

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

*Case No. C-48.—Decided April 17, 1936*

*Oil Producing and Refining Industry—Representatives:* proof of choice: membership in union, petition designating; resolution—*Unit Appropriate for Collective Bargaining:* community of interest; functional coherence; geographical differences; history of collective bargaining relations; occupational differences; organization of business—*Strike—Collective Bargaining:* refusal to negotiate with representatives; refusal to recognize representatives as bargaining agency representing employees—negotiation in good faith: counter proposals; meeting with representatives but with no intention of bargaining in good faith, reasonable effort, in general—negotiations suspended by strike, effect of—*Employee Status:* during strike—*Discrimination:* non-reinstatement following strike—*Reinstatement Ordered, Strikers:* discrimination in reinstatement—*Back Pay:* awarded.

*Mr. Karl Mueller* for the Board.

*Mr. C. J. Brannan* and *Mr. O. R. Tipps*, of Wichita Falls, Tex., for respondent.

*Mr. Robert S. Erdahl*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

Charges and amended charges having been duly filed by Local Union 258 of the International Association of Oil Field, Gas Well and Refinery Workers of America (hereinafter referred to as Local 258) and George E. Bebermeyer, E. H. Haynie, Frank T. Grozier, F. C. Cox, Clifford D. Jackson, B. F. Jackson and Roy W. Bowman, the National Labor Relations Board, by its agent, the Regional Director for the Sixteenth Region, issued and duly served its complaint, dated November 16, 1935, against the Bell Oil and Gas Company, Grandfield, Oklahoma, respondent herein, alleging that the respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935.

The complaint, as duly amended by the Trial Examiner, alleges, in substance, as follows:

That the respondent, a corporation organized under and existing by virtue of the laws of the State of Delaware, with its principal place of business in Tulsa, Oklahoma, is engaged in the business of producing, purchasing, transporting and refining crude petroleum, and in the production, purchase and transportation of natural gas, and in the sale and distribution of petroleum and petroleum products; that the respondent owns, operates and maintains producing oil and gas wells in Oklahoma and Texas, and a system of pipe lines for the transportation of oil from such wells to Grandfield, Oklahoma, where it owns, operates and maintains a refinery; that the respondent owns an undivided interest in a repressure plant situated in Wichita County, Texas, and owns in part and leases in part and operates and maintains a system of pipe lines to and from gas and oil wells in Oklahoma and Texas to and from said repressure plant.

That the respondent produces oil at its wells in Texas and Oklahoma, and purchases oil at the wells in said states from various persons, firms and corporations; and that it transports, by means of a system of pipe lines, oil so produced and purchased to its refinery at Grandfield, Oklahoma.

That the respondent transports, by means of a system of pipe lines, natural gas produced at wells in Texas and Oklahoma to a repressure plant situated in Wichita County, Texas where said gas is placed under pressure and then transported, by means of a system of pipe lines, to so-called "key" wells situated in Texas and Oklahoma, where it is forced into the ground to facilitate and stimulate the production of oil from surrounding wells; that, in the process of placing natural gas under pressure at said repressure plant, casinghead gasoline is precipitated, part of which is transported to the respondent's refinery in Oklahoma where it is used for blending with gasoline produced at the refinery.

That the respondent operates and maintains a refinery at Grandfield, Oklahoma where it produces gasoline and other petroleum products; and that the respondent causes the gasoline and other products so produced at said refinery to be sold and transported in interstate commerce.

That the aforesaid operations of the respondent occur in the course and current of interstate commerce and are an integral part of the operations of instrumentalities of such commerce, and constitute commerce among the several states.

That the respondent, on September 26, 1935, discharged, refused employment to, and refused to reinstate George E. Bebermeyer, E. H. Haynie, Frank T. Grozier, F. C. Cox, Clifford D. Jackson, B. F. Jackson, and Roy W. Bowman for the reason that they joined and

assisted a labor organization known as the International Association of Oil Field, Gas Well and Refinery Workers of America, Local No. 258, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, thereby engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act.

That the production department, the pipe line department and the repressure plant of the respondent each constitute a unit appropriate for the purposes of collective bargaining; that a majority of the employees in each of said units designated Local 258 to represent them for the purposes of collective bargaining with the respondent; that by virtue of Section 9 (a) of the Act said Local 258 has been the exclusive representative of all the employees in each of said units for the purposes of collective bargaining; that Local 258, acting by its duly authorized representatives, on August 12, 1935, August 26, 1935 and September 2, 1935, requested the respondent to bargain collectively with it as the exclusive representative of all the employees in each of said units; that the respondent, on each of said dates, refused to bargain collectively with Local 258 as the exclusive representative of all the employees in each of said units, thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (5) of the Act.

That the unfair labor practices of the respondent have occurred and are occurring in the course and current of commerce among the several states, and have led and tend to lead to labor disputes affecting commerce as defined by the Act.

In its answer the respondent denied the authority of the Board, under the Act, to require it to answer for its failure to employ the individuals named in the complaint and alleged that the Act is void and unconstitutional under the Fifth and Seventh Amendments to the Constitution of the United States.

Answering the allegations of the complaint, the respondent admits that it is a corporation; that it is engaged in the business of producing, purchasing, transporting and refining crude petroleum and in the sale and distribution of petroleum and petroleum products; that it owns, operates and maintains producing oil and gas wells in Oklahoma and Texas and pipe lines for gathering oil and transporting it to its refinery at Grandfield, Oklahoma; and that it owns an undivided interest in and to a repressure plant situated in Wichita County, Texas. The respondent denies that it operates the repressure plant exclusively and alleges that it owns an undivided 2/5th interest therein and that it operates the plant at the direction of and under the supervision of the owners of a 3/5th undivided interest who control the policies in the operation of the plant. It denies that

it transports any gasoline from the plant to its refinery and alleges that it sells all of the gasoline produced at the plant in Wichita County, Texas to local consumers.

The respondent denies that on September 26, 1935 it discharged George E. Bebermeyer, E. H. Haynie, Frank T. Grozier, F. C. Cox, Clifford D. Jackson, B. F. Jackson and Roy Bowman, and alleges that F. C. Cox, Clifford D. Jackson and B. F. Jackson were never at any time stated in the complaint employees of the respondent, and that the others were at one time employed by it, but that they voluntarily left its employment on September 17, 1935. Further, the respondent denies that it refused employment to these petitioners because of their membership in Local 258.

In its original answer the respondent denied that the production department, pipe line department and repressure plant each constitute a unit appropriate for the purposes of collective bargaining, and alleged that the only practical unit for such purposes is the employer unit, consisting of the employees of the refinery, pipe line and production departments, and the repressure plant. It denies that a majority of its employees designated Local 258 as their representative for collective bargaining. It also denies that it has refused to bargain collectively with Local 258, and alleges that it met with representatives of the Local when requested to do so and that it has at all times negotiated with them with respect to wages and working conditions. The answer alleges affirmatively that the employers in the Northwest field, where it operates, were negotiating with their employees with respect to wages and working conditions; that a representative who was assisting in such negotiations was called away; that Local 258 advised the respondent that negotiations would be continued upon his return and that no action would be taken in the meantime; that without notice, and in violation of the agreement, a minority group of the employees of the respondent and other employers forced the respondent's employees to cease operations and refused to permit them to enter upon the respondent's properties for the purpose of operating them; that this minority group of the respondent's employees caused several thousand dollars damage to respondent's properties; and that said acts reduced the production of the Northwest field to such an extent that when operations were resumed it was not necessary to employ as many employees in the respondent's operations as previously.

Finally, the respondent denies that it has engaged in unfair labor practices affecting commerce, and alleges that none of its action has led or tends to lead to labor disputes.

Pursuant to notice of hearing, the Trial Examiner, as agent of the Board, conducted a hearing commencing on December 20, 1935, at

the Federal Building, Wichita Falls, Texas. The respondent appeared by counsel and participated in the hearing. The Board was also represented by counsel.

