

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

Case No. 20-R-1396.—Decided April 19, 1946

*Messrs. Thomas Ashby and Donald C. Bennion*, of San Francisco, Calif., for the Company.

*Messrs. Harry M. Neeld, Clifford J. McElhanev, John A. Keilbach*, of Pittsburg, Calif., and *Mr. Julien Wagenet*, of Oakley, Calif., for the Union.

*Mr. Harry W. Clayton, Jr.*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Foremen's and Supervisors' Association of Pittsburg, California, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Columbia Steel Company, Pittsburg, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Wallace E. Royster, Trial Examiner. The hearing was held at San Francisco, California, on November 13 through 16, 1945, and November 19 through 21, 1945.<sup>1</sup> 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

At the hearing, the Company moved to dismiss the petition on the grounds that: (a) the Act is unconstitutional because it involves an improper delegation of legislative authority and does not provide for

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<sup>1</sup> United Steelworkers of America, C I O herein called the Steelworkers, bargaining representative of the Company's production and maintenance, plant-protection, and salaried clerical employees was served with Notice of Hearing but did not seek to intervene. A Field Representative of the Steelworkers was present during a portion of the hearing and stated to the company counsel and the Trial Examiner that there was no conflict between the Steelworkers and the Association as to the unit sought by the latter.

an immediate court review of any certification made; and (b) the unit sought by the Union is not appropriate for the reasons that certification of a bargaining representative for the unit would conflict with the Board's prior decisions, the grouping of the employees is illogical and improper, the Board is without power to establish a unit of supervisors, and there is no collective bargaining history for foremen in the steel industry. The Trial Examiner referred this motion to the Board. The motion is denied.<sup>2</sup>

All parties were afforded an opportunity to file briefs with the Board. The Company's request for oral argument is hereby denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

The Company, a Delaware corporation with its principal offices in San Francisco, California, operates coal mines, iron mines, and a blast furnace in Utah; steel mills at Torrance and Pittsburg, California; and warehouses and sales offices in Seattle, Portland, San Francisco, and Los Angeles. The Company's operations are integrated from the mining of ore to the sale and distribution of the finished steel products.

This proceeding concerns the Company's establishment at Pittsburg, California, only, where the Company operates open hearth furnaces, rolling mills, a sheet mill, a foundry, and a wire and wire-rope mill. During 1944, the Company received pig iron having a value of more than \$1,000,000, from its plant in Utah for use at the Pittsburg and Torrance establishments. During the same period, finished products having a value of more than \$1,000,000, were shipped from the Pittsburg works to points outside the State of California.

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

#### II. THE ORGANIZATION INVOLVED

Foremen's and Supervisors' Association of Pittsburg, California, unaffiliated, is a labor organization admitting supervisory employees of the Company to its membership.

<sup>2</sup> As to the contentions relating to the constitutionality of the Act, see *N. L. R. B. v. Hearst Publications, Incorporated, et al.*, 322 U S 111; *Matter of Bethlehem Transportation Corporation, et al.*, 65 N. L. R. B. 605, *Northrup Corporation v. Madden*, 30 F. Supp. 993 (D. C. Calif.), and *Heller Bros. Co. v. Lund, et al.*, 86 F. (2d) 862 (C. A. D. C.). See also *Marshall Field and Company v. Harry A. Millis, et al.*, unreported (D. C. D. C.), 5 Labor Cases 60, 891; *American Federation of Labor v. N. L. R. B.*, 308 U S 401; *N. L. R. B. v. International Brotherhood of Electrical Workers*, 308 U. S. 413, *N. L. R. B. v. Falk Corporation*, 308 U S 453. *Inland Empire Council, Lumber & Sawmill Workers Union, et al., v. Millis* 325 U S. 697

As to the contentions relating to the appropriate unit, see Sections III and IV, *infra*

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has declined to recognize the Union as the collective bargaining representative of any of its supervisory employees on the ground that its supervisors are part of the management of the Company, in other words, are not "employees."

