

In the Matter of DUVAL TEXAS SULPHUR COMPANY and SULPHUR
WORKERS UNION #23458

Case No. 16-R-690.—Decided December 17, 1943

Vinson, Elkins, Weems & Francis, by Messrs. Warren H. Dale and C. E. Bryson, of Houston, Tex., for the Company.

Mr. A. L. Crystal, of Houston, Tex., and *Mr. J. W. Park*, of Beaumont, Tex., for the Union.

Mr. Robert Silagi, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Sulphur Workers Union #23458, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Duval Texas Sulphur Company, Orchard, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert F. Proctor, Trial Examiner. Said hearing was held at Richmond, Texas, on August 27, 1943. 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. All parties were afforded an opportunity to file briefs with the Board.

On November 5, 1943, pursuant to an order of the Board reopening the record and upon due notice, a further hearing was held for the purpose of determining the exact supervisory status, if any, of employees of the Company classified as chief electrician, motor mechanic, plant engineer, driller, pipeline foreman, and rig builder foreman. Said hearing was held at Richmond, Texas, before Bliss Daffan, Trial Examiner. All parties 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 reopened hearing are free from prejudicial error and are hereby affirmed. All parties were afforded a further 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

Duval Texas Sulphur Company, a subsidiary of United Gas Corporation, is a Texas corporation engaged in the mining and marketing of crude sulphur. The Company operates a mine in Fort Bend County near Orchard, Texas. During the first 6 months of 1943, its sales of sulphur exceeded \$1,000,000, 92 percent of which represents sales to customers located outside the State of Texas.

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

II. THE ORGANIZATION INVOLVED

Sulphur Workers Union #23458, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.

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.¹

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 a unit comprised of all employees of the Company at the Orchard, Texas, plant, excluding office and warehouse clerks; timekeepers; the mine manager; chief and assistant chief plant engineers; plant, machine shop, carpenter, loading, and field foremen;

¹ The Field Examiner reported that the Union submitted 125 application-for-membership cards, 112 of which bore apparently genuine original signatures, and 10 of which bore printed signatures; that the names of 122 persons appearing on the cards were listed on the Company's pay roll of July 25, 1943, which contained the names of 163 employees in the alleged appropriate unit; and that all the cards were dated in June or July 1943 with the exception of 6 which were undated.

chemists and assistant chemists; and the mine engineer and assistant mine engineer. The Company agrees that the unit is substantially correct, but would exclude the following categories of personnel from the appropriate unit:

Defense watchmen. The record shows that since December 1941 the Company has enlarged its plant protection force from 4 to about 12. The new guards are termed "defense watchmen." The Company contends that inasmuch as defense watchmen will be discharged after the war, they are temporary employees, and should be excluded from the unit. There is uncontested testimony to show that both regular and defense watchmen alike perform the ordinary duties of plant protection employees. Although armed, they are not members of the Auxiliary Military Police or the Coast Guard Reserve. The evidence further shows that many watchmen have previously worked in other capacities at the plant, and at the end of the war will be given other jobs, if possible, before being laid off. Since no plausible reason exists for separating regular watchmen from defense watchmen, we shall include all watchmen in the appropriate unit.²

The Company contends that the employees in the following classifications are supervisors, and as such should be excluded from the unit under the doctrine established in the *Maryland Drydock* and *Douglas Aircraft* cases.³ The Union denies that they are supervisory employees and urges their inclusion in the unit. While it is conceded that none of the employees in question has authority to hire, the parties differ as to their alleged authority to discharge, recommend discharge, or otherwise effect changes in the status of their subordinates.

Chief electrician. The Company employs two electricians to take care of its electrical and lighting equipment about the plant and in the mines. One of the electricians is designated "chief electrician" and is paid on a salaried basis, whereas the other is an assistant and hourly paid. The chief electrician is engaged in the actual manual work of a journeyman electrician and is assisted by his helper; the chief electrician doing the intricate and complicated work and the helper performing the more routine operations.

Motor mechanic. The motor mechanic keeps all natural gas and gasoline motors in proper working order. He spends all of his time in actual manual labor, helped by his assistant. The motor mechanic does the complicated mechanical work and directs and supervises his helper in doing the less complicated work. As in the case of the chief electrician, the motor mechanic is a salaried employee whereas

² See *Matter of the Henrietta Mills (Caroleen plant)*, 44 N. L. R. B. 690; *Matter of Pittsburgh Limestone Corporation*, 53 N. L. R. B. 810; cf. *Matter of The Cleveland Electric Illuminating Company*, 52 N. L. R. B. 518; cf. *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

³ *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733, and *Matter of Douglas Aircraft Company, Inc.*, 50 N. L. R. B. 784.

the helper is hourly paid. Apparently the reason for placing the chief electrician and the motor mechanic on a salaried basis is that they are subject to call 24 hours a day.

