

In the Matter of THE GLOBE OIL & REFINING COMPANY and OIL WORKERS INTERNATIONAL UNION, C. I. O.

*Case 13-R-2206.—Decided April 14, 1944*

*Messrs. Lee C. Shaw and Thomas C. Strachan, Jr., of Pope and Ballard, and John W. Dorgan, all of Chicago, Ill., for the Company.*

*Mr. R. T. Aylor, of Argo, Ill., for the C. I. O.*

*Messrs. A. L. Sullivan and John J. Shasky, of Lemont, Ill., for the Independent.*

*Miss Kate Wallach, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of The Globe Oil & Refining Company, Lemont, Illinois,<sup>1</sup> herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George S. Freudenthal, Jr., Trial Examiner. Said hearing was held at Chicago, Illinois, on February 23 and 25, 1944. The Company, the C. I. O., and the Independent Oil Workers Association of Lemont, Illinois, 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. 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 Globe Oil & Refining Company is an Illinois corporation engaged in the refining, preparation, and distribution of petroleum

<sup>1</sup> At the hearing the Trial Examiner granted the Company's motion to amend the petition to correctly designate the Company as set forth above.

products at its refinery and bulk plant in Lemont, Illinois.<sup>2</sup> During the calendar year 1943, approximately 75 percent of the raw petroleum processed at the Lemont operations was shipped from points outside the State of Illinois; during the same period more than 15 percent of the finished products, valued in excess of \$50,000, was shipped from the Lemont operations to points outside the State of Illinois.

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, C. I. O., affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Independent Oil Workers Association of Lemont, Illinois, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Union, by letter of November 4, 1943, notified the Company that it represented a majority of the Company's production and maintenance employees and requested a collective bargaining conference. The Company, by letter of November 24, 1943, declined to recognize the Union on the ground that it had a contract with the Independent.

On June 11, 1940, the Independent entered into a written contract with the Company for its members only, this contract to continue in effect for a period of 1 year, thereafter until terminated by either party on 30 days' written notice. On November 4, 1943, the contract was amended with respect to seniority and leave provisions only. The Company and the Independent contend that this contract, as amended, is a bar to an election to determine representatives. Inasmuch as the contract has, however, been in effect for more than 3 years and is terminable by either party upon 30 days' notice,<sup>3</sup> and also since it is by its terms specifically limited to coverage of members of the Independent,<sup>4</sup> we find that it is not a bar to a determination of representatives.

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 unit hereinafter found appropriate.<sup>5</sup>

<sup>2</sup> The Company maintains three additional bulk plants at Bay City, Holland, and Ecorse, Michigan.

<sup>3</sup> *Matter of Phelps-Dodge Refining Corporation*, 40 N. L. R. B. 1159; *Matter of Carrier Corporation*, 46 N. L. R. B. 1319.

<sup>4</sup> See *Matter of Elgin National Watch Company*, 53 N. L. R. B. 855.

<sup>5</sup> The Field Examiner reported that the C. I. O. submitted 118 application cards, all of which bore apparently genuine original signatures; that the names of 108 persons appearing on the cards were listed on the Company's pay roll of January 7, 1944, which contained the names of 206 employees in the appropriate unit, and that 36 cards were dated September 1, 1943; 25, October 1943; 36, November 1943; 10, December 1943; and 1, January 1944.

The Independent relies on its contract to establish its interest.

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 C. I. O. requests a unit of production and maintenance employees, excluding clerical, technical, bulk plant, and plant protection employees. The Independent, however, would exclude only the following technical employees: the draftsmen, engineer, chemical engineer in the engineering department, and the safety engineer in the personnel department. The Company agrees with the contentions of the Independent but would also exclude trained chemists.

