

In the Matter of J. S. ABERCROMBIE COMPANY, AND HARRISON OIL  
COMPANY and OIL WORKERS INTERNATIONAL UNION, C. I. O.

*Case No. 16-R-975.—Decided October 14, 1944*

*Messrs. Joseph W. Moore and John D. Kelley, both of Houston, Tex., for the Company.*

*Mr. Lindsay P. Walden, of Ft. Worth, Tex., and Mr. J. E. Crossland, of Houston, Tex., for the Oil Workers.*

*Messrs. W. L. Grant and A. H. Houser, both of Houston, Tex., for the Machinists.*

*Mr. Chester M. Fulton, of Houston, Tex., for the Federation.*

*Messrs. W. J. Burkett and James F. Keenan, both of Beaumont, Tex., for the Pipe Fitters.*

*Messrs. G. B. Waller and Wilson M. Askins, both of Houston, Tex., for the Engineers.*

*Mr. A. L. Mayberry, of Houston, Tex., for the Boilermakers.*

*Mr. Calus A. West, of Houston, Tex., for the Painters.*

*Mr. S. R. Smith, of Houston, Tex., for the Electricians.*

*Mr. A. Sumner Lawrence, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon an amended petition duly filed by Oil Workers International Union, C. I. O., herein called the Oil Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of J. S. Abercrombie Company and Harrison Oil Company, of Houston, Texas, herein collectively called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss and Glenn L. Moller, Trial Examiners.<sup>1</sup> The said hearing was held at Houston, Texas, on August 17 and September 4, 1944. The Company, the Oil

<sup>1</sup> The hearing was originally conducted before Trial Examiner Weiss, was subsequently reopened before Trial Examiner Glenn Moller as a result of a petition to intervene filed after the close of the original hearing by International Brotherhood of Electrical Workers, Local No. 716.

Workers, Old Ocean Employees' Federation, herein called the Federation, International Association of Machinists, District Lodge No. 37, herein called the Machinists, International Union of Operating Engineers, Local 450, herein called the Engineers, Pipe Fitters and Welders Local No. 195, herein called the Pipe Fitters, International Brotherhood of Boilermakers, Iron Shipbuilders, and Helpers of America, Local No. 74, herein called the Boilermakers, Brotherhood of Painters, Decorators, and Paper Hangers of America, Local No. 130, herein called the Painters, and International Brotherhood of Electrical Workers No. 716, herein called the Electricians, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiners' 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 COMPANIES

J. S. Abercrombie Company and Harrison Oil Company, a subsidiary of Magnolia Petroleum Company, are Texas corporations engaged in the business of producing and refining petroleum and petroleum products. The two companies herein concerned are jointly engaged in operating, as lessees of Defense Plant Corporation, an agency of the United States Government, a refinery at Sweeney, Texas, the only plant involved in this proceeding and known as Plancor 880. In addition to its contract with Defense Plant Corporation for the operation of Plancor 880, the Companies operate under a contract with Defense Supplies Corporation, also an agency of the United States Government. Plancor 880 is engaged in processing and refining petroleum and natural gas into high-octane gasoline and byproducts, which are sold as directed by Defense Supplies Corporation. During the period from December 27, 1943, to August 1, 1944, a representative period of the Companies' operations, the Companies processed and refined gasoline and other allied byproducts of a value in excess of \$2,763,368, of which amount 78 percent was sold to the United States Army and Navy, and shipped from the State of Texas to and through States of the United States other than the State of Texas as directed both by Defense Supplies Corporation and the United States Army and Navy.

The Companies admit that they are engaged in commerce within the meaning of the National Labor Relations 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 Companies.

International Association of Machinists, District Lodge No. 37; Brotherhood of Painters, Decorators, and Paper Hangers of America, Local No. 130; Pipe Fitters and Welders Local No. 195; International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local No. 74; International Union of Operating Engineers, Local 450; and International Brotherhood of Electrical Workers, Local 716, each affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Companies.

Old Ocean Employees' Federation, unaffiliated, is a labor organization admitting to membership employees of the Companies.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about June 12, 1944, the Oil Workers, claiming majority representation among the Companies' production and maintenance employees at its Old Ocean refinery, requested in writing that the Companies recognize it as the exclusive bargaining representative of such employees. The Companies refused to recognize the Oil Workers unless certified by the Board in an appropriate proceeding.

