

In the Matter of PHILLIPS PETROLEUM COMPANY and INTERNATIONAL
UNION OF OPERATING ENGINEERS, LOCAL No. 351 (A. F. OF L.)

Case No. R-3788.—Decided June 9, 1942

Jurisdiction: oil refining industry.

Investigation and Certification of Representatives: existence of question: refusal to accord petitioner recognition until certified by the Board; contract automatically renewed after notice of rival union's claim to representation held no bar; election necessary.

Unit Appropriate for Collective Bargaining: all employees in 11 plants within the Gasoline Department, Borger District, excluding janitors, temporary employees, and employees occupying supervisory, clerical, technical, and plant patrol positions; stipulation as to.

Mr. M. W. Eddleman, of Bartlesville, Okla., for the Company.

Mr. John L. Coulter, of Ft. Worth, Tex., and *Mr. Arvil Inge*, of Borger, Tex., for the Union.

Mr. W. D. Cambern, of Phillips, Tex., for the Association.

Mr. H. G. Moorhead, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Union of Operating Engineers, Local No. 351 (A. F. of L.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Phillips Petroleum Company, Phillips, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice, before Clifford W. Potter, Trial Examiner. Said hearing was held at Amarillo, Texas, on April 30, 1942. The Company, the Union, and Gasoline Employees Association of the Gasoline Department (Phillips Petroleum Company) in the Borger District, herein called the Association, appeared, participated and 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.

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

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FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Phillips Petroleum Company is a Delaware corporation which maintains and operates within a 35-mile radius of Phillips, Texas, 11 plants, which it classifies within the Gasoline Department of the Borger District.¹ In one of these plants, the Borger Treater, it converts into commercial gasoline and other finished products, raw gasoline which is manufactured in the other 10 plants of the Gasoline Department of the District. During the hearing, Counsel for the Company stated formally for the record that the Company in 1941 manufactured over 200 million gallons of gasoline and other finished gasoline products in these 11 plants and that it shipped a major part of this gasoline and these products to points outside the State of Texas.

II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, Local No. 351, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Gasoline Employees Association of the Gasoline Department (Phillips Petroleum Company) in the Borger District, has since November 1940 represented employees of the Company. The evidence is in conflict as to whether this organization continues to represent employees of the Company or whether the Association has been dissolved and disbanded.

III. THE QUESTION CONCERNING REPRESENTATION

On or about January 2, 1942, the Company refused to recognize the Union except upon certification by the Board. The Union at this time made claim to represent employees in three of the plants in the Gasoline Department of the District, although the Company and the Union then primarily discussed the representation of employees in the Company's Refining Department and postponed to a later date their final disposition of matters concerning representation of employees in the Gasoline Department. On February 5, 1942, the Union filed a petition including employees of these three plants of the Gasoline Department in the proposed unit, but thereafter, on or about Feb-

¹The 11 plants of the Gasoline Department of the Borger District are named Texroy, Canadian, Panhandler, Carson, Rock Creek, Johnson, Sanford, Ray, Rice, Pantex, and Borger Treater. The Company also maintains and operates within the Borger District other plants which it classifies within its Refining Department, and also operates other plants outside of the Borger District; but the present proceeding involves only the employees of the 11 plants above named.

ruary 18, 1942, the Union acceded to the position taken by the Company, that the employees of all 11 plants in the Gasoline Department of the District constitute the appropriate unit, and on February 20, 1942, amended its petition to include employees in all of the Gasoline Department plants.

At the hearing, the Company asserted that it has a valid existing contract with the Association and that this contract constitutes a bar to the present proceeding. The contract, which is entitled "Working Agreement," extends by its terms for a period of one year from March 1, 1941, and thereafter by automatic annual renewal subject to written notice of cancelation or of the desire by a party to amend, such notice to be given 30 days before the renewal date. Under its terms, the Association is recognized as sole bargaining agent "subject to the conditions and limitations imposed by law." The Union raised a number of issues by various contentions which would avoid the bar of the contract, if any, and evidence was introduced by the parties bearing upon these issues; but we do not find it necessary to resolve these issues, because the Union, by presenting to the Company in January 1942 its claim to represent a substantial number of the employees covered by the contract, gave adequate and timely notice sufficient to prevent the automatic renewal clause of the contract from operating to its prejudice in this matter. We find that the contract between the Company and the Association is not a bar to the present proceeding.

The record discloses evidence tending to prove that the Union represents a substantial number of employees in the unit herein found appropriate.²

We find that a question affecting commerce has arisen concerning representation of employees of the Company's Gasoline Department in the Borger District, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

IV. THE APPROPRIATE UNIT

The Union and the Company stipulate that all employees of the Company's Gasoline Department, Borger District, excluding janitors, temporary employees,³ and employees occupying supervisory, clerical,

² The Trial Examiner received as a Board exhibit a Field Examiner's report indicating that the Field Examiner had checked against a Company pay roll for the latter half of February, containing 415 names, a list sworn truly to disclose the membership of the Union, 197 names, and that 86 names on the list appeared on the pay roll. Neither the Company nor the Association objected to the Union's showing of substantial representation. Near the close of the hearing, a representative of the Union stated that he wished the record to disclose that subsequent to the Field Examiner's check he had secured "a substantial number of additional authorizations." The Trial Examiner indicated that further evidence was not necessary.

³ Temporary employees are those who have worked less than 90 days for the Company; such employees are listed upon red cards by the Company and are either made permanent or laid off at the end of the 90-day period.

technical, and plant patrol positions, constitute an appropriate bargaining unit. The Association takes the position that the stated unit would be appropriate if it did not exclude clerical and plant patrol employees. All the parties agree "that the job descriptions set out in the Company's pay roll for the last half of February 1942 with the exception of janitors, constitute the job descriptions agreed upon as being included in the stipulated appropriate unit."

The contract between the Association and the Company covers all employees, but the Association has not offered evidence or presented argument why clerical and plant patrol employees should be included in the appropriate unit while other employees also covered in the contract may be properly excluded. Since we are not provided with reason to justify departing from the stipulation between the Company and the Union defining the unit, we shall exclude clerical and plant patrol employees therefrom.

We find that all employees of the Company's Gasoline Department, Borger District, excluding janitors, temporary employees, and employees occupying supervisory, clerical, technical, and plant patrol positions, 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 and the Association contend that no election should be held; the Union requests an election on a ballot enabling employees to vote only for or against it. In our opinion the question which has arisen concerning representation can best be resolved by an election by secret ballot. Since the Association does not wish to have its name appear upon the ballot,⁴ we shall direct that the election be held on a ballot in the form desired by the Union. Although the Union has requested that eligibility to vote be determined from a pay roll for a period early in February or else for a period approximating the date of the hearing, we shall follow our usual practice and direct that the employees of the Company eligible to vote in the election shall be those in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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

⁴ Committeeman Cambern, who appeared of record for the Association, stated that the Association does not desire to have its name appear on the ballot. Another of the Association's committeemen, Gillispie, agreed.

and pursuant to Article III, Section 8 of the National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Phillips Petroleum Company, Phillips, Texas, 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 Sixteenth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees in the unit found appropriate in Section 4 above, during the pay-roll period immediately preceding the date of this Direction, including any such employees who did not work during such pay-roll period because they were ill or on vacation or in the active military service or training of the United States, or temporarily laid off, but excluding any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by International Union of Operating Engineers, Local No. 351 (A. F. of L.) for the purposes of collective bargaining.