At the opening of the hearing the Trial Examiner declined to hear arguments on the constitutional questions raised by the respondent. These arguments were heard at the close of the hearing.

Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded all parties. Upon the record thus made, the stenographic report of the hearing and all evidence, oral and documentary, offered and received at the hearing, the Trial Examiner, on January 21, 1936, filed with the Regional Director for the Sixteenth Region an intermediate report, finding in substance that F. C. Cox, Clifford D. Jackson and B. F. Jackson were never at any time stated in the complaint employees of the respondent and that it never employed them, did not discharge them, and did not refuse to employ them; that the members of Local 258 went out on strike in violation of an agreement made between the Regional Director of the National Labor Relations Board, the employers and Local 258 to permit the situation existing immediately prior to September 17, 1935 to remain in status quo until the Regional Director's return from a trip, and until further conferences were had for the purpose of working out an agreement between the employees and employers; that George E. Bebermeyer, E. H. Haynie, Frank T. Grozier and Roy W. Bowman participated in this strike and voluntarily left the employ of the respondent; that the respondent did not discriminate against Bebermeyer because of union activities, but did not reinstate him after the strike because he had devoted a part of the time for which he was paid by his employer to union activities; that the complaint of discrimination by the respondent against Bebermeyer has not been sustained because the evidence shows that the Reno Oil Company, the Burk-Divide Oil Company and the respondent jointly owned and operated the repressure department where he was employed and that therefore the respondent does not have the power to reinstate him; that Haynie was not reinstated after the strike because of a cut in the force in the department in which he worked and not because of his union activities; that Grozier was not reinstated because he had made numerous mistakes over a period of time which would have justified the respondent in discharging him prior to the strike; that Bowman was not reinstated because of inefficiency; that the respondent did not refuse to bargain collectively with its employees, and that Local 258 does not represent a unit appropriate for the purposes of collective bargaining. Upon the basis of these findings the Trial Examiner concluded that it is not necessary to pass upon the constitutionality of the National

Labor Relations Act and recommended that the complaint against the respondent be dismissed.

On February 3, 1935 Local 258 filed exceptions to the intermediate report, contending that the Trial Examiner's findings are not supported by evidence and are contrary to the evidence. They contend that the Trial Examiner was not justified in considering the circumstances of the strike because the Act provides (Section 13) that nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike. They also contend that the only issue before the Trial Examiner, in connection with the allegations under Section 8, subdivision (5) of the Act, was whether or not the respondent refused to bargain collectively with Local 258 and therefore that the evidence admitted on the question of the appropriate bargaining unit was irrelevant and that the Trial Examiner was not justified in considering and passing on that question.

Upon the record as thus made, the stenographic report of the hearing, and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

## FINDINGS OF FACT

### A. THE RESPONDENT AND ITS BUSINESS

I. The respondent, Bell Oil and Gas Company, is a corporation organized under and existing by virtue of the laws of the State of Delaware, having its principal office and place of business in Tulsa, Oklahoma. It also maintains offices at Chicago, Illinois; Pittsburgh, Pennsylvania; Grandfield, Oklahoma; Pampa and Wichita Falls, Texas.

II. (a) The respondent owns, operates and maintains producing oil wells in what is known as the Northwest field, which lies partly in Wichita County, Texas, and partly in Tillman County, Oklahoma. Part of this field lies in the bed of the Red River, which forms the boundary between Texas and Oklahoma. The wells owned and operated by the respondent in this field are located in the river bed. It owns and operates no wells in other parts of the field. Approximately 7 of the respondent's wells in the river bed are located on the Texas side of the boundary line and 25 or 30 of them are on the Oklahoma side. The respondent also owns, operates and maintains producing oil wells in the Pampa, Texas field, which is 300 miles from the Northwest field.

(b) The Northwest field has been producing for 18 or 19 years. The flush production has long since been taken out. It is now what is known as a stripper field, that is, production is obtained by me-

chanical means. There are over 1,000 wells in the field, every third one of which has been abandoned. The average production of the wells still producing is about 2 to 5 barrels per day. In that part of the field lying outside of the Red River bed production is obtained by maintaining a high vacuum on the field. The vacuum elevates the oil out of low areas underground. It has taken many years to increase the vacuum to its present point. Without it the operators would get no production. It serves to draw oil to the producing wells, from which it is pumped by mechanical means—a pumping process which elevates the oil to the surface.

In that part of the Northwest field which lies in the Red River bed, where the respondent operates producing oil wells, production is obtained by means of repressure, a process whereby natural gas is injected into the ground under high pressure through so-called “key” wells for the purpose of forcing oil to move toward the producing wells. The wells in this area were formerly produced by vacuum, but in 1933 the operators determined to switch over to the repressure system. Since December of that year the wells in the river bed have been operated on that system.

(c) The repressure plant itself is located in Wichita County, Texas. It is jointly owned by the Reno Oil Company, the Burk-Divide Oil Company and the respondent. When it was built the Burk-Divide Oil Company and the respondent each contributed 40% of its cost and the Reno Oil Company contributed 20%. The operating expenses are pro-rated among the three joint owners on the basis of the production of each.

The operations at the plant consist of taking natural gas from the wells, circulating it through condensers in the plant to cool it, placing it under pressure and pumping it, under high pressure, back into the ground through key wells located throughout the river bed area. The gas injected into the ground permeates “oil sand”, thus artificially inducing a condition once produced by nature. The gas pressure causes the oil underground to move in a body toward the producing wells, from which it is elevated to the surface by a pumping process. This system prevents salt water from moving with the oil to the producing wells and thus prolongs the life of the field. By this process the operators hope to recover more oil per acre than it was possible to recover under the old vacuum process.

The gas used in the repressure system is obtained from wells located in both Texas and Oklahoma. However, these wells do not produce enough gas to supply the system and the additional amount needed is purchased from the Shasta Gas Company. The gas is piped from the producing wells to the plant and from the plant to the key wells. Under ground it moves from the key wells to the producing wells, from which it is piped back to the plant, thus form-

ing a complete circuit. The producing and key wells being located in both Texas and Oklahoma, the pipe lines carrying the gas cross and recross the state line. These pipe lines are a part of the repressure system and are jointly owned by the Reno Oil Company, the Burk-Divide Oil Company and the respondent.

In the process of condensing natural gas at the repressure plant natural gasoline, which the gas picks up in the course of its circulation under ground, is precipitated. Five to six hundred gallons per day of natural gasoline are produced by this process at the plant. This is sold to the La Salle Petroleum Company at Burk-burnett, Texas and to the employees of the respondent.

(d) The respondent's oil producing operations are carried on at its wells located on both sides of the Texas-Oklahoma boundary line in the Red River bed. These wells are connected with the repressure system described above. Production is obtained by pumping the oil to the surface where it is stored in stock tanks located near the wells.

(e) The respondent owns, operates and maintains an extensive pipe line system through which oil produced in the Northwest field is gathered and transported to its refinery located at or near Grandfield, Oklahoma. Oil produced at the respondent's wells in the river bed is transported from the stock tanks located near the wells through gathering lines to a main line pump station located in Wichita County, Texas, just below the Texas-Oklahoma boundary. From this station it is pumped through a trunk pipe line to the respondent's refinery at Grandfield, Oklahoma. Thus, regardless of the location of a particular well, the oil produced at the respondent's wells in the river bed crosses the Texas-Oklahoma boundary at least once in the course of its transportation to the refinery.

