

In the Matter of COLUMBIA STEEL COMPANY *and* FOREMEN AND
SUPERVISORS' ASSOCIATION OF PITTSBURG, CALIFORNIA

Case No. 20-C-1555.—Decided October 14, 1947

Mr. Robert E. Tillman, for the Board.

Mr. Thomas Ashby, of San Francisco, Calif., for the respondent.

Mr. George C. Smith, of Pittsburg, Calif., for the Union.

DECISION

AND

ORDER

On March 26, 1947, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had unlawfully refused to bargain with the Union as the collective bargaining representative of a unit of its supervisory employees previously found appropriate by the Board,¹ and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the respondent filed exceptions and a supporting brief.

Since the issuance of the Intermediate Report herein, the National Labor Relations Act has been amended so as to exclude "any individual employed as a supervisor" from the definition of "employee" contained in the Act.² Supervisory employees are therefore now outside the coverage of the Act. We are therefore of the opinion, without considering the merits of the case, that it would not effectuate the policies of the Act, as amended, to require the respondent to take any remedial action in this case, which involves nothing except a refusal to bargain.³ Accordingly, we shall dismiss the complaint.

ORDER

IT IS HEREBY ORDERED that the complaint against the respondent, Columbia Steel Company, Pittsburg, California, be, and it hereby is, dismissed.

¹ *Matter of Columbia Steel Company*, 67 N. L. R. B. 529. The Union won the election and was certified by the Board on June 6, 1946.

² Section 2 (3) and (11) of the Act, as amended.

³ *Matter of Westinghouse Electric Corporation*, 75 N. L. R. B. 1; *L. A. Young Spring & Wire Corporation v. N. L. R. B.*, 163 F. (2d) 905 (C. A.-D. C.).

INTERMEDIATE REPORT

Mr. Robert E. Tillman, for the Board.

Mr. Thomas Ashby, of San Francisco, Calif., for respondent.

Mr. George C. Smith, of Pittsburg, Calif., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on August 26, 1946, by Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twentieth Region (San Francisco, California), issued its complaint dated December 2, 1946, against Columbia Steel Company, herein called respondent, alleging that respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that on or about July 23, 1946, and at all times thereafter, respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, although a majority of the employees in such unit, in an election conducted under the supervision of the Board on May 17, 1946, had designated the Union as their representative for the purposes of collective bargaining, and that during August 1946, and thereafter, respondent had bargained directly and individually with the employees in such unit, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 12, 1946, respondent filed an answer in which it admitted the allegations of the complaint with respect to the nature of its business, but denied that it had engaged in unfair labor practices. The answer further alleged by way of affirmative defense, and these are the sole issues in the instant case, that (1) the unit contended for is inappropriate for the purposes of collective bargaining because the employees included therein are not employees within the meaning of the Act but rather supervisory employees who are a part of management, (2) the proceedings in Case No. 20-R-1396,¹ as a result of which the Union was certified by the Board as representative of the employees in the unit set forth in the complaint herein, are null and void, and (3) that the Union is not a labor organization.

Pursuant to notice, a hearing was held on December 17, 1946, at San Francisco, California, before Martin S. Bennett, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and respondent were represented by counsel and the Union by its representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the hearing, respondent moved to dismiss the complaint and the motion was denied. Upon the conclusion of the hearing, the parties were afforded an opportunity to argue orally before and to file briefs and/or proposed findings of fact and conclusions of law with the Trial Examiner. None of the parties argued orally but a brief has been received from respondent. By stipulation of the parties, the entire record in

¹ *Matter of Columbia Steel Company*, 67 N. L. R. B. 529.

Case No. 20-R-1396 was incorporated into and made a part of the record in this proceeding.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Columbia Steel Company is a Delaware corporation with principal offices in San Francisco, California, which operates steel mills at Torrance and Pittsburg, California; maintains warehouses and sales offices at Seattle, Washington, Portland, Oregon, and San Francisco and Los Angeles, California; and maintains a sales office at Salt Lake City, Utah.

This proceeding concerns the steel mill at Pittsburg, California, where respondent operates open hearth furnaces, rolling mills, a sheet mill, a foundry, and a wire and wire-rope mill and where respondent annually receives pig iron shipped from the State of Utah valued in excess of \$500,000. Respondent also ships from its plant at Pittsburg finished products valued in excess of \$500,000 annually, to states of the United States other than the State of California.

II. THE ORGANIZATION INVOLVED

Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, is a labor organization admitting to membership supervisory employees of respondent.²

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit

The Board's decision in the prior representation proceeding, dated April 19, 1946, found that all supervisors of production and maintenance employees of respondent's Pittsburg Works, including shipping clerks (rolling mill); foreman, instrument shop; and foreman, blacksmith shop, but excluding staff assistants; supplies foreman, bricklayers; planning supervisor, maintenance and construction; general superintendent; assistant general superintendent; assistant to general superintendent; department superintendents; assistant department superintendents; master mechanic, general foreman, construction; chief electrician; assistant chief electrician; assistant superintendent, wire rope mill; general foreman (in charge of wire mill), and all employees in non-operating departments, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

Respondent herein raises the same contentions with respect to the appropriateness of the unit which it made in the prior representation proceeding, contending that the Board lacked authority to certify representatives for a bargaining unit composed of supervisors. There, contrary to the position taken by respondent, the Board found that the above-described unit constituted a unit appropriate for the purposes of collective bargaining.

