

In the Matter of THE TEXAS PIPELINE COMPANY and OIL WORKERS
INTERNATIONAL UNION, CIO

Case No. 16-R-777.—Decided March 2, 1944

Messrs. John C. Jackson and R. B. McLaughlin, of Houston, Tex.,
and *Mr. Y. A. Land*, of Tulsa, Okla., for the Company.

Mr. Lindsay P. Walden, of Fort Worth, Tex., and *Mr. A. L. Har-*
desty, of Tulsa, Okla., for the Union.

Mr. Charles W. Schneider, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Oil Workers International Union, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Texas Pipeline Company, Oklahoma Division, Tulsa, Oklahoma, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer Davis, Trial Examiner. Said hearing was held at Tulsa, Oklahoma, on January 11 and 12, 1944. 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. Both parties were afforded 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 Pipeline Company is a Texas corporation doing business as a common carrier in the States of Texas, Oklahoma, Louisiana, Illinois, Indiana, and Montana. The Company operates approximately 6,474 miles of trunk and gathering pipe lines within said States for the gathering and transportation of crude oil.

During 1943 the Company transported at least 55,000,000 barrels of crude oil and petroleum products, approximately 20,000 barrels of which were transported through the Company's Oklahoma lines. A major portion of the oil originating within the State of Oklahoma is transported through the Company's lines to points in States other than Oklahoma. A portion of the oil originating in the State of Texas is transported through the Company's lines to points within the State of Oklahoma. The present proceedings involve only the Oklahoma Division of the Company.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Oil Workers International Union is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 30, 1943, the Union requested recognition as the collective bargaining representative of employees in the Oklahoma Division. On November 10, 1943, the Company declined to recognize the Union until it had been certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

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 contends that all production and maintenance employees in the Oklahoma Division of the Company, excluding clerical and supervisory employees, constitute an appropriate unit. The Company contends that the appropriate unit should be system-wide. In addition, there is dispute between the parties as to the supervisory or managerial status of a number of classifications of employees.

The main office of the Company is at Houston, Texas, at which point its operations and basic policies are determined and directed. However, for administrative purposes, the system is divided into six divisions, of which Oklahoma is one, each under a superintendent

¹ The statement discloses that the Union submitted applications for membership bearing the apparently genuine signatures of 75 persons whose names appeared on the Company's November 15, 1943, pay roll. The said pay roll listed approximately 171 employees in the appropriate unit.

responsible for its operation. Working conditions are generally uniform throughout the system. There is some interdivisional interchange of employees. However, the organizational activities of the Union have not as yet extended beyond the Oklahoma and the South Texas divisions. In a previous case involving the latter division we held that the extent of organizational activity and the administrative set-up of the Company indicated the feasibility of divisional bargaining, and found such a unit appropriate.² We deem the same considerations applicable here.

The parties are in dispute as to the following groups of employees, the Union contending that they should be included, the Company that they should be excluded as supervisors or representatives of management:

Chief tour engineers: Chief tour engineers, of whom there are 3, are in charge of important pumping stations. They are responsible for the proper operation of the station and the maintenance of efficient work standards. The operating crews at these stations consist of from 7 to 10 men, spread over 3 shifts. The chief tour engineer supervises these employees and keeps their time records. He also makes daily and monthly reports of oil runs. Generally, the chief works the daylight shift, and while on duty actually operates the pumping equipment. He is responsible to the chief dispatcher for efficient operation of the station and is subject to call 24 hours a day. Although there is dispute as to the extent of his supervisory authority, we find that the chief has authority to make effective recommendations with respect to the tenure of employees at his station. We shall therefore exclude chief tour engineers from the appropriate unit.

Tour engineers: The Company employs approximately 10 tour engineers. These men operate the pumping station equipment, make minor repairs, gauge tanks, and in general, see that the pumping equipment is properly maintained. Ordinarily, a gauger or combination gauger-fireman works the same shift with the tour engineer. At some stations, however, there is no one to assist the engineer. While there is dispute as to the supervisory status of these employees, we find that they are essentially skilled workmen whose function is to operate the pumping equipment, and that they are not supervisory employees. They will therefore be included in the unit.

Gang foremen: Gang foremen work directly under connection foremen. The latter are admittedly supervisors. The connection foremen lay out, or plan, the work of gangs a week in advance. It is then the function of the gang foremen to carry out this plan. There are 3 such foremen, each in charge of a gang of from 8 to 17 men. They perform

² *Matter of The Texas Pipe Line Company*, 53 N L R B. 431.

no manual labor. While they have no power to hire or discharge, their recommendations with respect thereto are accorded weight. Gang foremen will therefore be excluded from the unit as supervisory employees.

Assistant gang foremen: The assistant gang foreman exercises all the functions of the gang foreman when the latter is absent. While he may perform manual labor at times, he is not required to do so. Although he has no power to hire or discharge, his recommendations with respect thereto are accorded weight. Assistant gang foremen will be excluded from the unit as supervisors.

