In the Matter of SHELL OIL COMPANY *and* INTERNATIONAL ASSOCIATION OF OIL FIELD, GAS WELL AND REFINERY WORKERS OF AMERICA

Case No. R-551.—Decided May 24, 1938

Oil Producing and Refining Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; rival organizations; inability of joint collective bargaining agency, established in previous Decision, to function—*Unit Appropriate for Collective Bargaining:* State-wide; history of collective bargaining relations with employer; organization of business; desires of employees; determination of, dependent upon results of election—*Election Ordered*

Mr. David Sokol, for the Board.

Mr. Fred L. Phillips, of Long Beach, Calif., for the Oil Workers.

Mr. H. B. McMurry, of Los Angeles, Calif., for the Metal Trades Council.

Mr. C. S. Grow, of Los Angeles, Calif., and *Mr. Walter Nash*, of San Francisco, Calif., for the Machinists.

Mr. W. H. Lithcow, of Los Angeles, Calif., for the Teamsters.

Mr. Thomas J. Crowe, of Los Angeles, Calif., for the Boilermakers.

Mr. Amos H. Feely, of San Francisco, Calif., and *Mr. W. A. Kelly*, of Hollywood, Calif., for the Electrical Workers.

Mr. William C. O'Neill, of Washington, D. C., for the Plumbers.

Mr. Joseph R. Kelahan, of Washington, D. C., for the Operating Engineers.

Mr. Walter T. Nolte, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 16, 1937, the International Association of Oil Field, Gas Well and Refinery Workers of America, herein called the Oil Workers,[1] filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting

[1] At the hearing a motion was made and granted to amend all pleadings and documents to show the change in the name of the petitioning union to Oil Workers International Union.

commerce had arisen concerning the representation of employees of Shell Oil Company of California,[2] San Francisco, California, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On October 16, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 15, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon counsel for the Company, upon the Oil Workers, and upon the International Brotherhood of Electrical Workers, International Association of Machinists, Los Angeles Central Labor Council, Los Angeles Industrial Union Council, Association of Certified Welders, International Association of Boilermakers Welders and Helpers, International Brotherhood of Blacksmiths and Helpers, General Pipe Fitters and Helpers Local 465, and District Council of Painters Local 36, labor organizations claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on November 22 and 23 and December 9, 10, 16, 17, 18, 22, and 23, 1937, at Los Angeles, California, before Thomas H. Kennedy, the Trial Examiner duly designated by the Board. On November 23, 1937, the second day of the hearing, the Trial Examiner granted a motion to intervene made jointly and severally on behalf of the International Association of Machinists, herein called the Machinists, the International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America, herein called the Boilermakers, the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers,[3] herein called the Blacksmiths, the International Brotherhood of Electrical Workers, herein called the Electrical Workers, the United Association of Journeymen Plumbers and Steam Fitters of the United States and Canada, herein called the Plumbers, the International Brotherhood of Painters, Paperhangers and Decorators of America (District Councils Nos. 25 and 36), herein called the Painters, the International Union of Operating Engineers, herein called the Operating Engineers, the United Brotherhood of Carpenters and Joiners of America, herein called the Carpenters, the International Brotherhood of Teamsters, Chauffeurs, Stablemen and

[2] Erroneously referred to in the petition and the Board's order directing investigation and hearing as Shell Oil Company.

[3] Erroneously designated in the petition for intervention as International Brotherhood of Blacksmiths and Helpers.

Helpers of America, herein called the Teamsters, the International Association of Heat and Frost Insulators and Asbestos Workers, herein called the Asbestos Workers, the Sheet Metal Workers International Association, herein called the Sheet Metal Workers, the Bricklayers, Masons and Plasterers International Union of America, herein called the Bricklayers, the International Hod-Carriers, Building and Common Laborers of America, herein called the Laborers, and the Oil Industry Metal Trades Council of California, herein called the Metal Trades Council. The Board was represented at the hearing by counsel. The Oil Workers, the Metal Trades Council, the Machinists, the Teamsters, the Boilermakers, the Electrical Workers, the Plumbers, and the Operating Engineers, were represented by their officers and agents. All participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company participated in a previous hearing conducted by one of the Board's Trial Examiners from December 10, 1936, to January 29, 1937. That proceeding involved the same operations of the Company and the same classifications of employees as are involved in the instant case. Pursuant to an agreement with the Company, counsel for the Board introduced in evidence the transcript of the hearing in the previous case for the purpose of showing the nature and extent of the business of the Company. There was also introduced in evidence a mimeographed copy of the Decision in that case, issued on May 24, 1937,[4] which contains, under the heading "FINDINGS OF FACT, I. THE COMPANY AND ITS BUSINESS," a detailed statement of the corporate structure and business operations of the Company drawn from the records of the hearing referred to above. Those findings of fact relative to the Company and its business are hereby incorporated in and made a part of this Decision and Direction of Election.

