

In the Matter of PHILLIPS PETROLEUM COMPANY and OIL WORKERS  
INTERNATIONAL UNION (CIO)

In the Matter of PHILLIPS PETROLEUM COMPANY and OIL WORKERS  
INTERNATIONAL UNION (CIO)

Cases Nos. 16-R-790 and 16-R-806 respectively.—Decided February  
29, 1944

Messrs. M. W. Eddleman, and Rex McRoy, of Bartlesville, Okla., for  
the Company.

Mr. Lindsay P. Walden, of Fort Worth, Tex., and Mr. B. T. Kirby,  
of Oklahoma City, Okla., for the C. I. O.

Messrs. Jack Johannes and Jeff Hassel, Jr., of Dallas, Tex., for the  
Independent.

Miss Melvern R. Krelow, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon petitions duly filed by Oil Workers International Union (CIO), herein called the C. I. O., alleging that questions affecting commerce had arisen concerning the representation of employees of Phillips Petroleum Company, Bartlesville, Oklahoma, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Gustaf B. Erickson, Trial Examiner. Said hearing was held at Oklahoma City, Oklahoma, on January 14, 1944. The Company, the C. I. O., and Associated Oil Field Workers' Union, herein called the Independent, 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. During the hearing, the C. I. O. moved that it be permitted to introduce evidence to support its allegation that the Independent is a successor to Federated Independent Oil Workers of Oklahoma City District, Inc., which the Board ordered disestablished as company-dominated,<sup>1</sup> and for that reason

<sup>1</sup> *Matter of Phillips Petroleum Company*, Cases Nos. C-2697 and R-4921, issued August 18, 1943.

the Independent's intervention should be denied. The Trial Examiner denied the motion. The ruling is hereby affirmed.<sup>2</sup> 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

Phillips Petroleum Company, a Delaware corporation having its principal operating office in Bartlesville, Oklahoma, is engaged in the production, refinement, sale, and distribution of petroleum products. In the Company's operation within an area which is described as the Oklahoma City District of the Gasoline Division, located in and around Oklahoma City, Oklahoma, the Company is engaged in the manufacture, sale, and distribution of natural gasoline, liquefied petroleum gas products, gas, and other related products. During 1942, the Company in its operations in the Oklahoma City District, which is here involved, produced in excess of \$2,500,000 worth of petroleum products, of which more than 50 percent was shipped to points outside the State of Oklahoma. There has been no substantial change in the nature of the Company's operations in the Oklahoma City District during 1943. 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, affiliated with the Congress of Industrial Organizations, is a labor organization, admitting to membership employees of the Company.

Associated Oil Field Workers' Union, is an unaffiliated organization admitting to membership employees of the Company.

#### III. THE QUESTIONS CONCERNING REPRESENTATION

On December 3, 1943, the C. I. O. requested the Company to bargain with it as the exclusive representative of the Company's employees. On December 13, 1943, the Company replied that it would not recognize either the C. I. O. or the Independent in the absence

<sup>2</sup> Subsequent to the hearing, the C. I. O. filed a motion to reopen the record in order to introduce evidence regarding the successorship of the Independent similar to that which it sought to adduce at the hearing. On February 9, 1944, the Independent filed an answer in opposition to the C. I. O.'s motion. On February 21, 1944, the C. I. O. requested permission to withdraw the motion. The request is hereby granted.

of proper proof of authority to represent a majority of the Company's employees in an appropriate bargaining unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the units hereinafter found appropriate.<sup>3</sup>

We find that questions affecting commerce have 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 UNITS

The C. I. O. contends that all operating and maintenance employees in the gasoline division of the Company in the Oklahoma City District, including employees in the Edmond plant, and watchmen, but excluding office, supervisory, clerical, meter department, and technically trained (including laboratory testers) employees, and guards constitute an appropriate unit. The Independent is in general agreement with the C. I. O., but maintains that clerical employees (other than executive department clerks and stenographers, and chief clerks), meter department employees, and laboratory testers, should be included within the unit. The Company took no position with respect to the unit, except to state that the unit found appropriate in Case No. R-4921<sup>4</sup> is equally appropriate in this proceeding.<sup>5</sup>

The clerical employees engage in duties normally associated with employees in that category. Inasmuch as we have customarily excluded clerical employees from production and maintenance units, and since no compelling argument has been advanced as to why we should depart from that practice, we shall exclude clerical employees from the unit.<sup>6</sup>

<sup>3</sup> The Field Examiner reported that in Case No. 16-R-790 the C. I. O. submitted 86 authorization cards, 69 of which bore apparently genuine signatures; that the names of 69 persons appearing on the cards were listed on the Company's pay roll of January 1, 1944, which contained the names of 198 employees in the appropriate unit; and that 57 cards were dated between March and December 1943, 12 were undated.

