

In the Matter of BELL OIL AND GAS COMPANY, BURK-DIVIDE OIL COMPANY, CONSOLIDATED, RENO OIL COMPANY and INTERNATIONAL ASSOCIATION OF OIL FIELD, GAS WELL & REFINERY WORKERS OF AMERICA, LOCAL NO. 258, and GEORGE E. BEBERMEYER

*Case No. C-143.—Decided March 4, 1937*

*Oil Producing Industry—Strike—Discrimination:* non-reinstatement following strike—*Reinstatement Ordered, Striker:* discrimination in reinstatement; displacement of employee hired following strike—*Back Pay:* awarded.

*Mr. Karl Mueller* for the Board.

*Brannan & Tipps,* of Wichita Falls, Tex., for respondents.

*Mary Lemon Schleifer,* of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On April 23, 1936, International Association of Oil Field, Gas Well & Refinery Workers of America, Local No. 258, hereinafter referred to as Local No. 258, and George E. Bebermeyer filed a charge with the Regional Director for the Sixteenth Region alleging that the Bell Oil and Gas Company, Tulsa, Oklahoma, Burk-Divide Oil Company, Consolidated, Wichita Falls, Texas, and Reno Oil Company, Wichita Falls, Texas, had engaged in and were engaging in unfair labor practices, within the meaning of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act.<sup>1</sup> On May 7, 1936, the Regional Director for the Sixteenth Region duly issued and served upon the parties a complaint which alleged that the Bell Oil and Gas Company, Burk-Divide Oil Company, Consolidated, and Reno Oil Company, hereinafter referred to collectively as the respondents, had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act, by the lay-off or discharge of George E. Bebermeyer on September 26, 1935.

<sup>1</sup> This charge followed the decision of the Board in *In the Matter of Bell Oil and Gas Company and Local Union 258 of The International Association of Oil Field, Gas Well and Refinery Workers of America and George E. Bebermeyer, E. H. Haynie, Frank T. Grozier, F. C. Cox, Clifford D. Jackson, B. F. Jackson and Roy W. Bowman, I N. L. R. B. 562, decided April 17, 1936.*

The respondents filed an answer to the complaint on May 14, 1936. The answer alleged that the complaint should be dismissed because the Act is unconstitutional in several respects and because it is inapplicable to the respondents. It also denied that George E. Bebermeyer had been discharged and alleged that on September 17, 1935, Bebermeyer had voluntarily left the employ of the respondents. Pursuant to an amended notice of hearing duly served upon the respondents, Local No. 258, and Bebermeyer, a hearing was held on July 21 and 22, 1936, at Wichita Falls, Texas, before Robert Lee Guthrie, the Trial Examiner duly designated by the Board. The respondents were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties. At the beginning of the hearing, counsel for the respondents moved that the complaint be dismissed for the reasons set forth in the answer. The Trial Examiner reserved ruling on the motion. Objections to the introduction of evidence were made by counsel for the respondents and counsel for the National Labor Relations Board, hereinafter referred to as the Board. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On November 16, 1936, the Trial Examiner filed an Intermediate Report, finding that the respondents had discharged George E. Bebermeyer because of his union activities, but that the Board had no jurisdiction of the case because the respondents' activities and the work done by George E. Bebermeyer did not occur in or affect interstate commerce.

On December 8, 1936,<sup>2</sup> Local No. 258 and George E. Bebermeyer filed exceptions to the Intermediate Report, excepting to certain findings of fact made by the Trial Examiner and to his conclusion that the Act is inapplicable to the respondents' and George E. Bebermeyer's activities.

Upon the entire record in the case, the Board now denies the respondents' motion to dismiss, and makes the following:

#### FINDINGS OF FACT

##### I. THE COMPANIES

Bell Oil and Gas Company is a corporation existing under and by virtue of the laws of the State of Delaware, with its principal place of business in Tulsa, Oklahoma. It owns in whole or in part certain oil wells in the bed of the Red River, which to a large extent forms the boundary line between the States of Oklahoma and Texas.

