

In the Matter of BELL OIL AND GAS COMPANY, C. J. BOHNER OIL CORPORATION, and C. J. BOHNER, INDIVIDUALLY AND WITH HIS ASSOCIATES, and INTERNATIONAL ASSOCIATION OF OIL FIELD, GAS WELL & REFINERY WORKERS OF AMERICA, LOCAL No. 258, and CLIFFORD D. JACKSON, B. F. JACKSON, and F. C. COX

*Case No. C-144.—Decided June 1, 1937*

*Oil Producing Industry—Strike—Discrimination:* charges of not sustained, complaint dismissed.

*Mr. Karl Mueller*, for the Board.

*Brannan and 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, Clifford D. Jackson, B. F. Jackson, and F. C. Cox filed a charge with the Regional Director for the Sixteenth Region (Fort Worth, Texas), alleging that Bell Oil and Gas Company, Tulsa, Oklahoma, C. J. Bohner Oil Corporation, Wichita Falls, Texas, and C. J. Bohner, Wichita Falls, Texas, individually and with his associates, hereinafter referred to collectively as the respondents, 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 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 discharging and refusing to reinstate Clifford

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<sup>1</sup>This charge followed the decision of the Board *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. See also *In the Matter of Bell Oil and Gas Company, Burk-Divide Oil Company, Consolidated, and 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 (*supra*, p. 577).

D. Jackson, B. F. Jackson, and F. C. Cox on or about September 26, 1935.

On May 15, 1936, 31 employees of the C. J. Bohner Oil Corporation and of C. J. Bohner, individually, filed a petition for intervention alleging that the signers constituted a majority of the employees of the C. J. Bohner Oil Corporation and of C. J. Bohner, individually, that they do not desire Local No. 258 to represent them for collective bargaining and that they do not wish to work with the three men named in the complaint. On May 16, 1936, the Regional Director for the Sixteenth Region, acting pursuant to Article II, Section 19 of National Labor Relations Board Rules and Regulations—Series 1, as amended, denied the petition on the ground that “said petitioners . . . do not allege or set forth facts which show or tend to show that they or any of them have rights in the subject matter of the complaint . . . which they or any of them are entitled to assert in their own right . . .”

On May 15, 1936, an answer to the complaint was filed by the C. J. Bohner Oil Corporation and C. J. Bohner, individually. The answer alleged that the complaint should be dismissed because the Act is unconstitutional in several respects, because the Act is inapplicable to the business of the C. J. Bohner Oil Corporation and C. J. Bohner, individually, and because the respondents did not discharge the three men named in the complaint. On the same day Bell Oil and Gas Company also filed an answer, which in addition to the reasons set forth in the other answer, also denied it was the employer of the three men named in the complaint and further alleged that 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*,<sup>2</sup> had determined that Bell Oil and Gas Company was not their employer.

Pursuant to an amended notice of hearing duly issued and served upon the parties, a hearing was begun on July 16 and continued on July 17, 18, and 21, 1936, at Wichita Falls, Texas, before Robert Lee Guthrie, the Trial Examiner duly designated by the National Labor Relations Board, hereinafter referred to as 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 Bell Oil and Gas Company offered a plea in abatement on the grounds, set forth in the answer, that it had been found not to be the employer in a

<sup>2</sup> I N. L. R. B. 562, decided April 17, 1936.

prior decision of the Board. The Trial Examiner denied the plea. The petition for intervention was renewed. The Trial Examiner ruled that the petition had been disposed of by the Regional Director prior to the hearing and that under the Board's Rules and Regulations he had no authority to review the ruling. We affirm this ruling. Counsel for the respondents also moved that the complaint be dismissed because of the constitutional objections raised in the answers. Ruling was reserved by the Trial Examiner. This motion is hereby denied. Many objections to the introduction of evidence were made by counsel for the respondent and by counsel for the Board. The Board has reviewed the rulings of the Trial Examiner on motions and objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On September 21, 1936, a stipulation concerning the operations of the respondents was added to the record.

