

In the Matter of PHILLIPS PETROLEUM COMPANY *and* INTERNATIONAL  
UNION OF OPERATING ENGINEERS, LOCAL 351

*Case No. 16-R-719.—Decided December 24, 1943*

*Mr. M. W. Eddleman*, of Bartlesville, Okla., for the Company.

*Mr. Harry Cochran*, of Borger, Tex., for the Union.

*Miss Frances Lopinsky*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, Local 351, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Phillips Petroleum Company, Borger, Texas, herein called the Company, the National Labor Relations Board consolidated the petition herein with another petition filed by the Union covering other employees of the Company<sup>1</sup> and provided for an appropriate hearing upon due notice before Robert F. Proctor, Trial Examiner. Said hearing was held at Amarillo, Texas, on November 9, 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. At the conclusion of the hearing, the Company moved the dismissal of the petition, alleging that the Board lacks jurisdiction in this matter. For reasons hereinafter given, the motion is denied. 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. A motion made by the parties to sever the instant case from Case No. 16-R-732 is hereby granted.

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

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<sup>1</sup> Case No. 16-R-732, 54 N. L. R. B. 86.

54 N. L. R. B., No. 10.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Phillips Petroleum Company, a Delaware corporation, maintains its principal office at Bartlesville, Oklahoma, with branch plants and offices located in various States. This proceeding concerns only the Company's "Plains Plant" located at or near Borger, Texas, wherein butane is processed to produce butadiene which is an essential element in the manufacture of synthetic rubber. The only raw material used in the Plains Plant is butane which is purchased and obtained from the Company's Borger Treater Plant which is located near the Plains Plant. All of the butadiene produced by the Company is sold to the Goodrich Tire and Rubber Company which operates a synthetic rubber plant adjacent to the Plains Plant. The value of butane used by the Company is estimated to be \$1,801,800 annually. The average annual value of the butadiene produced at capacity operations is estimated to be \$11,000,000. The Company has been in operation since July 16, 1943, and from that time to the time of the hearing used repair parts of a value of approximately \$50,000, and supplies essential to the operation of the plant of a value of approximately \$350,000, of which about 25 percent has been purchased from places outside of the State of Texas. The Borger Treater Plant obtains 5 percent of the gasoline used in the manufacture of butane from the Company's wells in New Mexico, and the balance from the Company's wells in Texas.

The Company denies that its operations affect commerce. The Company's raw materials are purchased and its product is sold within the State of its location; however a portion of its supplies and repair parts come to it from outside the State of Texas, and part of the butane used by the Company has its origin in New Mexico. Moreover, although the record contains no specific data with respect to the ultimate destination of the rubber produced by the Goodrich Tire and Rubber Company from the butadiene furnished by the Company, we take notice of the fact that the Goodrich Company's operations are at least nation-wide in scope and that the manufacture of synthetic rubber is essential for war purposes. We further note that the Plains Plant is merely a division of the Company which is admittedly engaged in interstate commerce.<sup>2</sup> We find that the operations of the Company at its Plains Plant affect commerce within the meaning of the National Labor Relations Act.<sup>3</sup>

<sup>2</sup> See *Matter of Phillips Petroleum Company*, 54 N L R B 86.

<sup>3</sup> *N L R B v. Fainblatt*, 306 U S 601; *Matter of Spandco Oil and Royalty Company*, 42 N L R B 942

## II. THE ORGANIZATION INVOLVED

International Union of Operating Engineers, Local 351, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company refused to recognize the Union as the exclusive bargaining representative of its employees because it doubted the appropriateness of the unit requested by the Union. A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of the employees of the Company in the appropriate unit.<sup>4</sup>

We find that a question affecting commerce has arisen concerning the representation of the 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 Company and the Union agree that the appropriate unit should consist of all the employees of the Phillips Petroleum Corporation's synthetic rubber plant at Borger, Texas, except janitors, supervisors, administrative, clerical, and technical employees, and the plant-protection force. They further agree to the exclusion of certain employees of the plant whose work renders them ineligible for membership in the Union.<sup>5</sup> The Company's agreement to the exclusion of these persons was based upon the dissimilarity of the work of these persons to that of the employees included in the unit. The Union would further exclude all graduate engineers employed by the Company in whatever capacity. The graduate engineers whom the Union would exclude are employed not in a professional capacity, but as ordinary skilled workmen. The Union insists that these employees have been promised rapid promotion to technical positions. However the record indicates no support for the Union's position in this respect. The Company contended that it makes no distinction between graduate engineers and other employees, and as this contention was borne out by the record, we perceive no reason for excluding graduate engineers as such from the unit.

We find that all employees of the Phillips Petroleum Corporation's synthetic rubber plant at Borger, Texas, but excluding janitors, ad-

<sup>4</sup>The Field Examiner reported that the Union submitted 92 authorization cards, all of which bear apparently genuine original signatures, 81 of which correspond with names of persons whose names appear on the Company's pay roll of August 31, 1943, which contained the names of 233 persons in the appropriate unit

<sup>5</sup>These employees are telephone operator, cook, draftsmen, general duty nurses, laundress, librarian, messengers, PBX operator, PBX relief operator, warehouseman and buyer, junior design draftsman, and associate design draftsman

ministrative, clerical, and technical employees, plant-protection employees, and 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.<sup>6</sup>

#### 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 Phillips Petroleum Company, Borger, 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 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 International Union of Operating Engineers, Local 351, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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

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<sup>6</sup> The parties agreed that this unit excludes the shift foreman whose work is supervisory, and includes the catalyst operators who we find are not supervisory employees.