

**Pan American Petroleum Corporation and
Independent Oil Workers Union, Local 16.** Case
28-CA-1877

RULING ON THE MOTION FOR SUMMARY
JUDGMENT

October 16, 1969

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND ZAGORIA

Upon a charge filed by Independent Oil Workers Union, Local 16, herein called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for Region 28, issued a complaint, dated April 30, 1969,¹ against Pan American Petroleum Corporation, herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on Respondent.

With respect to the unfair labor practices, the complaint alleges, in substance, that on February 19 the Union was duly certified by the Regional Director for Region 28 as the exclusive bargaining representative of Respondent's employees in the unit found appropriate,² and that, since on or about April 3, Respondent has refused and is refusing to recognize or bargain with the Union as such exclusive bargaining representative, although the Union has requested and is requesting it to do so. On May 13, Respondent filed its answer to the complaint, in which it admitted in part and denied in part the allegations contained therein, and requested that the complaint be dismissed.

On May 28, the General Counsel filed with the Board a Motion for Summary Judgment and Issuance of Board Decision and Order, alleging that no factual issues had been raised that had not been litigated in the representation proceeding, and requesting, in view of the admissions contained in Respondent's answer, that the Board enter judgment against Respondent on the pleadings, making findings of fact as alleged in the complaint and admitted in the answer and concluding that, as a matter of law, Respondent has violated Section 8(a)(5) and (1) of the Act, as alleged in the complaint and denied in the answer, and order an appropriate remedy therefor. On June 3, Respondent filed its Motion in Opposition To Summary Judgment and to Request Hearing.

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.

Upon the entire record in this case, the Board makes the following.

In its statement in opposition to the General Counsel's Motion, Respondent contends, as it did in its answer to the complaint that, while the major facts set forth by the Regional Director were true at the time of his Decision, nevertheless he erred in finding the unit sought by the Union to be an appropriate one, and the Board erred in adopting his finding. Respondent argued to the Regional Director, *inter alia*, that the Farmington Area sought by the Union was nothing more than an integral part of its South District, which in turn, was an integral part of its Denver Division; that areas, districts, and sometimes even divisions were for valid business reasons realigned, and that the daily operation of all its areas depended upon the supervision of their Division Production Manager and the District Superintendents under him. For those and other reasons, Respondent contended that any unit including less than all producing department employees throughout the Denver Division was inappropriate. The Regional Director rejected these arguments, and found that the Farmington Area alone was appropriate. Respondent now contends that the Board erred in upholding the Regional Director's unit finding, it further contends that, since the hearing in the representation case, certain changes have taken place in the South District and the Farmington Area which bolster its original arguments and, at least, provide a ground for now finding that the unit the Union sought was inappropriate, and that the matter should be set for hearing. We find Respondent's contentions without merit.

On February 11, following a Decision and Direction of Election by the Regional Director for Region 28, a request for review by Respondent, and a denial of that request by the Board, a majority of Respondent's employees in the unit found appropriate, by secret ballot, designated the Union as their representative for the purposes of collective bargaining. No objections were filed to conduct affecting the results of that election and, on February 19, the Union was certified as the exclusive bargaining representative of the employees in the appropriate unit.

In its answer, Respondent admits that on or about March 28 the Union requested that Respondent meet with it for the purpose of collective bargaining, and that since on or after April 3 Respondent has refused to meet for that purpose.

At the representation hearing, evidence was taken with regard to Respondent's total operations in its Farmington Area, the supervisory structure existing within its districts and the Denver Division in particular, the degree of interchange and transfer of employees among areas and districts, and the frequency of realignment of areas and districts.

¹All dates refer to 1969

²Decision and Direction of Election in Case 28-RC-1855 (not published in NLRB volumes), on February 4, the Board denied a request for review

The Regional Director found:

While I am not unmindful of the control which appears to flow from the Employer's Division office and the uniformity of working conditions throughout the Division, considering the fact that the Area superintendent who is responsible for the day-to-day operations in the Area, apparently directs the work of the employees in the Area and makes certain local decisions; the lack of any definite plans to change the boundary line of this Area; and the limited amount, if any, of interchange and transfer of employees; it appears on the basis of the foregoing and the record as a whole that the unit sought by Petitioner is comprised of a stable and identifiable group of employees with common interests and is therefore appropriate. Moreover, there is no history of bargaining for this Division and even if the division-wide unit could also be deemed an appropriate unit, no union seeks to represent these employees on such basis.

The Regional Director directed an election in a unit comprising the Farmington Area alone. The Board denied Respondent's request for review of the Regional Director's decision.

At the time of the hearing, the Farmington Area embraced all or parts of 4 States; the South District embraced 3 areas, including Farmington; and the Denver Division embraced 3 districts. Respondent states that the Farmington Area now embraces all or parts of 5 States; the South District now embraces 4 areas, including Farmington; the Denver Division now has only 2 districts; these administrative changes have wrought a change in the geographical scope of supervisory authority on both the district and the area levels; there have been 5 transfers among areas in the Denver Division since the hearing; and, since the hearing, the Union has agreed to an initial divisionwide contract in another of Respondent's divisions. On these facts, Respondent seeks to have the Board reverse the previous finding as to the appropriate unit.