[4] Board Exhibit No. 7. For the same Decision in published form see: *Matter of Shell Oil Company of California* and *International Association of Oil Field, Gas Well and Refinery Workers of America, International Association of Machinists, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, International Brotherhood of Electrical Workers, and Welders International Association, Intervener*, 2 N. L. R. B. 835.

II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all employees of the Company in the State of California engaged in the production, pipe-line, and refinery departments and the automotive and telephone departments operated in conjunction therewith, excluding clerical employees and supervisory employees having the power to hire and fire.

The Intervenors are all labor organizations affiliated with the American Federation of Labor. Taken together they admit to their membership all employees of the Company in the State of California engaged in the production, pipe-line, and refinery departments and the automotive and telephone departments operated in conjunction therewith, excluding clerical employees and supervisory employees having the power to hire and fire.

III. THE QUESTION CONCERNING REPRESENTATION

The petition in the instant case was filed as a result of the breakdown of bargaining negotiations instituted subsequent to our Decision of May 24, 1937.[5] In that Decision the Oil Workers, Machinists, Boilermakers, Blacksmiths, and Electrical Workers were certified as a joint collective bargaining agency. The certification was based upon the results of an election conducted by the Petroleum Labor Policy Board in December 1934, in which a majority of the employees chose the five unions in preference to an employee conference delegate plant.

Between the date of that Decision, May 24, 1937, and the time when negotiations with the Company were begun during July 1937, the Oil Workers had come into open conflict with the American Federation of Labor over its affiliation with the Committee for Industrial Organization. In spite of this situation, the joint bargaining agency continued to function as such and came to the negotiations with a list of proposals uniformly agreed upon by the five unions. It was not until after the negotiations had continued for some days and agreement had been reached with the Company on a number of proposals that the unions took conflicting positions. At this juncture the Machinists, Boilermakers, Blacksmiths, and Electrical Workers asked that provision be made in the proposed agreement for the handling of individual employee grievances by the union having jurisdiction over the work in which the aggrieved employee was engaged, irrespective of whether or not such employee was at the time a member of one of the other unions comprising the joint col-

[5] 2 N L R B. 835; see footnote 4, supra.

lective bargaining agency. The Oil Workers objected strenuously to this proposal. When it became apparent to the representatives of the several unions that they could not compose their differences during the course of the negotiations with the Company and that failure to do so would effectively block the consummation of such negotiations, they asked the Company to recess the conferences until such time as they could reach agreement and present a single proposal with respect to grievances. The Company granted the request and the conferences were discontinued without any formal agreement having been reached. Because the unions have never been able to settle their differences, negotiations have not been resumed.

In view of the existing impasse to negotiations, the Oil Workers filed its petition, alleging the existence of a question concerning representation. In the petition and at the hearing the Oil Workers claimed to represent a majority of the employees within the same appropriate bargaining unit for which the joint agency had been certified previously and asked to be named as the exclusive representative of all such employees. During the course of the hearing claims were also made by this organization that it represented a majority of employees within any units which might be contended for by the four craft unions represented in the joint agency.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

In our Decision of May 24, 1937,[6] we found that all employees of the Company in the State of California "engaged in the production, pipe line, absorption plant,[7] refinery, and automotive departments, paid on an hourly basis, and those previously so paid but placed on a salary basis since 1932, and not in a supervisory capacity" constituted an appropriate unit for the purposes of collective bargaining. In making this finding, we considered fully the history of

[6] 2 N L R B 835. See footnote 4, supra

[7] The record in the instant case shows that the absorption plant department is considered by the Company as a part of the refinery department

the Company's collective bargaining with its employees from 1917 and also took into account the State-wide integration of its various operations.