<sup>2</sup> At the request of Local No. 258, the Board had extended the time within which exceptions might be filed to December 8, 1936

About 25 of the wells owned by the Bell Oil and Gas Company in the river bed are in the State of Oklahoma, and approximately seven in the State of Texas. The company also owns and operates a pipe line system through which crude oil from the wells owned and operated by the Bell Oil and Gas Company and from wells owned by other producers in both Oklahoma and Texas is carried to a pump station located on the Texas side of the Red River. This pump station is owned and operated by the Bell Oil and Gas Company. There the oil is driven into the main line of the pipe line system owned by the Bell Oil and Gas Company and forced across the Red River to a refinery located on the Oklahoma side of the Red River. This refinery is also owned and operated by the Bell Oil and Gas Company. Here gasoline, kerosene, and fuel oil are produced and sold.

The Bell Oil and Gas Company, in addition, owns and operates oil wells in various other districts in both Oklahoma and Texas.

Burk-Divide Oil Company, Consolidated, is a corporation existing under and by virtue of the laws of the State of Delaware, with its principal place of business at Terre Haute, Indiana. It also maintains an office at Wichita Falls, Texas. Burk-Divide Oil Company, Consolidated, owns about 24 producing wells in the bed of the Red River. All of these wells are on the Oklahoma side of the river bed. Crude oil drawn from these wells is stored in stock tanks located immediately adjacent to the wells in Oklahoma. All oil produced by Burk-Divide Oil Company, Consolidated, is sold to the Bell Oil and Gas Company. The sale and the purchase are made at the stock tanks, where the Bell Oil and Gas Company, having inspected the tank and issued a ticket stating the quantity and quality, turns the oil into its own gathering pipe lines, whence it is conveyed as the property of the Bell Oil and Gas Company to the pump station in Texas and then to the refinery in Oklahoma.

Reno Oil Company is a corporation existing under and by virtue of the laws of the State of West Virginia, with its principal office at Sistersville, West Virginia. It also maintains a branch office in Wichita Falls, Texas. Reno Oil Company owns approximately 11 producing wells in the bed of the Red River. Ten of these wells are on the Oklahoma side of the river bed, one on the Texas side. Reno Oil Company also sells all of the oil which it produces to the Bell Oil and Gas Company, the oil being taken from the wells to stock tanks adjacent to the wells, where it is sold to the Bell Oil and Gas Company, and then conveyed through the pipe line system of the purchaser to the pump station in Texas and thence to the refinery in Oklahoma.

Reno Oil Company also owns and operates oil wells in other districts in both Texas and Oklahoma.

The wells located in the river bed area are "stripper" wells, production being stimulated by means of a repressure system. This system consists of the drawing of gas from the wells of the respondents in this area and conveying it by means of pipe lines to a repressure plant located in Wichita County, Texas. Here the gas is subjected to a high pressure and is then pumped back into key wells in the river bed area. The pressure exerted by the influx of gas into these key wells stimulates the flow of oil to producing wells. The gas drawn from the wells for use in the repressure system is termed wet gas in that in its journey through the ground it has absorbed a certain amount of gasoline from the crude oil. After subjecting this gas to pressure at the repressure plant, it is run through coils and gasoline is precipitated. This gasoline is used in part by employees of the respondents; the balance is sold to the LaSalle Petroleum Corporation in Texas. The dry gas which is conveyed back into the key wells of the respondents consists not only of the residue of dry gas obtained, after precipitation, from wells in the river bed area; but is augmented by gas purchased by the respondents in Texas from the Chasta Oil and Gas Company.<sup>3</sup>

In addition to the activities described above, the Bell Oil and Gas Company, Burk-Divide Oil Company, Consolidated, and Reno Oil Company are joint owners of the repressure plant, the Bell Oil and Gas Company and Burk-Divide Oil Company, Consolidated, each owning a two-fifth undivided interest, and Reno Oil Company the other one-fifth. Each of these companies shared in the proportion stated in the expense of building the plant, and shares in the same proportion in the cost of operation of the plant and the sale of gasoline precipitated. The pipe lines which draw wet gas into the repressure plant are an integral part of the repressure plant and are owned by the respondents jointly in accordance with their proportionate ownership. The pipe lines which carry dry gas to key wells are owned by the Texas Oil Company and are leased to the respondents.

