

In the Matter of CONTINENTAL OIL COMPANY and OIL WORKERS INTERNATIONAL UNION—CIO

*Case No. 16-R-818.—Decided April 10, 1944*

*Mr. Wm. H. Zwick*, of Ponca City, Okla., for the Company.

*Mr. Lindsay P. Walden*, of Fort Worth, Texas, and *Mr. W. F. Noell*, of Ponca City, Okla., for the C. I. O.

*Messrs. L. R. Maris* and *C. E. Morrison*, of Ponca City, Okla., for the Independent.

*Mr. John H. LaRowe*, of Independence, Kans., and *Mr. A. J. Moore*, of Oklahoma City, Okla., for the Council.<sup>1</sup>

*Mr. Robert E. Tillman*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Oil Workers International Union—CIO, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Continental Oil Company, Ponca City, Oklahoma, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Glenn L. Moller, Trial Examiner. Said hearing was held at Ponca City, Oklahoma, on February 28, 1944. The Company, the C. I. O., and Independent Oil Workers Union of Ponca City, Oklahoma, herein called the Independent, and Ponca City Metal Trades Council, herein called the Council, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on

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<sup>1</sup>The following entered appearances for various craft affiliates of the Council: C. A. Buskel, for the International Association of Machinists; E. C. Jarboe, for the International Union of Operating Engineers; G. R. Stewart, for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Glenn W. Taylor, for the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada; Earl Phillips, for the International Hod Carriers, Building and Common Laborers Union of America; R. O. Hodson, for the Building Service Employees International Union; and Clyde Travis, for the International Association of Bridge, Structural and Ornamental Iron Workers.

the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

Continental Oil Company, a Delaware corporation, is engaged in processing crude oil and in selling and distributing products derived therefrom. The Company maintains its principal office at Ponca City, Oklahoma, and operates refineries at Baltimore, Maryland; Lewiston, Montana; Farmington, New Mexico; Ponca City, Oklahoma; Wichita Falls, Texas; and Glen Rock, Wyoming. Only the Ponca City refinery is involved in the instant proceeding. At this refinery the Company manufactures and distributes gasoline, lubricating oils, greases, and other petroleum products. Currently, approximately 40 percent of the crude oil processed at the Ponca City refinery is shipped or piped there from points outside the State of Oklahoma. The refinery processes about 600,000 barrels of crude oil per month, of which approximately 60 percent is shipped or piped to points outside the State of Oklahoma.

The Company admits that in its operations at the Ponca City refinery it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

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

Independent Oil Workers Union of Ponca City, Oklahoma, is an unaffiliated labor organization, admitting to membership employees of the Company.

Ponca City Metal Trades Council comprises several craft labor organizations affiliated with the American Federation of Labor, which admit to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On November 18, 1943, the C. I. O. mailed a letter to the Company apprising it of the C. I. O.'s claim to represent a specified group of the Company's employees. On December 1, 1943, the C. I. O. mailed a second letter to the same effect. No response was made to either letter.

On October 10, 1941, the Independent was victorious in a consent election conducted under the auspices of the Board's Regional Director

among the employees in the same unit for which the C. I. O. is now petitioning. On January 22, 1942, the Company and the Independent entered into a collective bargaining contract covering those employees, effective for a period of 1 year, but subject to automatic renewal from year to year in the absence of written notice to the contrary by either party not later than 60 days prior to the yearly expiration date. No such notice has been given. Thus, the contract was automatically renewed on or about November 23, 1942, and again about November 23, 1943. The Independent now urges that the contract, as automatically renewed, precludes a present investigation and determination of representatives. We do not agree. Since the C. I. O. gave notice to the Company of its claims to representation by its letter of November 18, 1943, more than 60 days prior to January 21, 1944, the yearly expiration date of the contract, we find that the contract does not operate as a bar to a present determination of representatives.<sup>2</sup>

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. and the Council each represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>3</sup>

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 C. I. O., the Independent, and the Company are agreed that the appropriate unit should comprise all production and maintenance employees of the Ponca City Refinery, including employees in the Ponca City Division—Sales and Sales Engineering Laboratory and non-militarized watchmen, but excluding all clerical and office employees, both in the plant and the main offices, surveyors, technologists, chemists, professional engineers (except centrifugal engineers, gasoline refinery plant engineers, and mechanical test engineers), militarized guards, employees in the five existing craft units (namely, boilermakers, welders and their helpers; electricians and their helpers; carpenters and their helpers; painters and their helpers; and brickmasons), foremen, and subforemen. The Council, on the other hand, while agreeing to the above-specified inclusions and exclusions, contends that the employees should comprise not one but

<sup>2</sup> See *Matter of Pressed Steel Car Company, Inc*, 41 N. L. R. B. 6, 8, and cases cited therein.

<sup>3</sup> The Field Examiner stated that the C. I. O. had submitted 405 authorization cards and that signatures on 319 of the cards were names of persons whose names appeared on the Company's pay roll of January 16, 1944, which listed 1,089 employees in the unit which the C. I. O. alleged to be appropriate. He also stated that the Council submitted 245 authorization cards and that signatures on 105 of the cards were names of persons whose names appeared on the above-mentioned pay roll. The Independent relies upon its contract to show its interest.

seven appropriate units, as follows: (1) janitors and janitresses; (2) toolroom man in Yard Labor Department, yardmen, gardeners, lawn men, laborers, brick mason helpers, and mortar mixers; (3) riggers and rigger helpers; (4) pipe fitters and their helpers and apprentices; (5) blacksmiths, pipe machine operators, hammer operators, toolroom men, machinists, and machinist helpers and apprentices in the machine shop, and automobile and truck mechanics with their helpers in the Motor Transportation Division; (6) tractor and truck drivers, warehouse deliverymen, and loaders; and (7) the remaining employees. The parties are not in agreement as to the disposition of gang bosses and shift leadmen.