Both the Board<sup>3</sup> and the courts<sup>4</sup> have held that foremen have a dual status under the definition of "employer" and "employee" contained in the Act. Accordingly, we find that for the purposes of this proceeding, the supervisors and foremen 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 alleged to be appropriate.<sup>5</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

A. *Organizational structure*

The Pittsburg Works, which is in charge of a general superintendent, consists of seven non-operating departments and six operating departments. The non-operating departments are headed by: works engineer, works industrial engineer, works metallurgist, superintendent of production planning, position analyst, supervisor of industrial relations, and works auditor. For reasons which will appear later in this opinion, we shall not go into more detail with regard to these departments.

Of the six operating departments three are under the supervision of the assistant general superintendent, and three under the supervision of the assistant to the general superintendent. Department superintendents are each in charge of a department. Four depart-

<sup>3</sup> *Matter of Boss 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 The Midland Steel Products Company, Parish and Bingham Division*, 65 N. L. R. B. 997; *Matter of The Simmons Company*, 65 N. L. R. B. 984.

<sup>4</sup> *N. L. R. B. v. Armour & Company*, 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), where the court said:

There is no inconsistency in these provisions when facts are taken into consideration. A foreman, in his relation to his employer, is an employee, while in his relation to the laborers under him, he is the representative of the employer and within the definition of Section 2 (2) of the Act

<sup>5</sup> The Field Examiner reported that the Union submitted 160 membership cards. There was no showing as to how the membership is divided between production and maintenance, and technical, professional, and clerical supervisors.

There are approximately 210 employees in the unit sought by the Union.

ments have assistant department superintendents. One of these departments is divided into two major functions with a "general foreman" (in charge of wire mill) in charge of one division and an assistant superintendent, wire rope mill, in charge of the other. In the maintenance and construction department in which there is no assistant department superintendent, there are three positions which would correspond to that of a division head. These are master mechanic; general foreman, construction; and chief electrician.

As to supervisory employees subordinate to the department superintendents, assistant department superintendents, and those of equivalent rank, the record shows that in some instances "general foremen" supervise other foremen, in other instances they do not. In the rolling mill there are five levels of supervision in one section, but elsewhere in that department are supervisors of rank and file employees who report directly to the department superintendent. Under department superintendents, assistant department superintendents, and those of equivalent authority there are foremen known by a variety of titles, e. g., melter foreman, pit foreman, stocker boss, roll designer, roller, shift roller, electric furnace shift melter, general foreman, foreman, turn foreman, and assistant foreman.

There are approximately 132 supervisory and 2,400 non-supervisory employees in the operating departments. The departments vary in the number of personnel employed. The smallest department has, in addition to the department superintendent, 15 supervisory and 192 non-supervisory employees. The largest department, in addition to the department superintendent, has 36 supervisory and 648 non-supervisory employees.

### B. *Unit sought*

The Union seeks a unit of all supervisory employees and staff assistants in the operating departments, excluding, in addition to the general superintendent and his assistants, the department superintendents; assistant department superintendents; master mechanic; general foreman, construction; chief electrician; assistant chief electrician; assistant superintendent, wire rope mill; and general foreman (in charge of the wire mill). In addition the Union would include certain employees in the non-operating departments. Thus, in effect, the Union would exclude in the operating departments, the top level of supervision in the rolling mill,<sup>6</sup> the top two levels in open hearth construction and maintenance department, foundry, and sheet mill, and the top three levels in the wire and wire rope mill. For reasons shown later in this opinion, we shall not go into more detail regarding the employees of the non-operating departments.

<sup>6</sup> There is no assistant superintendent or equivalent in this department.

*C. Company's contentions*

Although the Company's motion to dismiss the petition alleges that the positions are unrelated and the grouping illogical and improper, the Company's objections to the proposed unit seem to be based primarily on the belief that no possible unit of its supervisors would be appropriate, for the reasons that the Board is without authority to certify representatives for a bargaining unit composed of supervisors and there is no history of collective bargaining by foremen in the steel industry.

