

In the Matter of CONTINENTAL SOUTHERN CORPORATION, EMPLOYER AND
PETITIONER and OIL WORKERS INTERNATIONAL UNION, CIO, LOCAL
No. 128

Case No. 21-RM-98.—Decided May 17, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing in this matter was held before George H. O'Brien, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Reynolds, Murdock, and Gray].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. Oil Workers International Union, CIO, Local No. 128, hereinafter referred to as the "Union," is a labor organization claiming to represent employees of the Employer.

3. On December 1, 1947, the Employer and the Union entered into a collective bargaining agreement which expired on December 1, 1948. After the expiration of the 1947 agreement, the parties continued their collective bargaining relations.¹ On February 8, 1949, at the Employer's request, the Union addressed a letter to it proposing modifications of the 1947 contract. On February 15, 1949, the Employer replied, stating that it refused to bargain further with the Union upon the ground that it believed that the Union no longer represented a majority of its employees. On March 1, 1949, the Employer filed its petition with the Board. At the hearing, the Union moved to dismiss the Employer's petition, apparently contending that no question of representation exists in this case for the reasons: (1) that the Em-

¹ On December 7, 1948, the parties executed a supplemental agreement with respect to wages, but did not extend the term of the expired 1947 contract. There is no contention that the supplemental agreement constitutes a bar to this proceeding.

ployer does not in good faith question the Union's majority among the employees in the bargaining unit; and (2) that in the absence of service of notices pursuant to Section 8 (d) of the Act, the 1947 contract is a bar to the Employer's petition.

The Union contends that the transactions between itself and the Employer since the expiration of the 1947 contract demonstrate that the Employer does not in good faith question the Union's majority among its employees, and that therefore no question of representation exists. This contention is without merit. The Board has held that a question of representation exists under an employer petition, where the employer has been requested and has refused to recognize a labor organization as the bargaining representative for its employees, notwithstanding the fact that the employer may have previously recognized such labor organization and been party to a collective bargaining agreement with it.² In this case, the question of representation, which was raised by the Union's claim for recognition³ was put in issue when the Employer refused to recognize such claim. Under these circumstances the Employer had a clear right to file a petition under Section 9 (c) (1) (B). It is immaterial whether or not there may have been any reasonable basis in fact upon which the Employer might question the Union's claim to majority representation.

The Union further contends that the now expired 1947 contract is a bar to this proceeding upon the ground that no notices were given in accordance with the provisions of Section 8 (d) of the Act. This contention is likewise without merit. We have held that Section 8 (d) of the Act defines some aspects of the obligation to bargain collectively, but a failure to fulfil these obligations does not have the effect of renewing a contract between the parties.⁴ The 1947 contract is, therefore, no bar to this proceeding.

We find therefore that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. We find that all production and maintenance employees of the Employer employed on the Employer's property described as Southern Community Lease No. 1 and Northern Community Lease No. 1, the boundaries of which are generally Pico Boulevard between Seaside and Anaheim Boulevard in the city of Long Beach, California, including drillers and truck drivers, but excluding office, clerical and professional employees, and supervisors as defined in the Act, con-

² *Matter of Whitney's*, 81 N. L. R. B. 75

³ *Matter of Herman Lowenstein, Inc.*, 75 N. L. R. B. 377, 382.

⁴ *Matter of Crowley's Milk Company, Inc.*, 79 N. L. R. B. 602; *Matter of Magnolia Petroleum Company*, 79 N. L. R. B. 1027; *Matter of International Harvester Company*, 77 N. L. R. B. 242

stitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Oil Workers International Union, CIO, Local No. 128.