

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

Case No. 16-R-732.—Decided December 28, 1943

Mr. E. Waite Clark, 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,¹ 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. 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-719 is hereby granted.

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

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

¹ Case No. 16-R-719, 54 N. L. R. B. 51.

54 N. L. R. B., No. 18.

offices located in various States. This proceeding concerns only the Company's refinery located at Phillips, Texas, where it is engaged in the general business of producing, manufacturing, and refining petroleum and related products. The Company receives at its refinery crude petroleum and natural gasoline from various producing wells in Texas and New Mexico. The amount of material received in interstate commerce and the amount of refined products shipped by the Company to points outside the State of Texas is of substantial quantity in monetary value and volume. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

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 has refused to recognize the Union as the exclusive bargaining representative of the employees of the Tank Car Division of the Transportation Department at its Phillips Plant until the Union is 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 the Company's employees in the appropriate unit.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

The parties agree that all non-supervisory employees of the Tank Car Division of the Transportation Department of the Company's Phillips Plant constitute an appropriate unit. The only matter in dispute is the inclusion or exclusion of the assistant foreman in the Division. The Union would exclude this employee on the ground that his duties are supervisory and clerical. The Company, however, contends for his inclusion on the ground that he spends seven-eighths of his working time doing the same work as the men who are included in the unit and that his clerical duties consist merely of checking invoices and are insignificant in nature. The assistant fore-

²The Field Examiner reported that the Union submitted 11 authorization cards, all of which bore apparently genuine original signatures; that 10 of the said signatures correspond with the names of persons whose names are on the Company's pay roll of September 20, 1943, which contains the names of 14 persons in the appropriate unit.

man can neither hire nor discharge employees in the department, and his recommendations thereon carry no greater weight than those of other employees. Under the circumstances, it is our opinion that the assistant foreman is essentially a production employee and that the supervisory and clerical duties which he performs are not sufficient in importance or in time spent to warrant his exclusion from the unit. We find that all employees in the Tank Car Division of the Transportation Department of the Phillips Petroleum Company Plant at Phillips, Texas, including the assistant foreman, but excluding clerical, administrative, and technical 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.

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, Phillips, 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.