*Office clerical employees.* The Company employs various categories of clerical employees which appear under the office divisions of its pay roll. They include clerks, typists, secretaries, switchboard operators, etc. The Independent and the Company would include all such employees in the unit. Since the status and functions of clerical employees are essentially different from those of the employees who do manual labor, our usual practice has been to exclude office and clerical employees from a unit composed of production and maintenance employees. With two exceptions<sup>6</sup> all the employees in the office division work in a separate office building. Interchange of personnel to and from the office division is not customary. We therefore see no reason for departing from our customary practice; we shall exclude all office clerical employees from the unit.<sup>7</sup> We shall likewise exclude Joseph Spencer, who, although his name does not appear on the office division pay roll, is engaged primarily in running errands for the office division under the supervision of the chief clerk and whom we therefore regard as a member of that division.

*Laboratory division employees.* The laboratory division consists of a control laboratory and a research laboratory; both are in the same building and under the direction of the chief chemist. The personnel of the research laboratory includes 11 graduate chemists and 4 assistant chemists. The graduate chemists are required to have at least 4 years' college training or equivalent experience. At least 2 years' college training is necessary for the assistant chemists. As stated above, the Independent would include both groups, the Company would exclude the chemists only, and the C. I. O. would exclude both chemists and assistant chemists. In view of the higher degree of training and skill required for the duties of both groups in the research

<sup>6</sup> Two employees, Mary Jane Wilcox and Marian Futterer, are assigned to the laboratory as secretary to the chief chemist and as a typist, respectively. They are, however, under the supervision of the chief clerk.

<sup>7</sup> *The Texas Co.*, 33 N. L. R. B. 1214, 1218; *Pan American Refining Corp.*, 35 N. L. R. B. 725.

division, we shall exclude from the unit chemists and assistant chemists in the research laboratory.<sup>8</sup>

The work in the control laboratory consists of checking specifications of materials received and products shipped. The personnel consists of four day testers, four No. 1 testers, four tester helpers, and two octane operators who perform routine tests requiring no technical training and who work the same hours and the same number of shifts as do the employees in the processing units. The C. I. O. would include all of these employees with the exception of the octane operators and the day testers which latter employees it contends are supervisory employees. The work in the department is performed in three shifts. The day testers each direct one shift and assign work and are responsible for its performance; they are paid at a slightly higher rate of pay than the other employees in the control laboratory. Although they are referred to as "shift supervisors" in the amended "Working Agreement" of November 4, 1943, they do not make any recommendations as to the hiring and discharge of employees and are not listed as supervisors on the Company's pay roll. We are of the opinion that the day testers do not fall within our customary definition of a supervisory employee; accordingly, we shall include them within the unit. The octane operators test the antiknock quality of gasoline by machine. The performance of their task requires no special training and, like that of the testers, is of a routine nature which can be exercised after a short period of actual experience. We are of the opinion that the octane operators should be included in the unit; accordingly, we shall include them.

*Bulk plant employees.* Relying on their previous bargaining history, the Company and the Independent contend that the bulk plant employees should be included in the unit; the C. I. O., although admitting bulk plant employees to membership, points to the usual practice in the oil industry and to its contracts in the Chicago area which recognize separate units for bulk plant employees. However, the evidence does not establish that the contracts entered into by the C. I. O. covered operations of such an integrated nature as is present here. The bulk plant was constructed in 1936; it is located about 100 yards from the refinery from which it is separated by a State highway and railroad tracks. It consists of storage tanks for finished products and truck loading facilities. The employees in the bulk plant load the Company's products on trucks belonging to independent distributors. The other employees in the transfer division, of which the bulk plant is a part, are similarly engaged in loading the Company's products on barges and tank cars;<sup>9</sup> the C. I. O. has no objection

<sup>8</sup> See *Matter of Indian Refining Co.*, 44 N. L. R. B. 774, 776, *Matter of Shell Development Co., Inc.*, 38 N. L. R. B. 192

<sup>9</sup> Products shipped by tank car and barge are loaded on the premises of the refinery.

to the inclusion of these employees. The distribution from the bulk plant accounts for more than 70 percent of the total product of the plant, and thus constitute an integral part of the shipping operations carried on in the transfer division of the Company.

