

In the Matter of PORTLAND GAS AND COKE COMPANY and GAS & COKE WORKERS UNION, LOCAL NO. 19591, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, and GASCO EMPLOYEES ASSOCIATION

Case No. R-115

Gas Manufacturing and Distributing Industry—Election Ordered: prior to decision; controversy concerning representation of employees—rival organizations—question affecting commerce. confusion and unrest among employees—*Unit Appropriate for Collective Bargaining:* community of interest; established labor organizations in plant; eligibility for membership in both rival organizations—*Certification of Representatives*

Mr. E. J. Eagan for the Board.

Laing & Gray, by *Mr. Henry S. Gray*, of Portland, Ore., for the Company.

Green, Tanner & Boesen, by *Mr. Chris Boesen*, of Portland, Ore., for the Union.

Mr. Herbert L. Swett, of Portland, Ore., for Gasco Employees Association.

Mr. Joseph Rosenfarb, of counsel to the Board.

DIRECTION FOR ELECTION

January 22, 1937

The National Labor Relations Board, having found that a question affecting commerce has arisen concerning the representation of employees in the Operating Department (including the production, distribution, utilization, and supply bureaus) of the Portland Gas and Coke Company, Portland, Oregon, and that the said employees constitute one unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act, 49 Stat. 449, and acting pursuant to the power vested in the National Labor Relations Board by Section 9(c) of said Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby

DIRECTS that as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with the Portland Gas and Coke Company, an election by secret ballot shall be conducted within a period of ten (10) days after the pro-

duction by the Portland Gas and Coke Company of its payroll lists in accordance with the stipulation entered into by the Portland Gas and Coke Company and the Regional Director for the Nineteenth Region on December 17, 1936, under the direction and supervision of said Regional Director, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the employees in the Operating Department of the Portland Gas and Coke Company, who were on the payroll as of November 15, 1936; excepting, as provided by said stipulation, “executives and their chief assistants, office help, foremen, or temporary employees not regularly carried on the payroll,” to determine whether they desire to be represented by Gas & Coke Workers Union, Local No. 19591, or the Gasco Employees Association.

[SAME TITLE]

DECISION
AND
CERTIFICATION OF REPRESENTATIVES

March 9, 1937

STATEMENT OF CASE

On September 26, 1936, Gas and Coke Workers Union, Local No. 19591, hereinafter called the Union, filed with the Regional Director for the Nineteenth Region (Seattle, Washington) a petition for an investigation and certification of representatives of employees engaged in the Operating Department of the Portland Gas and Coke Company, Portland, Oregon, hereinafter called the Company. Thereafter the National Labor Relations Board, hereinafter called the Board, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing upon due notice.

A notice of hearing was issued and duly served and pursuant thereto a hearing was held on December 22, 1936, before Harry Hazel, the Trial Examiner duly designated by the Board. The Gasco Employees Association, hereinafter called the Association, appeared specially at the hearing and moved through its counsel to dismiss the proceedings on the ground that the Board has no jurisdiction in the matter. The motion was denied, and this denial is hereby affirmed. The Union and the Company likewise appeared through counsel, and the Association as well as the Union called witnesses and introduced evidence.

On December 17, 1936, a stipulation was entered into between the Company and the Regional Director for the Nineteenth Region, whereby the Company agreed to cooperate with the Board in holding an election or elections in the matter and that it would not challenge the jurisdiction of the Board to hold a hearing to determine the unit appropriate for collective bargaining, to hold an election or elections, or to certify the result of such election or elections.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of the employees in the Operating Department of the Company and on the basis of such conclusion, and acting pursuant to Article III, Section (8) of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a Direction of Election on January 22, 1937, in which it was found that the employees in the Operating Department constitute one unit appropriate for the purposes of collective bargaining. Merely for the purpose of expediting the election and thus to insure to the employees of the Company the full benefit of the right to collective bargaining as early as possible the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

The election was conducted on February 4 and 5 at and about Portland, Oregon. Pursuant to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, an Intermediate Report upon the election was subsequently prepared by Charles W. Hope, who conducted the election as agent of the Board, and duly served upon the parties. The Intermediate Report found that the Union had been selected by a majority of the employees in the Operating Department of the Company. No objections to the ballot or to the Intermediate Report were filed by the parties.

