

In the Matter of THE TEXAS COMPANY and OIL WORKERS INTERNATIONAL UNION, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 16-R-888.—Decided May 23, 1944

Messrs. John C. Jackson, of Houston, Tex., *F. S. Dengler*, of Port Neches, Tex., and *W. R. Moser*, of Port Arthur, Tex., for the Company.

Messrs. F. H. Mitchell and *S. S. Crane*, of Port Neches, Tex., for the Union.

Mr. William Whitsett, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Texas Company, Port Neches, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert F. Proctor, Trial Examiner. Said hearing was held at Beaumont, Texas, on April 18, 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

The Company is a Delaware corporation with its principal office in New York City. It is engaged in the production, transportation,

refining, and sale of petroleum and related products. The Company's plant located at Port Neches, Texas, called the Port Neches Works, is the only one involved in this proceeding. During 1943 the Port Neches Works produced petroleum products of substantial quantity and value, of which more than 30 percent was shipped to points outside the State of Texas.¹

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

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 clerical and office employees 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.

IV. THE APPROPRIATE UNIT

The Union seeks a unit composed of all office and clerical employees but excluding employment supervisors, first-aid nurses, engineers, chemists, confidential and private secretaries, chief clerks and assistant chief clerks, superintendents, and assistant superintendents. The Company contends that head clerks, the storekeeper, and the cashier should likewise be excluded as supervisory employees and a part of management; and that counter men, whom the Union seeks to include in the office-clerical unit, are already a part of a production and maintenance bargaining unit and should therefore be excluded.

¹ Since, for military reasons, the Company objected to a further disclosure of its operations, we take judicial notice of the facts in this regard appearing in the record of a prior proceeding before the Board. *Matter of The Texas Company, Port Neches Refinery*, 28 N. L. R. B. 590.

² The Field Examiner reported that the Union submitted 34 cards which bore apparently genuine original signatures; that the names of 31 persons appearing on the cards were listed on the Company's pay roll of April 1, 1944, which contained the names of 64 employees in the appropriate unit; and that all the cards were dated during March 1944.

There are four head clerks, one each for the general office, shipping, stock, and time departments. The record shows that these head clerks have no power to hire or discharge employees; that their duties require them to make recommendations as to the status of employees and that their recommendations are given weight and effect; that over 75 percent of their time is devoted to supervising and instructing subordinates; that all receive higher pay than other employees in their department; and that employees look upon them as their supervisors. For these reasons, we shall exclude the head clerks from the unit.

The storekeeper can effectively recommend action affecting changes in the status of five full-time and two part-time employees who serve in the storehouse under his supervision. We shall, therefore, exclude him from this unit.

There are three counter men who work under the supervision of the storekeeper. They receive and check all materials entering and leaving the warehouse. About 50 percent of their work is clerical and they are supervised by the office-clerical division of the Company. However, their contacts are predominantly with employees of the operating unit rather than with office or clerical employees, and their line of promotion is generally into the operating unit rather than into office-clerical positions. The Union would include the counter men in its unit because of the clerical nature of their duties; the Company would exclude them because in a previous Board election they were included in the operating unit and are presently represented by the Union in that unit. Under the circumstances of this case, we are persuaded that the position of the Company is correct. Because of the community of interest and associations of these employees with employees in the operating unit, and because of the prior practice, acquiesced in by both the Company and the Union, of including them in the operating unit, we are of the opinion, and we find, that they should be excluded from the office-clerical unit herein found appropriate.

The cashier of the general office performs no routine clerical work except in connection with the private pay roll which is of a confidential nature. He is invested with duties of great trust. The performance of his duties has nothing in common with office and clerical employees. We shall therefore exclude him from the unit.

We find that all office and clerical employees of the Company at its Port Neches, Texas, plant, but excluding employment supervisors, first-aid nurses, engineers, chemists, confidential and private secretaries, chief clerks, assistant chief clerks, head clerks of the general office, of the shipping department, of the stock department, and of the time department, the cashier of the general office, the storekeeper, counter men in the storehouse, superintendents and assistant superintendents, and all 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 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 Company, at its Port Neches Works, Port Neches, 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 the 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, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.