

In the Matter of JOHNS-MANVILLE PRODUCTS CORPORATION and  
INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS

In the Matter of JOHNS-MANVILLE PRODUCTS CORPORATION and  
CELITE MANUFACTURING EMPLOYEES (A. F. OF L.)

Cases Nos. R-727 and R-728, respectively.—Decided June 22, 1938

*Insulating and Building Materials Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding supervisory employees, laboratory workers, engineers, and office and clerical workers; no controversy as to—*Election Ordered*

*Mr. William R. Walsh*, for the Board.

*Pillsbury, Madison & Sutro*, by *Mr. Marshall P. Madison*, of San Francisco, Calif., for the Company.

*Mr. Ed Sugar*, of Los Angeles, Calif., for the International.

*Mr. A. H. Petersen*, of Los Angeles, Calif., for the C. M. E.

*Mr. Raymond J. Compton*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

On January 3, 1938, International Union of Mine, Mill & Smelter Workers, herein called the International, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Johns-Manville Corp., Lompoc, California, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On February 24, 1938, Celite Manufacturing Employees (A. F. of L.), herein called the C. M. E., filed a similar petition. On March 14, 1938, the National Labor Relations Board, acting pursuant to Section 9 (c) of the Act and Article III, Sections 3 and 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a consolidation of the

two cases for the purpose of hearing, and also ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On March 30, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the International, and upon the C. M. E. Pursuant to the notice, a hearing was held on April 12, 1938, at Los Angeles, California, and continued on April 13, 1938, at Lompoc, California, before Jesse E. Jacobson, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, the International by Ed Sugar, and the C. M. E. by A. H. Petersen, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. On the second day of the hearing, the Trial Examiner granted a motion by counsel for the Board to amend the petitions and other papers in the record so as to correct the name of the Company to read Johns-Manville Products Corporation. During the course of the hearing, the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. All of the rulings are hereby affirmed.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

The Company, a subsidiary of Johns-Manville Corporation, is organized under the laws of the State of Delaware and maintains its principal office in New York City. On the Pacific Coast, the Company owns and operates plants at Los Angeles, Redwood City, Pittsburg, Watson, and Lompoc, California. The Lompoc plant, the only one with which this proceeding is concerned, occupies 5,000 acres of land on which the Company is engaged in quarrying and processing of diatomaceous earth from which it manufactures various filtration materials, filter admixtures, and insulating materials consisting of natural and pressed brick. The filtration products are distributed directly by its own sales force and the insulation materials are distributed generally through private dealers and distributors. An average of 260 employees are employed by the Company at the Lompoc plant, of which number, 198 are engaged in production and maintenance.

In 1937 the Company shipped from its Lompoc plant approximately 73,000 tons of manufactured products, 89 per cent of which

were consigned to points outside the State of California. The gross value of these products was in excess of \$1,000,000. During the same year, it purchased supplies consisting mainly of sacks and other containers for its products, which amounted to approximately \$400,000, one-fourth of which came from outside the State of California.

## II. THE ORGANIZATIONS INVOLVED

International Union of Mine, Mill and Smelter Workers is a national labor organization affiliated with the Committee for Industrial Organization. It admits to membership all the production and maintenance employees of the Company.

Celite Manufacturing Employees is a labor organization affiliated with the American Federation of Labor, admitting to membership all production and maintenance employees of the Company at its Lompoc plant.

## III. THE QUESTION CONCERNING REPRESENTATION

Although neither the International nor the C. M. E. has requested the Company for recognition as the collective bargaining agency of its employees, in their petitions both unions claim to represent a majority of the employees of the Company in an appropriate unit at the Lompoc plant. The International seeks certification as the exclusive bargaining agency of the Company's employees without the holding of an election, whereas the C. M. E. has requested that the Board hold an election to determine the question of representation. The Company has expressed its willingness to deal with whichever union is certified by the Board, provided that an election is held to determine the question of representation.

