

In the Matter of SOUTHPORT PETROLEUM COMPANY OF DELAWARE¹ and
GALVESTON BUILDING AND CONSTRUCTION TRADES COUNCIL (AFL)

Case No. 16-R-986.—Decided September 4, 1944

Mr. Russell Allen, of Dallas, Tex., and *Mr. V. E. Smith*, of Texas City, Tex., for the Company.

Messrs. B. A. Gritta and *A. L. Mugnier*, of Houston, Tex., for the AFL.

Mr. W. J. Trombley, of Beaumont, Tex., and *Mr. Foy J. Hopkins*, of Texas City, Tex., for the CIO.

Miss Ruth Rusch, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Galveston Building and Construction Trades Council (AFL), herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Southport Petroleum Company of Delaware, Texas City, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Galveston, Texas, on July 29, 1944. The Company, the AFL, and Oil Workers International Union, Local 449, CIO, herein called the CIO, 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, the CIO moved to dismiss the petition on the ground that the AFL's representation showing was insufficient. The Trial Examiner reserved ruling on the motion for the Board's determination. For reasons hereinafter set forth in Section III, *infra*, 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.

¹ All parties agreed that the name of the Company be amended to read as set forth above.
58 N L R B, No 9.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Southport Petroleum Company of Delaware is a Delaware corporation. We are here concerned with the Company's plant at Texas City, Texas, where it is engaged in the processing of crude oil into gasoline, oil, kerosene, and other byproducts. During 1943, the Company purchased crude oil in excess of \$4,000,000 in value, of which less than 2 percent was shipped into the State of Texas. During the same period, it sold gasoline and byproducts amounting to more than \$4,500,000 in value, of which 80 percent was sold to the Army and the Navy and to the United States Government for lend-lease purposes. The remaining 20 percent was sold in Texas and nearby States.

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

II. THE ORGANIZATIONS INVOLVED

Galveston Building and Construction Trades Council is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Oil Workers International Union, Local 449, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the AFL as the exclusive bargaining representative of certain of its employees until the AFL has been certified by the Board in an appropriate unit.

On August 5, 1943, the Company and the CIO entered into a collective bargaining contract providing for maintenance of membership and a term of 1 year. The agreement also provided that, after its initial term, it was to "continue in effect unless either party to the agreement, upon thirty (30) days notice in writing, requests the opening of negotiations for a new agreement." Since the petition herein was filed by the AFL more than 30 days before the 1944 anniversary date of the contract, it is clear that in no event can the contract serve as a bar to a current determination of representatives.

In view of the contract's maintenance of membership clause, we find, contrary to the CIO's assertion, that a statement of a Field Examiner, introduced into evidence at the hearing, indicates that the

AFL represents a substantial number of employees in the units 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 UNITS

The Company, the AFL, and the CIO agree that the appropriate unit should be composed of all employees of the Company engaged in the operation and maintenance of its refinery at Texas City, Texas, excluding chemical engineers, office employees, technical employees, managerial employees, and supervisory employees. While the parties also agree to include plant-protection employees, they do not object to their establishment as a separate unit. Inasmuch as the Company's plant-protection employees are militarized, we are of the opinion that they can be more properly represented in a unit separate and apart from the other employees of the Company's refinery at Texas City, Texas.³

We find, consequently, that the following groups of employees constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(1) All employees of the Company engaged in the operation and maintenance of its refinery at Texas City, Texas, excluding chemical engineers, office employees, technical employees, managerial employees, militarized plant-protection employees, 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;

(2) All militarized plant-protection employees of the Company's refinery at Texas City, Texas, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by separate elections by secret ballot among

² The Field Examiner reported that the AFL submitted 124 authorization cards, 84 of which bore the names of persons listed on the Company's pay roll of June 15, 1944, which contained the names of 371 employees in the appropriate units. The cards were dated from December 1942 to June 1944. At the hearing, 7 additional cards were submitted and only 1 was found to bear the name of an employee on the pay roll of June 15, 1944. See *Matter of Pressed Steel Car Company*, 56 N. L. R. B. 393.

The CIO submitted 347 wage deduction authorization cards, 250 of which bore the names of persons appearing on the aforesaid pay roll. The cards were dated from various months in 1942 to June 1944. Six cards were undated.

³ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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 Southport Petroleum Company of Delaware, Texas City, Texas, separate elections 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 units 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 elections, to determine whether they desire to be represented by Galveston Building and Construction Trades Council, affiliated with the American Federation of Labor, or by Oil Workers International Union, Local 449, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

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