

In the Matter of MILLS BENNETT *and* OIL WORKERS INTERNATIONAL
UNION, CIO

Case No. 16-C-1077.—Decided November 30, 1945.

DECISION

AND

ORDER

On May 18, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed. Thereafter, the Union filed exceptions to, and the respondent filed a brief in support of, the Intermediate Report. No request for oral argument before the Board at Washington, D. C., was made by any of the parties, and none was held. The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions of the Union, the brief of the respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint herein against Mills Bennett, Houston, Texas, be, and it hereby is, dismissed.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. John H. Garver, for the Board.

Mr. H. F. Montgomery, of Houston, Tex., for the respondent.

Mr. Garland Butler, of Houston, Tex., for the Union.

STATEMENT OF THE CASE

Upon a first amended charge duly filed on November 7, 1944, by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, 64 N. L. R. B., No. 188.

herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint, dated January 31, 1945, against Mills Bennett of Houston, Texas, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance that the respondent (1) on or about May 8, 1944, discharged and thereafter refused to reinstate Sam Slutt because he joined or assisted the Union or engaged in other concerted activities with his fellow employees for the purposes of collective bargaining or other mutual aid or protection; and (2) through his agents since on or about March 15, 1944, (a) vilified, disparaged, and expressed disapproval of the Union, (b) interrogated his employees concerning their union affiliations, and (c) urged, persuaded, threatened, and warned his employees to refrain from assisting, becoming, or remaining members of the Union. At the opening of the hearing, the respondent filed an answer denying the commission of the alleged unfair labor practices.

Pursuant to notice, a hearing was held on February 15, 1945, at Houston, Texas, and on February 16, 1945, at Mont Belvieu, Texas, before Howard Myers, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a representative, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the case, the motion of Board's counsel to conform the pleadings to the proof was granted without objection. The respondent's counsel then moved to dismiss the complaint for lack of proof. Decision thereon was reserved. The motion is hereby denied. Oral argument, in which Board's counsel and the respondent's counsel participated, was had at the conclusion of the taking of the evidence and is part of the record. Although afforded opportunity to do so, none of the parties have submitted briefs.

Upon the entire record in the case, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is an individual having his principal office and place of business in Houston, Texas, and owns and operates properties and facilities in Barbers Hill, Texas, where he, at all times material herein, was engaged, and is engaged, in the production, sale, and distribution of crude oil. For the 12-month period ending February 15, 1945, the average daily production of crude oil from the respondent's Barbers Hill wells was approximately 500 barrels, about 50 percent of which is sold and shipped to the Atlantic Refining Company, which in turn ships the said crude oil to points outside the State of Texas.

The respondent concedes that it is engaged in commerce within the meaning of the 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 respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The alleged interference, restraint, and coercion; alleged discriminatory discharge of Sam Shutt

Early in February 1944, Garland Butler, a field representative of the Union, arrived in the town of Mont Belvieu, Texas, and immediately set out to organize the employees of the various oil producing companies located in the vicinity of that town. In the latter part of that month, Sam Shutt, a pumper employed by the respondent, sought out Butler and told him that he wanted to enlist his aid in organizing the respondent's employees.¹ Butler, starting early in March, held weekly meetings of the respondent's employees. Sometimes those meetings were attended by employees of other companies whose properties were located in or near Mont Belvieu. Shutt attended a great many of these meetings. He also asked each of the 11 employees of the respondent to join the Union, and he solicited memberships among employees of nearby companies. Shutt's activities on behalf of the Union were known to the respondent's supervisory officials prior to his discharge on May 8, 1944.

Shutt testified, and the undersigned finds, that sometime about the middle of March, he overheard a part of a discussion regarding the Union between Butler, employee Russell Childress, and an employee of another company, during which discussion Childress cursed the Union and then said that he would not join the Union because it admitted Negroes. Butler testified, and the undersigned finds, that at an open meeting held on March 22, but not attended by any other employees of the respondent,² Childress again cursed the Union for admitting Negroes and that the meeting broke up because Childress caused much confusion by denouncing the Union and adding that he would personally frustrate all the Union's plans to organize the respondent's employees.

Board's counsel contended at the hearing that at the time these anti-union statements were made Childress was a supervisor, and that his anti-union remarks and activities were therefore attributable to the respondent. The respondent contended that Childress was not a supervisor at that time.

The creditable evidence shows that sometime prior to the end of 1943, Childress was in charge of the pumpers and had supervisory powers. About that time, however, his duties, due in part to a reduction in the number of pumpers, were changed and he was made a relief pumper, with no supervisory power. Shutt testified that for about 8 years prior to his discharge on May 8, 1944, Childress was his boss and that Childress directed his work. Shutt further testified, however, that "since 1943 I believe [Childress] has been a relief pumper." Furthermore, under cross-examination, Shutt testified that for the last few months immediately prior to his discharge, Childress was a pumper doing the same work as the other pumpers. Moreover, Board's witness Tallie C. Arrington, formerly employed by the respondent as a pumper, testified that prior to May 1, 1944, Childress "was a kind of a boss. He was the day man, that is, he wasn't exactly the boss, see. Mr. Moore³ was the boss, supposed to have been." On the other hand, Buster Flowers, a gang pusher with the authority to hire and discharge, and a member of the Union, testified that Childress always had supervisory status with authority to hire and discharge. The undersigned is of the opinion that

¹ The respondent's Barbers Hill properties are in or near Mont Belvieu. The respondent owns and operates other oil fields, but only the employees of the respondent's Barbers Hill properties are involved in this proceeding.

