

In the Matter of THE TEXAS COMPANY and OIL WORKERS INTERNATIONAL UNION, C. I. O.

Case No. 15-R-1612.—Decided June 5, 1946

Mr. D. Douglas Howard, of New Orleans, La., and *Mr. L. J. Whetsell*, of Dallas, Tex., for the Company.

Messrs. John Bouche and *A. F. Geisler*, both of Morgan City, La., and *Mr. W. W. Allan*, of Beaumont, Tex., for the Union.

Mr. Herbert J. Nester, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Texas Company of New Orleans, Louisiana, herein called the Company, the National Labor Relations Board on April 4, 1946, conducted a pre-hearing election pursuant to Article III, Section 3,¹ of the Board's Rules and Regulations, among employees of the Company in the alleged appropriate unit, to determine whether or not they desired to be represented by the Union for the purposes of collective bargaining.

At the close of the election a Tally of Ballots was furnished the parties. The Tally reveals that there were approximately 46 eligible voters and that 46 of these eligible voters cast valid ballots, of which 33 were for the Union, 7 were against, and 6 were challenged.

Thereafter, pursuant to Article III, Section 10,² of the Rules and Regulations, the Board provided for an appropriate hearing upon due

¹ By amendment of November 27, 1945, this Section of the Rules now permits the conduct of a secret ballot of employees prior to hearing in cases which present no substantial issues.

² As amended November 27, 1945, this Section provides that in instances of pre-hearing elections, all issues, including issues with respect to the conduct of the election or conduct affecting the election results and issues raised by challenged ballots, shall be heard at the subsequent hearing.

notice before John H. Garver, Trial Examiner. The hearing was held at New Orleans, Louisiana, on April 30, 1946. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Texas Company, a Delaware corporation having its principal office in New Orleans, Louisiana, is engaged in the production of crude concentrate of petroleum oil, and operates cycling plants at Erath and Berwick, Louisiana. At the Berwick plant, known as the Bateman Lake cycling plant, which alone is involved in this proceeding, the Company produces annually in excess of 250,000 barrels of crude concentrate of petroleum oil which is valued at more than \$250,000. The entire annual output of the Company's Bateman Lake plant is shipped by pipe line to the Company's refineries located at Port Arthur, Texas.

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, 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 recognize the Union as the collective bargaining representative of its employees until it has been certified by the Board in an appropriate unit.

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 Union urges a unit composed of all operating and maintenance employees at the Company's Bateman Lake cycling plant, excluding tech-

nical and clerical employees, supervisors, foremen, and all other supervisory employees.³ The Company is in substantial agreement with the composition of the unit sought by the Union, but would exclude therefrom the fractionator operators.

The disagreement between the parties with respect to the status of the fractionator operators is reflected in the five ballots which were challenged by the Company.⁴ The Company bases its challenges on the contention that the fractionator operators exercise supervisory authority over other employees in the unit, and therefore, should be excluded. The Union would include them.

Approximately 9 months ago the Company began operating the Bateman plant on a 24-hour day basis. This change in policy necessitated a considerable increase in operating personnel to provide for two additional 8-hour shifts. With the establishment of this policy, the Company created the job classification of fractionator operator and promoted five of its regular operators to these positions. The fractionator operators each supervise a crew of four men, consisting of two operators, a fireman and a pumper. There are five such crews which alternate on three 8-hour shifts to make up a full 24-hour day. The fractionator operator is under the direct supervision of the plant foreman, who is in complete charge of all plant operations. In the absence of the foreman, who works only one 8-hour shift per day, the fractionator operator assumes all duties and responsibilities incumbent upon the foreman. In keeping with the authority delegated when the job was created,⁵ the fractionator operator may discipline and otherwise effect changes in the status of the other crew members. The Company gives great weight to the recommendations of the fractionator operators respecting hiring and promotions, and their authority is comparable with that of the maintenance foreman and head roustabout, both of whom the parties would exclude from the unit. In view of the foregoing facts, we are of the opinion that the fractionator operators fall within the Board's definition of supervisory employees, and we shall therefore exclude them from the unit.

We find that all production and maintenance employees at the Company's Bateman Lake cycling plant, excluding technical and clerical employees, the laboratory tester, supervisors, foremen, fractionator operators, and all other supervisory employees with authority to hire,

³ The election was held among the employees comprising the alleged appropriate unit.

⁴ At the hearing, the parties agreed that the challenged ballot of one R. E. Rawls, a laboratory tester, should not be counted, inasmuch as the duties of this employee are technical in nature, and would thereby exclude him from the over-all production and maintenance unit.

⁵ When the Company promoted the five operators to the position of fractionator operators, instructions to the fractionator operators that they would be solely responsible for plant operations during the absence of the plant foreman. The various crew members were likewise instructed that they were to be under the supervision of the fractionator operators and that all instructions pertaining to plant activities would emanate from them.

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 results of the election held previous to the hearing disclose that the Union has secured a majority of the valid votes cast. We shall certify the Union as the collective bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVES

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, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended,

IT IS HEREBY CERTIFIED that Oil Workers International Union, C. I. O., has been designated and selected by a majority of all production and maintenance employees of The Texas Company at its Bateman Lake cycling plant, Berwick, Louisiana, excluding technical and clerical employees, the laboratory tester, supervisors, foremen, fractionator operators, and all other employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining and that pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Certification of Representatives.