A statement of the Field Examiner, together with other evidence introduced at the hearing, indicates that the Oil Workers, the Federation, the Machinists, the Pipe Fitters, the Boilermakers, the Painters, and the Electricians, each represents a substantial number of employees within the unit it claims to be appropriate.<sup>2</sup>

<sup>2</sup> The Field Examiner reported that the Oil Workers submitted 188 designations, of which 163, dated between March and June 1944, checked with the Companies' pay roll of June 15, 1944, containing 344 names within the unit claimed by the Oil Workers; that the Federation submitted 78 designations, of which 74, dated June 1944, checked with the said pay roll containing 355 names within the unit claimed by the Federation; that the Boilermakers submitted 6 designations, of which 4, dated July 1944, checked with the said pay roll containing 4 names within the unit claimed by the Boilermakers; that the Pipe Fitters submitted 17 designations, of which 8, dated May and June 1944, checked with the said pay roll containing 47 names within the unit claimed by the Pipe Fitters; that the Machinists submitted 11 designations, of which 9, dated February and June 1944, checked with the said pay roll containing 17 names within the unit claimed by the Machinists; and that the Painters had submitted 1 designation, dated June 1944, which checked with the said pay roll containing 1 name within the unit claimed by the Painters. In addition to the report of the Field Examiner, it appeared from evidence introduced at the hearing that the Companies have at present, approximately 4 painters within the unit claimed by the Painters.

The Field Examiner further reported that the Engineers had been requested, on or about June 19, 1944, to submit evidence of representation but had failed to do so. The Engineers admitted at the hearing that it had been requested to submit evidence of representation as early as July 1, 1944, but had failed to submit such evidence and was unprepared at the hearing to substantiate its claim to representation among the employees of the Companies.

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

#### IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Oil Workers contends that the only appropriate unit is a plant-wide production and maintenance unit excluding only clerical, supervisory, and plant-protection employees.

The Federation, which is in substantial agreement with the Oil Workers, seeks a unit of all operating and production employees.<sup>3</sup>

The Engineers seeks a similar unit of all refining operators and helpers, including testers in the laboratory department.<sup>4</sup>

The Machinists, the Painters, the Electricians, the Boilermakers, and the Pipe Fitters, each seeks a unit of skilled employees engaged in occupations bringing them within the general jurisdiction of such unions.<sup>5</sup> The Companies take no position with respect to the question of the appropriate unit.

The record reveals that the Companies function as an integrated organization engaged in the business of producing and refining crude petroleum and petroleum products. While the evidence indicates that the operations of the Companies are interrelated and flexible, it appears that the employees in the various craft groups herein concerned, are generally confined to separate departments wherein they work under supervision of craft foremen.<sup>6</sup> The Companies have no history of collective bargaining with respect to the plant in question, since the plant has been in operation by the Companies only since November 12, 1943. A review of bargaining history in other comparable refineries reveals that both plant-wide and craft units have been recognized as appropriate. We are of the opinion, under the circumstances, that the crafts herein concerned might function as separate bargaining units or might appropriately be included in a unit of production and maintenance employees.<sup>7</sup> Accordingly, we find that the considerations are sufficiently balanced to make the desires of the employees themselves a factor in our determination of the type of unit through which they shall bargain. We shall, therefore, make

<sup>3</sup> The Federation, although requesting a general unit of production employees, stated at the hearing that it would not oppose a direction of self-determination elections for the various craft groups hereinafter referred to.

<sup>4</sup> The Engineers, while emphasizing its jurisdictional claim to the refining and production employees, indicated at the hearing that it desired to include all employees in the claimed plant-wide unit other than employees represented by the craft labor organizations herein concerned.

<sup>5</sup> The units proposed by the craft organizations are generally confined to members of their respective craft.

<sup>6</sup> The departments in question are subdivisions of the engineering department, which is engaged entirely in maintenance work.

<sup>7</sup> See *Matter of General Petroleum Corporation of California*, 57 N. L. R. B. 1366.

no present determination of the appropriate unit or units as affecting the craft employees hereinabove referred to, but shall reserve such finding pending the result of the separate elections which we shall hereinafter direct. Upon the result of these elections will depend, in part, the scope of the bargaining unit or units sought herein.

There remains for consideration the question of specific exclusions from the craft groups and the residual group of the production and maintenance employees.

