

IN THE MATTER OF CITIES SERVICE REFINING CORPORATION and LAKE CHARLES METAL TRADES COUNCIL, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Case No. 15-R-1174.—Decided September 4, 1944

Messrs. Sam H. Jones and Edward Everitt, Jr., of Lake Charles, La., and Mr. Henry C. Walker, of Shreveport, La., for the Company.

Messrs. George McSpangler, W. T. McKain, H. A. Roach, T. K. Stitzlein, and Wylie B. Oliver, of Lake Charles, La., and Mr. Leo Carter, of New Orleans, La., for the Council.

Mr. Arvil Inge, of Fort Worth, Tex., for the Operating Engineers.

Mr. T. M. McCormick, of Fort Worth, Tex., Mr. F. H. Mitchell, of Port Neches, Tex., Mr. W. F. Noell, of Ponca City, Okla., and Mr. W. B. Newby, of Maplewood, La., for the C. I. O.

Mr. Walter T. Grant, of Houston, Tex., and Mr. Earl H. Boswell, of Orange, Tex., for the I. A. M.

Mr. Robert Silagi, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Lake Charles Metal Trades Council, affiliated with the American Federation of Labor, acting on behalf of its affiliated organizations,¹ herein called the Council, alleging that a question affecting commerce had arisen concerning the representation of employees of Cities Service Refining Corporation, Lake Charles,

¹The organizations affiliated with the Council are: The International Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers of America; The International Brotherhood of Blacksmiths, Drop Forgers, and Helpers; The International Brotherhood of Electrical Workers; The International Brotherhood of Painters, Decorators and Paper-hangers of America; The International Association of Machinists; The United Association of Journeymen Plumbers and Steam Fitters of United States and Canada; The International Union of Operating Engineers; The International Hod Carriers, Building and Common Laborers Union of America; The International Association of Bridge, Structural and Ornamental Iron Workers; Heat and Frost Insulators Asbestos Workers; United Brotherhood of Carpenters, Joiners and Helpers of America; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and The Sheet Metal Workers International Association.

Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Lawrence H. Whitlow, Trial Examiner. Said hearing was held at Lake Charles, Louisiana, on July 12 and July 26, 1944. The Company, the Council, the Oil Workers International Union (CIO), herein called the C. I. O., and International Association of Machinists, District Lodge No. 31, A. F. L., herein called the I. A. M.,² 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 C. I. O. moved to dismiss the petition. The Council moved to dismiss both motions to intervene, and the C. I. O. moved to dismiss the intervention of the I. A. M. Rulings on these motions were reserved by the Trial Examiner for the Board. For reasons stated hereinafter, all motions to dismiss are 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

Cities Service Refining Corporation, a wholly owned subsidiary of Cities Service Company, owns and operates a petroleum refinery at Lake Charles, Louisiana. Adjacent thereto, the Company constructed a butadiene plant which it operates as agent for the Rubber Reserve Corporation. These two plants are the only ones owned and operated by the Company. The Company is engaged in the production and refining of petroleum into high octane airplane gasoline and the production of butadiene gas for the Rubber Reserve Corporation. The major part of the Company's products is sold directly, or indirectly, to the armed forces of the United States, or to the Rubber Reserve Corporation.

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

II. THE ORGANIZATIONS INVOLVED

Lake Charles Metal Trades Council, affiliated with the American Federation of Labor, and comprised of the affiliated unions enumerated in footnote 1, *supra*, is a labor organization admitting to membership employees of the Company.

² During the first day of the hearing the I. A. M. withdrew its name from the original petition filed by the Council and filed a separate motion to intervene.

The Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Association of Machinists, District Lodge No. 31, affiliated with the American Federation of Labor, and likewise affiliated with the Lake Charles Metal Trades Council, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 8, 1944, the Council, having learned that the Company was negotiating a collective bargaining agreement with the C. I. O., requested the Company to discontinue negotiations until such time as the Board could hold an election and certify a bargaining agent. Upon receipt of the claim of interest by the Council, the Company called the Regional Director of the Fifteenth Region and advised him of the claims of the Council, and of the extent of the negotiations that it had with the C. I. O. Thereafter, in the absence of contrary directions from the Regional Director, and on the strength of a cross-check of membership cards submitted by the C. I. O. the Company entered into a contract with that organization.³ Said contract is dated June 20, 1944, and by its terms will extend to June 1, 1945, and thereafter, subject to a 30-day written termination clause.

