

In the Matter of ALUMINUM COMPANY OF AMERICA and ALUMINUM
WORKERS UNION NO. 19104

Case No. R-4.—Decided April 10, 1936

Aluminum Smelting and Products Industry—Labor Organization: Board will not interfere in internal affairs of—*American Federation of Labor—Unit Appropriate for Collective Bargaining:* Board will not determine where only question involved is one of internal affairs of labor organization—*Petition for Investigation and Certification of Representatives:* denied.

Mr. Thomas I. Emerson for the Board.

Mr. F. B. Ingersoll, of Pittsburgh, Pa., for the Company.

Mr. Fred A. Wetmore for the Union.

Mr. David Williams for National Council of Aluminum Workers and American Federation of Labor.

Mr. Stanley S. Surrey, of counsel to the Board.

DECISION

STATEMENT OF CASE

In December, 1935, Aluminum Workers Union No. 19104, hereinafter referred to as the Union, petitioned the National Labor Relations Board for an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, approved July 5, 1935. The petition stated that the Union represented 1,681 employees out of a bargaining unit of approximately 2,600 employees, said unit constituting the employees engaged at the plants of the Aluminum Company of America located at Alcoa, Tennessee; that the National Council of Aluminum Workers Unions claimed to represent the employees in said unit; that the Aluminum Company of America and the National Council of Aluminum Workers Unions were entering into an agreement respecting the above plants against the wishes of the Union; and that such conduct gave rise to a question affecting commerce concerning the representation of the employees in said unit. The Union requested that the National Labor Relations Board investigate the controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees. On December 30, 1935, the National Labor Relations Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 11 of National

Labor Relations Board Rules and Regulations—Series 1, issued a notice of a hearing to be held before it. Pursuant to said notice, a hearing was held on January 16, 1936 at Washington, D. C. by the Board, all members being present, and testimony was taken. Full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to the parties. The Aluminum Company of America, the Union, and the National Council of Aluminum Workers were represented at the hearing, the Aluminum Company of America stating that its appearance at the hearing was not to be construed as a waiver of any of its claimed constitutional rights.

Upon the record in the case, the stenographic transcript of the hearing, and all the evidence, including oral testimony, documents and other evidence offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT

1. The Aluminum Company of America, hereinafter referred to as the Company, is a Pennsylvania corporation with its principal office in Pittsburgh, Pennsylvania. It is both an operating and holding company, and together with its subsidiaries, owns and operates a number of plants and offices for the production, sale and distribution of aluminum and aluminum products. Its smelting plants are located at Alcoa, Tennessee; Badin, North Carolina; Massena, New York and Niagara Falls, New York; its plants for the production of aluminum sheet and plate are located at Alcoa, Tennessee; New Kensington, Pennsylvania; Arnold, Pennsylvania; Niagara Falls, New York and Edgewater, New Jersey; its other fabricating plants, in which various aluminum products are mainly produced, are located at Edgewater, New Jersey; Massena, New York; New Kensington, Pennsylvania; Logan's Ferry, Pennsylvania; Arnold, Pennsylvania; Fairfield, Connecticut; Cleveland, Ohio; Detroit, Michigan; Oakland, California and Harwood, New Jersey; its foundries for the production of castings are located at Cleveland, Ohio; Fairfield, Connecticut; Detroit, Michigan and Oakland, California. In addition, the Company operates a plant at East St. Louis, Illinois for the concentration of aluminum oxide and for other preliminary operations in the production of aluminum, and mines in Arkansas, Alabama and Georgia. The general purchasing of raw materials and other products for these plants is under the direction of a central purchasing agency at Pittsburgh, Pennsylvania. Some local purchasing is performed by district purchasing organizations at each plant under the supervision of the central agency. The products are sold through sales offices located in industrial centers throughout the United

States, the orders being sent to Pittsburgh for acceptance. The orders received are allocated among the plants by the Pittsburgh office.

