

In the Matter of GULF OIL CORPORATION *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, WELDERS & HELPERS OF AMERICA

Case No. R-260.—Decided November 16, 1937

Oil Refining Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to continue recognition of petitioning union as representative until certified by Board—*Unit Appropriate for Collective Bargaining:* craft; history of collective bargaining relations with employer; history of organization among employees involved; eligibility for membership in petitioning union; desire and choice of employees involved—*Representatives:* proof of choice; signed authorizations designating union as collective bargaining representative; comparison of such authorizations with pay rolls—*Certification of Representatives:* upon proof of majority representation.

Mr. Karl Mueller, for the Board.

Mr. B. C. Clark, of Houston, Tex., for the Company.

Mr. J. N. Davis, of Kansas City, Kan., for the Boilermakers.

Mr. C. P. Humburg, of Houston, Tex., for the Oil Workers.

Mr. J. Mark Jacobson, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On May 31, 1937, International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, herein called the Boilermakers, filed with the Regional Director for the Sixteenth Region (Fort Worth, Texas) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the Port Arthur, Texas, refinery of Gulf Oil Corporation, 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 July 15, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to 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 July 23, 1937, the Regional Director issued and duly served upon the Company and the Boilermakers a notice of hearing to be held at Port Arthur, Texas, on August 5, 1937. The Regional Director served notice of said hearing upon Oil Workers International Union, herein called the Oil Workers, a labor organization claiming to represent employees of the Company, at its international office in Washington, D. C. On August 5, 6; and 7, 1937, a hearing was held at Port Arthur, Texas, before Charles E. Persons, the Trial Examiner duly designated by the Board.

The Board and the Company were represented by counsel; the Boilermakers and the Oil Workers, by their representatives. All participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all the parties.

The Trial Examiner, in the main, admitted only such evidence as was pertinent to the bargaining unit proposed by the petitioning union and did not admit evidence concerning the classification of other employees of the Company at its Port Arthur, Texas, refinery. The Board believes the Trial Examiner erred therein; however, in the light of the entire record, notably the failure of the Oil Workers to introduce any evidence as to the extent of its membership among the employees of the Company's Port Arthur refinery, the rulings of the Trial Examiner in this respect were not prejudicial error. During the course of the hearing, the Trial Examiner made several rulings on motions and on objections to the admission of other evidence. The Board has reviewed such 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 was incorporated in Pennsylvania August 9, 1922, succeeding a company of the same name incorporated in New Jersey February 13, 1907. It is engaged in all branches of the petroleum industry, controlling either directly or through its many subsidiaries extensive production, pipe line, refining, marine, and marketing facilities. It operates refineries at Port Arthur, Texas; Fort Worth, Texas; Sweetwater, Texas; Staten Island, New York; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Toledo, Ohio; and Cincinnati, Ohio. The Company's principal sales offices are located at Boston, Massachusetts; New York City; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Toledo, Ohio; Detroit, Michigan; Louisville, Kentucky; Atlanta, Georgia; New Orleans, Louisiana; and

Houston, Texas. The Company markets a line of over 650 different petroleum products, principally in 29 states comprising the New England, Middle and South Atlantic, South Central, and East North Central areas. Its sales are handled through over 1,100 distributing plants and 35,000 retail outlets. Approximately 2,000 tank cars and 1,250 tank trucks are engaged in delivering the Company's products. Through its foreign subsidiaries, the Company markets petroleum products throughout central and western Europe, including the Scandinavian Peninsula. It also owns a substantial interest in the United Petroleum Securities Corporation, which controls important refining and marketing facilities in France. The Company owns and operates a fleet of steamships, motorships, ocean-going barges and tugs, and river, lake, and harbor vessels, engaged in the transportation of crude oil from Port Arthur, Texas, and Venezuela to refineries on the eastern seaboard, and in the distribution of refined oils to more than 60 terminals located along the Atlantic and Gulf coasts, on the Great Lakes, and on inland waterways. The Company's pipe line system serves practically all important fields in Texas, New Mexico, Oklahoma, Kansas, Louisiana, and Arkansas, connecting with the Company's refineries in Texas and extending from Oklahoma east to its refineries at Cincinnati, and through outside connections, to Toledo and Pittsburgh.