The Company and the C. I. O. urge their contract as a bar to a present determination of representatives. The Council and the I. A. M. contend that since the notice of claim to representation was given the Company before it executed the contract with the C. I. O., the contract is no bar to the present proceeding. We agree with the contentions of the Council and I. A. M. Under our well-established practice, we have held that a contract executed after the receipt of notice of a rival claim to representation cannot preclude the determination of a question concerning representation. We note further that two petitions for certification of representatives in smaller units in this plant had been filed by the Council prior to the signing of the contract between the Company and the C. I. O.⁴

A statement of a Board agent introduced into evidence at the hearing indicates that the Council represents a substantial number of employees in the unit hereinafter found appropriate.⁵

³ The Company, by its personnel director and pay-roll clerk, together with the C. I. O., conducted a cross-check of authorization cards against the Company's pay roll. The cross-check disclosed that the C. I. O. represented 373 employees out of the 702 persons employed within the contract unit as of May 31, 1944.

⁴ Petitions Nos 15-R-1157 and 1158 were filed on June 12, 1944. These petitions were withdrawn upon the filing of the petition in the present case.

⁵ The Field Examiner reported that the Council submitted 494 authorization cards as evidence of its showing of representation in its petitions 15-R-1157 and 15-R-1158. These cards were checked against the Company's pay roll of June 23, 1944, which con-

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 Company, the Council, and the C. I. O. are agreed that the appropriate unit should consist of all hourly paid employees in the mechanical and operations departments of the Company, but excluding cafeteria employees, technically trained laboratory employees, plant guards, and all supervisory employees. This unit is substantially identical with the unit covered by the contract between the Company and C. I. O. The I. A. M., however, seeks a separate unit comprised of all employees in the machinist department.

The refinery and butadiene plant of the Company are operated as an integrated unit, the broad division of employees being made on functional grounds. The functions of the plants are divided into an operations department which handles all production, and a mechanical department which has charge of all maintenance. Only 62 of the employees in the mechanical department are in the machinists' classification sought by the I. A. M. There is no administrative set-up which includes only machinists inasmuch as they are a part of the mechanical department, but there is a separate pay-roll classification of inside and outside machinists. On that same pay roll also appear the 14 helpers who assist the machinists. The work of the employees sought by the I. A. M. is entirely mechanical; the inside machinists doing bench and lathe work, while the outside machinists care for pumps, compressors, and similar machinery. Although the two groups of machinists work under separate foremen they both come under the general supervision of the master mechanic.

For the purpose of operations the working area of the plants is divided into five geographical zones headed by zone engineers who exercise plenary supervision over all employees working therein. The machinists comprise but a small part of the other skilled craftsmen who work under the zone engineers. Comparable to the machinists and the master mechanic are the fabricating foreman, who has pipe-fitters, riggers, and welders under him; the electrical foreman, who has charge of all electricians; the craft foreman, who supervises insulators, carpenters, painters, and bricklayers; the instrument foreman, who oversees the mechanics who maintain and repair instruments; and the

tained the names of 486 persons in the units alleged to be appropriate. Of the cards submitted, 341 bore the names of persons listed on the pay roll

The I. A. M. presented 47 authorization cards to the Trial Examiner, which he checked against the Company's pay roll of July 26, 1944, containing the names of 62 employees within the unit alleged to be appropriate. Of the 47 cards submitted, 26 bore the names of persons listed on said pay roll.

transportation foreman, who is responsible for the mechanics who service trucks, cars, and switch engines. The I. A. M. does not seek to include any of these mechanics whose work is similar to outside machinists, within its proposed unit.

As stated above, the Company and the C. I. O. moved to dismiss the intervention of the I. A. M. on the ground that the unit sought by that union was inappropriate. The Council contends that since the I. A. M. is an affiliate of the Council it should follow the same procedure that all the other affiliates have followed, namely, to seek representation on an over-all basis through the Council. We find it unnecessary either to dismiss the intervention or to intercede between the Council and its affiliate. The record is replete with testimony to the effect that most of the refineries in the United States which are organized have plant-wide representation. It further appears that all of the Cities Service Company's plants are so organized. Even the testimony by the I. A. M.'s representative indicates that within the immediate Gulf Coast area most of the refineries and plants are organized on a plant-wide basis. In view of the integrated nature of the Company's operations, the history of organization at this particular plant, at other plants of the Company, and in the industry in general, we shall include all the employees of the refinery and the butadiene plant within a single unit.

We find that all hourly paid employees in the mechanical and operations departments of the Company, but excluding cafeteria employees, technically trained laboratory employees, plant guards, 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.

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 Cities Service Refining Corporation, Lake Charles, 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 Fifteenth 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 they desire to be represented by the Lake Charles Metal Trades Council, affiliated with the American Federation of Labor, or by the Oil Workers International Union, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.