The respondent purchases an average of 3200 barrels of crude oil daily from other producers operating in the Northwest field. Approximately 2600 barrels of this total is purchased in Texas and the balance in Oklahoma. The respondent's gathering pipe lines connect with stock tanks located near the vendors' wells. It maintains such connections with about 300 batteries of stock tanks located throughout the field. Approximately 250 of these batteries are on the Texas side of the Texas-Oklahoma boundary and the remainder are on the Oklahoma side. The purchases are made and the respondent accepts delivery of the oil so purchased at the vendors' tanks. The oil so purchased is piped through gathering lines to the main line pump station located in Wichita County, Texas. At this station the respondent maintains a battery of tanks, in which the oil piped from throughout the field is accumulated. The oil is then pumped from the pump station through the trunk pipe line to the respondent's refinery at Grandfield, Oklahoma. All of the oil purchased or produced by

the respondent in the Northwest field passes through the pump station in the course of its transportation to the refinery, regardless of whether it is produced in Texas or Oklahoma. Thus, it crosses the Texas-Oklahoma boundary at least once before reaching the refinery.

(f) The respondent owns and operates a refinery at or near Grandfield, Oklahoma, about 6½ miles north of the pump station described above. The crude oil transported to the refinery is first pumped into a stock tank. It is then pumped through a skimming plant where natural gasoline and kerosene are removed. The balance of the crude passes through high pressure stills where two cuts are made, the first the gasoline cut, and the second the residue or fuel oil cut.

The daily production of gasoline at the refinery is about 2080 barrels. Approximately one-fourth of this production is sold and delivered in Oklahoma, and the balance in other states. The respondent has regular gasoline customers in Oklahoma, Texas, Nebraska, Colorado, Wyoming, Ohio and Tennessee. It sells its gasoline all over the Mississippi Valley. Shipments are made from the refinery by tank car and truck. The respondent owns and operates its own trucks for local short hauls in Oklahoma. It owns no tank cars but leases some. The respondent's policy is to market its gasoline through independent jobbers throughout the United States. It does not own any retail service stations.

The kerosene produced at the refinery is sold in Oklahoma and Texas, approximately 1/5th of the production being sold in the latter State. Most of the fuel oil produced is sold to railroads. It is delivered to them in their tank cars at the refinery. Among others, it sells to the Missouri, Kansas and Texas R. R., on whose lines the refinery is located. The respondent also sells fuel oil to the Southwestern Light and Power Company at Lawton, Oklahoma and to cotton seed oil companies.

III. The aforesaid operations of the respondent constitute a continuous flow of trade, traffic, commerce and transportation among the several States.

#### B. THE EFFECT OF THE STRIKE OF SEPTEMBER 17-27, 1935 UPON THE RESPONDENT'S OPERATIONS

IV. (a) From September 17 to September 27, 1935 the respondent's employees in the Northwest field operations in the repressure,<sup>1</sup>

<sup>1</sup> While the repressure plant and system are the joint property of the respondent, the Reno Oil Company and the Burk-Divide Oil Company (see Finding II (c)), the employees in that plant were regarded as employees of the respondent in all negotiations between the respondent and its employees in the Northwest field. For convenience we will refer to the plant as one of the departments of the respondent's field operations. The case of George E. Bebermeyer, an employee in the plant and one of the individuals involved in this case, is considered separately in Finding XII (c).

production and pipe line departments were out on strike and operations in those departments were completely suspended. During that period no oil was produced at the respondent's wells and, due to the shut down in the pipe line department, no oil was transported to the refinery through the trunk pipe line from the main line pump station in Wichita County, Texas. The effect of this strike upon operations at the refinery was almost immediate. When the strike went into effect the respondent had approximately 10,000 barrels of crude oil in stock at the refinery, but within a week this supply was exhausted. The respondent was then forced to bring in oil by rail. The skimming plant was shut down, but with the oil the respondent had on hand and that shipped in by rail it was able to keep its cracking plant running at sufficient capacity to fill its contracts. After the supply of oil on hand was exhausted and the respondent became dependent entirely upon rail shipments to supply the refinery production of gasoline dropped 50%.

(b) When the strike was called most of the producers in the Northwest field whose stock tanks were connected with the respondent's pipe line system and who depended upon the respondent to purchase their production of crude oil had full tanks. Consequently the strike of respondent's employees affected them very seriously. Due to the complete stoppage of the flow of oil through the respondent's main line pump station and thence to the refinery at Grandfield, Oklahoma, these producers had no outlet for their oil and were forced to curtail production. Many of them threatened to take their business away from the respondent and connect with some other pipe line system because of the shut down in the respondent's pipe line department. The effect of such a loss of patronage upon the respondent's refinery would be disastrous. In the past several years, due to diminishing production in the Northwest field, the respondent has been forced to acquire several small pipe line companies from time to time in order to insure a sufficient supply of crude oil to operate its refinery. Any diminution in this supply would immediately cause curtailment of operations at the refinery.

#### C. PAST RELATIONS BETWEEN THE RESPONDENT AND THE UNION

V. The International Association of Oil Field, Gas Well and Refinery Workers of America, hereinafter referred to as the International, is an international labor organization, affiliated with the American Federation of Labor, and includes within its jurisdiction all *bona fide* wage workers working in the oil, gas well and refinery industries in the United States, Canada and Mexico. Burkburnett, Texas Local No. 258 of this organization, hereinafter referred to as Local 258, was organized and chartered in 1933. Its membership is

composed of field and refinery workers employed by various employers operating in and adjacent to the Northwest field, including employees in the respondent's repressure, production and pipe line departments.

VI. Early in August, 1934 the members of Local 258 employed by the respondent and other employers operating in the Northwest field went out on strike in an effort to secure written agreements with their employers. As a direct result of that strike the respondent, on August 11, 1934, entered into a written contract for one year with the International as the representative of the employees of the respondent who had designated Local 258 as their agency for collective bargaining. This included only employees in the repressure, production and pipe line departments. Local 258 had no members in the respondent's Grandfield, Oklahoma refinery. That contract provided that the respondent would abide by all of the labor provisions of the Code of Fair Competition for the Petroleum Industry; for the settlement and arbitration of disputes; that there should be no strike or lockout; and for leaves of absence and vacations, overtime pay, the checkoff, and recognition of seniority in laying off and promoting employees. Pursuant to its terms a so-called workmen's committee of the employees was appointed. It was the function of this committee to present grievances to the management and negotiate for their settlement.

#### D. THE BARGAINING AGENCY

VII. (a) In the spring of 1935 the workmen's committee was instructed by Local 258 to call a meeting of the members of the Local employed by the respondent for the purpose of selecting a committee to draft a new contract for presentation to the management. Pursuant to this instruction Frank T. Grozier, as chairman of the workmen's committee, called a special meeting for that purpose on May 13, 1935. Approximately 15 of a total of 25 or 26 employed in the repressure, production and pipe line departments attended. At that meeting a committee of five, composed of George E. Bebermeyer, W. R. Stimpson, D. F. Lamb, H. L. Dunn and Grozier, was elected to draft a new contract. This committee, on July 11th, wrote to C. J. Bohner, superintendent of the repressure and production departments, stating that the employees desired to continue the 1934-1935 contract with revisions and requesting a conference within twenty days (Exhibit B-16). There was no immediate response to this communication.

(b) Thereafter, Grozier, acting again as chairman of the workmen's committee, called a meeting of the union employees in the repressure, production and pipe line departments on July 22, 1935 for

the purpose of considering the contract drafted by the committee of five appointed at the meeting of May 13th. This meeting was attended by two employees from the repressure department, ten from the pipe line department and nine from the production department—a total of twenty-one. The contract submitted by the drafting committee was accepted by the group. It was decided that the drafting committee of five previously appointed was too large for the purpose of negotiating with the management. A committee of three was then elected to present the contract to the respondent and negotiate an agreement with it. The members of this negotiating committee were elected by secret ballot. Those present were given slips of paper upon which they made their nominations for the first committee post. The nominee polling a majority of the votes cast was declared elected to the committee. The group then proceeded in the same manner to elect committeemen from each of the two departments not represented by the first man elected. Thus, each member of the committee was elected by a majority vote of all those present and each department was represented on the committee. The election procedure followed at this meeting was pursuant to the deliberate policy of the group to have representation from all departments on all committees acting for the group. Bebermeyer from the repressure department, Grozier from the pipe line department and Haynie from the production department were thus elected to serve as the contract negotiating committee.