The Bell Oil and Gas Company is in active charge of the operation of the repressure plant and for this service receives a stipulated monthly sum. C. J. Bohner, as an employee of the Bell Oil and Gas Company, is the superintendent of the repressure plant. However, in the matter of hiring and discharging employees, the other two joint owners are consulted and the desire of the majority given effect.

In the operation of the repressure plant, the respondents draw gas from Oklahoma as well as from Texas, which, after being treated at the repressure plant in Texas, is returned to wells in Oklahoma and Texas. The respondents admit that more of the wet gas drawn into the repressure plant in Texas comes from the State of Oklahoma

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<sup>3</sup> There is evidence in the record that at least one other operator in the river bed area operates by means of the respondents' repressure system.

than from the State of Texas. Since a large majority of the wells are on the Oklahoma side of the Red River it is also reasonable to infer that more of the dry gas forced into key wells again crosses the line into Oklahoma than remains in Texas.

We find that the respondents are engaged in traffic, transportation, and commerce between the States of Texas and Oklahoma and that the operation of the repressure plant in Texas is an integral part of such traffic, transportation, and commerce.

## II. THE UNION

International Association of Oil Field, Gas Well & Refinery Workers of America is a labor organization affiliated with the American Federation of Labor. The membership of Local No. 258 includes employees of other producers in the district as well as some of the employees of the respondents.

## III. EFFECT OF STRIKES IN RESPONDENTS' BUSINESS ON COMMERCE

In 1934, Local No. 258 called a strike in an attempt to secure a contract with certain operators, including the respondents, in this area. The strike was terminated by the signing of a contract by Local No. 258 and certain operators, including the respondents, in August, 1934. This contract expired in August, 1935.

Prior to September 1, 1935, there were unsuccessful negotiations between the operators and Local No. 258 in an effort to secure a new contract. On September 17, 1935, no agreement having been reached, Local No. 258 again called a strike which lasted until September 26 or 27, 1935. As a result of this strike the wells, the pipe line department, the pumping station and the refinery of the Bell Oil and Gas Company, the repressure plant operated by the respondents, and the wells of the Burk-Divide Oil Company, Consolidated, and the Reno Oil Company, were all shut down.<sup>4</sup>

## IV. THE UNFAIR LABOR PRACTICES

George E. Bebermeyer had worked for or under the supervision of C. J. Bohner in the Oklahoma and Texas oil fields for approximately 17 years. The repressure plant had been built in 1932, and Bebermeyer had been put in active charge of the plant at that time and occupied the same position up until the time of the strike. He

<sup>4</sup>Evidence introduced at the hearing *In the Matter of Bell Oil and Gas Company and Local Union 258 of the International Association of Oil Field, Gas Well and Refinery Workers of America et al.*, 1 N. L. R. B. 562, shows that oil producers in the district who sell oil to the Bell Oil and Gas Company were also forced to cease operations within a few days after the strike commenced because of the inability of the Bell Oil and Gas Company to operate its pipe lines, pumping station, and refinery.

had two employees under him, the three dividing the shifts during the 24 hour day the plant was operated. However, because of his supervisory position, Bebermeyer was required to be available at any hour of the day or night if needed. His duties included checking the volume of gas passing through the system, testing the gas for air, looking after and keeping the pipe lines repaired, operating and repairing the compressors in the plant, checking the incoming and outgoing gas pressure and the precipitation of gasoline. For these services he received \$125 a month, the use of a company house, and free lights.

Bebermeyer was secretary-treasurer of Local No. 258 and was very active in all union affairs. He was a member of the contract committee which negotiated the contract with the respondents in 1934 and a member of the contract committee which unsuccessfully attempted to secure a contract in August and September, 1935. Bebermeyer and the two other employees in the repressure plant, who were also members of Local No. 258, ceased work on September 17, 1935, because of the strike. The strike, called because of the failure of the respondents and Local No. 258 to reach an agreement concerning wages and working conditions, was a controversy concerning terms, tenure, and conditions of employment. Bebermeyer ceased work as a consequence of, and in connection with, this current labor dispute.

