

In the Matter of THE GULF OIL CORPORATION and OIL WORKERS INTERNATIONAL UNION, LOCAL UNION NO. 23, C. I. O.

Case No. 16-R-789.—Decided February 23, 1944

Messrs. Rufus J. Lackland and Jno. E. Green, Jr., both of Houston, Tex., and *Mr. B. H. Barnes*, of Port Arthur, Tex., for the Company.

Mr. Lindsay P. Walden, of Fort Worth, Tex., and *Messrs. M. J. Trombley, W. M. Akin, and Homer Coffman*, all of Port Arthur, Tex., for the Oil Workers.

Messrs. H. V. Smith and E. R. Winstel, both of Port Arthur, Tex., for the Boilermakers.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, Local Union No. 23, C. I. O., herein called the Oil Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of The Gulf Oil Corporation, Port Arthur, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gustaf B. Erickson, Trial Examiner. Said hearing was held at Port Arthur, Texas, on January 21, 1944. The Company, the Oil Workers, and the International Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers of America, Port Arthur Local No. 305, herein called the Boilermakers,¹ 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 Boilermakers moved at the hearing for a dismissal of the petition herein on the ground that a presently existing contract between the Company and the Boilermakers constitutes a bar thereto. The Trial Examiner reserved ruling upon this motion for the Board. For reasons herein-

¹As hereinafter set forth, we take notice of the fact that the Boilermakers is affiliated with the American Federation of Labor.

after stated, 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 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 Gulf Oil Corporation, a Pennsylvania corporation, is engaged in all branches of the petroleum industry, producing and marketing over 650 petroleum products in various States, sales of which are handled through approximately 1,100 plants, and 300,000 retail outlets. The Company controls extensive production, pipe line, refining, marine, and marketing facilities, which carry its products among the several States and into foreign countries. The Company also operates a refinery at Port Arthur, Texas, with which we are concerned herein. Said refinery is engaged in the refining of crude oil and the production of gasoline, kerosene, lubricating oil, and other petroleum products. The Port Arthur refinery receives approximately 4,200,000 barrels of crude oil per month, of which about 25 percent is received from points located outside the State of Texas. Said refinery produces a monthly average of approximately 1,680,000 barrels of gasoline, 185,000 barrels of kerosene, 450,000 barrels of furnace oil, 330,000 barrels of lubricating oil, and 2,000,000 pounds of various types of greases, over 50 percent of which is sold at points located outside the State of Texas. In addition to the foregoing, said refinery has terminal facilities for loading railroad tank cars and deep water vessels. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union, Local No. 23, is a labor organization affiliated with the Congress of Industrial Organizations admitting to membership employees of the Company.

International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, Port Arthur Local No. 305, 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 grant recognition to the Oil Workers as the exclusive bargaining representative of the employees involved

in the proceeding herein until the Oil Workers has been certified as the representative of such employees by the Board. The Boilermakers contends that its contract with the Company constitutes a bar to the instant proceeding.

On August 26, 1938, subsequent to negotiations conducted between the Company and the Boilermakers, the former addressed a letter to the International president of the latter, incorporating therein the results of the aforesaid negotiations. This letter is signed only by a representative of the Company. However, both the Company and the Boilermakers have, since the date of execution thereof, and at all times up to the present date, recognized this document as constituting the contract between them.² Without passing upon the question of whether or not this document constitutes a contract or a mere working arrangement between the parties,³ we are of the opinion that since said document specifically provides that it may be modified at any time after August 26, 1939, upon one month's notice by either party, it is at best a contract of indefinite duration, and hence no bar to the instant proceeding.⁴

A statement of the Field Examiner introduced into evidence at the hearing, indicates that the Oil Workers and the Boilermakers represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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

Substantially in accordance with an agreement of the parties, we find that all employees of the Company engaged in its Port Arthur, Texas, refinery, as boilermakers, welders, layer-outs, riveters, blacksmith, inspectors, burners, riggers, tankmen, punch and shear men, buckers, heaters, caulkers, and their apprentices and helpers, excluding all supervisory employees with authority to hire, promote, discharge,

² The Company is presently operating under similar arrangements with other labor organizations

³ Cf. *Matter of Daily Mirror, Inc.*, 5 N. L. R. B. 362, 366.

⁴ *Matter of American Radiator and Standard Sanitary Corporation*, 35 N. L. R. B. 172; *Matter of Alleghany Ludlum Steel Corporation*, 40 N. L. R. B. 1285

⁵ The Field Examiner reported that the Oil Workers submitted 127 membership cards, of which 117 appear to contain genuine and original signatures; that 99 of the cards bearing apparently genuine and original signatures contain the names of persons appearing upon the Company's pay roll of December 1, 1943; and that said pay roll contains a total of 225 names. He further reported that the Boilermakers submitted 126 authorization cards, all of which appear to bear apparently genuine and original signatures; that 121 of these cards contain the names of persons appearing upon the afore-mentioned pay roll.

The record indicates that the Boilermakers presented at the hearing five additional cards bearing apparently genuine original signatures and containing the names of persons appearing upon the afore-mentioned pay roll.

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.⁶

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 Gulf Oil Corporation, 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 they desire to be represented by Oil Workers International Union, C. I. O., Local No. 23, or by Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers of America, Local 305, for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.

⁶ The Oil Workers requested at the hearing that it be designated on the ballot as "Oil Workers International Union, C. I. O., Local No. 23," and at the same time the Boilermakers requested that it be designated thereon as "Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers of America, Local 305" Both requests are hereby granted.