

In the Matter of WAR EMERGENCY PIPELINES, INC. and INTERNATIONAL UNION OF OPERATING ENGINEERS, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

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Cases Nos. 15-R-1186 and 15-R-1187 respectively.—Decided November 23, 1944

Mr. W. Richardson Blair, of Philadelphia, Pa., for the Company. *Messrs. E. C. Jarboe and John H. LaRowe*, of Independence, Kans., for the Operating Engineers.

Mr. R. W. Lawrence, of Fort Worth, Tex., and *Mr. F. H. Mitchell*, of Port Arthur, Tex., for the Oil Workers.

Mr. Sidney Grossman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon the separate petitions duly filed by International Union of Operating Engineers, affiliated with the American Federation of Labor, herein called the Operating Engineers, alleged that a question affecting commerce had arisen concerning the representation of employees of War Emergency Pipelines, Inc., Baytown, Texas, Sabine, Louisiana, and Bald Knob, Arkansas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before LeRoy Marceau, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on October 24, 1944. At the commencement of the hearing, the Trial Examiner granted the motion of Oil Workers International Union, CIO, herein called the Oil Workers, to intervene. All parties appeared, participated and 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 Operating Engineers moved to combine into one unit the operating

and maintenance employees in the First and Second Divisions. Ruling was reserved for the Board. For the reasons set forth in Section IV, below, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded full 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

War Emergency Pipelines, Inc., a privately owned Delaware corporation with main offices at Cincinnati, Ohio, operates two trans-continental pipelines known respectively as "Big Inch" and "Little Big Inch" as agent for Defense Supplies Corporation, a subsidiary of Reconstruction Finance Corporation which in turn is wholly owned by the United States Government. These pipelines transport and deliver crude oil and petroleum products from Texas to the New York and Philadelphia refining areas. Both pipelines generally utilize the same right of way, and have a combined line fill of approximately 7,000,000 barrels of oil, of a value in excess of \$5,000,000 at current market prices. Delivery of oil and products at the eastern terminals for the month of August 1944, averaged about 500,000 barrels per day.

While the Company is a non-profit corporation, it has, subject to certain powers and reservations on the part of its principal, full supervision, including authority to hire and discharge, over all labor required to operate and maintain the pipelines. It pays its employees directly from a bank account maintained in its own name as agent, keeps social security records, and carries workmen's compensation insurance for its employees, although it is reimbursed for all items of expense by Defense Supplies Corporation. The contract between the Company and Defense Supplies Corporation specifically provides that persons employed by the Company shall be considered employees of the Company and not of the Defense Supplies Corporation.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.¹

II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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

¹ See *Matter of War Emergency Pipelines, Inc.*, 58 N. L. R. B. 798; *Matter of War Emergency Pipelines, Inc.*, 56 N. L. R. B. 64.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Operating Engineers as the exclusive bargaining representative of its maintenance and operating employees in the First and Second Divisions,² until the Operating Engineers has been certified by the Board.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Operating Engineers and Oil Workers represent a substantial number of employees in the units hereinafter found appropriate.³

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 Operating Engineers requests a single unit composed of the operating and maintenance employees of the Company's First and Second Divisions, including contamination engineers, delivery gaugers, dispatcher-telegraphers, truck drivers, station engineers, the assistant division mechanic, the assistant master mechanic, and the welder foreman, but excluding clerical employees, guards, and supervisory employees. The Oil Workers contends that separate divisional units are appropriate. While the Company expressed a preference for a system-wide unit or for a combined unit comprised of the employees of both divisions, it did not take any positive position with regard thereto. It opposes, however, the inclusion of contamination engineers, delivery gaugers, and dispatcher-telegraphers. In accordance with our decisions in prior proceedings involving the same parties, we find that separate units of employees in the Company's First and Second Divisions, respectively, are appropriate for the purposes of collective bargaining.⁴

² The First Division extends from Station "A," Baytown, Texas, including the Baytown-Beaumont feeder system and Lake Charles line, to the north headgate at Station "D," Sabine, Louisiana. The Second Division extends from the north headgate at Station "D", Sabine, Louisiana, to the north headgate at Station 6, Bald Knob, Arkansas.

