

IN the Matter of THE TEXAS COMPANY and INTERNATIONAL UNION of
OPERATING ENGINEERS, LOCAL 552, A. F. of L.

Case No. 16-R-750.—Decided December 4, 1943

Mr. John C. Jackson, of Houston, Tex., and *Mr. H. A. Fouts*, of El Paso, Tex., for the Company.

Messrs. George F. Webber, J. E. Gilliland, and B. E. Tiller, of El Paso, Tex., for the A. F. of L.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Union of Operating Engineers, Local 552, A. F. of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of The Texas Company, El Paso, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before L. N. D. Wells, Jr., Trial Examiner. Said hearing was held at El Paso, Texas, on November 4, 1943. The Company and the A. F. of L. appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ 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

The Texas Company is a Delaware corporation with its principal office at New York City. We are here concerned with its oil refinery

¹ Although Employees' Representation Plan, herein called the Plan, intervened at the hearing it withdrew its intervention. It stated that it did not wish to participate in any election.

at El Paso, Texas. The Company is engaged in the business of producing, refining, and marketing crude oil and products thereof. During 1942, the Company processed over 100,000 barrels of petroleum at its El Paso refinery, over 10 percent of which was shipped to it from points outside the State of Texas. During the same period the Company shipped over 40 percent of the products from the El Paso refinery to points outside the State of Texas.

II. THE ORGANIZATION INVOLVED

International Union of Operating Engineers, Local 552, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During August 1943 the A. F. of L. requested the Company to recognize it as the exclusive collective bargaining representative of the employees at the El Paso refinery. The Company refused this request until such time as the A. F. of L. is certified by the Board.

On November 9, 1942, the Company and the Plan entered into an exclusive collective bargaining contract. The contract provides that it shall be in force until November 9, 1943, and thereafter until such time as the Company posts new rules or notice of termination. Neither the Company nor the Plan urges the contract as a bar. Inasmuch as the contract is terminable upon notice of the Company at any time, we find that it does not constitute a bar to a determination of representatives at this time.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the A. F. of L. 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 National Labor Relations Act.

IV. THE APPROPRIATE UNIT

The Union urges that all production and maintenance employees at the El Paso refinery of the Company, including stillmen and the head machinist, but excluding administrative, technical, supervisory, plant-protection, and clerical employees, constitute an appropriate unit. The only controversy with respect to the unit concerns stillmen.

² The Field Examiner reported that the A. F. of L. presented 33 authorization cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of September 15, 1943. There are approximately 57 employees in the appropriate unit.

The Company employs three stillmen, each of whom has from six to eight employees under him. The Union would include them in the unit whereas the Company would exclude them. The stillmen are in complete charge of the plant during the entire night shift and the latter part of the swing shift and have the authority to recommend the discharge of their subordinates. We find that the stillmen at the Company's El Paso refinery are supervisors, and as such, we shall exclude them from the unit.³

We find that all production and maintenance employees at the El Paso refinery of the Company, including the head machinist,⁴ but excluding administrative, technical, and plant-protection employees, stillmen, and any other 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 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Texas Company, El Paso, Texas, 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 Sixteenth 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

³ By this ruling we are in no way passing upon the status of stillmen employed at other refineries.

⁴ The record indicates that the head machinist is merely the most skilled machinist in the plant and that he does not exercise supervisory functions which would warrant his exclusion from the unit.

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 International Union of Operating Engineers, Local 552, A. F. of L., for the purposes of collective bargaining.