Upon the record in the case, the stenographic report of the hearing, and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, and the stipulation hereinbefore mentioned, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS¹

The Company is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business at Portland, Oregon.

The Company's principal business is converting petroleum into gas for domestic and commercial purposes and as an incident to such

¹ Most of the facts concerning the Company's business are taken from the aforementioned stipulation

business the Company manufactures and sells briquets, bensol, road tar, and other by-products. Besides distributing gas in the State of Oregon, the Company also distributes some gas outside of the State. The Company itself transports the gas outside of the State of Oregon in pipes and mains owned and operated by the Company. The Company also sells and ships 20 per cent of its by-products outside of the State of Oregon.

About 25 employees in the Operating Department of the Company are employed in the loading of briquets into trucks and into railroad cars. Ten or twelve truck drivers of the Company are engaged in the transportation of briquets into the State of Washington. All of the employees in the Distribution Bureau of the Operating Department are concerned with the maintenance and care of the pipes of the Company leading into the State of Washington.

About 325 men are employed in the Operating Department of the Company. This Department comprises four bureaus:

The Production Bureau manufactures gas and its by-products at the Company's gas works located at Gasco, Oregon, approximately seven miles from the headquarters of the other bureaus. Employees of the Production Bureau also load by-products for local delivery and for shipment. Employees of this Bureau consist of carpenters, pipe fitters, painters, machinists, machine operators, ditch diggers—in fact, they range all the way from common to highly skilled labor.

The Distribution Bureau has charge of the transmission and distribution of the manufactured gas from the outlet of the plant compressors to the inlet of customers' meters, as well as the maintenance and reconstruction of mains and facilities between such points. It also has charge of the teamsters and crews who deliver briquets within hauling distance. This Bureau also includes garage workers who service and maintain the Company's automotive equipment. Like the employees in the Production Bureau, the employees of the Distribution Bureau comprise those engaged all the way from common labor to skilled craft labor.

The Utilization Bureau has charge of the utilization of the manufactured gas, including the installation, removal of and repairs to meters and governors, and of adjustments to customers' appliances for the utilization of the manufactured gas.

The Supply Bureau consists of three or four men engaged in the provision and distribution of supplies to the other Bureaus.

The entire Operating Department consisting of the foregoing Bureaus is under the general supervision and management of E. L. Hall, the Company's operating manager who maintains his office in the Public Service Building in the City of Portland.

II. THE ORGANIZATIONS INVOLVED

A. *The Union*

The Union was organized on May 10, 1934, as a federal labor union affiliated with the American Federation of Labor. It later became a local of the International Union of Gas and Coke Workers, an affiliate of the American Federation of Labor. All employees, exclusive of office help and supervisory employees engaged in the gas and coke industry, whatever their occupation, are eligible to membership in the Union. It appears from the evidence that in February, 1935, an election was held by the old National Labor Relations Board among the employees of the Operating Department of the Company to determine the collective bargaining agency. The employees of the Production, Distribution, and Utilization Bureaus were treated for the purpose of the election as three separate collective bargaining units. A majority of the employees in the Production Bureau voted in favor of the Union as their collective bargaining representative, and the Company has since recognized the Union as the exclusive collective bargaining agency of the employees in the Production Bureau. All of the employees in the Production Bureau are now members of the Union. The rest of the union membership is distributed between the Distribution and the Utilization Bureaus.

B. *The Association*

The Gasco Employees Association was organized in the fall of 1934 by workmen in the Operating Department. It originally represented all employees in the Operating Department, but following the Company's recognition of the Union as exclusive bargaining agency in the Production Bureau, it has represented the Distribution and Utilization Bureaus. All employees engaged in gas and coke work are eligible to membership in the Association. Since its organization, it has been officered mostly by straw bosses.

III. THE APPROPRIATE UNIT

It is the position of the Union in this case that the employees throughout the entire Operating Department of the Company, excepting executives and their chief assistants, office help, foremen, and temporary employees not regularly carried on the payroll, constitute a unit appropriate for the purposes of collective bargaining. The position of the Association, however, is that the Board should conduct separate elections in the Bureaus comprising the Operating Department, as appropriate units for collective bargaining.