The Ponca City Refinery consists of several divisions. At the time of the hearing, additional plant facilities were under construction across the highway from the present plant and were expected to be placed in operation by March 15, 1944, as another division of the present plant. All parties are agreed that the new facilities should be considered as part of the old operations in determining the unit, and we so find.

On October 8, 1941, the C. I. O., the Independent, the Company, and five craft organizations affiliated with the American Federation of Labor,<sup>4</sup> which had been bargaining collectively with the Company for several years, entered into six consent election agreements, five on a craft unit basis and the sixth covering a "residual" unit. Each of the five craft organizations was victorious in the election in which it participated, and, as indicated in Section III, *supra*, the Independent won in the election conducted among the employees in the "residual" unit. Four of the craft organizations have since entered into written collective bargaining agreements with the Company, while the fifth has an oral agreement. No party contends that any of the employees covered by these five craft agreements should be included in the units now being sought.

The record indicates that the Council was established about November 28, 1943, to organize the employees of the Company into a single unit, and that it conducted its organizing campaign on that basis. At the hearing, the Council announced that it had changed its position from one in favor of an over-all unit to one favoring several craft units. However, it indicated that if the Board were to find the unit sought by the C. I. O. and the Independent to be appropriate, and were to certify the Council as the bargaining representative of the employees in such a unit, it would negotiate a master contract with the Company.

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<sup>4</sup> Namely, Local Union 444, of the International Brotherhood of Electrical Workers; Brotherhood of Painters, Paperhangers and Decorators of America, Local Union No. 589; United Brotherhood of Carpenters and Joiners of America, Local No. 2008; International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America, Lodge No. 707; and Brickmasons and Plasterers International Union of Oklahoma, No. 13.

The record is clear that the "residual" unit established as a result of the 1941 consent elections is that now sought by the C. I. O. and the Independent, that since these elections collective bargaining has been conducted by the Company and the Independent on the basis of such a unit, and that neither the Council nor its affiliates objected to this unit until shortly before the hearing in this proceeding. Under the circumstances, we are of the opinion that the collective bargaining history should be given decisive weight in our determination of the appropriate unit. Moreover, we perceive no circumstances in the record which would warrant a finding at this time that the residual production and maintenance unit recognized since 1941 should now be divided into seven separate bargaining units.

There remains for consideration the disposition of those categories of employees concerning whom the parties are in dispute.

*Gang bosses:* The C. I. O., the Council, and the Independent seek to include gang bosses in the unit. In the Company's supervisory hierarchy, gang bosses rank immediately below the foremen. They are hourly paid at a higher rate of pay than the 5 to 35 employees who may be under them. They effectively recommend disciplinary action. Less than 20 percent of their time is devoted to non-supervisory duties. We find that gang bosses are supervisory employees, and, accordingly, we shall exclude them from the unit.

*Shift leadmen:* The Company recently created the classification of shift leadmen in its control laboratory, and placed in this new classification three of its testers. The C. I. O. and the Council seek to include the shift leadmen in the unit, whereas the Company and the Independent would exclude them. The shift leadmen are responsible to the chief tester. In his absence they are in complete charge of the laboratory. They instruct and supervise from 15 to 23 women employees. Less than 10 percent of their time is spent in manual work. The shift leadmen have the power to discipline employees under their supervision by sending them home, and to make recommendation affecting their status. We find that shift leadmen are supervisory employees, and, accordingly, we shall exclude them from the unit.

We find that all production and maintenance employees of the Ponca City Refinery, including employees in the Ponca City Division—Sales and Sales Engineering Laboratory and non-militarized watchmen, but excluding all clerical and office employees; both in the plant and the main offices, surveyors, technologists, chemists, professional engineers (excepting centrifugal engineers, gasoline refinery plant engineers, and mechanical test engineers), militarized guards, employees in the five existing craft units (namely, boilermakers, welders and their helpers; electricians and their helpers; carpenters and their helpers; painters and their helpers; and brickmasons), foremen,

subforemen, gang bosses, shift leadmen, 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

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of our Direction of Election herein, subject to the limitations and additions set forth therein.

The Company and the Independent contend that so-called "temporary employees" should not be entitled to vote in the election, while the C. I. O. and the Council urge that they should. The Company has a probationary system as respects its new employees. New employees start at lower wage rates and are not entitled to participate in employee benefit plans. At the end of 6 months of satisfactory service (3 months in the case of common laborers) they are given permanent status, unless they have some physical or moral disability which the Company feels should bar them from assignment to permanent status. Failure to be given permanent status does not mean, however, that such an employee will be discharged. Thus, the Company has 172 so-called "temporary employees" (or probationary employees), of whom 98 have been employed less than 3 months, 31 from 3 to 6 months, and 43 for more than 6 months. Although employees with less than 6 months service were not permitted to vote in the 1941 consent election, the record discloses that the Independent has since bargained for temporary employees. Moreover, the Company has no intention of laying off or discharging such employees. We find, therefore, that the temporary employees have a sufficient interest in the selection of a collective bargaining representative to entitle them to vote in the election hereinafter directed.<sup>5</sup>

#### 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, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Continental Oil Company, Ponca City, Oklahoma, an election by secret ballot shall

<sup>5</sup> See *Matter of Nineteen Hundred Corporation*, 32 N. L. R. B. 327.

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, Sections 10 and 11, of said Rules and Regulations, among the 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 who present themselves in person at the polls, but excluding any 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 they desire to be represented by Oil Workers International Union-CIO, or by Independent Oil Workers Union of Ponca City, Oklahoma, or by Ponca City Metal Trades Council, for the purposes of collective bargaining, or by none.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.