

In the Matter of WAR EMERGENCY PIPELINES, INC. and INTERNATIONAL
UNION OF OPERATING ENGINEERS, A. F. OF L.

Case No. 9-R-1669.—Decided January 17, 1945

Messrs. John G. Quin, P. W. Houghtlin, and T. P. Thibodaux, of Cincinnati, Ohio, for the Company.

Mr. H. C. Scheppel, of Carlyle, Ill., for the Operating Engineers.

Mr. Lawrence L. Meskimen, of Whiting, Ind., and Mr. William V. Flower, of Hamilton, Ohio, for the Oil Workers.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, A. F. of L., herein called the Operating Engineers, alleging that a question affecting commerce had arisen concerning the representation of employees of War Emergency Pipelines, Inc., Cincinnati, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William R. Cameron, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on December 20, 1944. The Company, the Operating Engineers, and Oil Workers International Union, CIO, herein called the Oil Workers, 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

War Emergency Pipelines, Inc., a non-profit Delaware corporation with its main office at Cincinnati, Ohio, operates two transcontinental

pipe lines, 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 pipe lines which are owned in entirety by Defense Plant Corporation, another subsidiary of the Reconstruction Finance Corporation, transport and deliver crude oil and petroleum products from Texas to the New York and Philadelphia refining areas. "Big Inch" holds approximately 3,800,000 barrels of crude oil, valued in excess of \$5,000,000, and "Little Big Inch" holds approximately 3,000,000 barrels of petroleum products, valued in excess of \$4,700,000. Delivery of oil and petroleum products at the eastern terminals for the month of November 1944, averaged about 510,000 barrels per day.

The Company, as agent for Defense Supplies Corporation, subject to reservations on the part of its principal, has full supervision, including authority to hire and discharge, over all labor required to operate and maintain the said pipe lines, and fixes its own labor relations policy. Although it is reimbursed by Defense Supplies Corporation for all items of expense, it pays its employees from a bank account maintained in its own name, and keeps social security records and carries workmen's compensation insurance for said employees. 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.

The Company admits that it is engaged in commerce and that it is an employer within the meaning of the National Labor Relations Act.

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.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Operating Engineers as the exclusive bargaining representative of the employees in its Fourth Division until the Operating Engineers has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Operating Engineers and the Oil Workers each

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 the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

Subject to the contention of the Company and the Operating Engineers that the appropriate unit for representation of the Company's employees is system-wide, the parties agree that the unit consists of employees of the Company's Fourth Division, excluding clerical employees, the warehousemen, telegraph dispatchers,² master mechanic, division electrical foreman, pipe line gang foremen, assistant pipe line gang foremen, electrical foremen, chief station engineers and other supervisory employees. Dispute exists in regard to the assistant master mechanic and the pipe line welder foreman, whom the Company and the Operating Engineers seek to exclude, and the Oil Workers to include.

At the hearing the Company, while not seriously contesting the appropriateness of a unit limited to the employees of the Company's Division Four, reiterated the position which it has taken in previous cases,³ that the appropriate unit is system-wide. In previous cases involving this Company, the Board has stated that the system-wide unit is the optimum one, but that until a labor organization is in a position to represent the employees of the Company in such a unit, divisional units are appropriate for purposes of collective bargaining. It does not appear that any one labor organization is yet in a position to represent all operating and maintenance employees of the Company.⁴ We find, therefore, that operating and maintenance employees in the Company's Fourth Division constitute a separate appropriate unit.

¹ The Field Examiner reported that the Operating Engineers submitted 59 application-for-membership cards, 56 of which bore signatures of persons listed on the Company's pay roll of November 15, 1944, which contained the names of 128 employees in the appropriate unit; and that the cards were dated March through November 1944.

The Oil Workers submitted 39 application-for-membership cards, all of which bore signatures of persons listed on the aforesaid pay roll. The cards were dated August through November 1944.

² The telegraph dispatcher in the Fourth Division performs considerable clerical work.