On November 16, 1936, the Trial Examiner filed his Intermediate Report in which he found that the three men had not been discharged because of their union activities, and recommended that the complaint be dismissed because the activities of the respondents and the work done by the three men did not occur in or affect interstate commerce. On December 9, 1936, Local No. 258 and the three men filed exceptions to the Intermediate Report.

Upon the entire record in the case, the Board now makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF BELL OIL AND GAS COMPANY

Bell Oil and Gas Company, hereinafter referred to as Bell, a Delaware corporation having its principal place of business in Tulsa, Oklahoma, operates many oil wells, which it owns in whole or in part, in the Red River area, which lies partially within the State of Texas and partially within the State of Oklahoma. For the purpose of carrying off and disposing of the oil which it produces as well as oil which it buys in large quantities from other operators producing oil in the same and adjoining areas, Bell also owns and operates a pipe line system, a pump station, and a refinery. Oil produced by Bell is pumped from the wells to stock tanks adjacent to the wells. From these stock tanks, whether in Oklahoma or in Texas, the oil is turned into the gathering pipe line system where it is conveyed to a pump station in Wichita County, Texas, south of the Red River. The pump station consists of four 1,600 barrel tanks, and a centrifugal pump, which is used to force the oil from the storage tanks at the pump station through a main pipe line crossing the boundary line of Texas and Oklahoma to a refinery owned by Bell in Tillman County, Oklahoma, just north

of the Red River. At the refinery gasoline, kerosene, and fuel oil are produced. More than 65 per cent of a barrel of oil is recovered in gasoline, about six per cent in kerosene, and the balance in crude oil. Of the products of the refinery, approximately 50 per cent of the gasoline and somewhat less than 20 per cent of the kerosene is sold to vendees located outside the State of Oklahoma. Most of the fuel oil produced at the refinery is sold to local power companies and to railroads, including the Missouri, Kansas and Texas Railroad.

For the purpose of stimulating production of oil in the Red River area, Bell owns an interest jointly with Burk-Divide Oil Company, Consolidated, and Reno Oil Company in a repressure plant located in Wichita County, Texas. The operations of the repressure plant and the repressure system are set forth in detail in a prior decision of the Board.<sup>3</sup>

In addition to using the oil which it produces, at the refinery, Bell purchases approximately 2,500 to 2,600 barrels of oil per day from various producers in Texas, and approximately 500 barrels per day from producers in Oklahoma. The C. J. Bohner Oil Corporation and C. J. Bohner, individually, are among these vendors. The manner in which Bell conveys the oil purchased from the C. J. Bohner Oil Corporation, as described hereafter, is the same as is used for all other vendors of Bell.

Bell also owns and operates oil and gas producing property in the so-called Pampa or Panhandle Fields of Texas, approximately 300 miles distant from the property which it owns in the Red River area.

We find that the respondent, Bell Oil and Gas Company, in the operations set forth above, is engaged in trade, traffic, transportation, and commerce between the several States.

## II. THE BUSINESS OF C. J. BOHNER OIL CORPORATION

The C. J. Bohner Oil Corporation, sometimes hereinafter referred to as the Corporation, a Texas corporation having its principal office and place of business in the Burkburnett area in Wichita County, Texas, owns and operates about 100 oil wells in the so-called Northwest field, which lies entirely in Wichita County, Texas. It is approximately two miles from the last well on the Northwest field to the first well in the Red River area. Many other producers besides the Corporation and C. J. Bohner, individually, own and operate producing wells in the Northwest field.