None of the parties to the present proceeding contend that a State-wide unit is inappropriate. In fact the Oil Workers' position is essentially that it should be designated as exclusive representative of all employees in the unit found to be appropriate in the previous case. Each of the intervenors accepts the principle of bargaining upon a State-wide basis, but, in accordance with the theory of the motion of intervention, contends that separate units should be established on a craft basis. For the Machinists, Boilermakers, Blacksmiths, and Electrical Workers, all of whom participated in the previous case jointly with the Oil Workers, this represents a change of position. Welders International Association, herein called the Welders, was the only party to the prior proceeding which contended for a deviation from the single, State-wide unit. Upon all of the evidence in that record we were not satisfied that the Welders constituted a separate appropriate unit for bargaining purposes.

In opening its case the Oil Workers introduced evidence tending to support its claimed representation of a majority of all employees within the single State-wide unit and also tending to show that it represented a majority of employees coming within the jurisdiction of each of the intervenors separately considered. Some evidence was also introduced by the Oil Workers in support of its contention that an industrial unit is indicated, and in fact demanded, by the employment situation presented in this case. During the early stages of the hearing, four of the intervenors, namely the Machinists, Electrical Workers, Plumbers, and Teamsters, put in partial representation claims and some evidence tending to establish the advisability of and necessity for bargaining along craft lines. At this point the Oil Workers entered into stipulations with the Machinists, Boilermakers, Blacksmiths, and Electrical Workers, the four intervenors who had been named to the joint bargaining agency with the Oil Workers, providing that a separate ballot should be prepared for employees coming within the jurisdiction of each one of those crafts and that such employees should be allowed to choose between one of the four and the Oil Workers. Pursuant to these stipulations the Oil Workers requested that each of the four unions prepare for introduction in evidence a list of the employee classifications over which it claimed jurisdiction, such list to be prepared from a copy of the pay roll as of November 15, 1937, previously submitted in evidence by the Board.[8] The four unions complied with this request[9] and the Oil Workers

[8] Board Exhibit No 8 prepared by the Company in response to a subpena issued by the Board.

[9] Intervenors Exhibit Nos. 3, 4, 5, and 6

agreed that the classifications listed were proper except where welder, mechanics helper, and shop helper appeared upon each list with the accompanying notation "the major portion of whose time is spent on work coming under the jurisdiction of" one of the four crafts. It was thereupon agreed by the parties to the stipulations that the ambiguity with respect to the three classifications should be resolved by considering the nature of the work performed by such employees on November 15, 1937, or the date nearest thereto on which they were on duty. Pursuant to this agreement, supplementary pay-roll information was obtained from the Company and introduced in evidence by the Board.[10] Using the copy of the pay roll for November 15, 1937, and the supplementary information, the four unions prepared and introduced in evidence exhibits containing lists of employees by name and, in most instances, by classification as well, which lists purportedly include the names of all employees within the classifications previously claimed by them, including those attacked by the Oil Workers as ambiguous.[11] Although the supplementary pay-roll information submitted by the Company was itself ambiguous as to welders helpers, the names of certain employees within that classification were placed on the lists in longhand upon the basis of further information obtained from the Company but not placed in the record. Since the lists in such form were apparently acceptable to the Oil Workers and were introduced in evidence without objection from its representative, we can adopt them for the purpose of defining the four proposed units.

The Oil Workers refused to stipulate with the remaining intervenors that separate ballots should be prepared for employees within their several jurisdictions. In support of their contentions that organization and bargaining among the Company's employees should be upon a craft basis, these intervenors put on witnesses who testified that craft organization would be advantageous to the employees because "outside" employment would be available to them through the unions during slack periods in the operations of the Company and because bargaining on that basis would tend more definitely toward the elimination of existing wage differentials for similar work for the Company and on the "outside." It was also the contention of the intervenors that as a general rule skilled workmen employed by the Company were hired as such and were not trained within the Company's employ or brought up from less-skilled employment. Several witnesses testified to their experience in this connection and stated that because of this situation the interests of skilled workers were clearly apart from those of other classifications of employees. On the whole, the evidence in