The undersigned finds that the above-described unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

² The Board has previously found that the Union is a labor organization. See footnote 1.

2. Representation by the Union of a majority in the appropriate unit

On June 6, 1946, pursuant to an election held on May 17, 1946, among the employees in the appropriate unit, the Board certified the Union as the exclusive representative of all employees within the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. Respondent raises no question herein with respect to the union majority.

The undersigned finds that at all times material herein, the Union was the duly designated representative of a majority of the employees in the said appropriate unit within the meaning of Section 9 (a) of the Act.

3. The refusal to bargain

Respondent admits, and the undersigned finds, that on June 27, 1946, the Union wrote to respondent requesting a meeting for the purposes of collective bargaining, and that on July 23, 1946, respondent replied and refused the request, advancing as its reason that the certification of representatives was invalid and that there could be no logical unit of supervisory employees. The respondent further admits, and the undersigned finds, that at all times since July 23, 1946, respondent has refused to meet with representatives of the Union for the purposes of collective bargaining, and that it has further continued to negotiate individually with the employees within the appropriate unit with respect to rates of pay, wages, hours of employment and other conditions of employment.

The undersigned finds that on July 23, 1946, and at all material times thereafter, respondent failed and refused to bargain collectively with the duly designated representative of a majority of its employees in the afore-mentioned appropriate unit, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 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 the operations of respondent as 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 of commerce.

V. THE REMEDY

Since it has been found that respondent has engaged in unfair labor practices, it will be recommended that respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the undersigned will recommend that respondent, upon request, bargain collectively with the Union.

Because of the basis of respondent's refusal to bargain, as indicated in the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from respondent's conduct in the past, the undersigned will not recommend that respondent cease and desist from the commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that respondent cease

and desist from the unfair labor practices found and from in any manner interfering with the efforts of the Union to bargain collectively with it.³

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

CONCLUSIONS OF LAW

1. Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, is a labor organization, within the meaning of Section 2 (5) of the Act.

2 All supervisors of production and maintenance employees at respondent's Pittsburg Works, including shipping clerks (rolling mill); foreman, instrument shop; and foreman, blacksmith shop, but excluding staff assistants; supplies foreman, bricklayers; planning supervisor, maintenance and construction; general superintendent; assistant general superintendent; assistant to general superintendent; department superintendents; assistant department superintendents; master mechanic; general foreman, construction; chief electrician; assistant chief electrician; assistant superintendent, wire rope mill; general foreman (in charge of wire mill), and all employees in nonoperating departments, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3 Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, was, on May 17, 1946, and at all times thereafter has been, the exclusive representative of all the employees in the above unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on July 23, 1946, and at all times thereafter, to bargain collectively with Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, as the exclusive representative of all its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By said acts, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Columbia Steel Company, its officers, agents, successors, and assigns shall

1 Cease and desist from:

(a) Refusing to bargain collectively with Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, as the exclusive representative of the employees in the afore-mentioned appropriate unit;

(b) In any manner interfering with the efforts of Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

³ See *N L R B v. Express Publishing Company*, 312 U S 426

(a) Upon request, bargain collectively with Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, as the exclusive representative of the employees in the appropriate unit, and if an understanding is reached embody such understanding in a signed agreement;

(b) Post at its plant at Pittsburg, California, copies of the notice attached hereto and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by respondent's representative, be posted by respondent immediately upon receipt thereof and be maintained by it for at least sixty (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 the Twentieth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of receipt of this Intermediate Report, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondent to take the action aforesaid.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof, and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statements of exception and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

MARTIN S. BENNETT,
Trial Examiner.

Dated March 26, 1947.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with Foremen and Supervisors' Association of Pittsburg, California, unaffiliated, as the exclusive repre-

sentative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All supervisors of production and maintenance employees at our Pittsburg Works, including shipping clerks (rolling mill); foreman, instrument shop; and foreman, blacksmith shop, but excluding staff assistants; supplies foreman, bricklayers; planning supervisor, maintenance and construction; general superintendent; assistant general superintendent; assistant to general superintendent; department superintendents; assistant department superintendents; master mechanic; general foreman, construction; chief electrician; assistant chief electrician; assistant superintendent, wire rope mill; general foreman (in charge of wire mill), and all employees in non-operating departments.

We will not engage in any acts in any manner interfering with the efforts of the above-named union to negotiate for or represent the employees in the aforesaid bargaining unit.

COLUMBIA STEEL COMPANY,

By-----
(Representative) (Title)

Dated-----

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