(c) On or about May 1, 1935, at a meeting of Local 258, the members were instructed that appointments to contract negotiating committees representing the various groups of employees of employers operating in the Northwest field would have to be made by the Local. Under this plan each group was to elect its own committee and the committees so elected were to be confirmed by and as committees of the Local as well as committees of the various groups of employees. Pursuant to this policy the contract negotiating committee elected by the union employees of the respondent at their meeting on July 22nd reported the election at a meeting of the Local held prior to August 10th. On motion duly made and carried the committee was accepted, confirmed and appointed as a committee of the Local to represent the union employees in the repressure, production and pipe line departments in negotiations with the respondent.

(d) On August 10, 1935 twenty-one of the employees in the repressure, production and pipe line departments signed a petition stating that they had organized themselves into Local 258 of the International Union; that through this organization they desired to make a collective bargain with the respondent, and requesting a conference with representatives of the management "to begin negotia-

tions to work out a collective bargain and to agree on terms of employment and orderly methods of settling differences between management and employees." (Exhibit B-25)

(e) At all of the times mentioned in paragraphs (b), (c) and (d) above Local 258 represented an overwhelming majority of the employees in the repressure, production and pipe line departments. Of a total of 25 or 26 employed in the three departments, at least 21 were members of the Local. By departments, all of the three men employed in repressure, all of the ten or eleven in production and eight of the twelve or thirteen in pipe line were members of the Local.

The respondent does not deny that Local 258 represents a majority of its employees in these three departments, either separately or collectively.

#### E. EFFORTS TO NEGOTIATE AN AGREEMENT

VIII. (a) Pursuant to the authority vested in it by Local 258 and the employees it represented, the negotiating committee of the respondent's employees met with Rex Young, general superintendent of the respondent, and C. J. Bohner, superintendent of the repressure and production departments, on August 12, 1935 and presented for their consideration the contract previously prepared by the drafting committee and approved by the employees. At that meeting the committee requested that the respondent enter into a new contract with the International on behalf of the employees in the repressure, production and pipe line departments. Young, speaking for the respondent, stated that is was "the policy of the company to organize the entire Bell personnel, including Pampa, the refining and pipe line departments into one union;" that after the first of the year he intended to hold an election among all of such employees for the purpose of designating representatives for collective bargaining; that the respondent stood ready to negotiate with any representatives so designated by a majority of all of its employees; that therefore Local 258 did not represent a majority of the respondent's employees; and that the respondent would not negotiate with the committee and would not recognize Local 258 for the purpose of collective bargaining on behalf of the employees in the repressure, production and pipe line departments or any of its employees. The committee replied that the employees in the three field departments had no interests in common with the refinery employees; that the respondent had recognized Local 258 the year previously under the 1934-1935 contract, and that the field employees felt that they should not be absorbed with the refinery employees into one unit. The respondent's representatives at this meeting made no counter proposals to the contract offered by

the committee, nor did they discuss the terms of this or any other contract. Young told the committee that there would be no wage cuts, no increase in hours and no change in working conditions, but that the men in the field departments would have to work without the benefit of a contract. The committee then requested Young to meet again with it and with J. L. Coulter, the general secretary of the International, in an effort to work out an agreement. Young agreed to do so.

Coulter arrived in Burkburnett after the meeting of August 12th. He came at the request of the members of Local 258, including a majority of the employees in the repressure, production and pipe line departments, to assist in negotiations with the employers.

At a special meeting of Local 258 on August 16th, on motion duly made and passed, the contract negotiating committees representing the various groups of employees in the Northwest field, including the committee representing the employees in the respondent's repressure, production and pipe line departments, were directed to form themselves into a joint committee for the purpose of drafting a blanket contract, acceptable to all of the employees involved, to be presented to all of the employers at a joint meeting of the several contract negotiating committees and the representatives of the employers. This action was prompted by the suggestion and request of Tucker, one of the employers involved in the negotiations with Local 258. Pursuant to this direction of the Local, the several committees, with Coulter's assistance, drafted one contract to cover all of the employers and employees involved. The contract so drafted was to be adapted to meet the circumstances of each case.

(b) On August 26th the contract negotiating committees of the various groups of employees met with representatives of their employers in a joint meeting at which Coulter presided. The respondent was represented by Young. Coulter presented the blanket contract as a basis for negotiation and discussion and asked the employer representatives present to state the positions of their companies. Young reiterated the stand he took at the meeting of August 12th and refused to recognize or negotiate with Local 258. He declined to discuss the contract presented and made no counter offers or proposals. Consequently nothing was accomplished at this meeting. At Coulter's suggestion the employer representatives agreed to meet with a federal conciliator.

(c) On September 2nd the contract negotiating committees of the various groups of employees again met with the representatives of their employers in a joint meeting, presided over by Dr. Edwin A. Elliott, Regional Director for the Sixteenth Region, National Labor Relations Board, acting in this controversy as a duly authorized rep-

representative of the Conciliation Service of the United States Department of Labor and not in his capacity as an agent of the Board. Elliott opened the meeting by calling for the blanket contract previously drafted by the joint committee of employee representatives as a basis for discussion and negotiation. Young again stated that the respondent's policy was to organize all of its employees into one unit; that Local 258 did not represent a majority of all of the respondent's employees, and that therefore he would not negotiate with or recognize the Local for the purpose of collective bargaining on behalf of the employees in the repressure, production and pipe line departments. General discussion followed between Elliott, the joint contract negotiating committee, and the other employer representatives present. Among the demands made by the employee representatives in the proposed contract were the closed shop and a 30% increase in wages. The employers, Young included, insisted that they could not meet these demands. The employee representatives then proposed a 20% increase in wages, but this was likewise rejected. The operators explained that due to a break in the price of Pacific Coast crude which they feared might reach the Northwest field they could make no commitments. Elliott then proposed the selection of a subcommittee composed of Coulter, one representative of the employees and one of the employers to meet with him in an effort to reach an agreement. This was done and the rest of the representatives withdrew from the meeting temporarily. To this subcommittee of three Elliott proposed a renewal of the old contract, revised to include an agreement by the employers that there would be no objection to the employees joining the union. He proposed further that, because of the break in the price of Pacific Coast crude, the wage question be held in abeyance for sixty days. The other representatives were then called back into the meeting and Elliott's proposals were announced. After some discussion the employer representatives present agreed to take these proposals to their superiors and report back to Elliott the next day whether or not they were acceptable. The employee representatives then asked the employers to withdraw from the meeting so that they could discuss Elliott's proposals with him. There is some conflict in the record as to the result of the discussion which followed. Elliott testified that the employee representatives stood "pat" on their demands for a 20% increase in wages and the other features of the proposed blanket contract, including the closed shop, and that they instructed him to convey those demands to the employers. Grozier testified that Elliott was instructed to advise the employers that the employees did not feel that they could accept a renewal of the old contract, but that they were ready to negotiate a new contract with them. At any rate

Elliott reported to the employer representatives, who were awaiting him outside of the meeting place, that the employee representatives demanded the proposed contract as presented, except for the change from a 30% to a 20% increase in wages. He asked them to consider these demands and also his proposal to renew the old contract with modifications and to do the best they could on them. Young agreed to discuss them with Mr. Albert Finston, vice-president of the respondent, and report their decision to Elliott the next day (September 3rd).

At the meeting described above the terms of the joint committee's proposed contract were not discussed at any length. Young made no counter proposals to any of the demands of Local 258. Neither did he accept Elliott's proposal to renew the old contract with modifications. Not once did he question the majority representation by Local 258 in the repressure, production and pipe line departments. His participation in the discussion was largely confined to the question of the proper bargaining unit, his contention being that all departments of the respondent's operations, including the refinery, should be consolidated for the purposes of collective bargaining. To his demand that this question be determined before he would enter into negotiations for an agreement, Elliott replied that it was not before the meeting and that a petition for a determination of the appropriate unit would have to be presented by the employees.

