

In the Matter of AUTO-LITE BATTERY CORPORATION, OWEN-DYNETO  
DIVISION *and* FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER 117  
(INDEPENDENT)

*Case No. 3-R-1040.—Decided March 25, 1946*

*Mr. James P. Falvey, of Toledo, Ohio, for the Company.*

*Mr. W. Allen Nelson, of Detroit, Mich., for the Union.*

*Mr. Oscar Geltman, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Foreman's Association of America, Chapter 117 (Independent), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Auto-Lite Battery Corporation, Owen-Dyneto Division, Syracuse, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene von Wellsheim, Trial Examiner. The hearing was held at Syracuse, New York, on August 23, 1945. The Company and the Union 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. At the hearing, the Company moved to dismiss the petition for lack of jurisdiction. The Trial Examiner referred this motion to the Board. For reasons stated hereinafter, the motion is denied. 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Auto-Lite Battery Corporation, Owen-Dyneto Division, a New York corporation, is engaged at a plant on Park Street, in Syracuse,  
66 N. L. R. B., No. 136.

New York, in the manufacture of generators, voltage and current regulators, motors, and windshield wipers. Since July 1945, the Company has performed certain of its assembly operations at an additional plant located on West Onondaga Street, Syracuse, New York. Between August 1, 1944, and August 1, 1945, the Company used in its manufacturing processes raw materials valued in excess of \$1,000,000, of which more than half represented shipments to it from points outside the State of New York. During the same period, the Company produced finished products valued in excess of \$1,500,000, of which more than half represented shipments to points outside the State.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Foremen's Association of America, Chapter 117 (Independent), is an unaffiliated labor organization admitting supervisory employees of the Company into membership.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its supervisory employees until the Union has been certified by the Board in an appropriate unit.

The Company argues in support of its motion to dismiss the petition that the supervisors involved in this proceeding are not employees within the meaning of the Act and that consequently the Board lacks jurisdiction of the subject matter. The status of foremen and comparable supervisors under the Act has been considered in a number of Board<sup>1</sup> and court<sup>2</sup> decisions. Both the Board and the courts have concurred in holding that foremen have a dual aspect under the definitions of "employer" and "employee" contained in the Act. When he acts in the interest of his employer, a foreman is an "employer"; but when he acts in his own interest, as when he seeks to better the terms and conditions of his employment, he is an "employee." There is no inconsistency in recognizing such duality of status. Accordingly, we find that for the purposes of this proceeding

<sup>1</sup> *Matter of Soss Manufacturing Company, et al*, 56 N. L. R. B. 348; *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, and 64 N. L. R. B. 1212; *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298; *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294; *Matter of Simmons Company*, 65 N. L. R. B. 984; *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997

<sup>2</sup> *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).

the supervisors herein considered are employees within the meaning of Section 2 (3) of the Act.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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 UNIT

The Union seeks a unit consisting of "all production and maintenance supervisory employees" below the grade of superintendent at the Company's Syracuse, New York plants, excluding group leaders<sup>4</sup> and staff supervisors.<sup>5</sup> Without waiving its position that the employees sought herein are part of management and therefore cannot constitute an appropriate unit, the Company agrees that group leaders and staff supervisors should be excluded from any unit found appropriate by the Board. It objects, however, to the inclusion of any Onondaga Street plant employees in the unit.

In support of its argument that the supervisors here involved are part of management, the Company attempts to distinguish this case from the *Packard*<sup>6</sup> case on the ground that the supervisors in this proceeding have duties, powers and responsibilities greater than those of the supervisors in that case. In the recent *Young*<sup>7</sup> case where similar issues were raised, we held, as we do here, that foremen are employees within the meaning of Section 2 (3) of the Act; that, as employees, they are entitled to be placed in some appropriate unit under Section 9 (b); that the type of industry in which they are employed is immaterial; and that the nature of the duties and responsibilities of foremen is relevant only insofar as it bears on the question of their proper grouping for collective bargaining purposes.

The record discloses that the Company's "production and maintenance supervisory employees" below the grade of superintendent consist of 11 foremen and 3 assistant foremen, all of whom regularly work at the Park Street plant. Although some of them, on occasion, may work at the Onondaga Street plant, none of them is regularly

<sup>3</sup> The Field Examiner reported that the Union submitted 14 designation cards. There are approximately 14 employees in the appropriate unit.

<sup>4</sup> The record indicates that the group leaders are not supervisory employees.

<sup>5</sup> The staff supervisors, who consist of the persons in charge of the purchasing, planning, methods, engineering, time-study, and employment departments, and the office manager, apparently do not fall within the group of "production and maintenance supervisory employees."

<sup>6</sup> *Matter of Packard Motor Car Company, supra*

<sup>7</sup> *Matter of L. A. Young Spring & Wire Corporation, supra.*

assigned to that plant. The foremen and assistant foremen have substantially the same duties and have similar supervisory powers over their subordinates. Foremen, however, seem to have more responsibility than do assistant foremen. Assistant foremen substitute for foremen in the latter's absence. All the foremen and assistant foremen are either production or maintenance supervisors and fall within the two lowest levels of supervisors<sup>8</sup> in the employ of the Company.<sup>9</sup> In view of the similarity in their powers and duties, we conclude that the foremen and assistant foremen comprise an appropriate bargaining group.

As indicated above, at the time of the hearing none of the foremen or assistant foremen had been permanently assigned to the Onondaga Street plant; nor had the Company made any definite plans for future operations at that plant. The Union contends, however, that the unit it seeks to establish should cover employees in "all locations" of the Company. Inasmuch as the Union has made a showing of representation only among employees at the Park Street plant, we shall include only employees at that plant in the unit.

The Company has made no contention that the Union is not independent of the labor organization which is the bargaining representative of its rank and file employees. As in previous cases involving the petitioner,<sup>10</sup> we find that the Union is an independent, unaffiliated labor organization organized for the exclusive purpose of representing supervisory employees.

We find, therefore, that all foremen and assistant foremen employed in the Company's Park Street plant, Syracuse, New York, but excluding group leaders and staff supervisors, 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 the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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<sup>8</sup> All the foremen are apparently on the same supervisory level, although some are paid on a salary basis, and some on an hourly basis.

<sup>9</sup> The next higher level of supervision consists of the night superintendent and the plant superintendent.

<sup>10</sup> *Matter of L. A. Young Spring & Wue Corporation, supra*; *Matter of The B F Goodrich Company, supra*.

## 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 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 Auto-Lite Battery Corporation, Owen-Dyneto Division, Syracuse, New York, 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 Third 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 the employees in the unit 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 election, to determine whether or not they desire to be represented by Foreman's Association of America, Chapter 117 (Independent), for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinion in *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, I am constrained to dissent from the majority opinion in this case.