The Field Examiner further reported that the Independent submitted 116 authorization cards; that the names of 106 persons bearing apparently genuine signatures and appearing on the cards were listed on the Company's pay roll of January 1, 1944, and that the cards were dated in August, September, November and December 1943.

The Field Examiner also reported that in Case No. 16-R-806 the C. I. O. submitted five authorization cards bearing apparently genuine signatures, and dated in November and December 1943, all of which bear the names of persons whose names appear on the Company's pay roll of January 1, 1944. Said pay roll contains the names of eight employees in the appropriate unit. The Independent did not submit any evidence of representation among these employees and at the hearing admitted that it had no representation among them. We shall, therefore, not accord the Independent a place on the ballot in the election hereinafter directed among such employees.

<sup>4</sup> *Matter of Phillips Petroleum Company*, 48 N. L. R. B. 248.

<sup>5</sup> The unit previously found appropriate by the Board is substantially the same unit as is contended for herein by the C. I. O., except that the laboratory or plant testers were not excluded.

<sup>6</sup> See *Matter of Ballentine Packing Company*, 42 N. L. R. B. 15; *Matter of The Collins Company*, 46 N. L. R. B. 680; *Matter of Pan-American Petroleum Corporation*, 46 N. L. R. B. 916.

The Company employs five metermen in the meter department.<sup>7</sup> Two of the employees spend all of their time in repairing meters; the three remaining metermen also test gas in conjunction with the gas tester. We are of the opinion that these employees are maintenance employees, and as such have interests in common with the other maintenance employees included within the unit. We shall, therefore, also include the metermen.<sup>8</sup>

With respect to the laboratory testers, classified as plant testers and assistant plant testers, it appears that they perform routine tests on gas, gasoline, oil, and water. While some of these employees have a high school education with some academic training in chemistry, such educational background is not a requirement. Since they are an integral part of the production process, and perform no duties requiring technical training, we shall include them within the unit.<sup>9</sup>

We find that all operating and maintenance employees in the gasoline division of the Company in the Oklahoma City District, including employees in the Edmond plant, watchmen, metermen, plant testers, and assistant plant testers, but excluding clerical, and technically trained employees, guards, 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>10</sup>

The C. I. O. contends that all guards in the gasoline division of the Company in the Oklahoma City District, including the Edmond plant, constitute a separate appropriate unit. The Company and the Independent took no position with respect to the unit. The guards, who are militarized, engage in duties normally associated with employees in that category.<sup>11</sup>

We find that all guards in the gasoline division of the Company in the Oklahoma City District, including the Edmond plant, but excluding 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

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<sup>7</sup> As far as the record indicates, these five metermen apparently comprise the meter department.

<sup>8</sup> See *Matter of Commercial Solvents Corporation*, 45 N. L. R. B. 141.

<sup>9</sup> See *Matter of Gardner-Denver Company*, 44 N. L. R. B. 1192; *Matter of The Flintkote Company*, 42 N. L. R. B. 929; *Matter of Commercial Solvents Corporation*, 45 N. L. R. B. 141; *Matter of The Barrett Division, Allied Chemical & Dye Corporation*, 46 N. L. R. B. 45.

<sup>10</sup> The parties agreed, and we find, that the following classifications of employees should be excluded from the unit as falling generally within one or more of the excluded categories: District superintendent, maintenance superintendent, chief gas engineer, gas testers, instrument and control man, special agent, material clerk, chief clerk, plant foreman, rack foreman, gang pushers, paint foreman, senior engineers, associate engineers, junior engineers, plant superintendent, chief operators, and chief engineers.

<sup>11</sup> Guards were excluded from the production and maintenance unit found appropriate in the prior decision involving the Company's employees. See footnote 4, *supra*.

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 questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

#### DIRECTION OF ELECTIONS

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, Bartlesville, Oklahoma, elections 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 units 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 elections, to determine, in Case No. 16-R-790, whether they desire to be represented by Oil Workers International Union (CIO), or by Associated Oil Field Workers' Union, for the purposes of collective bargaining, or by neither, and in Case No. 16-R-806, whether or not they desire to be represented by Oil Workers International Union (CIO), for the purposes of collective bargaining.