2. As stated above, two plants of the Company are located at Alcoa, Tennessee. At one of these plants carbon electrodes are manufactured and metallic aluminum produced; at the other, sheet and plate aluminum are rolled and some commercial ingot produced. The major portion of the raw materials used in the first plant are transported to Alcoa from states other than the state of Tennessee. The ore or aluminum oxide is shipped from the Company's plant at East St. Louis, being produced there from bauxite imported mainly from Dutch Guiana and British Guiana. Practically all of the aluminum used in the second plant is produced at the first plant, the two plants being about two miles apart. The output of the first plant that is not utilized in that fashion is shipped outside of Tennessee for further fabrication. The second plant is the largest of the Company's five sheet and plate mills. The preponderant portion of its products is shipped to customers of the Company located outside of Tennessee. Such customers include railroad companies, airplane lines, automobile concerns, cooking utensil manufacturers and others, all of whose orders are in very large quantities. Millions of pounds of aluminum sheet and plate are shipped monthly to such customers.

3. The above operations described in paragraphs 1 and 2, including the operations at the Alcoa plants, constitute a continuous flow of commerce among the several states. Questions concerning the representation of employees at the Alcoa plants lead and tend to lead to labor disputes burdening and obstructing the free flow of that commerce.

4. Aluminum Workers Union No. 19104, the petitioner, is a labor organization which claims to represent a majority of the employees at the Alcoa plants. It is a Federal Labor Union, having a charter from the American Federation of Labor. Fred A. Wetmore has been president of this Union since its organization in 1932.

5. In May, 1934, the Aluminum Workers Council was formed for the purpose of working toward an international union of aluminum workers. Composing this Council, which had been preceded by a similar though much looser organization, were representatives of aluminum workers unions in the Company's plants at Alcoa, New Kensington, Massena and Logan's Ferry and in the plants of certain independent aluminum companies. In addition, there were representatives of two craft unions which had members employed at the New Kensington plant. A. R. Beuhler, employed by one of the independent companies, was president of the Council; Wetmore was secretary-treasurer. While the original intention had been the achieve-

ment of bargaining relations with the Aluminum Manufacturers Association, the unions in the plants of the independent companies decided not to join in such an attempt, although they still remained in the Council. Consequently, the Aluminum Company of America unions attempted to obtain an agreement from that Company alone. On July 24, 1934, the officers of the Council presented an agreement to the Company on behalf of the aluminum workers unions at the East St. Louis, New Kensington, Massena, Logan's Ferry and Alcoa plants. Upon the Company's refusal to enter into an agreement, a strike ensued, commencing on August 10, 1934. It was settled on September 6, 1934 by an "agreement" negotiated by the representatives of the unions but signed only by the Company and purporting to be between the Company and all of its employees. The agreement was to be effective for six months and thereafter until modified upon due notice.

6. In February, 1935, the Council was reorganized pursuant to the direction of President Green of the American Federation of Labor. Its name was changed to the National Council of Aluminum Workers (hereinafter referred to as the Council) and David Williams, a general organizer of the American Federation of Labor, was appointed president of the Council by President Green. Unions in plants of aluminum companies other than the Aluminum Company of America were represented on the Executive Board of the Council.

Shortly thereafter the aluminum workers unions in plants of the Aluminum Company of America attempted to negotiate an agreement with the Company. However, the Company insisted that the agreement would have to be submitted to non-American Federation of Labor organizations that it claimed existed in its plants. The unions refused and negotiations ceased. The Council then arranged to have the members of the unions involved sign cards authorizing the Council to represent the signatories in collective bargaining with the Company. The officers of the Alcoa Union, believing that it should not surrender its rights to the Council and supported in that view by the members, substituted cards authorizing the Union, affiliated with the Council, as the representative for Alcoa and these cards were signed by a large proportion of the employees at Alcoa.

7. In July, 1935, the Alcoa Union requested Williams to call a conference of Aluminum Company of America aluminum workers unions for the purpose of preparing a new agreement. Williams refused, charging lack of cooperation on the part of the Alcoa Union. That Union thereupon withdrew from the Council on August 3, 1935. Through the efforts of President Green, a partial reconciliation was effected and the officers of the Alcoa Union met with Williams to prepare an agreement, although the Alcoa Union did not formally reen-