The Board treated in detail, in the *Young* case,<sup>7</sup> the various arguments addressed to the inappropriateness of any unit of supervisors. The majority of the Board there concluded that foremen are employees, and that, as employees, they are entitled to be placed in some appropriate bargaining unit under Section 9 (b) of the Act. The majority also pointed out that the purpose of the Act is to encourage the practice of collective bargaining as a means of settling labor disputes and that this purpose is as applicable to labor controversies involving foremen as to those pertaining to rank and file employees. In the *Jones & Laughlin*<sup>8</sup> decision, the Board discussed in full the effect of an absence of a collective bargaining history for foremen, and we find no reason for repeating that discussion here. Accordingly, we find no merit to the Company's arguments that no possible unit of supervisors would be appropriate.

Without waiving its argument that no unit of supervisors would be appropriate the Company contends that certain employees sought to be included in the unit by the Union are not supervisory and should be excluded.

The Company has made no objection to the appropriateness of the unit sought on the ground that it would include several levels of supervisors. On the contrary, the Company throughout the hearing endeavored to show that the authority and responsibility of all its foremen ranging from those immediately supervising the rank and file employees to the general superintendent in charge of the entire plant are the same, except for area and scope.

*D. The unit finding*

There does not seem to be a line of cleavage between the levels of supervision in the production and maintenance departments sought by the Union to be included in the appropriate unit. They seem indiscriminately to be paid on an hourly, salaried, or salaried-plus-bonus basis. In some cases they attend the same supervisors' operating

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

<sup>8</sup> *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannon Coal Division*, 66 N. L. R. B. 386.

meetings. In other cases, operating matters are considered by the foremen under a management conference plan by which each supervisor meets with his subordinate supervisors. In addition, all the supervisors are members of a supervisory training conference which holds weekly meetings. Accordingly, we believe that the common backgrounds, interests, and problems of the different levels of supervision in the operating departments sought to be included in the appropriate unit establish a community of interest which is determinative of their being properly grouped together.

The Company's rank and file employees at the Pittsburg Works are at present organized into three units: (a) all salaried employees exclusive of supervisory (supervisors in charge of any classes of employees), administrative, and confidential employees, watchmen and guards, and trainees who do not occupy regular salaried positions not otherwise excluded;<sup>9</sup> (b) all employees except salaried employees, foremen, assistant foremen, supervisors in charge of any classes of labor, or watchmen, guards, confidential clerical employees regardless of method of compensation (but not excluding other clerical employees on an hourly wage-rate basis);<sup>10</sup> (c) plant-protection employees (gate watchmen, patrol watchmen, policemen, and guards) except plant-protection supervisors, watchmen supervisors, captains, sergeants, fire inspector, and fire inspector helper, confidential clerical employees and all supervisory employees within the meaning of the Board's definition.<sup>11</sup>

As indicated before in this opinion, there has been no history of collective bargaining for supervisors in the steel industry, including the Company. In the absence of such history and accepted unit pattern, we believe that supervisors should be organized in separate units apart from employees who do not exercise supervisory functions with respect to other employees and that the pattern of organization for such supervisory employees should generally follow the patterns approved by the Board for rank and file employees, that is supervisors of production and maintenance employees should be represented in one unit, apart from supervisors of clerical and technical employees.<sup>12</sup>

In the present proceeding the Union petitioned for a unit of supervisors of production and maintenance employees in the operating departments together with certain purported supervisors in the non-operating departments. Inasmuch as it appears that the alleged supervisors in the non-operating departments are not engaged in pro-

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<sup>9</sup> 39 N. L. R. B. 498.

<sup>10</sup> 42 N. L. R. B. 1125.

<sup>11</sup> Case No. 20-R-1089, issued June 22, 1944.

