

In the Matter of FREEPORT SULPHUR COMPANY and SULPHUR AND  
CHEMICAL WORKERS UNION, LOCAL NO. 21195, A. F. L.

*Case No. 16-R-943.—Decided August 30, 1944*

*Vinson, Elkins, Weems & Francis, by Messrs. Warren J. Dale and  
C. E. Bryson, of Houston, Tex., for the Company.*

*Mr. Robert D. Collins, of Freeport, Tex., for the Union.*

*Mr. Herbert C. Kane, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Sulphur and Chemical Workers Union, Local No. 21195, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Freeport Sulphur Company, Freeport, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Glenn L. Moller, Trial Examiner. Said hearing was held at Freeport, Texas, on July 13, 1944. The Company and the Union appeared and participated, were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Subsequent to the hearing, the Union filed a Motion for New Hearing with the Board. The motion is hereby denied. 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

Freeport Sulphur Company is a Delaware corporation licensed to do business in the State of Texas. The Company's main office is in New York City and its principal operations are carried on at Hoskins

57 N. L. R. B., No. 295.

Mound, Texas, known as the Freeport plant, and at a plant located at Port Sulphur, Louisiana. Only the Freeport plant is involved in the instant proceeding.

The Company is engaged in the marketing and mining of sulphur obtained from its mine at Hoskins Mound and shipped and marketed through the Company's office in Freeport, Texas. During the year 1943, the Company produced and shipped from its Freeport plant products valued in excess of \$1,000,000, of which more than 80 percent was shipped to points outside the State of Texas.

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

## II. THE ORGANIZATION INVOLVED

Sulphur and Chemical Workers Union, Local No. 21195, affiliated with the American Federation of Labor, 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 certain of its 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.<sup>1</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 1 (c) and Section 2 (6) and (7) of the Act.

## IV. THE APPROPRIATE UNIT

The Union desires a unit consisting of all production and maintenance employees at the Company's Freeport plant, excluding technical, clerical and supervisory employees. The Company agrees that a production and maintenance unit is appropriate, disagreeing with the Union only as to certain fringe groups and employees who spend some of their working time in the performance of supervisory duties.

The Company has divided its employees into seven groups<sup>2</sup> with respect to the degree of supervisory authority they possess. These groups have been accepted by the Union as substantially correct. The parties agree that groups I through V are supervisors within the

<sup>1</sup>The Field Examiner reported that the Union submitted 174 application cards that the names of 167 persons appearing on the cards were listed on the Company's pay roll of May 15, 1944, which contained the names of 335 employees in the appropriate unit, and that 149 of these cards were dated January 7 to May 21, 1944, that 9 were dated June 1944, and that 9 were undated.

<sup>2</sup>Company's Exhibits Nos 4-11

Board's customary definition. They likewise agree that the employees in group VI with the exception of drillers, do not possess supervisory status. As to the drillers, the record reveals that they are merely skilled craftsmen who have assistants assigned to them. They have no supervisory authority and any complaint concerning their assistants is independently investigated by the foreman to whom such complaint is made. We find that drillers possess no more supervisory power than the other employees in group VI and, accordingly, we shall include them in the unit.

There remains the problem of the disposition of some 20 employees in groups VI and VII who are sometimes employed in a supervisory capacity. Some of the employees regularly act as foremen one day a week in the absence of the regular foremen.<sup>3</sup> Others are temporarily designated to fulfill supervisory duties in emergencies caused by the addition of an extra shift or the absence of the regularly assigned foremen. Since the former employees, when performing supervisory functions, assume the full authority and responsibilities and exercise all the rights and privileges of foremen, we shall exclude them from the unit.<sup>4</sup> However, the latter employees, whose supervisory duties are purely of a temporary and sporadic character, appear to have interests more closely allied with those of the ordinary production employees than with those of the supervisors. We shall, therefore, include them in the unit.

We find that all production and maintenance employees at the Freeport (Hoskins Mound) plant, including drillers,<sup>5</sup> but excluding guards,<sup>6</sup> technical and clerical employees, foremen, including regular part-time foremen, and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action,<sup>7</sup> 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 em-

<sup>3</sup> The Company operates 7 days a week and the employees work 6 days a week.

<sup>4</sup> See *Matter of Latona Refining Corporation*, 49 N. L. R. B. 488; *Matter of Ford Motor Company*, 54 N. L. R. B. 82.

<sup>5</sup> Included in the unit are the employees designated by the Company as Group VI and Group VII, except those who regularly act as foremen.

<sup>6</sup> This category does not include ordinary production and maintenance employees who occasionally work a shift as guards in order to make up time lost, but who are neither armed nor deputized as are the regular guards.

<sup>7</sup> Among the employees excluded are all the employees designated by the Company as Groups I through V, and those in Groups VI and VII who regularly act as foremen one day a week in the absence of the regular foremen.

ployees 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.

The Company requests that employees who are serving in the armed forces of the United States be permitted to vote by mail. In accordance with our usual policy, however, we shall deny the Company's request and direct that only those employees on military leave who present themselves in person at the polls shall be permitted to vote.<sup>8</sup>

### 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Freeport Sulphur Company, Freeport, 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 Sulphur and Chemical Workers Union, Local No. 21195, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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

<sup>8</sup> See *Matter of Mine Safety Appliance Company*, 55 N. L. R. B. 1190.