ter the Council. The agreement was presented to the Company on August 23 by Williams, as president of the Council, on behalf of the unions of the Alcoa, East St. Louis, Massena, Badin, Logan's Ferry and New Kensington plants, negotiating through the Council. Negotiations commenced on this agreement between the Company and the representatives of the unions including Wetmore and Greene who represented the Alcoa Union. On September 25 Wetmore and Greene, became dissatisfied with the conduct and tenor of these negotiations and withdrew. They informed both Williams and the Company of their withdrawal and of their intent not to be parties to or to be bound by any agreement that might result. The Company then informed the remaining representatives that it could not continue negotiations unless it was assured that the resulting agreement would be binding upon all the aluminum workers unions in its plants, including the Alcoa Union. The remaining union representatives, headed by Williams, conferred with President Green of The American Federation of Labor. The latter stated that there should be only one agreement applicable to the plants of the Company and that therefore the negotiations should continue. He attempted unsuccessfully to persuade the Alcoa representatives to participate in the negotiations. Upon being informed of President Green's statements, the Company resumed negotiations with the remaining representatives. On October 14, 1935, an "agreement" was adopted, again signed only by the Company and purporting to be between the Company and all of its employees. This "agreement" was to be in effect for at least a year and thereafter until modified. During its life the Company was not to enter into any conflicting agreement. On November 18, 1935, President Green wrote Williams that the agreement should be given the official approval of the American Federation of Labor and "should apply to the officers and members of aluminum workers local unions who are employed by the Aluminum Company of America". Of six such unions, all but Alcoa had approved and accepted the agreement.

8. In the meantime, on October 8, 1935, Wetmore, on behalf of the Alcoa Union, had submitted a proposed agreement to the Company management at Alcoa to run concurrently with the September 6, 1934 agreement. The Company took no action on Wetmore's proposal as it considered it inconsistent with the negotiations then current between the Company and the other unions and later, with the October 14 agreement that resulted therefrom.

9. At the hearing before the Board, Wetmore, representing the Alcoa Union, contended that the Alcoa plants constituted an appropriate bargaining unit and that while the officers representing the Alcoa Union could voluntarily join with representatives of the other unions to present joint proposals to the Company they nevertheless

remained free to pursue an independent course unless they negotiated, or entered into, a joint agreement with the Company. Furthermore, in view of the withdrawal of the Alcoa representatives from the negotiations preceding the October 14 agreement, he maintained that the Alcoa Union was not bound by that agreement and was free to enter into a separate agreement applicable only to the Alcoa plants. Williams, representing the Council and the American Federation of Labor, contended that, at least during the life of the October 14 agreement, all of the plants of the Company at which aluminum workers unions existed taken together were the appropriate bargaining unit and that the Council represented such unit. Moreover, he asserted that, in view of President Green's rulings and the membership of the Alcoa Union in the American Federation of Labor, the October 14 agreement was binding upon the Alcoa Union. The Company asserted that in theory it was willing to deal with the six unions jointly through the Council or with each separately or with any group of its employees, its willingness thus to negotiate being apparently based upon its disinclination to deal exclusively with any group or to recognize the majority rule. However, it thought that in view of the October 14 agreement and President Green's ruling, which it deemed authoritative, the Company was bound for the time being to negotiate with the Council as representative of all of the unions.

10. As regards the membership of the Alcoa Union, Wetmore did not produce competent records proving that at the time of the hearing that Union represented a majority of the employees at the Alcoa plants, although the incomplete records produced indicated that it represented a large number of such employees. Wetmore claimed that it did actually represent a majority. The Company, as indicated above, said that the question of whether the Union represented a majority was not material, inasmuch as it would bargain with any group of its employees to an extent not inconsistent with the existing agreement. However, it was apparently unwilling to enter into any agreement to which a union was a formal party and signed as such.

CONCLUSION

Taking the petition in this case at its face value, the Board is only asked to investigate and certify, pursuant to Section 9 (c) of the Act, the "name or names of the representatives that have been selected" by the employees at the Alcoa plants. Ordinarily, such a request would involve (1) a decision as to whether the employees at those plants constitute an appropriate bargaining unit within the meaning of Section 9 (b); (2) if they do constitute such unit, the holding of an election to determine whom the employees desire as their repre-

representatives for collective bargaining; and (3) the certification of the name or names of the representatives chosen at such an election. Normally, such cases arise from situations in which the only organization claiming to represent the employees contends that it represents a majority of the employees in an appropriate unit but the employer refuses to bargain with it on the ground that such representation is not established, or in which each of two or more competing organizations claims a majority. The machinery of Section 9 (b) and 9 (c) is thus designed to complement and make workable the principle of the majority rule declared in Section 9 (a). Its purpose is simply to resolve, by means of an election or other suitable method, any doubts concerning which, if any, organization can claim the exclusive right to bargain collectively for certain employees.

