

In the Matter of THE TEXAS COMPANY, WEST TULSA WORKS, and OIL WORKERS' INTERNATIONAL UNION, LOCAL NO. 217

Case No. R-281.—Decided November 20, 1937

Oil Refining Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* plant-wide; functional coherence; history of collective bargaining with employer; desire of employees; agreement of one organization not to admit employees over whom another organization had been granted jurisdiction by a parent body not controlling when parent body no longer controls both organizations; temporary employees excluded from—*Election Ordered—Certificate of Representatives.*

Mr. Elmer P. Davis, for the Board.

Mr. O. J. Dorwin, of New York City, and *Mr. J. H. Hill*, of Tulsa, Okla., for the Company.

Mr. J. L. Coulter, of Washington, D. C., and *Mr. C. F. Jarrett* and *Mr. Maurice Daly*, of Tulsa, Okla., for the Oil Workers.

Mr. L. G. Fenn, of Tulsa, Okla., for the I. A. M.

Mr. Paul Phillips, of Tulsa, Okla., for the Employees' Federation.

Mr. Warren L. Sharfman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On May 27, 1937, International Association of Oil Field, Gas Well and Refinery Workers of America, Local No. 217, herein called the Oil Workers, 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 in the West Tulsa Works of The Texas Company, Tulsa, Oklahoma, 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 23, 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 September 7, 1937, the Regional Director issued a notice of hearing to be held in this matter on September 16, 1937, at Tulsa, Oklahoma, copies of which were duly served upon the Company, the Oil Workers, and upon International Brotherhood of Electrical Workers, International Brotherhood of Boilermakers, International Association of Machinists, all of which had objected to a consent election, and The Texas Company Plant Council, a labor organization named in the petition as claiming to represent employees in the bargaining unit alleged in the petition to be appropriate. Pursuant to the notice, a hearing was held at Tulsa, Oklahoma, on September 16, and continued on September 17, 1937, before James C. Paradise, the Trial Examiner duly designated by the Board.

At the hearing, International Association of Machinists, herein called the I. A. M. and Employees' Federation of The Texas Company, herein called the Employees' Federation, filed motions to intervene, which were granted by the Trial Examiner. Amendments to the pleadings, changing the designation of the Company to "The Texas Company, West Tulsa Works", and the name of the Oil Workers to "Oil Workers' International Union, Local No. 217", were also allowed. The Board and the Company, represented by counsel, and the Oil Workers, the I. A. M., and the Employees' Federation, each represented by its officers, participated in the hearing. All were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company and the Union stipulated, and we hereby find, as follows: The Texas Company is a Delaware corporation having its principal office in New York City, and is engaged in the production, refining, and distribution of oil and oil products in various states. It owns and operates a number of refineries in several states, among them being the refinery known as the West Tulsa Works located at Tulsa, Oklahoma. The West Tulsa Works has a daily production capacity of about 15,000 barrels of crude oil, from which gasoline, kerosene, diesel oil, tractor oil, and fuel oil are produced, and during the year 1937, up to the middle of September, it produced at its ap-

proximate capacity. During the year ending August 31, 1937, at least 60 per cent of the products of the West Tulsa Works were sold and transported in states other than Oklahoma by means of common carriers, namely, railroad tank cars, and the Great Lakes Pipeline Company, in which the Company is a stockholder. During the same period, at least 34 per cent of the purchases for the West Tulsa Works, including crude oil, chemicals, and machinery, were made outside Oklahoma.

The Company normally employs between 350 and 375 men at the West Tulsa Works. The various departments within the plant are largely interdependent, and the employees are frequently transferred from one department to another.

II. THE ORGANIZATIONS INVOLVED

Oil Workers' International Union is a labor organization, affiliated with the Committee for Industrial Organization, admitting to membership "persons working in the production, transportation, refining and marketing of natural gas and petroleum products". Local No. 217 is composed of members of the Oil Workers employed at the West Tulsa Works of the Company.

The International Association of Machinists is a labor organization affiliated with the American Federation of Labor, which admits to membership the machinists employed at the West Tulsa Works of the Company.

The Employees' Federation of The Texas Company is an unaffiliated labor organization, admitting to membership employees of the Company in the West Tulsa Works who are neither supervisory nor office employees.

III. THE QUESTION CONCERNING REPRESENTATION

During the month of April 1937, the Oil Workers and the Employees' Federation each requested the Company to recognize it as the sole bargaining agent at the West Tulsa Works, as each claimed to represent substantial groups of employees. The Company refused to recognize either organization as the sole bargaining agent until an election had been held, on the ground that it did not know whether either organization represented a majority of the men. Thereafter, the Union filed the present petition.

