In the Matter of The Texas Company and Oil Workers International Union, C. I. O.

Case No. 4-R-1239.—Decided November 8, 1943

Mr. Raymond J. Gengler, of New York City, and Mr. C. G. Cramer, of Claymont, Del., for the Company.

Mr. E. D. Hodson, of Wilmington, Del., and Mr. Jack Cardwell, of Chester, Pa., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Oil Workers International Union, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Texas Company, Claymont, Delaware, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Geoffrey J. Cunniff, Trial Examiner. Said hearing was held at Wilmington, Delaware, on October 18, 1943. The Company and the Union 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.

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

FINDINGS OF FACTS

I. THE BUSINESS OF THE COMPANY

The Texas Company is a Delaware corporation with its principal office at New York City. We are here concerned with its terminal at Claymont, Delaware, known as the Delaware River Terminal. The Company is engaged in the business of producing, refining, and marketing crude oil and products thereof. During 1942, the Company 53 N. L. R. B. No. 89.

shipped over \$100,000 worth of products handled at the Delaware River Terminal to points outside the State of Delaware. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Oil Workers International Union is a Labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During August 1943 the Union requested the Company to recognize it as the exclusive collective bargaining representative of the employees at the Delaware River Terminal. The Company refused this request until such time as the Union is certified by the Board.

On September 1, 1942, the Company and Brotherhood of Texaco Employees, herein called the Brotherhood, entered into an exclusive collective bargaining contract. The contract provides that it shall be in force until September 1, 1943, and thereafter unless 30 days' notice of a desire to be terminated is given by either party thereto. On August 16, 1943, the Brotherhood served notice of termination upon the Company. Inasmuch as the contract is terminable upon 30 days' notice it does not constitute a bar to a determination of representatives at this time.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.²

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

We find, in substantial agreement with a stipulation of the parties, that all operating and maintenance employees at the Delaware River Terminal of the Company, including non-technical testers and full-time plant-protection employees,³ but excluding technical, professional, and clerical employees, administrative employees and all super-

¹On September 10, 1943, a majority of the members of the Brotherhood voted to dissolve it and so notified the Company.

² The Regional Director reported that the Union presented 56 membership application cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of September 25, 1943 There are approximately 67 employees in the appropriate unit.

The plant-protection employees are not militarized

visory 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 means of 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.

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, Claymont, Delaware, 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 Fourth 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 or not they desire to be represented by Oil Workers International Union, C. I. O., for the purposes of collective bargaining.