District gaugers: District gaugers, of whom there are 15 in the division, arrange for the transfer of oil from the tanks of producing companies into the Company's pipe lines. When a producer desires the Company to transport his oil, the district gauger reports that fact to the district foreman, who directs the connection foreman to make the proper connections, and the district gauger is instructed to run the oil. The district gauger then meets the pumper for the customer. Together they gauge the customer's tank, and make tests for basic sediment, water, gravity, and temperature, following which the gauger fills out a "run sheet," containing the appropriate data, which he and the pumper sign. The oil is then turned into the Company's line. After the oil has been run, the gauger and the pumper make an additional report, copies of which are forwarded to the customer and the Company. If the oil is not up to specifications, or if he and the pumper disagree as to the specifications, the gauger is without authority to accept it, and must report the facts to the division superintendent. He also makes daily and monthly reports on oil runs, and is responsible generally for ascertaining damage to equipment and for gathering information on activities of producing companies in his area. He is instructed, however, not to solicit business. There are no employees under his supervision.

The Company contends that the district gauger is a representative of management and should therefore be excluded from the unit. We are of the opinion, however, that the duties of the district gauger are purely ministerial. He reports definitely ascertainable facts, and exercises no such discretion or independent judgment as to classify him as a managerial representative. The district gaugers will therefore be included in the unit.³

Welder foremen: There are three welder foremen in the Oklahoma Division. As a rule they work under the direct supervision of the

³ In *Matter of Empire Pipeline Company*, 46 N. L. R. B. 1341, we excluded district gaugers from a production and maintenance unit as managerial representatives. In that case, however, the Company was a purchaser of oil, all of which was bought by the district gaugers, dealing in an open and competitive market. In the instant case, the Company is a common carrier. There is no evidence that the district gaugers here are charged with a similar responsibility, or that they exercise any such managerial judgment in accepting oil for shipment as is involved in its purchase for profitable resale.

connection foreman. When manual labor is required in connection with welding, the welder foreman supervises a gang of from two to eight laborers and welders. In addition he does welding. In the absence of the connection foreman, the welder foreman is in complete charge of the gang. While he has no power to hire or discharge, the welder foreman has authority to send men off the job for misconduct, and they have been instructed to follow his orders. Under such circumstances we will exclude the welder foremen as supervisory employees.

Assistant master mechanics: There are two of these employees in the division. They work under the supervision of the master mechanic. Their function is to repair and maintain mechanical equipment. They work with hand tools and are usually assisted by a first class mechanic. Occasionally they may be assigned extra help. They have no authority to hire or discharge. While the mechanics and helpers receive instructions from the assistant master mechanic, we deem the relationship to be that of craftsman and helper, rather than of supervisor and subordinate. We shall therefore include the assistant master mechanics in the unit.

Chief stock and delivery gauger: There is one such employee in the division. He is charged with the operation of a tank farm and pump house. When the station is pumping, he supervises four gaugers and one or more tour engineers. He is directly responsible to the chief oil dispatcher, reports infractions of rules, and keeps the records of employees under his supervision. While he spends approximately 75 percent of his time performing some kind of work, the chief stock and delivery gauger recommends disciplinary action with respect to his employees, and his recommendations are accorded weight. He will therefore be excluded as a supervisory employee.⁴

In accordance with the foregoing, we find that all production and maintenance employees of the Oklahoma Division of the Company, including carpenters, local engineers, stock and delivery gaugers, laborers, district line-walkers, main line-walkers, first-class mechanics, second-class mechanics, mechanics' helpers, stock gaugers, stock gauger-oilers, stock gauger-firemen, stock gauger-watchmen, electric station operators, painters, pipe liners, truck drivers, station utility men, welders, tour engineers, district gaugers, and assistant master mechanics, but excluding clerks, division chief clerks, junior field clerks, senior field clerks, chief main line engineers, telephone and telegraph foremen, assistant telephone and telegraph foremen, district foremen, roving linemen, paint foremen, tankage foremen, master

⁴ The Union submitted in evidence copies of contracts with various oil and pipe-line companies in the area for the purpose of showing an historical practice of bargaining in the industry on behalf of the disputed categories of employees. We do not find that the contracts disclose such a practice.

mechanics, telegraphers, chief telegraphers, troublemen, superintendents, assistant superintendents, chief clerk, cost record clerk, right-of-way agents, stenographers, tank inspectors, connection foremen, dispatchers, chief tour engineers, gang foremen, assistant gang foremen, welder foremen, and chief stock and delivery gauger,⁵ and also excluding all other clerical employees, and other 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 means of 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 Pipeline Company, Tulsa, Oklahoma, 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 any 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 Oil Workers International Union, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

⁵ Except for the employment categories about which they were in dispute, the parties stipulated that the above inclusions and exclusions were appropriate.