#### F. THE BARGAINING UNIT

IX. The original complaint alleged that the respondent's repressure, production and pipe line departments each constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. In its original answer the respondent denied this allegation and alleged that the employer unit, consisting of the employees in the refinery, repressure, production and pipe line departments, is "the only practicable unit, which could be used as a unit of collective bargaining." Much evidence was adduced at the hearing to support these conflicting allegations. Witnesses for the Board described the operations in the three field departments and pointed out the functional differences in the duties performed by the employees therein. It was their contention that men trained in the work of a particular department are better qualified to represent the employees of that department than men employed in one of the other departments; that they know the problems of the employees in their department and the conditions under which they work. The respondent's witnesses testified to the similarity of the tasks performed by the employees in the three field departments and the refinery. For example, gaugers are employed in the pipe line and refinery depart-

ments; operators of pumps of various descriptions are employed in all four departments. On the other hand there are functional differences in the duties of employees in the same department. All of the witnesses testifying on the subject stated that the operations of the respondent naturally break down into the four departments—repressure, production, pipe line and refinery. Each department is supervised by a foreman or superintendent and each performs a distinct function. On behalf of the respondent, Young testified that all of the departments are part of one integrated unit; that each is dependent upon the other for the successful operation of the whole.

Upon consideration of the evidence adduced at the hearing, the Board, on March 10, 1936, amended its complaint so as to allege that the repressure, production and pipe line departments of the respondent constitute a single, appropriate unit for the purposes of collective bargaining with the respondent. All of the parties to the proceeding were duly notified of this action and the respondent was given an opportunity to file its answer and to petition for a hearing on the amended complaint. Thereafter, on March 20, 1936, the respondent filed its supplemental answer to the amended complaint in which it denied that the repressure, production and pipe line departments constitute an appropriate unit for the purposes of collective bargaining and alleged that the only practicable unit is the employer unit consisting of the employees in the repressure plant, production and pipe line departments, and the refinery.

We think that the evidence proves conclusively that the respondent's repressure, production and pipe line departments together constitute a unit appropriate for the purposes of collective bargaining with the respondent within the meaning of Section 9 (b) of the Act. The men in these departments are all employed in and adjacent to the Northwest field. Those in the repressure department work in the plant itself. The production employees work at the wells, located in the Red River bed. The men in the pipe line department are scattered throughout the field attending to the respondent's pipe line system, gauging oil in tanks and pumping it through the gathering lines and thence to the refinery. They are all engaged in the work of producing and transporting oil. Each of them is familiar with the nature of the duties of the others. In the performance of their duties the pipe line department employees are separated from the employees in the production and repressure departments, who work in the river bed, but all of them clear their work through a central office. All of the field employees have their homes in the field itself or in the nearby town of Burkburnett, Texas. The refinery employees, on the other hand, live at Grandfield, Oklahoma, which lies 20 or 25 miles north of Burkburnett. There is little or no contact of any

kind between the two groups. The duties of the refinery employees and the conditions under which they work are entirely dissimilar to those in the field.

Each of the field departments is small. Three men are employed in the repressure department, ten or eleven in the production department, and twelve or thirteen in the pipe line department. At least twenty-one of the total of twenty-five or six men employed in the field are members of Local 258 (see finding VII). The Local has no members in the refinery. This factor of itself tended to set the field employees apart as a separate bargaining unit.

Both the respondent and Local 258 have in the past treated the employees in the repressure, production and pipe line departments as comprising one unit, separate and distinct from the employees in the refinery and the Pampa field. So far as the record discloses, the Pampa employees never figured in negotiations between Local 258 and the respondent. We may, therefore, omit them from consideration in this case. The respondent recognized the unity of the employees in the three field departments in question by entering into a contract, in August, 1934, with the International on behalf of the respondent's employees who were members of Local 258. At that time, and continuing to the present, only employees in those departments were members of the Local. That contract made no distinction between departments. It applied alike to all of the field union employees. At about the same time the respondent recognized the refinery employees as a distinct unit by entering into a separate contract with them. Local 258 never claimed the right to represent the refinery employees, and, on the other hand, the latter never requested the Local or its committees to represent them in their negotiations with the respondent.

Under the 1934-1935 contract the respondent's employees in the three field departments who were members of Local 258 considered themselves as comprising one distinct bargaining unit, rather than as three separate units. Each of the departments was represented by one or more men on the workmen's committee which functioned under that contract as the representative of the group in the presentation of grievances to the management. The field union employees met once a month as a separate and distinct group to discuss and decide their common problems. The will of the majority of the entire group always prevailed. The committee selected to draft a new contract to present to the management (see finding VII (a)) and the contract negotiating committee (see finding VII (b)) were elected at meetings of the group. Each of the members of these committees was elected by a majority vote of those present. Only one contract covering all of the field employees was presented to the respondent.

The fact that the members of the group always selected a representative from each department to serve on committees representing the group does not militate against our conclusion that the field employees constitute a single, appropriate bargaining unit. The group being made up of component parts the men felt that the fair thing to do would be to include representation from each of the parts on committees representing the group before the management and this became their policy. A bargaining arrangement such as this combines the simplicity of a single agency negotiating for a more or less complex group with no accompanying sacrifice of the individual interests of the group's component parts.

Upon the record and upon precedent we find that the employees in the repressure, production and pipe line departments constitute a unit appropriate for the purposes of collective bargaining with the respondent.

In so finding we have not lost sight of the fact that the repressure plant is the joint property of the respondent, the Reno Oil Company and the Burk-Divide Oil Company (see finding II (c)). Section 2, subdivision (2) of the Act provides that "the term 'employer' includes any person acting in the interest of an employer, directly or indirectly." We think it clearly appears from the record that for the purposes of collective bargaining, the respondent is the employer of the plant employees within the meaning of this definition. By agreement among the joint owners the respondent was delegated as the agency to pay and supervise these employees. They are paid with the respondent's checks. The 1934-35 contract between the respondent and the International covered them. The respondent's Northwest field employees at all times considered the plant employees as being a part of their group for the purposes of collective bargaining. The latter were always represented by one of their own number on committees representing the group before the management of the respondent. They had representation on the workmen's committee which functioned under the 1934-35 contract (see finding VI); on the committee which drafted the new contract presented to the respondent (see finding VII (a)); and on the committee which negotiated with the respondent at the meetings of August 12th and 26th and September 2nd (see finding VII (b)). At all of the times above mentioned the respondent met and dealt with these committees as the representatives of the employees in the repressure plant as well as of those in the production and pipe line departments. The plant employees were never regarded as a separate and distinct group, occupying a peculiar relation to the respondent, and requiring special treatment. So far as appears from the record, the negotiations which concerned the repressure department employees were

always conducted with representatives of the respondent and not with representatives of the other two joint owners. In its original and supplemental answers to the complaint the respondent alleged that the only practicable bargaining unit of its employees is the "employer unit which consisted of the employees of the refinery, pipe line department, production department and repressure plant", and that all of these four departments, and the employees therein, are operated and directed under one directing head or authority.

On this record, therefore, we find that, in all negotiations affecting the plant employees, the respondent acted in its own behalf and as the agent of the other two joint owners and that these employees are properly a part of the bargaining unit for the purposes of collective bargaining with the respondent.

