

In the Matter of THE CELOTEX CORPORATION and CELOTEX SUPERVISORY EMPLOYEES' ASSOCIATION  
In the Matter of THE CELOTEX CORPORATION and CELOTEX SUPERVISORY EMPLOYEES' ASSOCIATION

*Cases Nos. 15-R-1358 and 15-R-1406, respectively.—Decided March 14, 1946*

*Pam, Hurd and Reichmann, by Mr. Carl Urist, of Chicago, Ill.; Mr. C. L. Christenson, of Chicago, Ill.; and Messrs. Ralph Freeman and H. B. Dobson, of Marrero, La., for the Company.*

*Messrs. Curry Juneau and Werner Ebner, of New Orleans, La., and Messrs. Lawrence Landwehr and Sidney La Rousse, of Marrerc, La., for the Association.*

*Mr. Angelo J. Fiumara, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by Celotex Supervisory Employees' Association, herein called the Association, each alleging that a question affecting commerce had arisen concerning the representation of employees of The Celotex Corporation, Marrero, Louisiana, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before T. Lowry Whittaker, Trial Examiner. The hearing was held at New Orleans, Louisiana, on July 31, August 1, and 2, 1945. The Company and the Association appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following.

66 N. L. R. B., No. 97.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

The Celotex Corporation, a Delaware corporation with its principal office located in Chicago, Illinois, operates several plants at various places in the United States. We are here concerned solely with the operations at its plant at Marrero, Louisiana, where the Company is engaged in the manufacture of cane fiber insulation board. During the 12-month period ending on or about July 1, 1945, the Company received at its plant raw materials valued in excess of \$50,000 from points outside the State of Louisiana. During the same period the Company manufactured and shipped outside the State finished products valued in excess of \$50,000.

The Company concedes for the purpose of this proceeding that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Celotex Supervisory Employees' Association, unaffiliated, is a labor organization<sup>1</sup> admitting to membership supervisory employees<sup>2</sup> of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On May 18, 1945, and again at the hearing, the Company indicated that it would not recognize the Association as the exclusive collective bargaining representative of certain of its supervisory employees.

The Company contends that the supervisory personnel involved in this proceeding are not "employees" within the meaning of Section 2 (3) of the Act, but are rather "employers" under the definition contained in Section 2 (2). The question of the status of foremen under the Act was discussed in all its aspects in the *Soss*<sup>3</sup> and *Packard*<sup>4</sup> cases

<sup>1</sup>The record clearly establishes, contrary to the Company's position, that the Association was organized for the purposes of collective bargaining, and that it is, therefore, a labor organization within the meaning of Section 2 (5) of the Act. See *Matter of E I du Pont de Nemours and Company*, 63 N L R B 1387.

<sup>2</sup>The Association's constitution describes as eligible for membership those employees of the Company "who have no other affiliation rights with a representative organization certified as such to the Celotex Corporation, providing he is not an executive or department head." Although this wording might give rise to an inference that rank and file employees of the Company could be eligible for membership, there was undisputed testimony that the Association's charter, which was granted by the State of Louisiana and which was not available at the hearing, describes as eligible only supervisory employees. Moreover, both production and administrative rank and file employees of the Company are represented by locals of affiliated organizations.

<sup>3</sup>*Matter of Soss Manufacturing Company, et al.*, 56 N L R B 348.

<sup>4</sup>*Matter of Packard Motor Car Company*, 61 N L R. B. 4, and 64 N L R. B. 1212.

and we there held that foremen in relation to their employer are "employees." This conclusion was reaffirmed in the recent *Young* case.<sup>5</sup> In accordance with our previous determinations we find that the foremen and, as hereinafter appears, the other supervisory personnel involved in this proceeding are "employees" within the meaning of the Act.<sup>6</sup>

A statement of a Board agent made at the hearing indicates that the Association represents a substantial number of employees in the units hereinafter found appropriate.<sup>7</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNITS

The Association seeks to establish two separate units to be constituted as follows: (1) all general foremen, foremen, and assistant foremen, herein collectively called the production foremen, excluding department heads, executives, and all other employees; and (2) all chief clerks, supervisors, chief inspectors, and the assistant cashier, herein collectively called the administrative supervisors, excluding instrument men, the head nurse, the chief interviewer, the laboratory assistant, the chief chemist, and all other employees. The Company, although not objecting to the composition of either of the units, asserts that the production foremen and the administrative supervisors are part of management, and therefore, units of such employees are inappropriate. The Company further undertakes to distinguish this case from the *Packard* case on the ground that the employees herein have duties, powers, and responsibilities greater than those in the *Packard* case and that their duties are more analogous to the foremen of the early 1900's than to foremen "traffic cops." The Company has also set forth various evils which it alleges will flow from the unionization of its supervisory personnel.

The issues raised in the instant proceeding were considered *in extenso* in the recent *Young* case.<sup>8</sup> We there held, as we do now, that

<sup>5</sup> *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298.

<sup>6</sup> See *N. L. R. B. v. Armour and Co.*, 154 F. (2d) 570 (C. C. A. 10); *Jones & Laughlin Steel Corporation v. N. L. R. B.*, 146 F. (2d) 833 (C. C. A. 5); *N. L. R. B. v. Skinner & Kennedy Stationery Company*, 113 F. (2d) 667 (C. C. A. 8).

<sup>7</sup> The Trial Examiner reported at the hearing that the Association submitted 2 petitions listing the signatures of 46 persons; that 36 names appearing on the petitions were listed on the Company's pay roll of about June 14, 1945, containing the names of 48 employees in the unit sought in Case No. 15-R-1358; and that of the remaining names on the said petitions, 9 were listed on the aforesaid pay roll listing the names of 14 employees in the unit petitioned for in Case No. 15-R-1406.

<sup>8</sup> *Matter of L. A. Young Spring & Wire Corporation*, *supra*; see also *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294.

foremen, in relation to their employer, are "employees" within the meaning of the Act; that, as "employees," they are entitled to be established in some appropriate unit under Section 9 (b); that the type of industry in which foremen are employed is immaterial; and that the nature of the duties and responsibilities of the foremen is relevant only insofar as it relates to the question of the proper grouping of the foremen for collective bargaining purposes. The same principles are no less applicable to the administrative supervisors. Notwithstanding their supervisory duties and responsibilities they are, like the production foremen, "employees" within the meaning of the Act, and, accordingly, are equally entitled to the privileges of collective bargaining within appropriate units.

The Company has made no contention that the Association is not independent of United Gas, Coke and Chemical Workers, Local Union No. 179, CIO, or of Local No. 248 of the same national union, or of International Association of Machinists, which represent the rank and file employees in both production and administrative units. We find that the Association is an independent, unaffiliated labor organization organized for the exclusive purpose of representing supervisory employees.<sup>9</sup>

As indicated above, the Company does not object to the composition of either of the units proposed by the Association. We find, therefore, that all general foremen, foremen, and assistant foremen at the Company's Marrero, Louisiana, plant, excluding department heads, executives, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We also find that all chief clerks, supervisors, chief inspectors, and the assistant cashier at the Company's Marrero, Louisiana, plant, excluding instrument men, the head nurse, the chief interviewer, the laboratory assistant, the chief chemist, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

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<sup>9</sup> *Matter of L. A. Young Spring & Wire Corporation, supra*; and *Matter of Packard Motor Car Company, supra*.

## DIRECTION OF ELECTIONS

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 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Celotex Corporation, Marrero, Louisiana, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among employees in the units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States, who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine whether or not they desire to be represented by Celotex Supervisory Employees' Association, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.