

In the Matter of UNITED GAS PIPE LINE COMPANY and OIL WORKERS
INTERNATIONAL UNION, CIO

Case No. 16-R-871.—Decided May 18, 1944

Vinson, Elkins, Weems & Francis, by *Mr. W. O. Crain*, of Houston, Tex., for the Company.

Mr. Sidney Cohen, of Fort Worth, Tex., for the Union.

Mrs. Margaret L. Fassig, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a 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 United Gas Pipe Line Company, Shreveport, Louisiana, 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 Dallas, Texas, on March 31, 1944. The Company and the Union 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

United Gas Pipe Line Company is a Delaware corporation and is engaged in the States of Texas, Louisiana, Alabama, Florida, and Mississippi in the purchase, transportation, and sale at wholesale of natural gas. The Company's headquarters are in Shreveport, Louisiana, but the instant proceeding is concerned only with what is known

as the Dallas District which has its office located on a company plat or camp just outside the city limits of Dallas, Texas. The Dallas District encompasses generally an area extending west as far as Fort Worth, east to a point near the Texas-Louisiana line, and south to a point near Center, Texas, and including the towns of Groveton and Huntsville, Texas. The Company sells natural gas to distributing companies for various municipalities, industrial consumers, and to Government agencies within the district. During the month of February 1944, the Company transported and sold through its lines within the district, 5,615,502,000 cubic feet of natural gas. Of this amount, 3,880,391,000 cubic feet was produced within the district and 1,735,111,000 cubic feet was transported into the district from the Shreveport, Louisiana, district. Sales within the district within the same period of time amounted to 2,953,597,000 cubic feet. Some natural gas is transported from the Dallas District into Louisiana and other States in which the Company operates. However, it is commingled in the lines, and figures are not available as to the amount produced within the State of Texas which is transported to other States.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.¹

II. THE ORGANIZATION INVOLVED

Oil Workers International Union, affiliated with the Congress of Industrial Organizations, 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 in its Dallas District until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, 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.

¹ See *Matter of Union Producing Company and associated companies, United Gas Pipe Line Company and Houston Gulf Gas Company*, 53 N. L. R. B. 1287

² The Field Examiner reported that the Union had submitted 41 membership application cards; that the Company's pay roll contained the names of approximately 80 employees in the appropriate unit; that the cards were dated as follows: 30 in February and 11 in March 1944; and that the rate of turn-over for a period of 6 months immediately prior to March 21, 1944, was 9 percent per month.

IV. THE APPROPRIATE UNIT

A. *Scope of the unit*

The Union contends that the production and maintenance employees of the Company who work under the supervision and direction of the Company's Dallas, Texas, District Manager, subject to certain specific inclusions and exclusions, constitute a unit appropriate for collective bargaining purposes. The Company contends that the district unit claimed by the Union is inappropriate, and that the only unit which would be appropriate for collective bargaining purposes would be one comprised of the production and maintenance employees of not only this Company but also of the Union Producing Company, Houston Gulf Gas Company, and the United Oil Pipe Line Company, all of which are affiliated with the subject Company, on the basis that the four companies together constitute an integrated system for the production, gathering, transporting, and delivering of oil and gas.

In a prior proceeding involving this same company³ and its affiliates, the Company made the same contention, but the Board nevertheless found appropriate on the basis of the limited scope of organization of the Union, petitioner in that case, two separate appropriate units, consisting of the San Antonio and Beeville districts. The record in this proceeding indicates that there has been no substantial change in the situation with respect to the operations of the Company or the organization or division of its employees into administrative geographical units. Furthermore, it still appears, as in the prior proceeding, that no labor organization has yet organized the employees on the basis of a system-wide unit. Therefore, for the same reasons as those set forth in our decision in the prior representation proceeding, we are of the opinion that although the operations of the four affiliated companies are closely integrated and coordinated, the employees under the supervision and direction of the Company's Dallas, Texas, District Manager presently constitute a separate unit appropriate for collective bargaining purposes. This conclusion, however, will not preclude a later redetermination of the question of the appropriateness of a company-wide or system-wide unit.

