

PHILLIPS PETROLEUM COMPANY *and* INTERNATIONAL UNION OF OPERATING ENGINEERS. *Case No. 16-CA-463. August 21, 1952*

Decision and Order

On March 24, 1952, Trial Examiner Charles W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (5) and Section 8 (a) (1) of the amended Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions, and supporting reasons therefor, to the Intermediate Report.

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

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.¹ The Board has considered the Intermediate Report, the exceptions and supporting reasons, and the entire record in this case,² and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Phillips Petroleum Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union of Operating Engineers as the exclusive representative of all its employees in the appropriate unit, with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) In any manner interfering with the efforts of International Union of Operating Engineers to bargain collectively with the Respondent on behalf of the employees in the aforesaid appropriate unit.

¹ The Trial Examiner rejected an offer of proof as to certain evidence as to the Respondent's apartment-hotel. The evidence contained in this offer of proof was previously submitted to the Board in support of a motion to reopen the representation proceeding which preceded the instant case. At that time, the Board considered the evidence tendered by the Respondent and found it insufficient to merit reopening the representation record or revision of the findings made in that proceeding. Accordingly, the ruling of the Trial Examiner herein is affirmed.

² As the record and the exceptions and supporting reasons, in our opinion, adequately present the issues and contentions of the parties, the Respondent's request for oral argument is hereby denied.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Upon request, bargain collectively with International Union of Operating Engineers, as the exclusive representative of all employees in the appropriate unit, and embody any understanding reached in a signed agreement.

(b) Post at its place of business at Bartlesville, Oklahoma, copies of the notice attached to the Intermediate Report, marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon the receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

³ This notice, however, shall be amended by striking therefrom the words "The Recommendations of a Trial Examiner" and substituting therefor the words "A Decision and Order." In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order"

Intermediate Report

STATEMENT OF THE CASE

Charges having been duly filed and served, a complaint having been issued and served by the General Counsel of the National Labor Relations Board, and a notice of hearing thereon having been waived by the parties, a hearing involving allegations of unfair labor practices by the above-named company, herein called the Respondent, in violation of Section 8 (a) (1) and (5) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, was held in Bartlesville, Oklahoma, on March 17, 1952, before the undersigned Trial Examiner.

In substance the complaint alleges that the Respondent, since January 17, 1952, has refused to bargain collectively with the Union as the exclusive representative of all employees in an appropriate unit, and thereby has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act. In substance, oral answer made by the Respondent at the opening of the hearing denies that the unit alleged is appropriate. Affirmatively, it is the Respondent's position that the Board erred in its determination of the appropriate unit in Case No. 16-RC-811¹ and that it may not be required to bargain as to a unit which is not appropriate.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings and conclusions. Argument and the filing of briefs were waived by all parties.

¹ *Phillips Petroleum Company*, 97 NLRB 67.

Upon the entire record in the case the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Phillips Petroleum Company is a Delaware corporation, having its principal office and place of business in Bartlesville, Oklahoma, and is engaged in several States of the United States in the production, sale, and distribution of petroleum and related products. The Respondent annually causes petroleum and related products, valued at more than \$1,000,000, to be purchased, delivered, and transported in interstate commerce from and through States other than the State of Oklahoma.

II. THE LABOR ORGANIZATION INVOLVED

International Union of Operating Engineers, herein called the Union, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

The complaint alleges, the Board has found, and in accordance with the Board's determination the Trial Examiner now finds, that a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (a) of the Act, among the Respondent's employees, consists of:

All employees of the Building Division of the Treasury Department engaged in the operation and maintenance of the Adams Building, Phillips Building, Bank Building, Thurman Building, Safety Building, Research Laboratory, Carpenter Shop, Power Plant, Machine Shop, Airport, Mailing Room, and the Phillips Apartment Hotel, all located at Bartlesville, Okla., including the leadmen on the night cleaning crew of the Research Laboratory and the light cleaning crew, but excluding mail register, file, stored records, and all other clerks, receptionists, mail sorters, typists, night service board operator, stenographer, secretary, personnel director, auditors, telephone operators, and all other office and clerical employees, cigar stand attendants, watchmen, professional employees, confidential employees, maintenance foremen, operations foremen, day service foremen, carpenter shop foremen, warehouse foremen, elevator operator foremen, electrical supervisor, shipping supervisor, office supervisor, mail section supervisor, the housekeeper, assistant manager, and manager at the hotel, janitor foreman, combination foremen, and all other supervisors as defined in the Act.