With respect to the craft groups, the record discloses and all parties agree that employees in the position of chief engineer, maintenance supervisor, and craft foremen in charge of departments are supervisory and should be excluded from all units of craft employees. The only classification concerning which a question arises by reason of disagreement among the parties is that of assistant heads or assistant craft foremen, comprising employees known as the assistant head pipe fitter, the assistant head welder, and the assistant head electrician.<sup>8</sup> The Oil Workers and the Engineers contend that all assistant foremen should be excluded from collective bargaining. The Federation would likewise exclude all assistant craft foremen with the exception of the head welder. The Companies, supported by the Machinists, the Electricians, and the Pipe Fitters, would include the assistant craft foreman within the jurisdiction of the several craft organizations. The evidence discloses that, while the assistant craft foremen, who are primarily workmen with minor supervisory duties, may make recommendations with respect to the status of employees under them, their recommendations in this respect are largely ineffective. We find that the assistant craft foremen have no substantial supervisory duties within our customary definition. We shall, accordingly, include them within the voting groups of craft employees hereinafter set forth.

So far as the residual group is concerned, all parties agree to the exclusion among others of office and supervisory employees. The only classifications concerning which a question arises by reason of a dispute between the parties or a consideration of the evidence relating thereto, cover the employees known as field clerks, safety department employees, draftsmen, process engineers, laboratory foremen, graduate chemists, and shift foremen.<sup>9</sup>

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<sup>8</sup>The problem of assistant craft foreman does not arise in the case of the departments covering the boilermakers, painters, and machinists, respectively, since no employees of this type are to be found in these departments. The classification of leadman found in the machine shop is the nearest to that of assistant craft foreman. The position is, however, one which carries no supervisory authority within the Board's customary definition thereof.

<sup>9</sup>The parties do not dispute and we find that the following employee classifications may properly be included within the residual group: warehouse stockmen, janitors, test engineers, and assistant terminal foremen. We shall exclude therefrom in accordance with the agreement of the parties, plant-protection employees, department heads, the power plant engineer, the assistant power plant engineer, chief chemist, assistant chief chemist, and nurses.

*Field clerks:* The Oil Workers would exclude, while the Independent and the Companies would include, certain employees known as field clerks.<sup>10</sup> The record reveals that field clerks, as distinguished from main office clerks, spend a certain portion of their time in the refinery and the balance of their time in the plant offices under the supervision of the assistant department heads. It is our opinion that, except for Jackson, who is a supervisory employee with authority to make recommendations as to employee status, the foregoing field clerks, all of whom are in daily contact with the production and maintenance employees and work under the same supervision as the latter, have interests more intimately related to those of the production and maintenance employees than those of the office employees.<sup>11</sup> We shall, therefore, include field clerks other than the aforesaid supervisory employee, within the residual group of production and maintenance employees.

*Safety department employees:* The employees in the safety department consist of inspectors who inspect the plant equipment from the standpoint of fire prevention. They also check and service both fire extinguishers and safety appliances to see that these are maintained in proper working condition. Of employees in this department, one, a salaried employee known as the fire and safety inspector, is directly responsible to the personnel director, who is in charge of the safety department and trains fire crews in the work of first aid and fire prevention. While fire inspectors may, as a class, report instances of individual carelessness on the part of other employees, such reports are not extensive and apparently are largely ineffective insofar as they affect the status of such employees. On the other hand, the report by the fire and safety inspector would be given very serious consideration by the personnel director. The Oil Workers contends that all safety department employees should be excluded from the appropriate unit. The Independent is equally insistent that they be included therein. The record reveals that, notwithstanding the fact that the safety department is under the supervision of the director of personnel, the work performed by safety department employees is essentially one of maintenance. Accordingly, we shall include the ordinary safety department inspectors within the residual voting group hereinafter referred to.<sup>12</sup> However, we shall exclude therefrom the fire and safety inspector, since it appears that, by virtue of his managerial responsibilities, he occupies in practice the position of safety engineer, which category has generally been excluded from units of production and maintenance employees.<sup>13</sup>

<sup>10</sup> The employees in this category comprise the following named employees: J. J. Goodwin, E. J. Dore, W. C. Reynolds, George Cooper, and D. W. Jackson.

<sup>11</sup> See *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 531.

<sup>12</sup> See *Matter of Shell Development Company, Inc.*, 38 N. L. R. B. 192.

<sup>13</sup> See *Matter of General Chemical Company*, 57 N. L. R. B. 524.