The same pay roll covers both refinery and bulk plant employees, and seniority is on an operation-wide basis. The bulk plant employees use the same time clock as the refinery employees and have locker rooms and shower facilities in common. There also has been a substantial interchange of employees between the refinery and the bulk plant; since 1940, 24 employees have been transferred to the bulk plant and during the same period 15 employees have transferred from the bulk plant to other departments. Since seniority is operation-wide and the duties and working conditions of the bulk plant employees are the same as those of the other employees in the transfer division whose inclusion in the unit is not questioned, and in view of the fact that the bulk plant employees in the past have been represented in the same unit with the remaining production and maintenance employees of the Company, we shall include them in the unit.<sup>10</sup>

*Plant clerical employees.* There are four billers in the bulk plant who keep records of shipments of gasoline by truck who work under the supervision of the bulk plant foreman. Two clerks and a messenger, Daniel McRae, are detailed to the warehouse where they are under the supervision of the warehouseman, who in turn is responsible to the maintenance foreman. All of these plant clericals were included in the unit represented by the Independent and appear on the pay roll of the Company as maintenance employees. Since the work of these employees is so closely allied to that of the production and maintenance employees with whom they work under common supervision, we shall include them in the unit.

*Supervisory employees.* The supervisory status of J. F. Schomig and L. T. Babb is in dispute. Both men are carried on the Company's pay roll as subforemen, and the Company and the Independent request their exclusion; the C. I. O. would include them.

Schomig is a compressor maintenance subforeman in charge of maintaining and repairing gas driven compressor engines. He is under the direction of both the maintenance foreman and the pump repairman subforeman. Prior to May 1943, when he was given an increase in salary, he was classified as a first-class mechanic. Since that time, however, his work and responsibilities have not changed substantially. He performs his work alone a majority of the time and is only occasionally assigned a helper. Babb is classified as a still-cleaning

<sup>10</sup> See *Matter of Wadham's Division of Socony-Vacuum Oil Co.*, 54 N. L. R. B. 1164; *Matter of Socony Vacuum Oil Co.*, 34 N. L. R. B. 236; *Matter of Magnolia Petroleum Co.*, 18 N. L. R. B. 380, 393.

subforeman. He devotes approximately one-quarter of his time to cleaning out the various stills. At regular intervals he is assigned crews of from 2 to 20 men for cleaning the stills, but has no regular crew for this purpose. Babb spends the balance of his time on repair work without assistance. We are of the opinion that both Schomig and Babb do not have supervisory authority within our customary definition. We shall, therefore, include both of these employees in the unit.

*Plant protection employees.* The Company employs 10 militarized guards. In accordance with our usual policy, we shall exclude them from the unit.<sup>11</sup>

The Company employs, in addition, five night watchmen whom it expects to be sworn into the auxiliary military police shortly. The C. I. O. requests their inclusion, the Company and Independent their exclusion. We find that since these five night watchmen are not militarized at the present time, they are more properly included within the unit. We shall, therefore, include them. However, they are to be included in the unit only so long as they retain their non-militarized status.<sup>12</sup>

We find that all production and maintenance employees at the Company's Lemont plant, including control laboratory employees (including day testers and octane operators), non-militarized watchmen, bulk plant employees (including billers), warehouse clerks and messenger, and the compressor maintenance and still cleaning subforemen, but excluding draftsmen, engineers, chemical engineers in the engineering department, safety engineers in the personnel department, armed militarized guards, chemists, assistant chemists, office clericals and messenger, 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.

<sup>11</sup> *Matter of Standard Oil*, 48 N. L. R. B. 1291, 1294.

<sup>12</sup> *Matter of The Texas Co.*, 53 N. L. R. B. 436

## 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 Globe Oil & Refining Company, Lemont, Illinois, 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 Thirteenth 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 they desire to be represented by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or by Independent Oil Workers Association of Lemont, for the purposes of collective bargaining, or by neither.