<sup>3</sup> *In the Matter of Bell Oil and Gas Company, Burk-Divide Oil Company, Consolidated, and Reno Oil Company and International Association of Oil Field, Gas Well & Refinery Workers of America, Local No. 258, and George Bebermeyer, Case No. C-143, decided March 4, 1937 (supra, p 577).*

All of the oil produced by the Corporation in the Northwest field is sold to Bell. Oil produced by the Corporation is carried through a pipe line to a stock tank, adjacent to the well, both the pipe line and tank being owned by the Corporation. When this tank is filled, a gauger employed by Bell inspects the oil, and if acceptable issues a run ticket, which is in effect a bill of purchase. The oil is then turned into the gathering pipe lines of Bell and conveyed as the property of Bell from the stock tank to the pump station in Texas and from there to the refinery in Tillman County, Oklahoma.

The C. J. Bohner Oil Corporation also owns and operates other wells in Texas which do not lie in the Northwest field.

We find that the operations of respondent, C. J. Bohner Oil Corporation, as set forth above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States.

### III. THE BUSINESS OF C. J. BOHNER, INDIVIDUALLY

C. J. Bohner, individually, owns in whole or in part wells located in both Oklahoma and Texas. The wells in the Red River area in which he has an interest are wells in which Bell also has an undivided interest. He also owns, either wholly or with associates, approximately 150 wells in the Northwest field. All of the oil produced in the Northwest field from wells in which Bohner has an interest is sold to Bell, in the same manner that the Corporation sells its oil to Bell.

C. J. Bohner personally supervises the operation of all wells owned by him in the Northwest field, and as president and general manager of the Corporation also supervises the operation of all wells owned by the Corporation. In his capacity of superintendent of Bell, he supervises the operation of all wells owned in whole or in part by Bell in the Red River area and is directly in charge of the operation of the repressure plant located in Wichita County, Texas, which is owned jointly by Bell, Burk-Divide Oil Company, Consolidated, and Reno Oil Company.

We find that the operations of the respondent, C. J. Bohner, as set forth above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States.

### IV. EFFECT OF STRIKES IN RESPONDENTS' BUSINESS

Prior to September 1, 1935, Local No. 258 began negotiations to secure a new contract with the respondents, and Burk-Divide Oil Company, Consolidated, Reno Oil Company, and Tucker Oil Company to replace a contract which had expired on August 1, 1935. Having been unsuccessful in securing such a contract, Local No. 258 called a strike on September 17, 1935, among the employees engaged

in the operations of the wells and in the pipe line and repressure departments of Bell and among the employees engaged in the production of oil for the other operators named above. The strike caused immediate cessation of all oil field operations of the respondents. It also caused the pipe line and repressure operations of Bell to be suspended, which in turn prevented Bell from operating its pump station in Texas and its refinery in Oklahoma. The inability of Bell to operate its pipe line system prevented it from purchasing oil from other operators in this area, since it was unable to carry off the oil through its pipe line system. Due to this, every operator within the area who sells oil to Bell had to suspend operations within a few days after the strike began and as soon as their stock tanks were filled. These operators included Kimball Bostic, Henry Porter Oil Company, Texas Oil Company, and Skelly Oil Company, as well as the operators whose activities were suspended primarily because their employees were on strike.

#### V. THE UNION

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

#### VI. THE EMPLOYMENT OF THE THREE MEN

As previously stated, C. J. Bohner was in active supervision of the operations in the Northwest field of the C. J. Bohner Oil Corporation and of the wells in which he had an interest which were not the property of the Corporation. In addition, he was in active supervision of the operations of Bell in the Red River area as superintendent. In the operation of the Northwest field Bohner employed a crew of approximately 33 or 34 men who acted as pumpers and as maintenance men. These men worked a portion of their time for the Corporation and another portion of their time for Bohner, no distinction being made between their duties whether working for the one or the other. However, they kept separate time sheets for each and received checks from one or the other in accordance with the time they turned in as having been spent on the wells of each. Bohner, in the main, employed a separate and distinct crew of men to operate the Bell properties. However, both for the purpose of giving regular employment to the men he employed in the Northwest field and because Bell did not have a sufficient number of wells which required cleaning to justify the employment of a crew for this purpose, Bohner customarily used some of his employees from the Northwest field on Bell operations whenever the latter needed wells

cleaned or some emergency arose. When such employees were used on Bell operations, they turned in time sheets showing the exact amount of time spent on Bell property and received payment from Bell for such time. The evidence also shows that these employees, when working for Bell, were covered by Bell's compensation insurance and that Bohner, individually, and the C. J. Bohner Oil Corporation did not carry such insurance in the State of Oklahoma.