G. THE STRIKE OF SEPTEMBER 17-27, 1935

X. On the morning of September 3, 1935 Dr. Elliott was called to Washington, D. C. on urgent official business in his capacity as Regional Director of the National Labor Relations Board. He notified Coulter before his departure and requested of him that Local 258 withhold any further action until his return, which he anticipated would be about ten days hence. The employer representatives who were present at the meeting of September 2nd were also notified that Elliott had been called away temporarily and they were likewise requested to maintain the status quo until his return. At a meeting held the night of September 3rd, Local 258, upon Coulter's recommendation, voted to grant Elliott's request. Pursuant to instructions, Bebermeyer, as Secretary of the Local, by a letter dated September 3rd, notified Young that Elliott had requested the Local to delay further action until his return and that the Local had granted his request (Exhibit R-1). Thereafter there were no further negotiations between Local 258 and the respondent. Coulter went to South Texas on other business expecting to return in ten days with Elliott. On September 14th, in Fort Worth, Elliott, who had just returned there from Washington, advised Coulter that he had been called to El Paso on urgent business and that he would be unable to return to North Texas for a few days. Coulter arrived in Wichita Falls the evening of September 16th where he was met by the contract negotiating committees representing the employees of the respondent and the other employers. He advised the members of these committees that Elliott had been delayed for a few days. They complained that the respondent had, since September 3rd, laid off one man and had put the pipe line department on longer hours and that other employers had laid off some men. (It will be recalled that Local 258 included in its membership employees of other

employers operating in and adjacent to the Northwest field. See finding V.) They felt that they could not restrain the members of the Local any longer and demanded that Coulter, as an officer of the International, give them permission to cease work. A strike vote had been taken at a regular meeting of Local 258 on August 30th and an overwhelming majority of those present had voted favorably to such action. No date was set for the strike at this meeting. Coulter yielded to the demand of the committee members and gave permission for a cessation of work. The committee members then notified the members of Local 258 of a mass meeting to be held in a nearby ball park for the purpose of receiving the reports of the contract committees and taking action thereon. At this meeting, attended by an overwhelming majority of the members, it was agreed that the strike would go into effect at 4:00 A. M., September 17th. The respondent had no notice of the strike. However, Coulter had advised Young at the meeting of September 2nd that the men had voted to strike at any time after September 2nd unless an agreement was reached. The strike lasted for about ten days, during which time operations in the repressure, production and pipe line departments were closed down completely. The other employers against whom the strike was directed were similarly affected.

On or about September 26th Elliott returned to the field and immediately started negotiations for a settlement of the strike. He succeeded in inducing the employers to reinstate all of their striking employees except the seven involved in this case. Operations in the field were resumed on the morning of September 27th.

#### H. THE ALLEGED VIOLATION OF SECTION 8, SUBDIVISION (5)

XI. On September 3rd, when Elliott was called to Washington, negotiations between Local 258 and the respondent were still in progress. The issues had been clearly defined at the meetings of August 12th and 26th and September 2nd. While the parties had reached an impasse by reason of Young's refusal to recognize Local 258 as representing an appropriate bargaining unit, the situation was not hopeless. When the meeting of September 2nd adjourned it was clearly understood by all parties that Young was to confer with Finston, his superior, on the demands made by the contract committee and also on Elliott's proposal to renew the old contract with modification. There is some evidence that Young intended to have Finston come to Wichita Falls on the 3rd to participate in the negotiations. All of the employer representatives present at the meeting had agreed to report to Elliott the afternoon of the 3rd and he had arranged to meet with the contract committees later that day. All

parties to the negotiations expected that further conferences would be held. This was the situation when negotiations were suspended by Elliott's temporary absence. The strike called on the 17th effectively prevented any further efforts to reach a written agreement. When Elliott returned on or about the 26th he directed his efforts toward a settlement of the strike based upon the reinstatement of the striking employees.

In these circumstances we do not think there has been a violation of Section 8, subdivision (5), and we will, therefore, dismiss the complaint in so far as it charges such violation.

In doing so, however, we cannot fail to take cognizance of the respondent's attitude in its negotiations with Local 258. At all of the meetings with the representatives of its Northwest field employees Young repeatedly refused to recognize and deal with the Local on the sole ground that it did not represent a proper bargaining unit. A determination of the question as to unit was demanded by him as a prerequisite to negotiation. It was his contention that the proper unit should include the refinery and field employees. It is interesting to note that some 50 or 55 men are employed in the refinery. Not one of them is a member of Local 258. A total of not more than 26 are employed in the Northwest field, and at least 21 of them are members of Local 258. The testimony of witnesses for the Board that Young stated that he intended to organize all of the respondent's employees into one organization was not contradicted. There is some evidence that the respondent maintained a company union at the refinery and this also was not denied. We think this evidence explains why Young was so insistent that the field and refinery employees be grouped together as one unit. There is ample evidence in the record to show that the respondent was decidedly prejudiced against Local 258. If the field and refinery employees were grouped together the respondent would be in a position to dominate the whole group through its control over the organization of the refinery employees who far outnumbered those employed in the field. By means of this device the respondent would be enabled to thwart the efforts of the field employees to organize and bargain collectively through representatives of their own choosing and thus nullify the rights guaranteed to those employees in Section 7 of the Act.

On the whole record we think that the respondent was not acting in good faith in the negotiations outlined in finding VIII. While it is true that Young met with representatives of Local 258 every time they requested a meeting, he made no genuine effort to reach an agreement with them. His persistent refusal to recognize the Local as the representative of an appropriate bargaining unit prevented any real discussion of the contract submitted to him by the repre-

sentatives of the Local. At none of these meetings did he make any counter offers to the proposals of Local 258. His participation was largely confined to disputing their right to bargain at all because they would not include the refinery employees in the bargaining unit. The obligation to bargain collectively requires considerably more of an employer than merely meeting with the representatives of his employees and then challenging the composition of their unit or employing other dilatory tactics to thwart their efforts to reach an agreement with him. We do not think the respondent fulfilled this obligation in the negotiations conducted up to September 3rd. But in view of our finding that those negotiations were still pending and that there was still a distinct possibility of reaching an agreement when Elliott was called away and again when the strike was called, we think that the respondent did not violate Section 8, subdivision (5) of the Act.

#### I. THE DISCHARGES

XII. (a) The complaint alleges that the respondent refused employment to, discharged and refused to reinstate Bebermeyer, E. H. Haynie, Grozier, F. C. Cox, Clifford D. Jackson, B. F. Jackson and Roy W. Bowman because of their union membership and activity. The respondent denies that Cox and the two Jacksons were ever at any time stated in the complaint employed by it. With respect to the remaining four, the respondent alleges that they were at one time employed by it, but that they voluntarily left its employment on or about September 17, 1935. It specifically denies that it refused employment to or discharged or refused to reinstate these four men because of membership or activities in Local 258 or that it ever discriminated in regard to their hire or tenure of employment.

The respondent contends that the strike of September 17-27th was a violation of an agreement made between Elliott, Local 258 and the respondent at the time Elliott was called away on other business. This alleged agreement is predicated upon the letter written by Bebermeyer, as Secretary of the Local, to Young advising him that Local 258 had agreed to grant Elliott's request that it withhold further action until his return. The respondent made no reply to this letter, and, so far as appears from the record, made no promises to either Local 258 or Elliott. Witnesses for the Board testified that between September 3rd and 17th the respondent laid off at least one man and put the pipe line department on longer hours. Witnesses for the respondent denied that any regular employees were discharged between those dates and testified that only one extra employee, whose services were not required at the time, was laid off. It was admitted that the pipe line department was put on longer hours, but Young

and Gilchrist, the superintendent of the department, testified that this was necessary because the respondent had recently acquired a small pipe line system which it had to connect up with its old system as quickly as possible in order not to inconvenience the producers who thus became dependent upon it to buy their oil and that it was done with the consent of the pipe line employees. Other witnesses against the respondent testified that it and other employers engaged in acts of discrimination and intimidation against the members of Local 258 between September 3rd and 17th, but there is no evidence to substantiate these charges. It is clear, however, that the members did fear that unless an agreement was reached soon the employers would discriminate against them and interfere with their efforts to maintain their organization. Thus, when Coulter informed them on the evening of September 16th that Elliott had been delayed in returning to resume negotiations, their patience had been taxed to the limit and they felt that an immediate strike was their only means of protection. They took the position that the respondent had violated the status quo since September 3rd and that they were no longer under obligation to Elliott since he had told them that he expected to return on or about September 13th.