B. *Constituency of the bargaining unit*

The Union contends that all production and maintenance employees of the Company who work under the supervision and direction of the Company's Dallas, Texas, District Manager, including meter inspectors, dispatchers, telegraphers, and warehouse clerks, but excluding office and clerical employees, technical, professional, admin-

³ See footnote 1, *supra*

istrative, and supervisory employees, constitute an appropriate bargaining unit. Subject to its contention relative to the scope of the unit, the Company agrees to the appropriateness of the categories of employees to be included and excluded in the bargaining unit, and further, requests that all employees classified by the Company as temporary be excluded from the bargaining unit. The Company classifies as temporary the following:

- (a) Any person employed in a regularly established position in any department of our organization for a period of less than three months, such three months' period to be calculated from the date of employment to the corresponding day of the third month following;
- (b) All persons (other than regular employees already on our payroll) specifically employed for a construction job;
- (c) Employees (other than regular employees already on our payroll) of Plant Reclassification, Inventory and Appraisal Departments, or other such special groups that may be set up;
- (d) All persons employed in designated occupations caused by the national emergency.

The employees covered by the provisions of paragraph (a) will be discussed hereinafter in Section V.

At the time of the hearing there were no employees covered by paragraphs (b) and (c) above, within the Dallas District, and the Company did not expect to have any such employees within a period of at least 6 months. The Union agreed to the exclusion of any such employees from the bargaining unit. We are of the opinion that the categories of employees referred to in paragraphs (b) and (c) are properly excluded from a unit of production and maintenance employees, and accordingly we shall exclude them from the unit.

The only category of employees covered by the description in paragraph (d) is that of armed guards. There are five or six guards employed within the district. The Company's guards were formerly militarized, but the militarization program has been abandoned and the guards have been demilitarized, although they still are armed, and some of them carry deputy commissions. The Union agreed to the exclusion of the guards. Although we do not subscribe to the Company's contention that the exclusion of these employees is warranted by the fact that they are employed only for the duration of the war,⁴ we find that they may be properly excluded from the unit of production and maintenance employees as a separate functional group, and accordingly we shall exclude the armed guards.

Therefore we find, in substantial accordance with the agreement of the parties, that all production and maintenance employees of the

⁴ See *Matter of Emerson Radio & Phonograph Co.*, 53 N. L. R. B. 1359.

Company who work under the supervision and direction of the Company's Dallas, Texas, District Manager, including meter inspectors, dispatchers, telegraphers, and warehouse clerks, but excluding office and clerical employees, technical, professional, and administrative employees, armed guards, temporary construction employees, temporary employees in the Plant Reclassification, Inventory, and Appraisal Departments, or other such special groups, and 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 purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The Union agreed with the Company that the Company's regular part-time employees and its employees described in paragraph (a), Section IV B, *supra*, who have not completed their 3-month probationary period of employment should be ineligible to vote in the election.⁵ Although the Company considers these employees as "temporary," they are employed in regularly established positions and will be reclassified as "regular" employees upon successful completion of a 3-month probationary period. It appears they have a substantial expectancy of permanent employment. We find, therefore, that they are eligible to vote in the election.⁶

The Company has approximately six regular part-time employees who change the charts at the Company's stations. At some stations the meters have 24-hour charts which must be changed daily, and at other stations the charts are changed weekly. Therefore, some of these part-time employees work a few hours each day and others work only a few days out of each month. They usually do not work more than 10 percent of a normal workday for this Company, and most of them are employed full-time by other companies or are self-employed as farmers. However, there is no indication in the evidence that these part-time employees work on any different basis than full-time employees as to rates of pay, duties, or other conditions of employment. The Board does not regard the regular employment of these part-time employees by other employers as precluding their right to participate in the election of representatives. We have frequently in the past declared regular part-time employees eligible to vote for bargaining

⁵ At the time of the hearing there were four or five persons who had been employed in regular positions as laborers for less than 3 months

⁶ See *Matter of Nineteen Hundred Corporation*, 32 N. L. R. B. 327, and cases cited therein; also *Matter of Indian Refining Company*, 44 N. L. R. B. 774, and cases cited therein.

representatives,⁷ and therefore find here that all part-time employees regularly employed by the Company are eligible to vote.

The Company urges that all employees within the appropriate unit who are in the armed forces of the United States be permitted to vote by mail. The Union did not take any position on this matter. Since, as we fully stated in *Matter of Mine Safety Appliances Co., etc.*, 55 N. L. R. B., No. 215, it is administratively impracticable to provide for mail balloting of employees on military leave who are unable to appear at the polls and a safeguard has been established for their interests, only those employees in the armed forces of the United States who present themselves in person at the polls will be permitted to vote.

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 United Gas Pipe Line Company, Shreveport, Louisiana, 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, and the findings in Section V, above, 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 Oil Workers International Union, CIO, for the purposes of collective bargaining.

⁷ See *Matter of Wagner Folding Box Corporation*, 49 N. L. R. B. 346, and cases cited therein.