The Port Arthur refinery, employing approximately 4,000 workers, is a complete refinery, making gasoline, kerosene, fuel oil, lubricating oils, greases, and a number of special products. It receives an average of 3,800,000 barrels of crude oil a month; ships by boat 300,000 barrels of crude oil a month to the Philadelphia refinery; and produces monthly an average of 1,500,000 barrels of gasoline, 225,000 barrels of kerosene, 400,000 barrels of furnace oil, 140,000 barrels of lubricating oil, and 3,000,000 pounds of grease. Approximately 25 per cent of the crude oil is received from states other than Texas; and approximately 95 per cent arrives by pipe lines and the rest by water. Less than one-half of the refinery's output is sold for delivery in Texas and approximately 98 per cent of the output is shipped by water. This refinery has terminal facilities for loading railroad tank cars, including a rack built alongside a railroad spur track with pipe connections to tanks, through which are run the finished products to be loaded. It also has terminal facilities for loading deep-water vessels, including a concrete dock, with space for eight deep-sea vessels.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America is a labor organization. It is affiliated with the American Federation of Labor and with its Build-

ing Trades, Metal Trades, and Railway Employees departments and with the Chief Executives Association of the 21 Standard Railroad Unions. The local lodge admits to membership boilermakers, welders, layer-outs, riveters, blacksmiths, inspectors, burners, riggers, tankmen, punch and shearmen, buckers, beaters, caulkers, and helpers.

Oil Workers International Union is a labor organization affiliated with the Committee for Industrial Organization. It was organized in 1917 under the name of International Association of Oil Field, Gas Well and Refinery Workers of America. It admits to membership all persons working in the production, transportation, refining, and marketing of natural gas and petroleum products.

III. THE QUESTION CONCERNING REPRESENTATION

The Boilermakers International was organized in 1880, and the Port Arthur Lodge in 1904. For a period of four or five years prior to May 1937, the Company had recognized the Boilermakers as a bargaining agent for its members at the Port Arthur refinery and had reached oral agreements with it concerning wages, hours, and working conditions. However, prior to May 31, 1937, the Company informed the Boilermakers that it could not continue such bargaining unless the Union was certified by the Board. On June 1, 1937, the Company telegraphed the Regional Director that it was prepared to bargain collectively with the Boilermakers or any other craft that the Board rules an appropriate unit, but that it did not feel authorized to decide itself the question of appropriate unit.

We find, therefore, that a question has arisen concerning the representation of employees of the Company's Port Arthur, Texas, refinery.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON COMMERCE

We find that the question concerning representation which has arisen, 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 with foreign countries, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Boilermakers urged as an appropriate unit the employees in the boilermaking and welding department of the Company's Port Arthur, Texas, refinery—that is, boilermakers, welders, layer-outs, riveters, blacksmiths, inspectors, burners, riggers, tankmen, punch and shearmen, buckers, beaters, caulkers, and helpers. The Oil

Workers, on the other hand, urged as the appropriate unit all the employees at the Company's Port Arthur, Texas, refinery.