A Board election was held following the Board's Direction of Election, above cited. It was won by the Union, which thereafter was certified as the exclusive bargaining agent of the employees in the aforesaid unit.

On or about December 28, 1951, the Union requested the Respondent to bargain with it for all employees in the aforesaid unit. On January 17, 1952, the Respondent refused to bargain with the Union as the representative of the employees engaged in the operation and maintenance of the Phillips Apartment Hotel, maintaining that the Board had erred in including such employees in the appropriate unit. At the hearing the Respondent confirmed its position in this respect.

Also at the hearing the Trial Examiner rejected an offer of proof made by the Respondent, as to additional evidence which, it claimed, related to the question of an appropriate unit. Rejection of the offer was made upon the Respond-

ent's admission that the same offer had previously been made to the Board at the time of moving for reopening of the record in the above-cited representation case.

The Trial Examiner does not consider that the merit of the Respondent's claims as to the appropriateness of the unit is before him for determination but, instead, that he serves merely as a medium through whom the question of such merit may reach the Board for its reconsideration.

The Trial Examiner therefore concludes and finds that on January 17, 1952, and at all times since, the Respondent has refused to bargain collectively with the Union as the exclusive representative of all employees in the above-described appropriate unit, and that by such refusal the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It has been found that the Respondent has engaged in the unfair labor practice of refusing to bargain collectively with the chosen representative of its employees. It will therefore be recommended that it cease and desist therefrom and from like and related conduct. It will further be recommended that the Respondent bargain collectively, upon request, with the Union as the exclusive representative of its employees in the aforesaid appropriate unit.

CONCLUSIONS OF LAW

1. International Union of Operating Engineers is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of the building division of the treasury department of the Respondent engaged in the operation and maintenance of the Adams Building, Phillips Building, Bank Building, Thurman Building, Safety Building, research laboratory, carpenter shop, power plant, machine shop, airport, mailing room, and the Phillips Apartment Hotel, all located at Bartlesville, Oklahoma, including the leadmen on the night cleaning crew of the research laboratory, and the light cleaning crew, but excluding mail register, file, stored records, and all other clerks, receptionists, mail sorter, typists, night service board operator, stenographers, secretary, personnel director, auditors, telephone operators, and all other office and clerical employees, cigar stand attendants, watchmen, professional employees, confidential employees, maintenance foremen, operations foremen, day service foremen, carpenter shop foremen, warehouse foremen, elevator operator foremen, electrical supervisor, shipping supervisor, office supervisor, mail section supervisor, the housekeeper, assistant manager, and manager of the hotel, janitor foremen, combination foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

3. International Union of Operating Engineers was on December 10, 1951, and at all times since has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on and after January 17, 1952, to bargain collectively with the aforesaid Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8 (a) (5) of the Act.

5. By the aforesaid unfair labor practice, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in an unfair labor practice within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication in this volume.]

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that :

WE WILL bargain collectively upon request with INTERNATIONAL UNION OF OPERATING ENGINEERS, as the exclusive representative of all employees in the bargaining unit described herein, with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is :

All employees of the building division of the treasury department engaged in the operation and maintenance of the Adams Building, Phillips Building, Bank Building, Thursman Building, Safety Building, research laboratory, carpenter shop, power plant, machine shop, airport, mailing room, and the Phillips Apartment Hotel, including the leadmen on the night cleaning crew of the research laboratory and the light cleaning crew, but excluding mail register, file, stored records, and all other clerks, receptionists, mail sorters, typists, night service board operator, stenographer, secretary, personnel director, auditors, telephone operators, and all other office and clerical employees, cigar stand attendants, watchmen, professional employees, confidential employees, maintenance foremen, operations foremen, day service foremen, carpenter shop foremen, warehouse foremen, elevator operator foremen, electrical supervisor, shipping supervisor, office supervisor, mail section supervisor, the housekeeper, assistant manager, and manager at the hotel, janitor foremen, combination foremen, and all other supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain collectively with us, or refuse to bargain with said union, as the exclusive representative of all our employees in the bargaining unit set forth above.

PHILLIPS PETROLEUM COMPANY,

Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.