*Draftsmen:* Employees in this classification work in the engineering department under the supervision of the chief design engineer and the assistant design engineer. The duties of draftsmen consist of designing and making drawings to be furnished to construction and maintenance men, employed by the Companies in connection with both normal maintenance work and the Companies' current program for plant revision. The qualifications for draftsmen require general drafting experience and a certain knowledge of strength of material and principles of design. While it appears that draftsmen receive approximately the same wages as production employees and perform work which, in most instances, is of routine character, the record also discloses that draftsmen are not interchanged with production workers; moreover, the evidence reveals that draftsmen spend but little time in the plant<sup>14</sup> and are generally considered office employees whose line of advancement is different from that of the production and maintenance group. The Companies and the Independent contend that draftsmen should be included within the appropriate unit. On the other hand, the Oil Workers and the Engineers urge the exclusion of draftsmen. In view of the technical nature of their work, we shall exclude draftsmen from the residual voting group hereinafter referred to.<sup>15</sup>

*Process engineers:* The employees in this category are a highly technical group whose duties require a degree in engineering together with considerable practical experience. Process engineers are subdivided into two groups known as senior and junior engineers, respectively. Senior process engineers, whose higher rank is the result of greater experience, spend the greater part of their time in offices where they tabulate and study engineering data for the purpose of increasing the efficiency of operating units. By comparison therewith, junior process engineers are likewise concerned with the accumulation of data, but spend the greater part of their time working in operating units where they collect data for subsequent study and tabulation by senior members of the group. Both senior and junior process engineers are regarded by the Companies as professional employees and are treated differently from production workers, both with respect to the manner in which they are paid and in relation to overtime work.<sup>16</sup> The Oil Workers and the Federation contend that all process engineers be excluded as technical employees. The Companies urge that junior process engineers be included within the appropriate unit. We find, in view of the technical and professional nature of the work performed by process engineers as a group, that they have few interests

<sup>14</sup> The time which draftsmen spend in the plant amounts to only approximately 10 or 15 percent of their working day.

<sup>15</sup> See *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 531.

<sup>16</sup> Senior and junior process engineers are paid on a monthly salary basis and are not entitled to overtime as are the hourly paid production employees generally.

in common with the ordinary production employees; accordingly, we shall exclude all process engineers from the residual voting group.

*Graduate chemists:* The employees in this group are located in the analytical section of the laboratory department where they perform special analytical work requiring professional training and a degree in chemistry as qualifications for their employment. The Oil Workers and the Federation would exclude all graduate chemists while the Companies would include such employees within the appropriate unit. We are of the opinion that graduate chemists occupy with respect to the residual group of non-professional employees, substantially the same position as the process engineers previously considered. Accordingly, we shall exclude graduate chemists from the residual voting group.

*Laboratory foremen:* Employees in this category are four in number and supervise various sections in the laboratory including employees known as laboratory testers. The evidence reveals that while certain of the laboratory foremen perform actual maintenance work in connection with other duties, all make recommendations as to status of employees under them, which recommendations are given considerable weight by higher management officials.<sup>17</sup> Since it appears that laboratory foremen are, by virtue of their power to make effective recommendations, supervisory employees within the meaning of our usual definition, we shall, notwithstanding the agreement of the parties to the contrary, exclude laboratory foremen from the residual voting group aforesaid.

*Shift foremen:* Employees in this category known as shift foremen are in charge of various operating shifts and supervise from 5 to 20 employees each during the period covered by their respective shifts.<sup>18</sup> The record discloses that shift foremen are not expected to do physical work, although they may do such work on occasions if the situation requires it. They make recommendations with respect to the status of employees under them, which recommendations are given serious consideration by higher management officials.<sup>19</sup> While all parties are agreeable to the inclusion of shift foremen, we find that they are supervisory employees within the meaning of our usual definition. We shall, accordingly, exclude them from the residual voting group.

