

IN THE MATTER OF SOUTH WEST PENNSYLVANIA PIPE LINES *and* OIL
WORKERS INTERNATIONAL UNION, CIO

Case No. 6-R-1188.—Decided December 13, 1945

Messrs. Read, Smith, Shaw, and McClay, by *Mr. Nicholas Unkovic*, of Pittsburgh, Pa., for the Company.

Mr. Forest Sparks, of Coraopolis, Pa., for the Union.

Mr. Lee Pressman, by *Mr. Frank Donner*, of Washington, D. C., for the CIO.

Mr. Joseph A. Padway, by *Mr. Herbert S. Thatcher*, of Washington, D. C., for the AFL.

Mr. Philip Licari, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of South West Pennsylvania Pipe Lines, Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph Lepie, Trial Examiner. The hearing was held at Pittsburgh, Pennsylvania, on August 3, 1945. The Company and the Union 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 opportunity to file briefs with the Board. On November 15, 1945, pursuant to notice served upon all parties to the proceeding, the Congress of Industrial Organizations, herein called the CIO, the American Federation of Labor, herein called the AFL, the National Association of Manufacturers, herein called the N. A. M., and the Chamber of Commerce of the United States, herein called the C. of C., a hearing for the purpose of oral argument was held before the Board at Washington, D. C., in connection with the issue

of mail balloting of employees in the armed forces. The Company, the Union, the CIO, and the AFL appeared and participated.¹

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

South West Pennsylvania Pipe Lines, a Pennsylvania corporation, is engaged in the transportation of petroleum by means of pipe lines. During the year 1944, the Company purchased equipment valued at approximately \$10,000, of which in excess of 10 percent was shipped from points outside the Commonwealth of Pennsylvania. During the same period, the Company shipped oil valued at approximately \$100,000, to points outside the Commonwealth of Pennsylvania.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

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

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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

The Company and the Union agree that the Company's production and maintenance employees, with certain stipulated inclusions and

¹The N A M and the C of C. did not appear, but the former set forth in a letter to the Board its position concerning the issue which was the subject of the oral argument.

²The Field Examiner reported that the Union submitted 63 authorization cards bearing the names of 61 employees listed on the Company's pay roll of June 16, 1945, and that the cards were dated: 5 in December 1944, and 58 between April and June 1945. There are approximately 124 employees in the appropriate unit

exclusions, constitute an appropriate unit. There is some question, however, concerning the inclusion of gaugers and assistant working foremen.

Gaugers: The Company employs approximately 14 gaugers who arrange for the transfer of oil from the tanks of producing companies to the Company's pipe lines. When a producer desires the Company to transport his oil, the gauger reports this fact to the district foreman, who directs the connection foreman to make the proper connection. The gauger is then instructed to "run" the oil. He examines the producer's tank, and makes tests for basic sediment, water, gravity, and temperature, following which he fills out a "run sheet" containing the appropriate data. If the oil is not up to specifications, the gauger is without authority to accept it, and must report the facts to the general superintendent. If the oil meets specifications, it is turned into the Company's pipe lines. After the oil has been run, the gauger makes an additional report, copies of which are forwarded to the producer and the Company. He also makes daily and monthly reports on oil runs, and is responsible generally for ascertaining damage to equipment and gathering information of activities of producing companies in his area. Although they are paid a monthly salary higher than many of the Company's other production employees, the gaugers have no workers under their supervision.

It thus appears that the duties of the gaugers are purely ministerial and that they exercise little or no discretion or individual judgment in connection with their work. They merely obtain definite ascertainable facts and report to their superiors. The Company contends that the gaugers are managerial employees and should be excluded from the unit. The Union seeks their inclusion. We are of the opinion that the gaugers are not managerial employees and we shall include them in the unit.

Assistant working foremen: The Company has 4 of these employees, each of whom spends approximately 80 percent of his time in the supervision of working crews comprised of from 2 to 12 employees. The record shows that the assistant working foremen have the authority to recommend effectively the discharge or change in status of their subordinates. Although the Company and the Union desire their inclusion, inasmuch as the assistant working foremen fall within the Board's customary definition of supervisory employees, we shall exclude them.

