

In the Matter of THE PURE OIL COMPANY (SMITH'S BLUFF REFINERY)
and INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE NO. 395

Case No. 16-R-808.—Decided April 22, 1944

Mr. C. E. Bryson, of Houston, Tex., and *Messrs. J. S. Allen* and *I. L. Hostetler*, of Nederland, Tex., for the Company.

Mr. Earl H. Spencer, of Nederland, Tex., and *Mr. H. McDonald*, of Vidor, Tex., for the I. A. M.

Mr. L. L. Crane, of Port Neches, Tex., and *Mr. W. J. Trombley*, of Port Arthur, Tex., for the C. I. O.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, Lodge No. 395, herein called the IAM, alleging that a question affecting commerce had arisen concerning the representation of employees of The Pure Oil Company (Smith's Bluff Refinery), Nederland, Texas, 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 Beaumont, Texas, on March 4, 1944. The Company, the IAM, and Oil Workers International Union, Local No. 228, CIO, herein called the CIO, 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 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

The Pure Oil Company is an Ohio corporation with its principal office in Chicago, Illinois. It is engaged in producing, refining, trans-

55 N L R B. No 267.

porting, and selling petroleum and petroleum products within the States of Texas, Louisiana, Oklahoma, West Virginia, Michigan, Illinois, Ohio, and Kansas, and operates refineries in Michigan, Ohio, West Virginia, and Texas. The Company's refinery at Nederland, Texas, known as Smith's Bluff Refinery, is the only operation of the Company involved herein. The through-put capacity of the Smith's Bluff Refinery is approximately 50,000 barrels of crude oil per day. Approximately 25 percent of the crude oil processed there is shipped to the refinery from the State of Louisiana and more than 50 percent of the finished products of said refinery is shipped from it to points outside the State of Texas.

We find that the operations of the Company affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Lodge No. 395, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Oil Workers International Union, Local No. 228, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION; THE ALLEGED APPROPRIATE UNIT

The refinery operations of the Company are divided into an Operating Division and a Maintenance Division. About the year 1938, the Company, because of the varied needs of the craft departments in the Maintenance Division, discontinued its practice of employing persons as helpers in specific craft departments and created a pool of "maintenance helpers." These helpers were to be available to and capable of working in any of the craft departments.

On November 14, 1939, the CIO, the IAM, and the Company entered into a consent election agreement pursuant to which the production and maintenance employees of the Company were given an opportunity to vote for or against the CIO as their exclusive bargaining representative. In a separate election the machinists, handy men, and service men in the Mechanical Department were afforded an opportunity to vote for the CIO, the IAM, or neither as their exclusive collective bargaining representative. As a result of the elections, the IAM was recognized as the bargaining representative of the machinists and the CIO was recognized as the bargaining representative of all other employees in the plant, including all craftsmen in the maintenance department except machinists, and including the maintenance helpers.

In the operation of the pool, although maintenance helpers are subject to being assigned to work with any craft in the refinery, certain of them tend to spend the major portion of their time in one department. There are four such helpers who spend as much as 90 percent of their time working with the machinists. The IAM contends that they are, therefore, more properly a part of the machinists' unit represented by the IAM than of the residual unit represented by the CIO, and it requests that the Board find that machinists, handy men, service men, and machinists helpers in the Company's Mechanical Department constitute an appropriate unit. However, the IAM does not seek an election covering the entire group but desires to have any election which the Board might order confined to the four maintenance helpers who spend the major portion of their time as machinists' helpers to determine whether or not they desire to be included in the machinists' unit for the purposes of collective bargaining. The CIO maintains that because of the upgrading system of the Company, whereby any maintenance helper may qualify to fill a vacancy in any maintenance department irrespective of the department in which he does most of his work,¹ the granting of the IAM's request would be prejudicial to the rights of all other maintenance helpers and would be contrary to the history of bargaining as established and adhered to since 1939. The Company asserts that it has no preference in the matter except that it wants to be able in any case to continue freely to shift maintenance helpers around as they are needed.

The machinists generally require more helpers than do other craftsmen. For long periods of time, other helpers in addition to the 4 presently in dispute spend the major portion of their time as machinists' helpers. It is contemplated that in the near future the number of helpers at all times spending the major portion of their time with the machinists will increase from 4 to 10. It is, therefore, evident that the number of persons affected by the proposed change is not constant and the matter would continually need readjustment.

In view of the interchangeability of maintenance helpers and the long history of bargaining instituted by the consent election agreement in

¹ For the purpose of increasing the number of skilled workmen in its employ, the Company has instituted a training program whereby a certain number of "trainees" are assigned to each craft department. These trainees are maintenance helpers who have evidenced an interest in a certain craft and to whom the craftsmen in that department give particular attention. In accordance with its contract with the CIO, the Company's upgrading system provides for the posting of vacancies in all departments. Laborers in the Company's employ may apply for positions in the maintenance helper pool; only maintenance helpers may apply for vacancies in the "trainee" class. Trainees, if qualified, have first preference in the filling of vacancies in the department in which they have trained, but if the trainee in the department is not qualified, a maintenance helper qualified by ability and seniority may have the position. A trainee may also qualify to fill a position in a department other than the one in which he was training, but in applying for such a position, he has a status no higher than other maintenance helpers

which the IAM participated, whereby, with the acquiescence of the IAM the maintenance helpers have been included in the residual unit, we find that the employees affected by the petition may not appropriately be added to the machinists' unit. We further find that no question concerning the representation of employees of the Company in an appropriate bargaining unit has arisen within the meaning of Section 9 (c) of the Act. Accordingly, we shall dismiss the petition.

ORDER

Upon the basis of the foregoing findings of fact and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of The Pure Oil Company (Smith's Bluff Refinery), Nederland, Texas, filed by International Association of Machinists, Lodge No. 395, be, and it hereby is, dismissed.

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