Clifford D. Jackson, B. F. Jackson, and F. C. Cox were maintenance men, hired in the first instance by Bohner to work upon his own and the C. J. Bohner Oil Corporation properties in the Northwest field. These men testified that they frequently worked also on the wells of Bell. The record shows that in the period from January 1 to September 17, 1935, Clifford D. Jackson worked 751 hours, B. F. Jackson worked 140½ hours, F. C. Cox worked 181 hours, respectively, for Bell, and that each was paid by Bell for this time. The record also shows that for about two months prior to September 17, 1935, B. F. Jackson had been employed constantly as a pumper in the Northwest field on the property of Bohner and the Corporation, and that as a pumper he was not sent to do maintenance work on the property of Bell. The pumper whom B. F. Jackson had replaced had been injured and it seems apparent on the entire record that B. F. Jackson had not been permanently removed from the maintenance crew.

We find that at the time of the strike on September 17, 1935, the three men were employees of the C. J. Bohner Corporation and C. J. Bohner, individually, and that by virtue of such employment, they were also part time employees of Bell.

#### VII. THE DISCHARGES

Clifford D. Jackson had been employed by Bohner for about fifteen years, working the last nine years as a gang pusher and clean out man. He was a member of Local No. 258 and had at three different times acted as a substitute on the contract committee of Local No. 258 in meeting with the respondents and other operators for the purpose of negotiating contracts with Local No. 258.

B. F. Jackson had been employed by Bohner for approximately ten years on the clean out crew, sometimes as gang pusher in charge of the crew. For about two months prior to September 17, 1935, he had been employed as a pumper temporarily replacing a pumper who had been injured. He was recording secretary of Local No. 258 and had also served on the contract committee.

F. C. Cox had been employed by Bohner for approximately seven years in general maintenance work. He was a member of Local No. 258.

The three men joined in the strike called by Local No. 258 on September 17, 1935. The strike, called because of the unsuccessful attempt of Local No. 258 to secure a new contract with the respondents and the other operators involved, was a controversy concerning terms, tenure, and conditions of employment. The three men, therefore, ceased work as a consequence of and in connection with a current labor dispute.

Production of oil by all operators in the Northwest field consists of two distinct operations. In addition to the operation called pumping by means of which the oil is lifted from the well, all of the operators in this field maintain a steady and continuous vacuum on the wells for the purpose of pulling oil through the porous sand to the opening of the wells. The normal flow of oil to the wells in this area is considered insufficient to justify operation. The vacuum system is the means employed to artificially stimulate production to a point where it is considered profitable.

The effect of the strike was to compel all operators whose employees joined in the strike to cease all pumping operations. In the case of the Tucker Oil Company, it also had the effect of cutting off the vacuum system on their wells since the pumping and vacuum systems were connected. It was not a necessary effect of the strike that the vacuum system operating on the wells of C. J. Bohner, individually, and of the C. J. Bohner Corporation should cease to operate, even though oil could not be pumped out of the wells, since the vacuum system on these wells was operated by the Texas Oil Company and Skelly Oil Company whose employees were not involved in the strike. Although, as previously stated, all other operators in the Northwest field were compelled to stop pumping oil within a few days after the strike commenced, the record shows that with the exception of the Tucker Oil Company, they continued to operate their vacuum systems during the time of the strike. During the course of the strike the vacuum on many of the wells belonging to C. J. Bohner and to the C. J. Bohner Oil Corporation was turned off either at the well or at a meter close to the well and remained off for approximately eight days before Bohner could restore it.