We find that a question has arisen concerning representation of employees of the Company.

## IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE APPROPRIATE UNIT

The International states in its petition that all the Company's employees below the grade of supervisor or foreman, except the office

and clerical force and the engineering and laboratory workers, constitute a unit appropriate for the purposes of collective bargaining. In its petition the C. M. E. states that all the Company's employees, except those with authority to hire, fire, promote, and demote, the office force, clerical workers, and engineers, constitute an appropriate bargaining unit. Although laboratory workers were not expressly excluded by the C. M. E. from the unit proposed in its petition, it was shown at the hearing that the C. M. E. does not admit laboratory workers to its membership. The record shows that both the International and the C. M. E. are in agreement that all production and maintenance employees of the Company at its Lompoc plant, excluding supervisory employees, laboratory workers, engineers, and office and clerical workers, constitute an appropriate bargaining unit. The Company raised no objection to the classifications included within such a unit.

We find that all production and maintenance employees of the Company at its Lompoc, California, plant, excluding supervisory employees, laboratory workers, engineers, and office and clerical workers, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

Prior to the organization of the International and the C. M. E., the Company's employees belonged to the Independent Union which had been organized in September 1937, but had gradually disintegrated. The International and the C. M. E. commenced their organization among the Company's employees at approximately the same time; the International started its membership drive and received its charter in December 1937, and the C. M. E. solicited applications for membership in January 1938. At a meeting held on December 14, 1937, approximately 75 members of the Independent Union transferred their affiliations to the International. At the hearing, the International introduced 132 membership application cards in evidence. The C. M. E. introduced 98 applications for membership. The Company's pay rolls of February 27 and April 3, 1938 show that there are approximately 198 employees in the appropriate unit. Counting the application cards for membership in the International and in the C. M. E., we find that the combined membership of both Unions, as indicated by the application cards, totals 230. By a comparison with the pay rolls, this reveals a substantial overlapping of authorized representation. The record also shows that some of the employees whom the International claims as mem-

bers are no longer employed by the Company or have transferred their affiliation to the C. M. E. This discrepancy between the total membership of both Unions and the total number of employees on the Company's pay rolls, the terminations of employment, and the transfers of affiliation, make it impossible to establish a clear majority in either the International or the C. M. E. We find that the holding of an election by secret ballot is necessary to resolve the question concerning representation.

In adopting a date for the determination of eligibility to vote in the election, we wish to choose a period of time which is most likely to insure eligibility to the greatest possible number of employees having a direct and substantial interest in the choice of representatives. It was shown that as of February 27, 1938, the scheduled production of the Company would be uniform for the remainder of the year, thus eliminating the possibility of a material fluctuation in production personnel. Inasmuch as the International, which filed its petition on January 3, 1938, made no objection to the selection of a date in the latter part of February, and since the C. M. E. filed its petition on February 24, 1938, we will adopt the pay-roll date of February 27, 1938, for use in the determination of eligibility to vote. Accordingly, those eligible to vote shall be the persons in the appropriate unit whose names appear on the Company's pay roll for the period ending February 27, 1938, excluding those who have since quit or have been discharged for cause.

On the basis of the above findings of fact, and upon the entire record in the proceeding, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Johns-Manville Products Corporation, Lompoc, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All production and maintenance employees of the Company at its Lompoc, California, plant, excluding supervisory employees, laboratory workers, engineers, and office and clerical workers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

#### 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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as a part of the investigation ordered by the Board to ascertain representatives for collective bargaining with Johns-Manville Products Corporation, at its Lompoc, California, plant, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees of Johns-Manville Products Corporation, at its Lompoc, California, plant, who were employed by it during the pay-roll period ending February 27, 1938, excluding supervisory employees, laboratory workers, engineers, and office and clerical workers, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by International Union of Mine, Mill and Smelter Workers, affiliated with the Committee for Industrial Organization, or by Celite Manufacturing Employees, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.