As previously indicated, we shall, at this time, make no final determination with respect to the appropriate unit or units pending the

<sup>17</sup> The authority of laboratory foremen to make recommendations is equal in all respects to that of the craft foremen excluded by agreement from the several voting groups of craft employees

<sup>18</sup> The evidence reveals that shift foremen are also subject to call 24 hours a day in order that they may be on hand in the event of an emergency

<sup>19</sup> The recommendations of shift foremen are subject to less investigation than are the recommendations of certain of the craft foremen whom all parties agree should be excluded as supervisory employees.

outcome of elections among employees of the Companies' Old Ocean refinery in each of the voting groups set forth below :

1. All maintenance machinists and helpers in the machine shop, including leadmen, but excluding the machine shop foreman 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 ;

2. All maintenance electrical employees in the electrical department, including helpers and the assistant chief electrician, but excluding the chief electrician 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 ;

3. All maintenance boilermakers, helpers, and riggers in the boiler-makers and riggers department, excluding the rigger boilermaker foreman 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 ;

4. All maintenance painters in the paint department, excluding the head painter 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 ;

5. All maintenance pipe fitters, pipe fitters' helpers, welders, hangermen, insulators, pipe liners, pipe walkers, and pipe machine operators in the pipe fitting and welding departments,<sup>20</sup> including the assistant head pipe fitter and the assistant head welder, but excluding the head pipe fitter and the head welder 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 ;

6. All remaining production and maintenance employees, including warehouse stockmen, janitors, test engineers, laboratory testers, safety department inspectors, field clerks, and assistant terminal foremen, but excluding craft maintenance employees in the pipe fitting, welding, machine shop, paint, electrical, and riggers and boilermakers' departments, respectively, professional and technical employees (including process engineers, draftsmen, graduate chemists and nurses), office employees, the fire and safety inspector, plant-protection employees, power plant engineer, assistant power plant engineer, chief chemist, assistant chief chemist, laboratory foremen, shift foremen, department heads, the supervisory field clerk,<sup>21</sup> and all other super-

<sup>20</sup> The Pipe Fitters and the Boilermakers, while claiming equal jurisdiction over welders, agreed at the hearing that all welders, whether engaged in pipe fitting or boilermaking work, should be placed in the pipe fitters' group for purposes of the election.

<sup>21</sup> D. W. Jackson.

visory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

We shall direct separate elections among the employees in the groups set forth above who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to additions and limitations set forth in the Direction.<sup>22</sup>

Inasmuch as the Engineers made no showing of representation among the employees of the Companies, we shall not accord it a place on the ballot in the election.<sup>23</sup>

### 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 J. S. Abercrombie Company and Harrison Oil Company, Sweeney, Texas, elections by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of the Direction of Elections, 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 voting groups referred to 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 any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections:

1. To determine whether the employees in the machinists' group described in Section IV, above, desire to be represented by International Association of Machinists, District Lodge No. 37, A. F. of L., or by Oil Workers International Union, affiliated with the Congress

<sup>22</sup> The Oil Workers requested at the hearing that the pay-roll period immediately preceding June 17, 1944, be designated as the eligibility date by reason of the fact that a number of additional employees have been added to the pay roll since the filing of the original petition. The request was opposed by the craft organizations and the operating engineers. While the record indicates that the Companies' pay roll has been increased by approximately 10 percent between June 17, 1944, and the date of the hearing, we find therein no reason to depart from our usual practice in respect to the selection of a date governing eligibility to vote.

<sup>23</sup> See *Matter of General Petroleum Corporation of California*, 57 N. L. R. B. 1366.

of Industrial Organizations, or by Old Ocean Employees Federation, for the purposes of collective bargaining, or by none of these organizations;

2. To determine whether the employees in the electricians' group described in Section IV, above, desire to be represented by International Brotherhood of Electrical Workers, Local Union No. 716, A. F. of L., or by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or by Old Ocean Employees Federation, for the purposes of collective bargaining, or by none of these organizations;

3. To determine whether the employees in the boilermakers' group described in Section IV, above, desire to be represented by International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers, Local No. 74, or by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or by Old Ocean Employees Federation, for the purposes of collective bargaining, or by none of these organizations;

4. To determine whether the employees in the painters' group described in Section IV, above, desire to be represented by Brotherhood of Painters, Decorators and Paperhangers of America, Local No. 130, or by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or by Old Ocean Employees Federation, for the purposes of collective bargaining, or by none of these organizations;

5. To determine whether the employees in the pipe fitters' group described in Section IV, above, desire to be represented by Pipe Fitters Local No. 195, or by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or by Old Ocean Employees Federation, for the purposes of collective bargaining, or by none of these organizations;

6. To determine whether the employees in the residual group described in Section IV, above, desire to be represented by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or by Old Ocean Employees Federation, for the purposes of collective bargaining, or by neither.

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