

In the Matter of CHALMETTE PETROLEUM CORPORATION *and* OIL WORKERS INTERNATIONAL UNION, AFFILIATED WITH CONGRESS OF INDUSTRIAL ORGANIZATIONS

In the Matter of DOUGLAS PUBLIC SERVICE CORPORATION *and* OIL WORKERS INTERNATIONAL UNION, AFFILIATED WITH CONGRESS OF INDUSTRIAL ORGANIZATIONS

Cases Nos. 15-R-1181 and 15-R-1197 respectively.—Decided October 2, 1944

Mr. Nicholas Callan, of New Orleans, La., for Chalmette. Baldwin, Haspel, Molony & Lang, by Mr. L. A. Molony, of New Orleans, La., for Douglas.

Mr. R. W. Starnes, of New Orleans, La., for the CIO.

Mr. Robert Faget, of New Orleans, La., for the AFL.

Mr. Robert Silagi, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by Oil Workers International Union, affiliated with Congress of Industrial Organizations, herein called the CIO, alleging that questions affecting commerce had arisen concerning the representation of employees of Chalmette Petroleum Corporation, New Orleans, Louisiana, herein called Chalmette, and Douglas Public Service Corporation, New Orleans, Louisiana, herein called Douglas, the National Labor Relations Board consolidated the petitions and provided for an appropriate hearing upon due notice before Leroy Marceau, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on August 24, 1944. The Company, the CIO, and International Union of Operating Engineers, Local Unions Nos. 226, 226A, and 226C, herein called the AFL, 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.

During the hearing, and in its brief, Douglas moved to dismiss the petition in Case No. 15-R-1197. Ruling on the motion was reserved by Trial Examiner for the Board. For the reasons hereinafter set forth, the motion is hereby granted.

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

FINDINGS OF FACT

I. THE BUSINESS OF CHALMETTE AND DOUGLAS

Chalmette Petroleum Corporation is a Delaware corporation maintaining its principal office in New Orleans, Louisiana. Chalmette is engaged in the business of refining petroleum, for which purpose it operates a refinery at Chalmette, Louisiana. During the first half of the year 1944, this refinery secured over 7,000 barrels of petroleum products each month from sources outside the State of Louisiana, which represented 3.4 percent of its total purchases. During the second quarter of 1944, 79 percent of its products, or more than 160,000 barrels each month were shipped to points outside the State of Louisiana.

Douglas Public Service Corporation, a Louisiana corporation, conducts a general warehousing business in the course of which it operates warehouses and bulk liquid terminals in Louisiana, including the one at Chalmette. Each year the merchandise entering Douglas' warehouses and terminals exceeds \$50,000 in value and comes from States other than Louisiana. During the same period the merchandise leaving the warehouses and terminals exceeds \$50,000 in value and is shipped to States other than Louisiana.

In connection with its oil refinery, Chalmette has several storage tanks located on its premises. Under a contract with Chalmette, the tanks are leased to Douglas which takes possession of the oil pumped into them from the refinery and issues negotiable warehouse receipts therefor. Aside from the fact that Chalmette is a customer of Douglas, there is no interrelation between the two companies.

We find that both Chalmette and Douglas are engaged in commerce within the meaning of the National Labor Relation 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.

International Union of Operating Engineers, Local Unions Nos. 226, 226A, and 226C affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION IN CASE NO. 15-R-1181;
THE ALLEGED QUESTION CONCERNING REPRESENTATION IN CASE NO.
15-R-1197

On August 12, 1943, Chalmette and the AFL executed a contract covering the employees working at the refinery in Chalmette, Louisiana. This contract, by its terms, was to remain in effect until August 11, 1944, and each year thereafter unless terminated or amended upon written notice 30 days prior to an anniversary date. On July 10, 1944, the CIO advised Chalmette that it represented a majority of its employees and requested a conference at which the terms of a collective bargaining agreement might be discussed. Three days later Chalmette refused to grant the CIO recognition in the absence of a Board certification. Inasmuch as the CIO's claim to representation was presented to Chalmette prior to the automatic renewal date, the contract does not constitute a bar to a present determination of representatives.

On May 5, 1944, Douglas executed a collective bargaining agreement with the AFL to commence on June 1, 1944, and terminate on September 30, 1946. This contract covers employees of Douglas working in its bulk liquid departments at Marrero, Algiers, Avondale, and Chalmette, Louisiana. The AFL and Douglas join in the contention that their contract bars a present investigation into the question concerning representation. Since the CIO made no claims to representation whatever upon Douglas prior to the execution of the contract, in accordance with our well established policy we find that it bars a determination of representatives at the present time. We find that there is no question concerning the representation of employees of Douglas within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act, and we shall, therefore, dismiss the petition in Case No. 15-R-1197.

A statement of a Board agent, introduced into evidence at the hearing, indicates that CIO represents a substantial number of employees in the unit hereinafter found appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of Chalmette, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

¹ The Field Examiner reported that the CIO submitted 60 membership cards, 57 of which bore the names of persons appearing on the Company's pay roll of July 17, 1944. There are approximately 60 employees within the appropriate unit.

IV. THE APPROPRIATE UNIT

The parties agree that all production and maintenance employees of Chalmette excluding the clerical and supervisory employees constitute an appropriate unit. To this group the CIO would add the three bonded watchmen who are employees of Douglas, urging that they are an integral part of the refinery group.² However, in view of our dismissal of the petition in Case No. 15-R-1197 on other grounds we find it unnecessary to discuss the appropriateness of including within the same unit employees of two unrelated employers.³

We find that all production and maintenance employees of Chalmette, but excluding clerical 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, 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

The CIO requests that the pay roll for the week of July 10, 1944, be used to determine eligibility to vote. No substantial reason appearing for deviating from our normal procedure in this respect, 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 Chalmette Pe-

² The CIO seeks their inclusion on the following grounds (a) the watchmen, who also act as gaugers, execute orders emanating from Chalmette supervisors, (b) they work in close proximity with the refinery employees of Chalmette, (c) they desire representation by the CIO, (d) they allegedly are carried on the seniority register of Chalmette, and (e) one of the watchmen served as chairman of the CIO Committee of Chalmette employees which negotiated with Chalmette management.

³ It should be noted, however, that in the absence of some nexus between individual employers which results in a common control of labor policies or some unique and compelling factual situation, the Board does not direct an employer to bargain with respect to the wages, hours, and conditions of employment of persons who are not its own employees. See National Labor Relations Board Sixth Annual Report, pp 67-68, also see *Matter of J. L. Brandeis & Sons*, 50 N. L. R. B. 325, and *Matter of Chicago Bridge and Iron Co.*, 54 N. L. R. B. 1001.

troleum Corporation, New Orleans, 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 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 Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or by International Union of Operating Engineers, Local Unions Nos. 226, 226A, and 226C, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

ORDER

Upon the basis of the foregoing findings of facts 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 Douglas Public Service Corporation, New Orleans, Louisiana, filed by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, be, and it hereby is, dismissed.