As stated above, on its face the instant petition appears to present the normal situation described above: one organization, Aluminum Workers Union No. 19104, claims to represent a majority of the employees at the Alcoa plants of the Company. It asserts that another body, the Council, contests this claim. It in effect requests an election to resolve the issue thus created. However, the foregoing brief summary of the facts in the case indicates that the issues here are of an essentially different character. A short statement of the real issues in the case makes it clear that under the guise of a petition for certification the parties are presenting entirely different questions to this Board for its decision.

Assuming for the purposes of the argument that the Alcoa plants constitute an appropriate bargaining unit, as the Union contends, an election would be necessary to establish the strength of the Union. If the Union received a majority vote in such an election, the Board would then certify it as the representative of the employees at Alcoa. But such certification would in no way conclude this controversy since the underlying question here is not whether the Union shall represent the employees, but rather, who shall represent the Union in its dealings with the Company. The solution of that question is far from simple. Wetmore, the president of the Union, contended before the Board that he speaks for the Union in all matters, including its dealings with the Company. He claims that his contention is supported by the actual wishes of the members of the Union. With equal vigor, Williams asserted that the applicable rules of the American Federation of Labor demand that the Alcoa Union bargain only in concert with the other unions through the Council which he heads and that consequently that body and not Wetmore speaks for the Alcoa Union in its dealings with the Company. It may be observed, so as further to point the problem, that the rules of the American Federation of Labor as applied to this case are by no

means free from doubt. The Alcoa Union is a Federal Labor Union directly chartered by the American Federation of Labor. The Constitution of the Federation in Article XIV provides as follows:

“SEC. 2. The Executive Council (of the Federation) is authorized and empowered to charter Local Trade Unions and Federal Labor Unions, to determine their respective jurisdictions not in conflict with National and International Unions, to determine the minimum number of members required, qualifications for membership and to make rules and regulations relating to their conduct, activities and affairs from time to time and as in its judgment is warranted or deemed advisable.”

While this section was referred to by Williams, he did not offer evidence of any action by the Executive Council itself directed to the instant case or any delegation of authority to President Green, but introduced only the ruling of the latter. While it might be said that a strict and technical view would therefore make that ruling of President Green inapplicable, it must be remembered that Wetmore and the organization he represents are still, and voluntarily, parts of a larger organization and that Green is its president. It is possible that the unwritten law of tradition and custom makes his rulings binding within the Federation until altered. However, as hereinafter appears, in our view of the case it becomes unnecessary to resolve these opposing contentions.

The course and conduct of the future bargaining of the Alcoa Union is thus bound up with the question of who shall speak for that Union. The real question is therefore who represents and speaks for the Alcoa Union and not whether that Union represents a majority of the employees at Alcoa. The Board feels that the question is not for it to decide. Such a question, involving solely and in a peculiar fashion the internal affairs of the American Federation of Labor and its chartered bodies, can best be decided by the parties themselves. The availability of the Board as a convenient forum for the airing of such problems would induce the parties to present them to the Board without first having made any real attempt to compose their differences among themselves. The consequent accumulation of cases on its docket would considerably hamper the work of the Board. Nor do we feel that the petitioner itself after a full consideration of the implications of its request would desire the Board to pass judgment upon such matters.

It is preferable that the Board should not interfere with the internal affairs of labor organizations. Self-organization of employees implies a policy of self-management. The role that organizations of employees eventually must play in the structure established by Con-

gress through that Act is a large and vital one. They will best be able to perform that role if they are permitted freely to work out the solutions to their own internal problems. In its permanent operation the Act envisages cohesive organizations, well-constructed and intelligently guided. Such organizations will not develop if they are led to look elsewhere for the solutions to such problems. In fine, the policy of the National Labor Relations Act is to encourage the procedure of collective bargaining and to protect employees in the exercise of the rights guaranteed to them from the denial and interference of employers. That policy can best be advanced by the Board's devoting its attention to controversies that concern such fundamental matters. The petition for certification is accordingly dismissed.