We do not think the strike was a violation of any agreement with the respondent. The Local's agreement was with Elliott, not with the employers. Without conceding or in any way implying that a strike in violation of an agreement alters the status of striking employees under the provisions of the National Labor Relations Act, we find that the men involved in this case are individuals whose work has ceased as a consequence of, or in connection with, a current labor dispute and that they are "employees" within the meaning of Section 2, subdivision (2) of the Act.

After returning to Wichita Falls on or about September 26th, Elliott engaged in conferences with representatives of Local 258 and the employers in an effort to settle the strike upon the basis of the reinstatement of the strikers. At his first conference with representatives of the employers he induced all but Young to reinstate all of their employees without discrimination. Young at first refused to agree to reinstate a number of the strikers, but after further discussion he agreed to reinstate all except Grozier, Haynie, Bowman and Bebermeyer. As a condition to reinstatement, however, he required the men to present themselves at the Burkburnett office of the respondent on the morning of September 27th to make application for employment. Elliott conveyed these instructions to the men, who were awaiting the results of his conference with the employers. At that time he told all of the men involved in this case except Cox, who was not present, that they would not be reinstated.

(b) *B. F. Jackson, Clifford D. Jackson and F. C. Cox.* These three men were part of a group of 30 or 35 who worked under the supervision of C. J. Bohner. Bohner is the president of the C. J. Bohner Oil Corporation, which owns and operates producing wells in the Northwest field, and in that capacity supervises operations at those wells. He owns and operates some producing wells in the field in his individual capacity and others in partnership with associates. Bohner is also employed as superintendent of the respondent's production department and of the repressure plant. He maintains an office in the field from which he directs operations at all of the wells under his supervision, whether as owner or agent for others.

The respondent does not employ roustabouts and clean out gangs in its production department. Whenever it needs men for cleaning out a well or other extra work on its properties it borrows them from Bohner. Nearly all of the men in his employ worked part of the time for the respondent. Among these were the Jackson brothers and Cox. They worked under Bohner's supervision at all times, either in his capacity as their employer or as superintendent of the respondent's production department. Each of them kept his own time sheet showing the exact number of hours worked for the respondent and for Bohner. The respondent paid them with its own checks for the time they worked for it.

For two months prior to September 17th B. F. Jackson worked exclusively as a pumper on a Bohner well. Prior to that date he worked as a gang pusher, roustabout and tool dresser for both Bohner and the respondent, but most of his work was on Bohner's properties. He was originally hired by Bohner.

Clifford D. Jackson worked for both Bohner and the respondent for 15 years prior to September 17th. Just prior to that date he was employed as a gang pusher. From March 15, 1935 to September 17th he worked most of the time on the respondent's properties and so received most of his compensation from it.

F. C. Cox, a tool dresser and roustabout, was working for Bohner just prior to September 17th. From January 1, 1935 to September 17th he worked 180 hours for the respondent and 1200 hours for Bohner and his associates.

These three men and many others in the group who worked part of the time for the respondent were members of Local 258. The union members in this group were represented by their own contract negotiating committee composed of the Jackson brothers and one Livingston. This committee negotiated exclusively with Bohner on behalf of these employees. The group did not participate in the meetings of the respondent's union employees in the repressure, production and pipe line departments, nor in the election of the contract

committee representing those employees. This latter committee did not purport to represent the group to which the Jacksons and Cox belonged. Bohner's union employees participated in the strike and all properties under his management were shut down. In his negotiations for the reinstatement of the strikers Elliott dealt with Bohner as the employer of these three men. Bohner refused to reinstate them under any circumstances. Young testified that if Bohner would reinstate them, the respondent would have no objection to employing them whenever it had need for their services as it had done in the past.

We think B. F. Jackson, Clifford D. Jackson and F. C. Cox were employees of the C. J. Bohner Oil Corporation or C. J. Bohner individually or with his associates. At best they were only part-time employees of the respondent. We will therefore dismiss the complaint as to them, without prejudice, however, to their right to file charges against their employer.

(c) *George E. Bebermeyer*. Bebermeyer was employed in the repressure plant as the operator in charge at a salary of \$125 per month. The plant is the joint property of the respondent, the Reno Oil Company and the Burk-Divide Oil Company and the operating expenses are pro-rated among them (see Finding II (c)). This was common knowledge to the employees in the plant and throughout the Northwest field. Except for two or three short periods, Bebermeyer had been employed in the Northwest field for eight or nine years prior to September 17, 1935. He was employed in the construction of the repressure plant in 1933 and upon its completion was assigned to work there as an employee of the joint owners. Bohner, the respondent's superintendent of production, was his immediate superior. Bohner received a salary from the respondent for his work as superintendent of the production department, but received no additional compensation when he took over superintendence of the repressure plant. Bebermeyer was active in union affairs and was the Corresponding Financial Secretary of Local 258. He was also a member of the committee which tried to negotiate a new contract with the respondent in August and September, 1935.

The repressure plant employees participated in the strike of September 17-27th. On September 26th Elliott endeavored to effect the reinstatement of Bebermeyer by request to representatives of the Reno and Burk-Divide Oil Companies and Young, representing the respondent. It was pointed out to Elliott at this conference that Bebermeyer was employed jointly by the three companies. Young refused to accede to Elliott's request on the ground that Bebermeyer had absented himself from his job to attend to union business. The Reno and Burk-Divide representatives concurred in this refusal. The

record does not support this charge against Bebermeyer. So far as appears from the evidence he was an efficient and reliable employee.

Before the strike three men, including Bebermeyer, were employed at the repressure plant, all of them being members of Local 258. The other employees were reinstated on September 27th and a night watchman was employed. There is evidence in the record that operations at the plant were curtailed after the strike. Two compressors were operated before the strike, but when operations were resumed on September 27th only one was used. Gas injections into the wells were reduced. The respondent's witnesses testified that no more than two men are needed at the plant now. However, Bebermeyer testified that the watchman performs the usual tasks at the plant, such as oiling machinery and the like. He also testified that it takes as many men to operate the plant on the curtailed schedule as were employed when it was operated at its full capacity.

On the whole record we find that Bebermeyer was discharged on September 27th because of his union affiliation and activity. But because of the fact that the Reno and Burk-Divide Oil Companies are not parties to this proceeding the complaint as to him must be dismissed. We think it clearly appears from the record that Bebermeyer was an employee of the respondent in its own behalf and as agent of the Reno and Burk-Divide Companies (see finding IX). This agency was revoked, however, on September 26th when the representatives of the two latter companies refused to reinstate him. For this reason an order directed to the respondent requiring Bebermeyer's reinstatement would be ineffective. We will dismiss the complaint as to him, without prejudice to his right to file charges against his joint employers.

(d) *Frank T. Grozier*. Grozier had been employed by the respondent since 1925. From 1928 to September 17, 1935, he was a gauger in the pipe line department at a salary of \$171 per month. He was active in union affairs and was President of Local 258 the first half of 1935. He was on the committee which negotiated the 1934-35 contract; the workmen's committee which functioned under that contract, and was chairman of the contract committee which tried to negotiate a new contract with the respondent in August and September, 1935. On September 26th Young told Elliott that Grozier would not be reinstated because he was inefficient.

A gauger's duties consist of running oil from the stock tanks located near the wells through the gathering lines to the main line pump station tanks. The flow is controlled by a stop located close to the stock tank. When a run is made the gauger makes out a run ticket stating the tank and lease number, the owner's name, the temperature of the oil, the amount of waste in the bottom of the tank and the

number of feet or inches of oil in the run. Payment for the oil is based upon the measurements stated on the run ticket. After the run is made the stop is sealed with a numbered metal seal similar to those used on railroad cars. The numbers of the seals removed and placed on the stop before and after a run is made are entered on the run ticket.