The record indicates that the employees in the Company's boiler-making and welding department do anything in connection with the construction and repair of boilers, tanks, towers, locomotives, boats, railroad tank cars, and "any piece of equipment that you might have in the refinery that would require boilermakers' work." They may, where occasion requires, fabricate the metal out of which the refinery storage tanks are constructed, such as designing and rolling the metal into proper shape, shearing the metal, punching the holes for the rivets, riveting, caulking the rivets, welding. While they are stationed at the boiler room, they work wherever in the refinery their construction and repair work takes them. The Port Arthur refinery maintains 25 tanks with an average capacity of 60,000 barrels each for storage of crude oil, 50 tanks with an average capacity of 3,500,000 barrels for storage of gasoline, kerosene, and fuel oil, 100 tanks with a total capacity of 400,000 barrels for storage of lubricating oils, and 20 tanks with a storage capacity of 4,000 to 5,000 tons of sulphuric acid. The construction and maintenance of these tanks come within the jurisdiction of the boiler-making department.

Wherever possible, it is obviously desirable that, in the determination of the appropriate unit, we render collective bargaining of the Company's employees an immediate possibility. In the instant proceeding the record clearly indicates that a majority of the boiler-making employees at the Port Arthur refinery have authorized the Boilermakers to act as their bargaining agent and that that labor organization has for the past four or five years been recognized by the Company as the representative of its members. On the other hand, there is no evidence that the majority of the other employees at the refinery belong to any union whatsoever; nor has any labor organization petitioned the Board for certification as representative of the refinery employees on a plant-wide basis. Consequently, even if the boilermaking employees do not constitute the most effective bargaining unit, as the Oil Workers contend, nevertheless, in the existing circumstances, unless they are recognized as a separate unit, there will be no collective bargaining agent whatsoever for these workers, who for years have actually engaged in collective bargaining with the Company.

At the present time and in view of the existing state of labor organization among the refinery employees of the Company, in order to insure to the boilermaking employees of the Company's Port Arthur, Texas, refinery the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies

of the Act, we find that the employees in the boilermaking and welding department of the Company's Port Arthur refinery, including boilermakers, welders, layer-outs, riveters, blacksmiths, inspectors, burners, riggers, tankmen, punch and shearmen, buckers, welders, caulkers, and helpers, constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

VI. THE DETERMINATION OF REPRESENTATIVES

The bargaining unit stated above included at the time of the hearing approximately 200 employees. The Company submitted two lists of employees in its boilermaking and welding department: one, the pay roll of April 29, 1937, prior to the filing of the petition, listed 304 employees; the other, the pay roll of August 5, 1937, the date of the hearing, listed 191 men. Considerable doubt exists as to the status of the employees laid off between those two dates.

The Boilermakers introduced in evidence original authorizations dated April 22, 1937, signed by 250 employees in the appropriate unit, designating the Boilermakers as their representative for the purposes of collective bargaining. Members of the Boilermakers testified that these authorizations were signed in their presence by employees of the Company in the appropriate unit who were personally known to them. Counsel for the Company raised no objection to the admission of these authorizations in evidence; nor did he question their authenticity. The representative of the Oil Workers failed to offer any evidence attacking the authenticity of these authorizations.

The Board has compared the names on these authorizations with those on the two payrolls submitted by the Company. Of the names on the authorizations examined by the Board, the Board has identified 244 on the April 29th payroll of 304 employees, and 149 on the August 5th payroll of 191 employees.

We find that the Boilermakers has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. The Boilermakers is, therefore, by virtue of Section 9 (a) of the Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and we will so certify.

CONCLUSIONS OF LAW

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

1. A question affecting commerce has arisen concerning the representation of employees of the Port Arthur, Texas, refinery of Gulf Oil Corporation, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the employees in the boilermaking and welding department of the Port Arthur, Texas, refinery of Gulf Oil Corporation, including boilermakers, welders, layer-outs, riveters, blacksmiths, inspectors, burners, riggers, tankmen, punch and shearmen, buckers, beaters, caulkers, and helpers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America has been designated and selected by a majority of the employees in the boilermaking and welding department of the Port Arthur, Texas, refinery of Gulf Oil Corporation, including boilermakers, welders, layer-outs, riveters, blacksmiths, inspectors, burners, riggers, tankmen, punch and shearmen, buckers, beaters, caulkers, and helpers, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.