[10] Board Exhibit Nos. 11–A to 11–G, inclusive.
[11] Intervenors Exhibit Nos 11, 12, 14, and 15

support of the above contentions is more argumentative than conclusive. However, the intervenors' chief contention in support of their positions was that the employees themselves preferred representation through the various intervening unions and that substantial numbers of the employees had expressed such a preference by joining one of the intervening unions or authorizing it to represent them. Since such a contention depends for its strength mainly upon a showing of numbers, the intervenors devoted themselves almost exclusively to producing evidence of numerical strength.

As a basis for its particular case the Plumbers introduced in evidence a list of the employee classifications over which it intended to claim jurisdiction.[12] The Oil Workers took issue on the list of classifications, claiming that some classifications had been omitted by the Plumbers when in fact the work done under such classifications fell within the Plumbers traditional jurisdiction. The classifications in controversy include pipeliner, wellpuller, roustabout, and pipe-welder. The Oil Workers put in evidence to show that employees within those classifications are engaged mainly in handling and working with pipe and, with respect to pipeliners in particular, that they are engaged almost exclusively in pipe work. Such evidence was not controverted by the Plumbers whose position with respect thereto, as stated on the witness stand by their international representative; is that, while they do not recognize the classifications, if the work done is as claimed by the Oil Workers they do claim jurisdiction over all employees so engaged. The Plumbers refused, nevertheless, to amend their list of classifications and their final contention was to the effect that they claim jurisdiction only over the classifications on the list as submitted in evidence.

The record shows that employees of the Company first became members of the Plumbers when that organization chartered Local No. 465 in August of 1937. The business agent of Local No. 465 testified that 24 employees were members of the local and that 25 other employees had signed cards authorizing it to represent them. No documentary proof of representation was offered. The Plumbers put on other witnesses whose testimony as to its representation varied somewhat from that of the business agent, but in no instance did these representation claims equal those stated by him. If we take only the classifications listed by the Plumbers, approximately 341 employees are covered according to the copy of the pay roll of November 15, 1937, and the supplementary information furnished by the Company. Within the disputed classification concerning which the evidence on the question of jurisdiction by the Plumbers is most complete, namely pipeliner, there are approximately 62 employees

[12] Intervenors Exhibit No. 9.

on the pay roll. There are also approximately 242 wellpullers listed on the pay roll, some of whom at least should come under the Plumbers jurisdiction on the basis of this record. Judged most favorably we believe the Plumbers case is not convincing and, as readily appears from the above figures, is even less impressive if the contentions of the Oil Workers are in any wise correct. Upon a previous occasion we made the following observation, which, we believe, applies with equal force here:

> In this case, the weight of the factors arguing for recognition of the plant-wide unit would, at the least, seem to make it requisite upon the advocate of the smaller unit, after showing that his definition of the smaller unit is not an arbitrary one, to indicate that a reasonably large percentage of the workers in that smaller unit desire it, as opposed to the more inclusive unit.[13]

Upon the basis of all the evidence we are of the opinion that the Plumbers failed to make a case for a separate ballot.

It is not necessary to discuss the evidence with respect to the remaining intervenors separately, for they changed position near the close of the hearing and authorized the Metal Trades Council to claim representation of all employees not included within the units claimed by the Machinists, Boilermakers, Blacksmiths, Electrical Workers, and Plumbers. It was the request of this group that a single election be held for all employees outside of the five groups above named and that the Metal Trades Council be placed on the ballot in opposition to the Oil Workers. This position on the part of the remaining intervenors was taken when it developed that the chief evidence of representation by them was in the form of authorization cards naming the Metal Trades Council without reference to any specific individual union. This proposed semi-industrial unit does not conform to any previous bargaining arrangement for employees of the Company and appears to be purely fortuitous. Furthermore, although we have found above that the Plumbers failed to make a case for a separate unit, this unit sought by the Metal Trades Council excludes the Plumbers. We conclude that all classifications of employees claimed by the Plumbers must of necessity be combined in the same bargaining unit with the classifications of employees claimed by the Metal Trades Council.