As shown above, the work both in the Production and Distribution Bureaus consists of a similarly wide range of labor both skilled and unskilled. Indeed, the employees in the two Bureaus are interchangeable. At present 40 employees in the Production Bureau are transferees from the Distribution Bureau. The problem of who should represent the transferees is one which is productive of confusion under a division of the Operating Department into three units but would be non-existent if the collective bargaining agency represented the whole Operating Department. Likewise, the problem of seniority of transferees is a difficult one now under the tripartite division of the Operating Department, but would not present an abnormal problem under a unitary arrangement of the whole Operating Department. Furthermore, the same economic and other factors which have caused a vertical alignment of labor in the plant of the Company (as witness the membership both in the Union and in the Association) are operative in making it logical that the employees of the Operating Department as a whole organize as a unit to bargain collectively with the Company. The evidence is clear that the same standards of wages and working conditions must prevail throughout the Operating Department for corresponding work in the various Bureaus. This was asservated by Hall, the operating manager of the Company, and admitted by A. R. McLean, secretary of the Association. It follows therefore that only one bargaining agency for the whole Operating Department could effectively represent the employees.

The objection of distance—that the Production Bureau is seven miles from the Distribution and Utilization Bureaus—is not of serious weight. Frank R. Downing, Association representative, admitted that it is not unusual for labor organizations in the industry to have members scattered over 50 miles and that the Association had members in Salem, a place apparently further removed from the Distribution and Utilization Bureaus than is the Production Bureau. Furthermore, the distance did not prevent the Association from representing the employees in the Production Bureau before the election of 1935.

To designate the Operating Department as one unit for the purposes of collective bargaining would promote the harmony and solidarity of the employees in that Department, whose interests are the same in all Bureaus, and would thereby facilitate the processes of collective bargaining already established.

We therefore find that the employees in the Operating Department, consisting of the Production Bureau, Distribution Bureau, Utilization Bureau, and Supply Bureau, constitute a unit appropriate for the purposes of collective bargaining. However, in ac-

cordance with the stipulation entered into, we shall except executives and their chief assistants, office help, foremen, and temporary employees not regularly carried on the payroll.

IV. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

The question of representation which has arisen bids fair to cause confusion and unrest among the employees in the Operating Department of the Company, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the above findings, the following conclusions of law are made by the Board:

1. A question affecting commerce has arisen concerning the representation of the employees in the Operating Department of the Portland Gas and Coke Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The employees in the Operating Department, consisting of the Production Bureau, Distribution Bureau, Utilization Bureau, and Supply Bureau, except executives and their chief assistants, office help, foremen, and temporary employees not regularly carried on the payroll, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

A petition for certification of representatives having been duly filed, and an investigation and hearing having been duly authorized and conducted, and an election by secret ballot having been conducted on February 4 and 5, 1937, among the employees of the Operating Department of the Portland Gas and Coke Company located at Portland, Oregon, pursuant to the National Labor Relations Board's Direction of Election dated January 22, 1937, and an Intermediate Report upon the secret ballot finding that the Gas and Coke Workers Union, Local No. 19591, affiliated with the American Federation of Labor, had been selected by a majority of the employees in the bargaining unit, having been prepared by Charles W. Hope, the agent of the Board designated to conduct the election, and duly served upon the parties, and no objections to the ballot and to the Intermediate Report having been filed with the Board by the parties, pursuant to Article III, Section (9) of National Labor Relations Board Rules and Regulations—Series 1, as amended,

THEREFORE, 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 (8) of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Gas and Coke Workers Union, Local No. 19591, affiliated with the American Federation of Labor, has been selected by a majority of the employees in the Operating Department (including the Production, Distribution, Utilization and Supply Bureaus) of the Portland Gas and Coke Company, Portland, Oregon, excepting executives and their chief assistants, office help, foremen, and temporary employees not regularly carried on the payroll, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of said Act, Gas and Coke Workers Union, Local No. 19591, affiliated with the American Federation of Labor, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.