³ The Trial Examiner reported that, with respect to the First Division, the Operating Engineers submitted 38 authorization cards and the Oil Workers submitted 5 authorization cards, all of which bore recent dates and represent the names of persons upon a current pay roll of the Company against which the cards were checked. There are 146 employees in the alleged appropriate unit. Subsequent to the hearing, the Oil Workers submitted 9 additional authorization cards, of which the names of 6 persons appear upon the pay roll above referred to. The cards bore dates in August and September 1944, and, therefore, conform to the request of the Operating Engineers that additional cards submitted bear dates prior to the hearing.

The Trial Examiner also reported that, with respect to the Second Division, the Operating Engineers submitted 69 authorization cards and the Oil Workers submitted 72 authorization cards, all of which bore recent dates and represent the names of persons who appear upon the current pay roll referred to. There are 147 employees in the alleged appropriate unit.

⁴ See footnote 1, *supra*.

Contamination engineers: These employees were at first assigned to other divisions of the Company for the purpose of eliminating sources of contamination, and have now been assigned mainly to the First Division. However, the record does not reveal any substantial change in their duties that would warrant a departure from our determination in a prior case involving the Company wherein we excluded contamination engineers from the operating and maintenance unit.⁵ We shall, accordingly exclude the contamination engineers from the units hereinafter found appropriate.

Delivery gaugers: The Company contends, in effect, that delivery gaugers are in the nature of purchasing agents and therefore possess responsibilities that are regarded as closely aligned to management. The record reveals that these employees are merely responsible for the quality and quantity of crude oil and petroleum products received from other companies, and for oil deliveries to carriers, terminals, and refineries, and that the character of their duties is not such as to warrant their disassociation from the other maintenance and operating employees. We shall, therefore, include the delivery gaugers in the units herein found appropriate.⁶

Dispatcher-telegraphers: These employees receive and transmit communications relating to the dispatching of crude oil products through the main line system; handle related movements through gathering systems in assigned areas; and balance reports hourly for the purpose of indicating overages and shortages. For the performance of such duties, they must possess a thorough knowledge of the Company's operational facilities and the functions thereof. We do not agree with the Company's contention that the dispatcher-telegraphers, assigned to both the First and Second Divisions, should be excluded because they are in a position to listen to confidential messages, normally received by other telegraph operators of the Company, since, as the record discloses, their duties are not directly related to the receipt and transmission of messages associated with information concerning labor relations. We shall, therefore, include the dispatcher-telegraphers in the units herein found appropriate.

We find that all operating and maintenance employees of the Company's First Division and Second Division, respectively, including truck drivers, station engineers, the assistant division mechanic, the assistant master mechanic, welder-foremen, delivery gaugers, and dispatcher-telegraphers, but excluding clerical employees, contamination engineers, guards, foremen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes

⁵ *Matter of War Emergency Pipelines, Inc.*, 58 N. L. R. B. 798.

⁶ See *Matter of Texas Pipeline Company*, 55 N. L. R. B. 239.

in the status of employees, or effectively recommend such action,⁷ constitute separate units 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 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 War Emergency Pipelines, Inc., Baytown, Texas, Sabine, Louisiana, and Bald Knob, Arkansas, 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 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 election, to determine whether they desire to be represented by International Union of Operating Engineers, affiliated with the American Federation of Labor, or by Oil Workers International Union, CIO, for the purposes of collective bargaining, or by neither.

⁷ The parties agreed, and we find, that the assistant foreman of the tank crew, and Jess Web, a contamination engineer, both employed in the First Division, fall within the supervisory definition set forth above.