....	100

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, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that International Union, Aluminum Workers of America, Local No. 11, affiliated with the Committee for Industrial Organization, has been designated and selected by a majority of the production and maintenance employees of the Aluminum Company of America at its Detroit, Michigan, plant, including scale clerks, tally clerks, and timekeepers who are paid on an hourly basis and whose duties are confined wholly to the factory, but excluding other clerical employees and supervisors, as their representative for the purpose of collective bargaining, and that, pursuant to Section 9 (a) of the Act, International Union, Aluminum Workers of America, Local No. 11, affiliated with the Committee for Industrial Organization, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. EDWIN S. SMITH took no part in the consideration of the above Certification of Representatives.

8 N. L. R. B., No. 20b.