In view of the stipulations between the Oil Workers and the Machinists, Electrical Workers, Blacksmiths, and Boilermakers, and all the other considerations noted above, and in the absence of any com-

[13] *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N L R B 159

petent evidence for the certification of any organization or organizations, we conclude that five separate ballots should be prepared and that the desires of the employees as expressed on such ballots should control the determination of the unit or units appropriate for the purposes of collective bargaining.

Balloting will be conducted as follows:

1. Among all employees listed on Intervenors Exhibit No. 11, who shall have the opportunity of voting for the Oil Workers or the Machinists or neither.

2. Among all employees listed on Intervenors Exhibit No. 12, who shall have the opportunity of voting for the Oil Workers or the Electrical Workers or neither.

3. Among all employees listed on Intervenors Exhibit No. 14, who shall have the opportunity of voting for the Oil Workers or the Blacksmiths or neither.

4. Among all employees listed on Intervenors Exhibit No. 15, who shall have the opportunity of voting for the Oil Workers or the Boilermakers or neither.

5. Among all remaining employees of the Company, as of November 15, 1937, engaged within the State of California in the production, pipe-line, and refinery departments and the automotive and telephone departments operated in conjunction therewith, excluding clerical employees and supervisory employees having the power to hire and fire, who shall have the opportunity of voting for the Oil Workers or the Metal Trades Council or neither.[14]

In accordance with our usual practice there should be excluded from participation in each of the above ballots employees who have quit or have been discharged for cause since November 15, 1937.

In the event that a majority of the employees voting one of the five ballots choose the Oil Workers, all employees within the classifications covered by such ballot will be combined with employees within the classifications covered by any other ballot or ballots in which a similar result is reached to constitute a single unit for the purposes of collective bargaining. Thus, if the Oil Workers is accorded a majority on each of the five ballots, there will be a single collective bargaining unit. Wherever a ballot results in a majority for one of the unions other than the Oil Workers, employees within the classifications covered by such ballot will constitute a separate and distinct unit for the purposes of collective bargaining.

---

[14] No intervening union has claimed to represent employees within such a unit. But, since the Metal Trades Council has, by its own position, adopted the principle of a semi-industrial unit, we will afford it an opportunity to claim all employees within this unit, and will direct that its name be placed on the ballot for such employees, unless and until the organization itself expresses a contrary desire

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusion of Law

A question affecting commerce has arisen concerning the representation of employees of Shell Oil Company of California, San Francisco, California, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Shell Oil Company of California, San Francisco, California, an election by secret ballot shall be conducted within thirty (30) days from the date of this Direction under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations:

1. Among all employees listed on Intervenors Exhibit No. 11, except those who have quit or have been discharged for cause since November 15, 1937, to determine whether they desire to be represented by the Oil Workers International Union or by the International Association of Machinists, for the purposes of collective bargaining, or by neither;

2. Among all employees listed on Intervenors Exhibit No. 12, except those who have quit or have been discharged for cause since November 15, 1937, to determine whether they desire to be represented by the Oil Workers International Union or by the International Brotherhood of Electrical Workers, for the purposes of collective bargaining or by neither;

3. Among all employees listed on Intervenors Exhibit No. 14, except those who have quit or have been discharged for cause since November 15, 1937, to determine whether they desire to be represented by the Oil Workers International Union or by the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers, for the purposes of collective bargaining, or by neither;

4. Among all employees listed on Intervenors' Exhibit No. 15, except those who have quit or have been discharged for cause since

November 15, 1937, to determine whether they desire to be represented by the Oil Workers International Union or by the International Brotherhood of Boiler Makers, Iron Ship Builders, Welders, and Helpers of America, for the purposes of collective bargaining, or by neither;

5. Among all remaining employees of Shell Oil Company of California, as of November 15, 1937, engaged within the State of California in the production, pipe-line, and refinery departments and the automotive and telephone departments operated in conjunction therewith, excluding clerical employees and supervisory employees having the power to hire and fire, and excluding also employees who have since quit or have been discharged for cause, to determine whether they desire to be represented by the Oil Workers International Union or by the Oil Industry Metal Trades Council of California, for the purposes of collective bargaining, or by neither.