

In the Matter of THE TEXAS COMPANY (NORFOLK TERMINAL) and CON-
GRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 5-R-1378.—Decided November 5, 1943

Messrs. Raymond J. Gengler and J. E. Blake, both of New York City, and Mr. E. L. Lott, of Norfolk, Va., for the Company.

Mr. Robert A. Johnson, of Portsmouth, Va., and Mr. William R. Wonsettler, of Oil City, Pa., for the Union.

Mr. W. L. Nicholas, of South Norfolk, Va., and Mr. A. O. Partridge, of Norfolk, Va., for the Independent.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Congress of Industrial Organizations on behalf of Oil Workers International Union, C. I. O.,¹ herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Texas Company (Norfolk Terminal) Norfolk, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Anthony E. Molina, Trial Examiner. Said hearing was held at Norfolk, Virginia, on October 11, 1943. The Company, the Union, and the Independent Organization of Employees of The Texas Company (Norfolk Terminal), herein called the Independent, appeared, participated, and 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.

¹As hereinafter indicated, the Union desired to be designated as Oil Workers International Union, CIO, although the petition was filed by Congress of Industrial Organizations, through its Virginia field representative.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Texas Company, a Delaware corporation with its principal office located in New York City, is engaged in the production, transportation, refining, and marketing of crude oil and petroleum products. In the course and conduct of its business the Company operates various types of properties, among which is an oil terminal located at Norfolk, Virginia, herein called the Norfolk Terminal, with which we are concerned. Products of the Company are shipped from the Norfolk Terminal to points both within and without the State of Virginia. During the year 1942, approximately 75 percent of the products of the Company were shipped from the Norfolk Terminal to points outside the State of Virginia; the amount of products shipped from the Norfolk Terminal is in excess of 100,000 barrels yearly.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Congress of Industrial Organizations and its affiliate, Oil Workers International Union, is a labor organization, admitting to membership employees of the Company.

Independent Organization of Employees of The Texas Company (Norfolk Terminal) is an unaffiliated organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the Union as the exclusive bargaining representative of its employees at the Norfolk Terminal unless and until it has been certified by the Board. The Independent contends that its contract with the Company covering these employees and terminable at any time after September 15, 1943, upon 30 days notice is a bar to the instant proceeding. However, since the petition herein was filed on August 31, the contract does not constitute a bar.²

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

² See *Matter of LaPlante Choate Mfg Co., Inc.*, 29 N. L. R. B. 40.

³ The Field Examiner reported that the Union submitted 30 designation cards, all of which bore apparently genuine original signatures and contained the names of persons appearing upon the Company's pay roll of August 30, 1943. Said pay roll contained the names of 80 employees in the appropriate unit.

The interest of the Independent is sufficiently established by its contract with the Company.

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 to represent a unit of all production and maintenance employees of the Company, including group leaders,⁴ but excluding supervisory, clerical, professional, and technical employees, and also watchmen and gatemen. The Independent contends that all employees engaged at the Norfolk Terminal, exclusive of supervisory and technical employees, should constitute the appropriate unit. The Company, without taking any position with respect to the unit, stated that its general policy has been to seek the exclusion of administrative, professional, technical, and supervisory employees in the absence of particular circumstances; that it has made exceptions to this policy, and that the Norfolk Terminal, because of its past bargaining history, is one of these exceptions.

The following classifications are in dispute:

Clerical employees: The Company has recognized the Independent for several years prior to the proceeding herein as the collective bargaining representative of all its employees at the Norfolk Terminal, with the exception of supervisory and technical employees. It has executed several bargaining agreements with the Independent, the most recent of which has been referred to above. These contracts have included clerical employees within the unit covered by them. For this reason the Company does not object to the inclusion of these employees within the same unit as the production and maintenance employees, even though generally it has maintained a contrary policy. The Union contends that the problems and interests of such employees are dissimilar to those of production and maintenance workers and that they should, therefore, be excluded. The Independent argues that the history of bargaining relations of the employees of the Norfolk Terminal clearly indicates the feasibility of including clerical employees. Furthermore, it maintains that several male clerical employees are on occasion required to perform production work. We are of the opinion, however, that clerical employees do not properly belong within a unit of production and maintenance workers, and, in accordance with our usual policy,⁵ shall exclude them.

The above rationale also applies equally to the secretary to the superintendent of the Norfolk Terminal. In addition to being a

⁴ These employees are in charge of departments and sections of the Company in the absence of the foreman or assistant foreman, but have no authority to hire, discharge, or recommend such action.

⁵ See *Matter of Pan-American Petroleum Corp.*, 46 N. L. R. B. 916.

clerical employee, she may also be considered as occupying a confidential status, inasmuch as she has access to information pertaining to personnel and labor relations at the Norfolk Terminal, which would normally require her exclusion.⁶

Nurse: The Company and the Union would exclude this employee on the ground that she is a professional worker, whereas the Independent would include her. We agree with the contentions of the Company and the Union that the nurse, being a professional employee, is not properly included within a production and maintenance unit. Accordingly, we shall exclude her.⁷

Watchmen and gatemen: The Company employs eight individuals who alternate between these two classifications and perform the usual duties of both. None of them is militarized at the present time although the Company anticipates that they may be in the future. The Union seeks to exclude them because of present wartime conditions and their contemplated militarization. The Company would include these employees within the unit because they are non-militarized at the present time. The Independent concurs with the position of the Company because of the past bargaining history with respect to these employees. We agree with the contention of the Company and are of the opinion that since these employees are not militarized at the present time, they are more properly included within the unit.⁸ We shall, therefore, include them. However, they are to be included in the appropriate unit only so long as they retain their non-militarized status.⁹

Accordingly, we find that all production and maintenance employees of the Company at the Norfolk Terminal, including group leaders, watchmen and gatemen, but excluding clerical, professional, and technical employees, as well as all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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

⁶ See *Matter of Creamery Package Mfg. Co.*, 35 N. L. R. B. 108, 110.

⁷ See *Matter of Cannon Mfg. Co.*, 46 N. L. R. B. 592, 595.

⁸ *Matter of Nebraska Power Company*, 46 N. L. R. B. 601, 606-7.

⁹ *Matter of Dravo Corp.*, 52 N. L. R. B. 322.

herein, subject to the limitations and additions set forth in the Direction.¹⁰

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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Texas Company (Norfolk Terminal), Norfolk, Virginia, 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 Fifth 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 any 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 they desire to be represented by Oil Workers International Union, C. I. O., or by Independent Organization of Employees of The Texas Company (Norfolk Terminal), for the purposes of collective bargaining, or by neither.

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

¹⁰ The Union requested that it be designated on the pay roll "Oil Workers International Union, C. I. O., Local No. _____ (the number to be determined after a charter has been granted). We shall designate the Union on the ballot as "Oil Workers International Union, C. I. O." and it may move to amend the Direction, or any subsequent certification so as to designate the appropriate local.