In the Matter of MAGNOLIA PETROLEUM COMPANY *and* OIL WORKERS INTERNATIONAL UNION, C. I. O.

Case No. 16–R–895.—Decided August 30, 1944

Messrs. Roy J. Ledbetter and *J. C. Field*, of Dallas, Tex., appearing specially for the Company.

Mr. Lindsay P. Walden, of Fort Worth, Tex., for the Oil Workers.

Mr. J. W. Hassell, Jr., of Dallas, Tex., for the Association.

Mr. Robert Silagi, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, C. I. O., herein called the Oil Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Magnolia Petroleum Company, Dallas, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Longview, Texas, on June 24, 1944. The Company, the Oil Workers, and Associated Petroleum Employees, herein called the Association, 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.

At the hearing, both the Company and the Association moved to dismiss the petition. The Trial Examiner referred the motion to the Board for ruling. For reasons stated in Section III, *infra*, the motion is granted. 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

Magnolia Petroleum Company is a Texas corporation having its principal offices and place of business in Dallas, Texas. The Company

is engaged in the production, purchase, refining, and sale of petroleum and petroleum products in the States of Arkansas, Louisiana, Illinois, New Mexico, and Texas. A substantial amount of the Company's production of petroleum and petroleum products is transported through interstate channels of trade in the States herein mentioned.

For the purposes of this proceeding 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 Petroleum Employees, an unaffiliated labor organization, admits to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

As the result of a cross-check agreement entered into by the Company and the Association, in November 1941 the Regional Director for the Sixteenth Region designated the Association as the majority bargaining representative of the Company's field and plant employees working in the East Texas Field. Four months later, on March 6, 1942, the Company and the Association entered into a contract covering the employees of this field, as well as employees in an area much larger than originally involved in the cross-check agreement. The contract was for the term of 1 year from the date of its execution and thereafter until abrogated by either party. Subsequently, the contract was modified by 3 supplemental agreements entered into on May 29, June 16, and August 16, 1942, respectively. On December 17, 1943, the parties entered into a "Revised Agreement" bearing the effective date of January 26, 1944.[1] This contract, like the one executed in 1942, is for a term of 1 year and is to remain in effect thereafter until terminated upon the demand of either party. On February 21, 1944, the petitioner notified the Company that it represented a majority of its employees in the northern part of the East Texas Field. On March 27, 1944, certain clauses in the contract pertaining to the substitution of vacation time for sick leave were deleted.

The Company and Association contend that their contract of 1944 bars a present investigation into the question concerning representation. The Oil Workers, however, argues that the contract is no bar

[1] The contract provides that it shall be deemed an offer by the Company to the Association, "which shall remain in force for a period of 30 days until submitted to and approved by the Association . . ." Although the contract was executed by the Company on December 17, 1943, it was not signed by the Association until January 26, 1944.

for the following reasons: The contract of 1944 is not a new contract but merely a "revision, amendment and reduction of said contracts to this single agreement." Since the 1944 agreement is merely a continuation of the 1942 contract, the petitioner alleges that the contract renewed itself from year to year, and most recently renewed itself on March 6, 1944. The Oil Workers also contends that the contract of 1944 was not validly executed in that it was not approved by the Association within the 30-day limit from the time that it was executed by the Company, as called for in the contract. The Oil Workers further argues that assuming that the contract of 1944 was validly executed, by modifying its terms on March 27, 1944, the parties reopened their contract, in which event the petitioner's notice of claim to representation was timely.

We disagree with the contentions of the Oil Workers. The petitioner's interpretation of the contract as being one which renewed itself from year to year is contrary to the express declarations of the parties in their contract. There can be no question but that the contract dated March 6, 1942, had a definite term of life until March 6, 1943, and that thereafter it was terminable upon demand of either party. If the Oil Workers had presented its claim to representation prior to January 26, 1944, up to which time the contract remained terminable at will, it is clear the contract would have constituted no bar to a determination of representatives. However, on January 26, 1944, the parties executed a new agreement for the definite term of 1 year. Since the 1942 contract was terminable at will and since the Company at that time was not confronted with any conflicting claims to representation, it was free to enter into any agreement with the Association that it desired.[2] Whether the agreement of January 26 be deemed a revision[3] of the 1942 contract or a new agreement, it is clear that the terms thereof were specifically made binding upon the parties until January 26, 1945. Nor can its validity be attacked because of the failure of the Association to sign the contract within the 30 days provided for therein; compliance with the 30-day option clause was a requirement that the Company was obviously free to waive under accepted contract principles. Since the Oil Workers' claim to representation was not made until 1 month after the contract of January 26, 1944, was signed by both the Company and the Association, it follows that such contract is a bar to the instant proceeding.

[2] Cf. *Matter of Wichita Union Stockyards Company*, 40 N. L. R. B. 372, where, unlike the present case, the parties to a contract entered into a new agreement in advance of the definite termination date provided for in the existing contract.

[3] The contract provides that it "shall not be construed as novating, terminating or canceling (the 1942 contract and its supplements), but rather a revision, amendment and reduction of said contracts into this single agreement to the end that the rights, duties and obligations of the parties shall, . . . be determined solely and exclusively by this agreement."

As to the revision of the contract made on March 27, 1944, we do not believe that this is the kind of modification which would reopen the contract so as to make the petition of the Oil Workers timely.[4] The modification was made pursuant to a clause in the contract which provides that "Nothing (therein) shall be construed as limiting the right of the parties to amend or supplement this contract by agreement during the time it is in force." The revision does not extend the term of the contract and was made pursuant to authority identical with that existent under the 1942 contract by which the first, second, and third supplemental agreements thereto were admitted to be validly made.

In view of our findings above, we conclude that no question concerning representation has arisen concerning the representation of the employees of the Company within the meaning of Section 9 (c) of the National Labor Relations Act. Inasmuch as we shall dismiss the petition on the grounds set forth above, we find it unnecessary to discuss the matter of unit. However, we express serious doubt as to the appropriateness of the unit sought herein, in view of the bargaining history on a wider basis disclosed by the present record.

ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Magnolia Petroleum Company, Dallas, Texas, filed by Oil Workers International Union, C. I. O. be, and it hereby is, dismissed.

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

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[4] See *Matter of Green Bay Drop Forge Company*, 57 N L. R. B 1417