We do not think Young's charge of inefficiency against Grozier is sustained by the evidence. The mistakes he made in entering seal numbers on run tickets were ordinary clerical errors which all gaugers make. They are the result of the nature of the job rather than carelessness or inefficiency. The respondent's estimate of Grozier's ability and efficiency as a gauger is illustrated by the statement made by Young to a regular monthly meeting of the pipe line department employees on July 1, 1935. Bowman testified that Young said at this meeting that "if all the gaugers' runs would check out as close as Frank Grozier's that it would come out pretty nice." This evidence is not contradicted.

After the strike Grozier was replaced by a non-union gauger who had worked for the respondent in the Pampa field. From September 27th to the date of the hearing he was unemployed.

(e) *E. H. Haynie*. Haynie had been employed by the respondent since 1926. Since August, 1929 he worked as a pumper in the production department. Prior to September 17, 1935 he worked six hours per day, six days a week, at the rate of 65¢ per hour. He was active in union affairs and was a member of the workmen's committee under the 1934-35 contract and of the contract committee which tried to negotiate a new contract with the respondent in August and September, 1935. He participated actively in the September 17-27th strike. On September 26th Young told Elliott that Haynie would not be reinstated because of his efforts to intimidate non-union employees of the respondent. There is no evidence to support this charge. Haynie was active, along with others, in soliciting employees to join Local 258, but there is nothing in the record to show that he resorted to intimidation.

After the strike the respondent cut pumping operations in its production department to eight hours per day. The wells had been pumped continuously before the shut-down. Prior thereto four full-time pumpers were employed, but because of this curtailment in operations only three were reinstated after the strike. Bohner testified that the three reinstated were considered the most efficient and "reliable" and that the principal reason for not reinstating Haynie was the curtailment in pumping operations. All three of the regular full-time pumpers who were reinstated are members of Local 258. A part-time pumping job was given to a man who had previ-

ously worked as an extra in a roustabout gang. Haynie was not offered this part-time job. He was the oldest pumper on the job for the respondent. The others were hired after the code for the industry was promulgated. In all the years of his employment by the respondent he was never charged with inefficiency or negligence. From September 27th to the date of the hearing he had earned \$8.50.

(f) *Roy W. Bowman*. Bowman had been employed by the respondent since September, 1932. Prior to September 17, 1935 he operated the main line pump station at a salary of \$140 per month. Between September 27th and the date of the hearing he earned \$157.88 as an automobile salesman. He is an active member of Local 258 but has never served as an officer or committeeman. On the morning the strike was called Bowman did not start the main line pumps. Young called him from Grandfield that morning by phone and when Bowman told him that he could not start the pumps because a strike had been called, Young replied that he would send in some one who would. Young told Elliott on September 26th that Bowman would not be reinstated because of inefficiency. There is no evidence in the record to support this charge. Bowman was never threatened with discharge or demotion for inefficiency or any other reason. On the morning of September 27th when the men were returning to work Young told Bowman that he was sorry he (Bowman) was mixed up in the "mess" and that he might consider Bowman for reemployment later. After the strike Bowman's job was given to a non-union employee of the respondent.

#### J. CONCLUSIONS RESPECTING GROZIER, HAYNIE AND BOWMAN

XIII. We think it clear from the evidence that Grozier, Haynie and Bowman were discharged on September 27th because of their union affiliation and activity. The testimony of several of the men who were reinstated with respect to statements made to them by Young when he received their applications for reemployment on the morning of September 27th demonstrates a strong prejudice on his part against Local 258 and the International and against the organization and activities of the respondent's employees. He advised one of them "to get out of the union"; told another to let him know by letter when he withdrew from the union; another: "When you get ready to turn your card in turn it in to Mr. Bohner"; and asked another what he thought of the union and if he had had enough of the strike. The same morning Young asked one of the union men applying for reinstatement if he knew what the Liberty League of America represented. When he received a negative answer Young advised this man that "it was fifty of the smartest lawyers in the country who had passed on the legality of the Wagner Bill" and

found it to be unconstitutional. To two other applicants Young remarked that the money they had paid in dues to Local 258 would have bought them each a suit of clothes and asked them whether they or Coulter, an International officer, were wearing the clothes.

This evidence clearly indicates a purpose on the part of the respondent to discourage membership in Local 258 and thus to deny to its employees the rights guaranteed them in Section 7 of the Act. The discharges of Grozier, Haynie and Bowman we think were designed to contribute to the effectuation of this purpose. Grozier and Haynie were both old employees with many years of experience in their respective jobs. Both of them were leaders in the activities of Local 258 and in the efforts to negotiate a contract with the respondent. The reasons assigned by Young for his refusal to reinstate them are not supported by the evidence. As to Bowman, the only apparent reason for not reinstating him is the fact that he declined to start the pumps in the main line pump station the morning the strike was called. Young's charge of inefficiency against him is entirely unsupported. A finding that he was discharged because of his participation in the strike as a member of Local 258 is the only conclusion we can draw from the evidence. We therefore conclude on the record before us that by discharging and refusing to reinstate Grozier, Haynie and Bowman, the respondent discriminated against them in regard to tenure of employment, and thereby discouraged membership in Local 258. By so doing, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The aforesaid acts of the respondent burden and obstruct commerce and the free flow of commerce and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceedings, the Board finds and concludes as a matter of law:

1. Local No. 258 of the International Association of Oil Field, Gas Well and Refinery Workers of America is a labor organization, within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. The employees in the respondent's production and pipe line departments and the repressure plant constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. By virtue of Section 9 (a) of the National Labor Relations Act, Local No. 258 of the International Association of Oil Field, Gas Well

and Refinery Workers of America, having been designated and selected as their representative by a majority of the employees in a unit appropriate for the purposes of collective bargaining, has been at all times since August 10, 1935 the exclusive representative of all the employees in such unit.

4. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the National Labor Relations Act.

5. The respondent, by discriminating in regard to the hire and tenure of employment of Frank T. Grozier, E. H. Haynie and Roy W. Bowman, and each of them, thereby discouraging membership in the labor organization known as Local No. 258 of the International Association of Oil Field, Gas Well and Refinery Workers of America, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the National Labor Relations Act.

6. The unfair labor practices in which the respondent has engaged and is engaging, as set forth in paragraphs 4 and 5 above, constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

### ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Bell Oil and Gas Company, and its officers and agents, shall:

1. Cease and desist from in any manner interfering with, restraining or coercing its 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 purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Cease and desist from in any manner discouraging membership in Local No. 258 of the International Association of Oil Field, Gas Well and Refinery Workers of America by discrimination in regard to hire or tenure of employment or any term or condition of employment.

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

(a) Offer to Frank T. Grozier, E. H. Haynie and Roy W. Bowman, and each of them, immediate and full reinstatement, respec-

tively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole the said Frank T. Grozier, E. H. Haynie and Roy W. Bowman, and each of them, for any losses of pay they have suffered by reason of their discharge on September 27, 1935, by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate stated in the findings of fact as the rate each was paid at the time of his discharge, less the amount, if any, earned subsequent to discharge as shown in the findings of fact; and in the event of any dispute as to the amount of such back pay due, the dispute shall be laid before this Board for determination of the amount of such wages properly due each such employee under the terms of this Order;

And it is further ordered that,

4. The complaint be, and it hereby is, dismissed without prejudice with respect to George E. Bebermeyer, B. F. Jackson, Clifford D. Jackson and F. C. Cox, and each of them;

5. The complaint be, and it hereby is, dismissed with respect to the allegations of paragraphs 13 and 14, as amended, charging the respondent with engaging in unfair labor practices within the meaning of Section 8, subdivision (5) of the National Labor Relations Act.