Whether the unit sought was an appropriate one when the Board denied review of the Regional Director's direction of election depended upon the facts and circumstances then existing. The Regional Director found the unit sought was an appropriate one, and the Board affirmed that finding by denying review. The matters raised in that proceeding may not be relitigated here. Section 102.67(f), National Labor Relations Board Rules and Regulations, Series 8, as amended. Nor do the administrative changes or additional transfers now related by Respondent persuade us to find differently. We accept as true all that Respondent offers. Since the hearing in the representation case, the geographical boundaries of the districts and areas within the Denver Division have changed. As a result, the geographical scope of the supervision of the District Production Superintendents, and the Area Superintendents have been broadened. While the

Farmington Area, with which we are primarily concerned, has been expanded to include part of a fifth State, neither the responsibility of the Area Superintendent nor the overall supervisory structure from area to district to division has been altered. None of the factors upon which the Regional Director relied in finding the Farmington Area "a stable and identifiable group of employees with common interests" have changed.³ Accordingly, we hereby find that the new facts offered do not render inappropriate the unit previously determined.

The General Counsel's motion averred that, following a Board-conducted secret-ballot election, the Union was certified as collective-bargaining agent of the producing department employees in Respondent's Farmington Area, that thereafter the Union demanded and Respondent refused to bargain with the representative so chosen, that Respondent's answer to the complaint admits all pertinent facts with the addition only of the administrative changes and additional factors discussed above, that these changes and factors are not disputed but do not alter the original unit finding, and that there are therefore no matters requiring hearing before a Trial Examiner. We agree. Accordingly, the General Counsel's Motion for Summary Judgment is hereby granted. On the basis of the record before it, including the General Counsel's motion and Respondent's opposition thereto, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and at all times material herein has been, a corporation with its principal office and place of business at Tulsa, Oklahoma, and is engaged in the exploration for and production of oil and gas in several States of the United States, including an operation in the Farmington, New Mexico, area. During the 12 months preceding the issuance of the complaint herein, Respondent purchased and had delivered to its Farmington Area materials valued in excess of \$50,000, which were transferred to the Farmington Area from States other than those included within the Farmington Area.

Respondent admits, and we find, that it is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act

³The fact that there have been five additional transfers of employees "between Areas in the Denver Division" does not compel us to find otherwise. Neither are we persuaded by the agreement of the Union to a divisionwide unit in Respondent's New Orleans Division, subsequent to the hearing in the representation case, to depart from the original finding that the Farmington Area is an appropriate unit. When making that decision, there were in existence contracts between the Union and Respondent in other divisionwide units.

II THE LABOR ORGANIZATION INVOLVED

Independent Oil Workers Union, Local 16, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A *The Representation Proceeding*

At all times material herein the following employees have constituted and now constitute a unit appropriate for purposes of collective bargaining within the meaning of the Act:

All production, operating and maintenance employees in the producing department of the Employer's Farmington Area at Farmington, New Mexico, including gas technicians, excluding all office clerical and professional employees, guards, watchmen and supervisors as defined in the Act.

B. *The Request to Bargain and Respondent's Refusal*

A majority of the employees of Respondent in said unit having designated the Union as their representative for the purposes of collective bargaining with Respondent, the Regional Director duly certified the Union as the exclusive bargaining representative of the employees in said unit, and the Union continues to be such representative. We find that the Union at all times since February 19 has been and now is the exclusive bargaining representative of all the employees in the appropriate unit described above, within the meaning of Section 9(a) of the Act; that the Union requested and is continuing to request Respondent to bargain collectively with it as the exclusive bargaining representative of all the employees in the appropriate unit; that Respondent has since April 3 refused to bargain collectively with the Union as such representative; and that, by such refusal, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of Respondent set forth in Section III, above, occurring in connection with its operations as 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.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial year of certification as beginning on the date the Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817, *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10).

CONCLUSIONS OF LAW

1. Pan American Petroleum Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Independent Oil Workers Union, Local 16, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production, operating and maintenance employees in the producing department of the Employer's Farmington Area at Farmington, New Mexico, including gas technicians, excluding all office clerical and professional employees, guards, watchmen and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 19, the above-named labor organization has been and is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing, on or about April 3, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive representative of all its employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of

the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pan American Petroleum Corporation, Farmington, New Mexico, its officers, agents, successors, and assigns, shall.

1 Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Independent Oil Workers Union, Local 16, as the exclusive and duly certified bargaining representative of its employees in the following appropriate unit.

All production, operating and maintenance employees in the producing department of the Employer's Farmington Area at Farmington, New Mexico, including gas technicians, excluding all office clerical and professional employees, guards, watchmen and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

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

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement

(b) Post at its jobsites in its Farmington Area copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 28 shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by

⁴In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading posted by Order of the National Labor Relations Board shall read "posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

Respondent to insure that said notices are not altered, defaced, or covered by any other material

(c) Notify the Regional Director for Region 28, in writing, within 10 days from the date of this Decision and Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES

Posted by order of the National Labor Relations Board, an Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Independent Oil Workers Union, Local 16, as the exclusive bargaining representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is

All production, operating and maintenance employees in the producing department of the Employer's Farmington Area at Farmington, New Mexico, including gas technicians, excluding all office clerical and professional employees, guards, watchmen and supervisors as defined in the Act

PAN AMERICAN
PETROLEUM
CORPORATION
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

This is an official notice and must not be defaced by anyone.

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

Any questions concerning this notice or compliance with its provisions, may be directed to the Board's Office, 7011 Federal Building & U.S. Courthouse, 500 Gold Avenue, S.W., Albuquerque, New Mexico 87101, Telephone 505-843-2507.