

In the Matter of ALUMINUM ORE COMPANY and ALUMINUM
WORKERS UNION No. 18780, A. F. OF L.

Case No. R-939.—Decided August 16, 1938

Aluminum Processing Industry—Investigation of Representatives: controversy concerning representation of employees: employer desires certification by Board of bargaining representative before entering into further negotiations—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, including watchmen and gatemen, but excluding supervisory employees, office and clerical workers, metermen, routine chemists, subforemen, and foremen who have no assistants; controversy as to inclusion of watchmen and gatemen; unit found appropriate—*Representatives:* proof of choice: financial records of Union show majority as compared with total number employed as indicated on pay roll—*Certification of Representatives:* upon proof of majority representation.

Mr. Alan Pearl, for the Board.

Cobbs & Logan, by *Mr. Cobbs*, of St. Louis, Mo., for the Company.

Mr. Charlton Ogburn, by *Mr. Arthur E. Reyman*, of New York City, for the Union.

Mr. Richard Meigs, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On June 13, 1938, Aluminum Workers Union No. 18780, A. F. of L., herein called the Union, filed with the Regional Director for the Fourteenth Region (St. Louis, Missouri) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Aluminum Ore Company,¹ East St. Louis, Illinois, herein called the Company, 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 June 16, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III,

¹ On motion of Board's attorney made at the hearing, the petition and other Board documents were amended, changing the designation of the Company, incorrectly called Aluminum Company of America, to Aluminum Ore Company

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 June 22, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Union, and upon Committee for Industrial Organization, herein called the C. I. O., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to notice, a hearing was held on July 11, 1938, at St. Louis, Missouri, before Hugh C. McCarthy, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing.² Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the hearing the Trial Examiner granted a motion made by counsel for the Union to amend the petition to include maintenance employees in the unit claimed to be appropriate. No objection to this motion was made by any of the 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 Ore Company, a Delaware corporation employing approximately 1,369 persons, is a wholly owned subsidiary of the Aluminum Company of America. It operates its plant at East St. Louis, Illinois, for the purpose of processing natural bauxite into aluminum oxide. The operations involved at this plant are known as the second and third steps in the industry of mining, reducing, refining, manufacturing, and fabricating aluminum. The raw materials used by the Company aggregate more than 100,000 tons per year. Of this amount approximately 80 per cent consists of bauxite and soda ash, all of which are obtained from outside the State of Illinois. The total volume of products manufactured at the East St. Louis plant aggregates over 100,000 tons per year. Ninety-five per cent of this amount consists of alumina (aluminum oxide) and the remaining five per cent is made up of aluminum hydrate, electrolyte, and dry sodium aluminate, and other miscellaneous prod-

² No appearance was filed by the C. I. O.

ucts. Approximately 95 per cent of the said alumina is shipped outside the State of Illinois.

II. THE ORGANIZATION INVOLVED

Aluminum Workers Union No. 18780, A. F. of L., is a labor organization affiliated with the American Federation of Labor, herein called the A. F. of L., admitting to its membership all hourly production and maintenance employees of the Company, including watchmen and gatemen, and excluding supervisory employees, office and clerical workers, metermen, routine chemists, subforemen, and foremen.

III. THE QUESTION CONCERNING REPRESENTATION

On December 2, 1936, the Aluminum Company of America and its subsidiaries entered into a contract concerning hours, wages, and other conditions of employment with several organizations, including the Union, affiliated with the A. F. of L., acting jointly, in cooperation with the National Council of Aluminum Workers and local Unions of the International Association of Machinists. By its terms this contract was to remain in effect "until November 1, 1937, and thereafter until notified, after at least thirty (30) days notice."

By a series of letters, the first of which was dated October 18, 1937, representatives of the A. F. of L. notified the Aluminum Company of America of certain changes desired in the said contract by the Union and another A. F. of L. local, and requested that a conference be held between representatives of the Aluminum Company of America and the said two locals for the purpose of discussing the terms of the new contract.

The evidence indicates that contemporaneously or slightly prior to this time, the C. I. O. had served notice upon the Aluminum Company of America that it represented a majority of its employees at various plants throughout the country, and had filed petitions with the Board for certification on a nation-wide basis. Some of these petitions, including one pertaining to the East St. Louis plant, were withdrawn. Because of its inability to determine the relative merits of the claims of the rival organizations, the Company refused to enter into a new agreement with the Union unless and until it obtained a certification by the Board. In the letter dated December 10, 1937, I. W. Wilson, vice president of the Aluminum Company of America, stated that "under the National Labor Relations Act we believe the only procedure open to us by two organizations both claiming to represent the employees for the purposes of collective bargaining is to ask that a certification be obtained from the Board as to the proper agency."

We find that a question concerning representation 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 relationship 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 alleges in its petition, as amended at the hearing, that all hourly production and maintenance employees of the Company, including watchmen and gatemen, but excluding supervisory employees, office and clerical workers, metermen, routine chemists, subforemen, and foremen constitute a unit appropriate for the purposes of collective bargaining. The Company agreed generally that the unit proposed by the Union is appropriate, but objected to the inclusion of 19 employees who are classified as watchmen, because of the nature of their duties in protecting Company property. The evidence shows that these watchmen and gatemen act in no supervisory capacity. Their duties consist of making rounds of inspection in the plant, collecting passes, and similar duties performed by protection employees everywhere. In accordance with our usual practice of including such employees when they are desired by the petitioning union, we shall include them in the bargaining unit.³

All the persons sought to be excluded by the Union from the unit claimed to be appropriate are eligible, with the exception of supervisory employees, for membership in Aluminum Administrative Union No. 20661, a separate A. F. of L. local active in the Company's plant. The jurisdiction of this organization and the Union are separate and distinct.

We find that the production and maintenance employees of the Company, including watchmen and gatemen, but excluding supervisory employees, office and clerical workers, metermen, routine chemists, subforemen, and foremen 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.

³ See *In the Matter of Luckenbach Steamship Co., Inc., et al.*, 2 N. L. R. B. 181.

VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing it was stipulated between the Company and the Union that on June 11, 1938, 1,015 persons were employed at an hourly rate as production and maintenance employees, exclusive of supervisory and clerical employees and the 19 watchmen at the East St. Louis plant.

The Union submitted financial reports indicating the payment of a per capita tax to the A. F. of L. for the month of June 1938, and a receipt dated June 3, 1938, acknowledging the said payment of the per capita tax on 1,014 members. It was testified that these reports were prepared from the permanent records of the Union. These permanent records were produced at the hearing and an opportunity to inspect them was furnished all parties.

The Company does not question the majority status of the Union.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

Upon the basis of the above findings of fact and upon the entire record of the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of the Aluminum Ore Company, East St. Louis, Illinois, 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, including watchmen and gatemen, but excluding supervisory employees, office and clerical workers, metermen, routine chemists, subforemen, and foremen constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Aluminum Workers Union No. 18780, A. F. of L., is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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

IT IS HEREBY CERTIFIED that Aluminum Workers Union No. 18780, A. F. of L., has been designated and selected by a majority of the production and maintenance employees of the Aluminum Ore Company, East St. Louis, Illinois, including watchmen and gatemen, but excluding supervisory employees, office and clerical workers, metermen, routine chemists, subforemen, and foremen, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Aluminum Workers Union No. 18780, A. F. of L., 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.