On September 27, 1935, Dr. Edwin A. Elliott, Regional Director of the National Labor Relations Board for the Sixteenth Region, in an effort to end the strike, asked the operators, including the respondents, to agree to reinstate all of their striking employees. Bohner agreed to reinstate all of his men except the three named in the complaint, stating that he believed they had been the persons who had shut off the vacuum on the wells during the strike, and that he believed permanent injury had been done to the wells by cutting off the vacuum while vacuum had been maintained by other operators

in the field. Since the employment of the men by all of the respondents depended upon Bohner's personal employment of them, the refusal to reinstate was effective as to all of the respondents.

The record shows that the Northwest field has been under constant vacuum for about ten years, that in the endeavor of each operator to secure for himself the greatest possible amount of oil every effort is made to maintain a continuous and as great a "pull" of vacuum as is possible; and that when it is necessary to shut off the vacuum on a well to clean it out, or the vacuum is cut off because of some stoppage caused by such things as freezing of pipes, it has been the duty of Bohner's employees to make every effort to restore the vacuum as quickly as possible. The three men testified that the members of Local No. 258 felt it was unfair to the Tucker Oil Company, whose vacuum was necessarily cut off because of the strike, for Bohner to continue to pull vacuum and for this reason they decided they would cut off the vacuum on Bohner's wells and the wells of the C. J. Bohner Oil Corporation. Clifford D. Jackson and B. F. Jackson admit that they were selected by the members of Local No. 258 to cut off the vacuum and that they did so. Cox denied that he personally had cut off the vacuum on any wells, but Bohner testified to facts from which Bohner might reasonably have believed that Cox also had turned off the vacuum on some of the wells.

We are not convinced that Cox did turn off the vacuum on any of the wells. Whether or not any permanent injury was caused by the shutting off of the vacuum is a highly technical question. However, under the circumstances of this case we do not consider it necessary to decide this question since we are convinced that Bohner's refusal to reinstate these men was based entirely upon his belief they had cut off the vacuum and caused permanent injury to the wells and was not for the purpose of discouraging membership in a labor organization. We are in part impelled to this conclusion because the record shows that Bohner has employed many members of Local No. 258 since 1933, that he had operated from August 1, 1934, to August 1, 1935, under a contract with Local No. 258, that a check-off has been made by Bohner in the salaries of union employees whose names were given to Bohner, and that all other employees of Bohner who were members of Local No. 258 were reinstated after the strike.

We find that the respondents in refusing to reinstate Clifford D. Jackson, B. F. Jackson, and F. C. Cox did not discriminate in regard to hire and tenure of employment to encourage or discourage membership in a labor organization.

We find that the respondents in refusing to reinstate Clifford D. Jackson, B. F. Jackson, and F. C. Cox have not interfered with,

restrained, or 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.

#### 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. The operations of the respondents occur in commerce, within the meaning of Section 2, subdivision (6) of the Act.

2. 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.

3. The strike was a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

4. Clifford D. Jackson, B. F. Jackson, and F. C. Cox at the time of their discharge were employees of the respondents, within the meaning of Section 2, subdivision (3) of the Act.

5. The respondents, by discharging Clifford D. Jackson, B. F. Jackson, and F. C. Cox, have not discriminated in regard to hire and tenure of employment and thereby discouraged membership in a labor organization, within the meaning of Section 8, subdivision (3) of the Act.

6. The respondents by discharging Clifford D. Jackson, B. F. Jackson, and F. C. Cox have not interfered with, restrained or coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, within the meaning of Section 8, subdivision (1) 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 orders that the complaint against Bell Oil and Gas Company, C. J. Bohner Oil Corporation, and C. J. Bohner, individually and with his Associates, be and hereby is dismissed.