We find that all the Company's production and maintenance employees, including gaugers, engineers, firemen, repairmen, line walkers, linemen, laborers, welders, welders' helpers, deliverymen, and the master mechanic, but excluding office and clerical employees, employees of the Company's offices in Pittsburgh, Washington, and Oil City Pennsylvania, assistant working foremen, foremen, 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

The Company requests that its employees presently absent on military leave be afforded an opportunity to cast ballots by mail in any election which the Board may direct. The N. A. M. has indicated agreement with the Company's position. The Union involved here, and the C. I. O. and A. F. L., do not oppose an alteration of the Board's present policy of balloting only those employees on military leave who appear in person at the polls,³ so long as such alteration does not effect an undue delay in the final disposition of representation cases by the Board. Significantly, in the oral argument before the Board, each of the participants exhibited only a desire for the Board to establish or maintain procedure which will accomplish expeditious and effective determination of questions concerning representation in the interests of stability—a desire which the Board must effectuate in order to administer the Act efficiently. Thus, the unions addressed themselves especially to the time element involved in mailing ballots to employees in the armed services, and the Company emphasized the need to conduct elections in a manner which would obviate defeasance of any resulting certification by reason of the return of employees to an active work status following their discharge from the armed services.⁴

In the instant case, the Company employs about 124 workers in the appropriate unit who are presently in an active work status. Employees now on military leave who possess rights set forth in the Selective Training and Service Act of 1940 numbered 15 at the time of the hearing, and may now be fewer. The Company alleges that each of them was employed in a work category within the appropriate unit before his transfer to military leave status, and has already introduced into evidence an exhibit allegedly setting forth the name and present address of each man in service. During the oral argument, the Company's attorney said that the Company would make available to the Union all current information which it possesses concerning the addresses and work categories of these employees:

Under the circumstances of this case, we are of the opinion that balloting by mail of the 15 or less employees of the Company now on military leave may be accomplished so that no undue delay in

³ See *Matter of Mine Safety Appliances Co., etc.*, 55 N. L. R. B. 1190

⁴ In the *Mine Safety* case, the Board held that, where returned servicemen comprised a substantial percentage of employees in a bargaining unit for which a bargaining representative had been certified prior to their return, it would entertain a new petition for investigation and certification of representatives in order to enable such servicemen to express their desires with respect to the representation issue. Similar holdings have appeared in the numerous decisions that have followed this case

determining the election will result. It is also apparent that many of the administrative complexities necessarily involved in conducting a mail ballot of absent employees—problems arising out of overlapping bargaining units, the contraction of wartime operations, conflicting reemployment rights of servicemen—are not present here. There is evidence in this record to show that ballots can be returned within 20 days. We refer, moreover, to the relatively small size of the unit involved, the presence of adequate and accurate data (with names and addresses of servicemen) in the original record, and the fact that no substantial reconversion question is present. This is not a war plant with a rapidly diminishing work force. Certain other cases may require other action.

The Board's experience has shown that the speed and efficacy with which it can conduct elections has depended to a great extent upon the degree of cooperation afforded it by the interested parties with respect to matters such as the physical arrangements for the election and the preparation of eligibility lists. A free interchange between the interested parties of information on the addresses and work categories of the employees to be balloted by mail will be necessary in order to avoid challenges and post-election objections. Accordingly, the Board will make available to all interested parties any information of this nature furnished it by any other party. In the event that the parties should send the absentee voters any information or literature⁵ bearing directly or indirectly on the pending election, copies of all such documents should be simultaneously filed with the Regional Office for inspection by or transmittal to the other parties.

In view of the foregoing, we will direct that the question concerning representation be resolved by an election by secret ballot among employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the election herein, subject to the limitations and additions set forth in the Direction. In this case, the Regional Director is authorized to mail ballots to employees within the appropriate unit on military leave, *provided* one or more of the parties hereto, within seven (7) days from the issuance of the Direction of Election, files with the Regional Director a list containing the names, most recent addresses, and work classifications of such employees. The Regional Director shall open and count the ballots cast by mail by employees on military leave, *provided* that such ballots must be returned to and received at the Regional Office within thirty (30) days from the date they are mailed to the employees by the Regional Director.⁶

⁵ Acceptance or transmittal of such literature by the Board's office is not to be construed as conferring immunity on the filing party in the event that objections are later interposed concerning its content. The usual principles will apply.

⁶ The decision in this case does not apply to cases in which the hearing has been held and the record closed without the issue having been raised.

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 South West Pennsylvania Pipe Lines, Pittsburgh, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixth 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 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 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, 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 or not they desire to be represented by Oil Workers International Union, CIO, for the purpose of collective bargaining.