On or about September 26, 1935, Edwin A. Elliott, Regional Director of the National Labor Relations Board in the Sixteenth Region, arranged to meet a committee of producers, including the respondents, in an effort to end the strike. As one term of settlement Elliott suggested that the producers reinstate all striking employees. Representatives of respondents at this meeting stated they would not reinstate Bebermeyer because "(he) had been negligent about his duties because of his giving attention to his Union affairs, and that oftentimes he was away from the plant and had been for some months leaving it from time to time to attend to these Union meetings and that they did not feel that he was worthy of consideration of reemployment . . ." This reason was reiterated at the hearing, the respondents alleging that the reason given in this statement did not constitute a refusal to reinstate because of union activity but that the fact he was absent on union duties was a mere coincidence and that they would have refused to reinstate him if these absences had been for any other cause.

The fallacy in the respondents' argument is that there is no evidence in the record which shows Bebermeyer was absent from his work for any cause for such periods of time as to make him an employee who was neglecting his duties. The only specific testimony relating to the absence of Bebermeyer concerns his attendance as a representative of Local No. 258 at a hearing of the Petroleum Labor

Policy Board in Tulsa, Oklahoma. Bebermeyer had asked for and received permission from Bohner to attend this hearing, which had lasted only three days, and had been held almost two years before the strike in 1935. It seems apparent that this absence could not have been the basis for refusing to reinstate Bebermeyer in September, 1935. Mr. Rex Young, representing the Bell Oil and Gas Company, also testified he had been informed once or twice before the strike that Bebermeyer was absent from work. However, he could not state when these incidents occurred, admitted he had never checked up to see whether Bebermeyer or one of the other two employees should have been on duty at that time, and had never asked Bebermeyer about these incidents.

As we have said many times before, general allegations of inefficiency or neglect, unsupported by any specific testimony, are not convincing. Bebermeyer was an active union member who had for many years been an efficient and trusted employee. It is also significant that Bohner, who was directly in charge of the plant, did not testify that Bebermeyer had been absent from his work. The entire record leaves no doubt that the respondents and Bohner were opposed to union organization and to Bebermeyer's union activities. Although it may be true that the respondents might have refused to reinstate Bebermeyer had he been absent for other reasons unconnected with the union, the reason given as admitted by the respondents, i. e.—absence for union activities—can mean nothing but a discharge for union activities when there is no evidence of specific absences for any cause.

At the hearing, the respondents gave as an additional reason for not reinstating Bebermeyer the fact that after the strike the oil wells in the river bed area were being pumped on an eight hour daylight basis only, as opposed to the previous 24 hour basis, and that only one of the two Miller compressors used in the repressure plant was being operated at a time, while before the strike both had been in constant operation, and that these curtailed operations required only two employees in the repressure plant. The respondents also testified that the other two employees had been reinstated and that both of these employees were members of Local No. 258.

The evidence shows that even though the wells are being pumped for only eight hours a day, one of the engines in the repressure plant runs constantly and that the respondents since the strike have hired a new non-union employee whose duties include a periodic inspection of this engine. The testimony also shows that the present cost of operation of the repressure plant with two employees is practically the same as it was previous to the strike with three employees. This attempted explanation of the respondents only strengthens our con-

viction that Bebermeyer was discharged because of his union activities.

We find that the respondents by refusing to reinstate George E. Bebermeyer, have discriminated in regard to hire and tenure of employment to discourage membership in a labor organization.

The respondents by their refusal to reinstate George E. Bebermeyer have interfered with, restrained and coerced their employees in the exercise of the rights of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining and other mutual aid and protection.

#### V. THE REMEDY

As previously stated, the respondents are now operating only one compressor at a time in the repressure plant and claim that only two engineers are now needed to operate the plant. It is clear, however, that Maxwell, the non-union employee hired since the strike, performs in part some of the duties previously performed by Bebermeyer. We will therefore order the respondents to reinstate Bebermeyer, and to dismiss Maxwell, if necessary, in order to reinstate Bebermeyer. This does not necessarily mean that Bebermeyer will perform the duties now performed by Maxwell. We intend rather that the respondents will divide the duties incident to the operation of the repressure plant among Bebermeyer and the two other employees now engaged in operating the repressure plant, without discriminating in any way against Bebermeyer because of his union activities.

