

In the Matter of THE CLYMORE COMPANY, INC. and OIL WORKERS INTERNATIONAL UNION, CIO

Case No. 16-R-985.—Decided September 13, 1944

Messrs. Vinson, Elkins, Weems, and Francis, by Mr. Leroy Jeffers, of Houston, Tex., for the Company.

Mr. W. J. Trombley, of Beaumont, Tex., for the Union.

Mr. Philip Licari, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Oil Workers International Union, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Clymore Company, Inc., Pettus, 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 Beeville, Texas, on July 28, 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 Clymore Company, Inc., a Texas corporation with its main offices at San Antonio, Texas, owns two oil refineries in the State of Texas, located within 45 miles of each other, at which it is engaged in the sale and distribution of kerosene, gasoline, gas oil, and fuel oil. One refinery, whose employees are sought to be represented by the

Union, is located at Pettus, Texas, and the other at Refugio, Texas. A third refinery situated at Refugio, Texas, is owned by the Refugio Refinery Company, also a Texas corporation, hereinafter referred to as Refugio. The record reveals that Garland Clymore is the president of the Company and also president of Refugio, and owns the controlling interest in the corporate stock of each. The Company's board of directors is identical with that of Refugio. R. S. Wyrick is vice president and manager of the Company, and also vice president and manager of Refugio. The superintendents of the Company's refineries and Refugio's refinery are under the supervision of Wyrick, who directs operations at all three refineries. The pay rolls of the Company's refineries and Refugio's refinery are sent to Wyrick for approval, and he, in turn, forwards them to the Company's main office at San Antonio, Texas, where checks are prepared and drawn and transmitted to Wyrick for distribution to the superintendents of all three refineries. Clymore testified that the Company and Refugio have a unified pay-roll system and single bank account. All purchases of supplies, equipment, crude oil, and natural gas for operations at all three refineries are made by either Clymore or Wyrick. There is frequent interchange of equipment and supplies between the Company's Pettus refinery and Refugio's refinery. Potential purchasers of the products of either the Company's Pettus refinery or Refugio's refinery are directed to Wyrick or his subordinate for the purpose of negotiating for the sale of such products. Testimony shows that either Clymore or Wyrick handles labor problems for both the Company and Refugio.

The Company and Refugio purchase all their needed crude oil and natural gas in the State of Texas, and it is transported to their respective refineries through intrastate pipelines and by tank transports. During the year ending July 1, 1944, the Company purchased equipment and lead valued at \$110,000, of which 10 percent was shipped from points outside the State of Texas. During the same period the Company processed at its Pettus refinery 365,000 barrels of oil valued at approximately \$600,000, of which 2 percent, in a single transaction, was sold to the United States Navy and shipped to points outside the State of Texas. Also during the same period, Refugio processed 90,000 barrels of oil valued at approximately \$208,000, of which 70 percent was sold to the Pontiac Refining Company,<sup>1</sup> a corporation located in the State of Texas, which, in turn, after reprocessing and commingling the oil with its own products, sold it to the United States Government.

In view of the relationship between the Company and Refugio, the integration of their operations, and upon all the facts above set forth,

<sup>1</sup> The Pontiac Refining Company is a Texas corporation unrelated to the corporations involved in the instant proceeding.

contrary to the Company's contention, we find that its activities, and, more particularly, its Pettus refinery's activities, affect commerce within the meaning of the National Labor Relations Act.<sup>2</sup>

## 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 certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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 -

We find, in accordance with the agreement of the parties, that all employees of the Company at its refinery at Pettus, Texas, excluding the refinery superintendent, and 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, 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

<sup>2</sup> See *Consolidated Edison Co. of N. Y., Inc. v. N. L. R. B.*, 305 U. S. 197; *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1; and *N. L. R. B. v. Richter's Bakery*, 140 F. (2d) 870 (C. C. A. 5), cert. denied, 322 U. S. 754.

<sup>3</sup> The Field Examiner reported that the Union submitted 11 designation cards, all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll of June 15, 1944, which contained the names of 17 employees in the appropriate unit; and that the cards were dated June 1944. The Trial Examiner stated on the record that the Union, at the hearing, submitted 5 additional authorization cards dated July 1944, and signed by employees whose names appear on the pay roll above mentioned.

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 The Clymore Company, Inc., Pettus, 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 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.