Plant engineers. There are four plant engineers who work under the supervision of the power plant engineer. Each plant engineer is hourly paid and has a crew of either three or four men under his supervision. Each member of the crew has his own specific duties to perform and ordinarily does not need much supervision. As the name implies, plant engineers are responsible for the proper functioning of the engines used in the power plant of the Company. Plant engineers ordinarily work throughout the plant manually assisting their crew members in the operation of the various machines. At the hearing the Union amended its petition to exclude "chief, or assistant chief, plant engineer." The Company's counsel stated that there are no employees carried on the pay roll with those titles.

Drillers. As of the date of the reopened hearing, the Company employed six hourly paid drillers who work under the supervision of a field foreman. The job of a driller is a skilled one entailing specialized mechanical and geological knowledge. The job is also considered by the Company to be a responsible one since the driller, for the most part, supervises all work connected with the drilling of a sulphur well. The drilling crew consists of the driller and three driller helpers or "rough-necks." The driller keeps the time of his helpers. While the crew is engaged in the actual process of drilling the well, substantially all of the driller's time is spent operating the rig. When the machinery is not in operation, the driller joins the rough-necks in doing the manual labor incident to drilling a well. Approximately 25 percent of the driller's time is spent in this latter work.

Pipe line foreman. The pipe line foreman supervises a gang of men ranging from 3 to 12 who construct pipe lines for the Company. The pipe line foreman is hourly paid but at a substantially higher rate than the common laborers who work under him. Unlike the employees mentioned above, the pipe line foreman performs very little manual labor, but spends nearly all his time in supervising his crew.

Rig builder foreman. There is one rig builder foreman in the employ of the Company. Like the pipe line foreman he is hourly paid, but at a substantially higher rate than the dozen or so laborers who comprise his labor gang. The rig builder foreman is charged with responsibility of building and moving the derricks and rigs used in drilling for sulphur. Nearly all of his time is spent in supervision.

As to the chief electrician, motor mechanic, plant engineers, and drillers, it is apparent that they occupy positions comparable to that of master mechanics or journeymen in their respective crafts. The fact that they work with helpers, and perform direct and guide the

work of their helpers, does not, of itself, elevate them to such supervisory rank that they must be excluded from the broad production and maintenance unit.⁴ While they have authority to make recommendations with respect to their helpers, the record indicates that such recommendations do not go beyond those normally and customarily made by every skilled craftsman regarding his less skilled helpers. The record contains no evidence which indicates that either the chief electrician or the motor mechanic had ever discharged or recommended the discharge of his helper. As for the plant engineers, their immediate supervisor testified that he did not know whether they had ever been told that they had the authority to discharge; but in any event he knew of no instance where plant engineers had discharged their helpers.

There is considerable conflict in the evidence concerning the authority of the drillers over their helpers. Testimony was offered by the Company to the effect that drillers have authority to discharge their helpers. On the other hand no instance was cited where a driller had actually discharged a helper, and there is testimony to the effect that the authority of a driller is limited to reporting any dereliction of duty on the part of a helper to the field foreman for appropriate action by the latter. In this respect, the authority of the drillers is apparently similar to that of the pipe line welders employed by the Company who have one or more helpers working with them. Should a welder become dissatisfied with the work or conduct of his helpers, he would report his dissatisfaction to his immediate supervisor, the shop foreman, who would act upon the report in the same fashion as the field foreman acts upon the report of a driller. The Company does not contend that welders are thereby employees who should be excluded from the unit. In view of the evidence that discharges from the Company's operations are not a common occurrence, we are of the opinion that any authority to discharge vested in the drillers is both nebulous and at best only theoretical. In actual practice, decisions are made by supervisors with at least the rank of field foreman. We have generally included skilled workers such as these in appropriate units with their helpers.⁵ Accordingly, in the instant proceeding, we shall include the chief electrician, motor mechanic, plant engineers, and drillers in the unit appropriate for collective bargaining.

With respect to the pipe line foreman and the rig builder foreman, the record discloses that they have the authority to discharge members of their crews working under them. On at least one recent occasion the rig builder foreman exercised that authority. We shall there-

⁴ See *Matter of Victor Chemical Workers*, 52 N. L. R. B. 194.

⁵ See *Matter of Norwood Sash & Door Mfg. Co.*, 42 N. L. R. B. 678; *Matter of Bond Stores, Inc.*, 51 N. L. R. B. 1437.

fore exclude both the pipe line foreman and the rig builder foreman from the appropriate unit.

We find that all employees of the Company at its Orchard, Texas, plant, including all watchmen, the chief electrician, motor mechanic, plant engineers, and drillers, but excluding office and warehouse clerks; timekeepers; the mine manager; the power plant engineer;⁶ plant, machine shop, carpenter, loading, and field foremen; chemists and assistant chemists; the mine engineer and assistant mine engineer; the pipe line foreman; and the rig builder foreman, and all 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 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 Duval Texas Sulphur Company, Orchard, 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 of this Direction, including employees who did not work during said pay-roll period because they were ill or on

⁶This is intended to be the same person(s) whom the Union apparently incorrectly designated as "chief and assistant chief plant engineers."

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 Sulphur Workers Union #23458, affiliated with the American Federation of Labor, for the purposes of collective bargaining.