

In the Matter of THE TEXAS COMPANY and OIL WORKERS INTERNATIONAL UNION, CIO

Case No. 16-R-998.—Decided October 13, 1944

Messrs. John C. Jackson, J. A. Bermingham, and A. R. Wilson, of Houston, Tex., for the Company.

Mr. T. M. McCormick, of Ft. Worth, Tex., and Mr. J. J. Hickman, of Pasadena, Tex., for the Union.

Mr. Erwin A. Peterson, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a 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 Texas Company, South Texas Division, Houston, 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 Houston, Texas, on September 8, 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.<sup>1</sup> 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 Texas Company, a Delaware corporation, through its producing department, is engaged in the production of crude oil and gas. The South Texas Division of the Company's producing department is the only portion of the Company's operation which is here involved. The

<sup>1</sup> International Union of Operating Engineers, A. F. of L., was also served with notice but did not enter appearance at the hearing.

South Texas Division annually produces large quantities of crude oil and gas in the State of Texas, of which a substantial portion valued in excess of \$1,000,000 is shipped from the Company's Texas operations 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

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 parties stipulated that on June 30, 1944, the Union wrote a letter to the Company requesting recognition as the statutory bargaining agent of the Company's employees and that the Company declined to recognize the Union unless and until the Union is certified by the Board.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</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

The parties agreed at the hearing that the appropriate unit should consist of all production and maintenance employees of the Company's producing department, South Texas Division, excluding all clerical employees,<sup>3</sup> administrative, technical and professional employees,<sup>4</sup> all employees at the Houston garage and warehouse, all divisional employees,<sup>5</sup> temporary chainmen and rodmen, and all foremen<sup>6</sup> and other supervisory employees.

The Company's South Texas Division, with its headquarters at Houston, Texas, covers four producing districts, each of which contains one or more oil fields. It is the production and maintenance

<sup>2</sup> The Field Examiner reported that the Union submitted 135 authorization cards, dated from August 1943 to July 1944, the majority being dated subsequent to January 1, 1944, of which 130 bear names appearing on the Company's pay roll, which contains the names of 398 employees in the appropriate unit.

<sup>3</sup> The parties further agreed in clarification of the bargaining unit that this classification includes all district clerks, field clerks-warehousemen, clerk-district, and other clerks.

<sup>4</sup> This includes district petroleum engineer, acting district petroleum engineer, petroleum engineers, district warehouseman and warehouseman.

<sup>5</sup> These employees include the classifications of superintendent, assistant superintendent, drilling superintendent, petroleum engineers, accounting, warehouse, stenographic, land and lease, civil engineers, geological and industrial relations.

<sup>6</sup> Which includes field foremen, production foremen, and drilling foremen.

employees of these fields who constitute the unit desired by the parties. Disagreement arose at the hearing concerning the inclusion within the unit of head roustabouts, the Company contending that head roustabouts are supervisory employees, the Union contending that they are merely working leadmen or gang pushers with no disqualifying supervisory authority. The record discloses that head roustabouts are in charge of gangs of three or four men, whose work they supervise and direct. The men in the gang look to and consider the head roustabout as their boss, recognizing that it is their duty to follow whatever instructions and orders he gives them. Head roustabouts attend foremen's meetings where matters relating to company policy and personnel are discussed. They are sometimes appointed to act as production foremen during the vacations of production foremen. They make recommendations concerning the promotion, transfer or discipline of the men under them and their recommendations are given weight by management. We find that head roustabouts are supervisory employees within the meaning of our customary definition, and we shall accordingly exclude them.<sup>7</sup>

*Rotary Drillers:* Both parties would include rotary drillers in the unit on the ground that it is a practice and custom in the industry to include them in the bargaining unit. However, the record fails to establish a uniform practice recognized throughout the industry of including such employees in the bargaining unit. Inasmuch as the uncontradicted testimony shows that their duties, responsibilities, and authority are supervisory in character, we shall exclude them.

We find that all production and maintenance employees of the Company's producing department, South Texas Division, excluding all clerical employees, administrative, technical and professional employees, all employees at the Houston garage and warehouse, all divisional employees, temporary chainmen and rodmenal foreman, rotary drillers, head roustabouts, and all 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

The Union urges that the pay roll for the period ending September 1, 1944, be used to determine eligibility to participate in the election. In the alternative, the Union urges that all employees who have not been employed by the Company for at least 4 months prior to the date of the election should be excluded from participation in the

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<sup>7</sup> *Matter of Milwaukee Gas Light Company*, 52 N. L. R. B. 1213; also *Matter of The Texas Company*, 55 N. L. R. B. 1223, and *Matter of The Texas Company*, 58 N. L. R. B. 209. In the latter two cases which involved the same parties as those in the instant proceedings head roustabouts were excluded by agreement.

election. The Company prefers to follow the Board's customary practice. The Company classifies all new employees as temporary for a probationary period of 4 months. The record reveals these employees perform the same work as regular employees and the Company normally retains 98 percent of its newly hired employees for periods in excess of 4 months. Since it thus clearly appears that the newly hired employees have a substantial expectancy of regular employment, we see no reason to exclude them from participation in the election by fixing eligibility as of September 1, or otherwise.<sup>8</sup>

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 The Texas Company, South Texas Division, Houston, 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.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

<sup>8</sup> See *Matter of W. R. Squibb & Sons*, 54 N. L. R. B. 1424