<sup>12</sup> See *Matter of Federal-Mogul Corporation*, 66 N. L. R. B. 532, and *Matter of Westinghouse Electric Corporation (East Springfield Works)*, 66 N. L. R. B. 1297.

duction and maintenance functions, we shall not include them in the appropriate unit for production and maintenance supervisors.<sup>13</sup>

There remain for consideration the fringe groups in the operating departments which the Union desires to include in the unit.

*Staff assistants:* The Company urges that these employees are not supervisors. Their duties involve the securing and analysis of data concerning performance, adherence to standard practice, inventory, costs, engineering appropriation requests, purchase orders, and grievances and the performance of special assignments at the direction of the department superintendent or assistant department superintendent. These employees generally do not direct the work of any other employees. In one department the staff assistant, without any instructions from either the department or the assistant department superintendent, has instructed a crew of six employees and an individual employee who are under the direct supervision of the assistant department supervisor. Each time he has done so, he has reported his action to the assistant department superintendent, who has never countermanded the instructions. The job description dated November 9, 1945, for this employee and signed by him as being a fair statement of his duties and responsibility, contains no reference to any supervisory duty. In another department the staff assistants occasionally substitute for the foremen. We find, nevertheless, that the staff assistants are not supervisors and shall exclude them from the unit.

*Shipping clerks (rolling mill):* The Company contends that these employees are not supervisors. They are paid on an hourly basis and supervise and direct the work of the crane followers and crane leaders with regard to the loading of material for shipping, oversee the weighing of materials preparatory to shipping, record the material to be shipped, and make out the necessary reports. A witness for the Company testified that the shipping clerk might be termed an assistant foreman. It does not appear that they are included in the production and maintenance unit of the non-supervisory employees. We find that they are supervisors, and we shall include them in this unit.

*Supplies foreman, bricklayers:* It appears that this employee does not supervise any subordinates. Consequently, he is not a supervisor and should be excluded.

*Foreman, instrument shop:* The Company does not consider this employee as a supervisor. He is responsible for the work of seven subordinate employees and is in charge of the operation of the instrument shop in which scientific instruments used in connection with the making of steel are repaired. The foreman, instrument shop, is con-

<sup>13</sup> This exclusion covers the senior metallurgists, the supervisor of plant protection, the head watchmen, and the head nurse, about whom considerable testimony was given at the hearing, as well as the other alleged supervisors in non-operating departments.

sulted on the installation of instruments throughout the plant. He, himself, repairs the more delicate instruments and devotes approximately 50 percent of his time to actual instrument repair. The remainder of his time is utilized in directing the work of the instrument shop and consulting with personnel in the various departments. When the operations under his supervision are not up to standard, he has authority to instruct the employees in remedial measures. He has authority to reject unsatisfactory new employees during the probational period. He also is authorized to establish specific skills required in the selection of new employees and to make recommendations for promotion when obvious differences exist in physical fitness or ability. We shall include the foreman, instrument shop, in the unit.

*Foreman, blacksmith shop:* This is another employee who the Company believes is not a supervisor. He is paid on a salary basis, is in full charge of the blacksmith shop with a crew of seven employees, lays out the work for the other employees, and performs duties similar to those performed by the employees he supervises. He may establish the specific skills required in the selection of new employees and make recommendations for promotion and demotion. He does not seem to be included in the production and maintenance unit of the non-supervisory employees. We shall include him in this unit as a supervisor.

*Planning supervisor, maintenance and construction:* This employee supervises only one clerk. He seems to be a member of the department superintendent's immediate administrative staff. We shall exclude him from the unit.

We find that all supervisors of production and maintenance employees at the Company's Pittsburgh 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.

#### 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 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.

### 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 purpose, of collective bargaining with Columbia Steel Company, Pittsburg, California, 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 Twentieth 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 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 Foremen's and Supervisors' Association of Pittsburg, California, for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinions in *Matter of Packard Motor Car Company*,<sup>14</sup> I am constrained to disagree with the majority opinion.

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<sup>14</sup> *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, 64 N. L. R. B. 1212.