In view of the Trial Examiner's recommendation that the complaint be dismissed, we will not require the respondents to pay Bebermeyer back pay for the interval between the date of the Intermediate Report (November 12, 1936) and the date of this decision.<sup>5</sup>

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. International Association of Oil Field, Gas Well & Refinery Workers of America, Local No. 258, is a labor organization within the meaning of Section 2, subdivision (5) of the Act.
2. The strike was a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

<sup>5</sup> See *In the Matter of E. R. Heffelfinger Company, Inc. and United Wall Paper Crafts of North America, Local No. 6*, I N. L. R. B. 760, 767.

3. George E. Bebermeyer was an employee of the respondents at the time of his discharge, within the meaning of Section 2, subdivision (3) of the Act.

4. The respondents, by discriminating in regard to the hire and tenure of employment of George E. Bebermeyer and thereby discouraging membership in a labor organization, have engaged in and are engaging in an unfair labor practice, within the meaning of Section 8, subdivision (3) of the Act.

5. The respondents, by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, have engaged in and are engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Bell Oil and Gas Company, Burk-Divide Oil Company, Consolidated, and Reno Oil Company, and their officers and agents, shall:

1. Cease and desist from

(a) In any manner interfering with, restraining or coercing their employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) In any manner discouraging membership in any labor organization by discrimination in regard to hire and tenure of employment or any term or condition of employment.

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

(a) Offer to George E. Bebermeyer immediate and full reinstatement, without prejudice to rights and privileges previously enjoyed, dismissing Maxwell, if necessary;

(b) Make whole George E. Bebermeyer for any loss he may have suffered by reason of the respondents' refusal to reinstate him, by payment to him of a sum of money equivalent to the amount he would normally have earned as wages plus the fair value of the housing and lights which the respondents would normally have furnished, during the periods from the date when the striking em-

ployees returned to work to November 12, 1936, and from the date of this decision to the date of such offer of reinstatement, less an amount equivalent to the sums he may have earned elsewhere plus the fair value of whatever housing and lights the respondents may have furnished him, during the same periods;

(c) Post notices in conspicuous places in the repressure plant stating (1) that the respondents will cease and desist as aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days from the date of posting.

[SAME TITLE]

## AMENDED DECISION AND ORDER

*September 3, 1937*

On March 4, 1937, the National Labor Relations Board, herein called the Board, issued a decision and order in the above entitled case. The Board in its decision found that the respondents, Bell Oil and Gas Company, Burke-Divide Oil Company, Consolidated, and Reno Oil Company, had engaged in and are engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, by discharging George E. Bebermeyer, a joint employee of the respondents, for union activities. The order of the Board required the respondents to cease and desist from engaging in unfair labor practices and to reinstate George E. Bebermeyer with back pay.

On April 12, 1937, the Board filed a petition for enforcement of its order in the United States Circuit Court of Appeals for the Fifth Circuit. On July 21, 1937, the Court issued a decision on the petition. This decision affirmed the findings of the Board that it had jurisdiction over the respondents and that Bebermeyer had been discharged because of his union activities, and ordered the cease and desist portion of the Board's order to be enforced. The Court, however, remanded the case to the Board for further consideration and clarification of that portion of the decision and order which dealt with the reinstatement of Bebermeyer.

The Board having further considered the matter, and in accordance with the opinion of the Court, hereby amends its decision and order of March 4, 1937, as follows:

1. Subsection v. **THE REMEDY**—shall be amended to read:

### V. THE REMEDY

Since we have found that Bebermeyer would have been reemployed after the strike but for his union activities, he is entitled to rein-

statement. We will accordingly order the respondent to reinstate Bebermeyer, and to do so without discriminating against Bebermeyer or against the two union members now employed in the operation of the repressure plant, because of union membership or activities.

In view of the Trial Examiner's recommendation that the complaint be dismissed, we will not require the respondents to pay Bebermeyer back pay for the interval between the date of the Intermediate Report (November 12, 1936) and March 4, 1937, the date of this decision.

2. Subdivision 2 (a) of the order shall be amended to read:

Offer to George E. Bebermeyer immediate reinstatement without prejudice to his seniority or other rights and privileges, and without discrimination against Bebermeyer or the two union members now employed in the operation of the repressure plant, because of union membership or activities.