

In the Matter of THE TEXAS COMPANY and OFFICE EMPLOYEES UNION
#22977 AFFILIATED WITH A. F. OF L.

Case No. 16-R-763.—Decided January 20, 1944

Messrs. Frank L. Wallace and W. R. Moser, of Port Arthur, Tex., and Mr. John C. Jackson, of Houston, Tex., for the Company.

Messrs. J. W. Park, C. A. Stafford, and A. G. Tomblin, of Beaumont, Tex., for the AFL.

Mr. J. Elro Brown, of Port Arthur, Tex., for the C. I. O.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Office Employees Union #22977, Affiliated with the A. F. of L., herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of The Texas Company, Port Arthur, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles E. Persons, Trial Examiner. Said hearing was held at Port Arthur, Texas, on November 18, 1943. The Company and the Union¹ 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 an 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, a Delaware corporation with its principal offices in New York City, is engaged in the production, refining, and

¹ A representative of the Oil Workers International Union, (CIO) Local No. 27, herein called the CIO, appeared without formally intervening, for the purposes of defining the jurisdiction of the CIO under a contract which it has with the Company.

marketing of crude oil and its byproducts. It operates a refinery and a terminal at Port Arthur, Texas, with which this proceeding is concerned. Approximately 90 percent of the finished products of the Company is transported to states other than the State of Texas and to foreign countries by pipe line, railroad cars, and tankers.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Office Employees Union #22977 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.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 Union requests a unit composed of all clerical and office workers at the Company's Port Arthur Terminal and Port Arthur Works, including clerks, junior clerks, senior clerks, supervisory clerks, and comptometer operators, excluding department heads, engineers, draftsmen, chemists, material checkers on the hourly pay roll,³ office boys and girls, and the librarian for the laboratory. The Company has no objection to the broad unit requested, but desires the exclusion of numerous employees on the ground that they are supervisory employees or that their work is confidential in nature. The Union agrees that the employees hereinafter named in Appendix I, are confidential and those named in Appendix II are supervisory employees; and that both groups should be excluded from the unit. The Union contests all other exclusions requested by the Company.

² The Field Examiner reported that the Union submitted 182 authorization cards, 168 of which bore apparently genuine original signatures corresponding with the names of persons appearing on the Company's pay roll of October 31, 1943, which contained the names of 425 employees in the appropriate unit.

³ These material checkers are included in a unit represented by the CIO.

Some of the confidential employees named in Appendix I are private secretaries to executives of the Company who formulate labor policies, others are employed in the Industrial Relations Department of the Company and have access to information concerning labor relations. As all of these come within our usual definition of confidential employees, we agree with the parties that they should be excluded from the unit.

The employees listed in Appendix II, although classified on the Company's pay roll as clerks, senior clerks or supervising clerks, are in fact heads of their respective departments and direct the activities of all persons employed therein. We agree with the parties that these persons are supervisory employees and shall exclude them from the unit.

The Company contends for the exclusion of all of the employees of the cashier's department⁴ as confidential employees because they work on the "private" pay roll. The private pay roll contains the names of all salaried employees in the plant. Since the nature of the confidential information to which they have access has no direct bearing on labor relations, we shall not exclude employees of the cashier's department, as such, from the unit.⁵ We agree with the Company, however, that certain persons,⁶ classified on the Company's pay roll as clerks and stenographers, who work as secretaries to department heads who formulate labor policies and handle grievances within their own departments, are confidential employees and should be excluded from the unit.

The Company contends for the exclusion of 30 other employees⁷ on the ground that they are supervisory employees. These employees outline the work for small groups of clerks and are responsible for its execution. They have authority to make recommendations concerning discipline, transfer, and discharge of their subordinates, an authority exercised by them in varying degrees dependent upon their individual personalities. They are paid an average of 10 percent more than the people they supervise. All perform clerical work but it is generally of a special character. Since these employees fall within our customary definition of supervisory employees, we shall exclude them from the unit.

We find that all clerical and office employees of the Company at its refinery and terminal at Port Arthur, Texas, including clerks,⁸

⁴ Appendix III lists all non-supervisory employees of the cashier's department.

⁵ See *Matter of Firestone Tire & Rubber Co. of Calif.*, 50 N. L. R. B. 679; *U. S. Smelting, Refining & Mining Co.*, 53 N. L. R. B. 84.

⁶ Listed in Appendix IV.

⁷ Listed in Appendix V.

⁸ All clerks of whatever classification not specifically excluded are hereby included. The unit also covers those clerks who were promoted to that classification from the classification, material checker.

stenographers, comptometer operators, and employees of the cashier's department, but excluding department heads, engineers, draftsmen, chemists, material checkers on the hourly pay roll, office boys and office girls, the librarian in the laboratory, confidential 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 The Texas Company, Port Arthur, 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 Office Employees Union #22977, Affiliated with A. F. L. for the purposes of collective bargaining.

APPENDIX I

S. T. Gregory	Elsie Gruetaner
Irene V. Ahlbom	Howard C. Nichols
Rose M. Calvert	Jos. A. Willbank
Raymond M. Davis	W. E. Scott

APPENDIX II

E. C. Forque	T. C. Roddy
F. R. Keith	M. C. Franklin
W. W. Butler	F. E. Walker
Lawrence McCarley	H. R. Chandler
N. A. Romero	R. T. DeLaureal
C. M. S. O'Neil	C. H. Rayser

APPENDIX III

J. S. Carr	J. B. Thomson
Euclid Hudson	Stella Wells
J. C. Trahan	

APPENDIX IV

Kenneth W. Schultz	Callie Matise
Collis M. Williamson	Willie May Wunderle
Harry A. Williams	Ruth E. Bracken

APPENDIX V

L. B. Williamson	C. A. Lartigue
A. R. Lacy	W. C. Kent
J. I. Sweeney	Olga Waite
Robert Chiasson	Lessie Johnson
R. C. Savoie	J. E. Brenizer
John Whitmeyer	G. L. Hall
Arthur Grote	L. S. Crawford
E. F. Graham	D. Speyrer
K. W. Schulze	W. F. Hunt
S. A. Lewis	A. D. Smith
W. C. Robinette	R. R. Finley
P. H. LaGrone	C. T. Long
J. D. Hill	H. C. Otey
Leslie McInnis	J. E. Hoffpauir
A. C. Sudduth	J. A. Crain