² Some of respondent's employees attended the meeting after Childress had left.

³ As will be shown below, Moore left the respondent's employ on April 30, 1944, and was replaced by Wilbur Woods.

Flowers was mistaken in this respect and finds that from at least January 1, 1944, Childress was a non-supervisory employee. Therefore, the undersigned attaches no probative value to the testimony of Shutt and Butler with respect to the anti-union remarks and activities of Childress and finds that these remarks and statements cannot be attributed to the respondent nor can he be held accountable for them.

On or about April 29, 1944, the respondent posted the following notice in his warehouse at a place where notices to his employees are customarily posted:

R. M. Moore has resigned from my employ and his resignation has been accepted effective May 1, 1944.

J. J. Sapp has been made General Superintendent, in charge of my field operations in the Gulf Coast area.

W. G. Woods has been designated by J. J. Sapp as Superintendent in charge of my Barbers Hill and Blue Ridge producing properties.

Recent negotiations for the sale of these properties have terminated. No other negotiations are contemplated.

Mills Bennett

On or about May 5, according to the credited testimony of Flowers,⁴ he and Moore had a conversation during which the following transpired:

He came in there and I was changing clothes and we just had a general conversation and he asked me—Bobby asked me something about the Union—had we all joined, or something like that and I told him yes, I had, and he said, "Well, what do you think about it?" and I told him I thought it was all right and then I asked him, "what do you think about it?" and he said, "I think it's a pretty good deal—" something like that, to the best I can remember, and then he went on and told me that he thought to the best of his judgment that Mr Bennett would not be satisfied with a bunch of us boys belonging to a Union, that had been working out here for a number of years, and that he would be dissatisfied, and that he'd hate to know he had a bunch of men working for him dissatisfied after so many years of working for him and would then have to join a Union, something like that, to protect themselves some way, he went on like that, you know, and as far as I can remember that was the general run of the conversation, so far as I could explain it.

Flowers also testified that Moore advised him to discuss the matter with Shutt and ascertain whether, under the circumstances, it would not be advisable to get along without the Union; that, although he knew Moore was no longer in the employ of the respondent, he told one of the men working under him and Shutt what Moore had said and then asked Shutt and this other employee "what they thought about the Union and did they think we ought-a go ahead and try to organize [the Union], or did they think we had better let it go, or what we'd better do about it"; and that, after a lengthy discussion, the three of them agreed to remain in the Union. The record is clear that at the time of the conversation between Moore and Flowers, the former was no longer in respondent's employ and that all the employees were aware of that fact.⁵ Under the circumstances, the

⁴ It will be recalled that Flowers at that time was a supervisor and also a member of the Union.

⁵ Board's counsel contended that Moore, although he had resigned on April 30, was still in the respondent's employ throughout the month of May because at the time of his resignation the respondent gave Moore his May salary. The undenied credible testimony shows that it always has been the respondent's practice to give supervisory employees leaving his employ an additional month's salary.

undersigned finds that the respondent cannot be held accountable for the afore-said anti-union statements of Moore.

On May 7, Shutt was on the 1:30 p. m to 9:30 p. m tour. He testified that he was constantly having motor trouble with the truck he was using on that day; that in order to make the rounds of the wells he was to inspect that day he had frequently to stop and fix the motor; that at about 8:30 that evening he drove the truck to a filling station in Mont Belvieu because it had steamed up and filled the radiator with water; that he then went into a domino hall near the filling station and played two games of "knock poker";⁶ and that after remaining in the domino hall for "a short while," he came out and drove the truck to one of the wells. Superintendent Woods testified that he observed the truck at the filling station shortly after 8:20 that evening; that he went to several places in Mont Belvieu, including the domino hall where he saw Shutt play two games of "knock poker"; that the truck was still at the filling station at approximately 9:10, at which time he went home; that the following morning he informed his superior that Shutt was playing games in the domino hall when he should have been on duty; that his superior instructed him to discharge Shutt; and that when Shutt reported for work that day he discharged him. The undersigned credits Woods' version of what transpired on the evening of May 7.

The record, it is true, shows that Shutt was the most active employee on behalf of the Union. In view, however, of Shutt's admitted dereliction in duty, the undersigned does not feel that the evidence is sufficient to show that he was discharged because of his union activity. The undersigned finds that the respondent did not discriminate against Shutt in regard to hire or tenure of employment. The undersigned further finds that the evidence does not sustain the allegations of the complaint that the respondent violated the Act. The undersigned will accordingly recommend that the complaint be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The operations of the respondent, Mills Bennett, Houston, Texas, occur in commerce, within the meaning of Section 2 (6) of the Act.
2. Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.
3. The respondent has not engaged in unfair labor practices as alleged in the complaint, within the meaning of Section 8 (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the complaint be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective July 12, 1944, as amended, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in

⁶ "Knock poker" is played with dominoes.

support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

HOWARD MYERS,
Trial Examiner.

Dated May 18, 1945