³ 56 N. L. R. B. 64, involving the Company's Sixth Division, 58 N. L. R. B. 798, involving the Third Division; 59 N. L. R. B. 449, involving the First and Second Division, and 60 N. L. R. B. 69, involving the Fifth Division.

⁴ The Oil Workers has been certified as the collective bargaining representative of employees in the Sixth and Third Divisions. Elections were conducted December 20 and 21, 1944, in the First and Second Divisions, the Oil Workers and the Operating Engineers appearing on the ballot. The Oil Workers won the election in the First Division but the results of the election in the Second Division will have to be determined by a run-off election. An election to determine whether or not employees in the Fifth Division desire to be represented by the Oil Workers has been directed but has not been held.

Assistant master mechanic: The master mechanic is responsible for the installation and maintenance of the mechanical equipment in a division. In the absence of the master mechanic, or in the event repairs and maintenance are required simultaneously at two locations in the pipe line, the assistant master mechanic is in complete charge of a group of men. About half of the time of the assistant master mechanic in the Fourth Division is so spent. At such times he has supervisory authority, including power to hire and discharge, similar to that of the master mechanic whom the parties agree to exclude. Accordingly, we shall exclude the assistant master mechanic from the appropriate unit.⁵

Pipe line welder foreman: The Company employs one pipe line welder foreman who at present does all of the welding which is necessary to be done and also occasionally is sent out with a small gang to do mechanical maintenance work on the pipe line. Although the Company stated that on the latter occasions he has authority to hire and discharge the workmen under him, it does not appear that he has ever exercised that authority. It appears that the classification of pipe line welder foreman was adopted by the Company at a time when it planned to have more welders on the pipe line than its present operation requires. Should the need for additional welders arise, these employees will take on supervisory functions. However, until that time, we are of opinion that the Company's pipe line welder foremen are not supervisory employees.⁶ We shall, therefore, include the pipe line welder foreman of the Fourth Division in the unit.

We find that all operating and maintenance employees of the Company's Fourth Division, including the pipe line welder foreman, but excluding clerical employees, the warehouseman, telegraph dispatcher, master mechanic, assistant master mechanic, division electrical foremen, pipe line gang foreman, assistant pipe line gang foremen, chief station engineers, 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

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

⁵ This employee differs from the assistant master mechanic in the Third Division, whom the Board included in the unit, in that the latter infrequently exercised supervisory authority, whereas the employee here involved regularly exercises such authority.

⁶ See *Matter of War Emergency Pipelines, Inc.*, footnote 3, *supra*.

herein, subject to the limitations and additions set forth in the Direction.

The Company employs at present one laborer, two carpenters and three electricians who are designated "station construction" employees. The Company contends that these are temporary employees and should not be allowed to participate in the election. The Oil Workers contends that they should be eligible to vote. The Operating Engineers took no definite position as to these employees, stating that permanent employees should be declared eligible and temporary employees should not. The "station construction" employees were hired on a temporary basis to complete certain construction work which was not completed at the time the Company began operation of the pipe lines. The work will probably be completed within 60 days from the date of the hearing herein. "Station construction" employees will then be released and the probability that they will be rehired by the Company is remote. Under the circumstances, we are of the opinion that "station construction" employees do not have interests sufficiently in common with employees in the appropriate unit to warrant their participation in the election. We hereby declare them ineligible to vote.

The parties specifically requested that the election be conducted manually rather than by mailed ballot. Division Four of the pipe lines extends for a distance of approximately 300 miles across southern Indiana and Ohio. Employees are scattered all along the line in small groups, which are divided into three groups which work shifts. To poll all employees in the division manually may be a difficult task. The Regional Director, being on the scene, is best qualified to weigh the difficulties against the objections of the parties. Therefore, we shall make no ruling upon the matter but, in accordance with our customary practice, the Regional Director may conduct the balloting, in whole or in part, by mail if such procedure is deemed by him to be expedient.

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., Cincinnati, Ohio, 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 Ninth 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 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, A. F. of L., or by Oil Workers International Union, C. I. O., for the purposes of collective bargaining, or by neither.