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

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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Company, the Oil Workers, and the Employees' Federation are all of the opinion that collective bargaining in the West Tulsa Works should be conducted on a plant-wide basis. It is the contention of the I. A. M. that collective bargaining should proceed on a craft basis. The nature of the work to be done at the West Tulsa Works and the practices of the Company in accomplishing it, have broken down, in a large measure, strict craft distinctions. Except for the machinists, all the crafts employed are customarily transferred to the work of other crafts as the occasion demands. Even machinists sometimes do the work of other crafts rather than remain idle for a time. The employees of the Company, including some machinists, by affiliating in large numbers with the Oil Workers and the Employees' Federation, have expressed a preference for collective bargaining on a plant-wide scale. No employee at the West Tulsa Works is a member of the I. A. M., and the I. A. M. has never claimed to represent or bargained for, any of the employees. The Company has always bargained on a plant-wide basis at its West Tulsa Works. In three of four other similar plants of the Company as to which evidence was introduced, collective bargaining is on a plant-wide basis. In the fourth plant it is being conducted on a craft basis because the employees are highly organized into craft unions. That factor is not present here. The contention of the I. A. M., that the appropriate unit for collective bargaining is the craft unit, is based upon an agreement between the Oil Workers and the I. A. M., in which the Oil Workers agreed not to accept or retain in their membership, men employed in the petroleum industry, over whom the I. A. M. had been granted jurisdiction by the American Federation of Labor. The agreement was entered into on October 26, 1935, when the Oil Workers were still affiliated with the American Federation of Labor. The question of whether this agreement is still in effect, since the two parties to it no longer recognize the jurisdiction of the same parent body, does not concern us here. At least in the absence of a parent body to which the parties might look for the enforcement of such an agreement, it cannot be given controlling weight.

In order to insure to the Company's employees 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 hourly rate employees, and the gatemen, janitors, barnmen, and counter men, employed at the West Tulsa Works, excluding office and supervisory

employees, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

VI. THE DETERMINATION OF REPRESENTATIVES

We find that the question which has arisen, concerning the representation of the employees of the Company working at its West Tulsa Works, can best be resolved by the holding of an election by secret ballot to determine which of the unions, if either, the employees in question desire to represent them.

The Oil Workers contended that the employees eligible to vote at an election ordered by the Board should be those in the employ of the Company on May 27, 1937 (the date the petition was filed), who had been employed for a period of four months or more. This rule of eligibility was advocated because the Company employed a group of "school-boys" and a group of temporary employees during the summer to carry out its vacation plan for permanent employees, and because permanent papers are not made out for an employee, and seniority does not accrue to him, until he has been employed for a period of four months. From the testimony adduced at the hearing, we find that it is not the policy of the Company to consider employees as temporary employees during the first four months of their employment, and thereafter permanent employees, but rather to use the date four months after their employment as the date when seniority rights will start to accrue to the employees and permanent papers will be made up for them. Testimony disclosed that at the time of the hearing 23 of the 25 "school-boys" employed during the summer of 1937 were no longer in the employ of the company, that the other two might be retained permanently, and that the workers employed temporarily to replace permanent employees on vacation would no longer be employed for that purpose after October 15, 1937.

We find, therefore, that the employees of the Company who were employed in the appropriate unit at the West Tulsa Works during the pay-roll period next preceding the date of this Direction of Election, shall be eligible to vote.

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 Texas Company, West Tulsa Works, Tulsa, Oklahoma, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The hourly rate employees, and the gatemen, janitors, barnmen, and countermen, employed by the Company at its West Tulsa Works, Tulsa, Oklahoma, excluding office and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with The Texas Company, West Tulsa Works, Tulsa, Oklahoma, an election by secret ballot shall be conducted within ten (10) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the hourly rate employees, and the gatemen, janitors, barnmen, and countermen, excluding office and supervisory employees, who were employed by The Texas Company at its West Tulsa Works, Tulsa, Oklahoma, during the pay-roll period next preceding the date of this Direction, to determine whether they desire to be represented by Oil Workers' International Union, Local No. 217, or Employees' Federation of The Texas Company for the purposes of collective bargaining, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

December 20, 1937

On May 27, 1937, Oil Workers' International Union, Local No. 217, herein called the Oil Workers, 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 in the West Tulsa Works of The Texas Company, Tulsa, Oklahoma, 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.

Pursuant to notice duly served upon the Company, the Oil Workers, and upon International Brotherhood of Electrical Workers, Inter-

national Brotherhood of Boilermakers, and International Association of Machinists, all of which had objected to a consent election, and upon The Texas Company Plant Council, a labor organization named in the petition as claiming to represent employees in the bargaining unit alleged in the petition to be appropriate, a hearing was held at Tulsa, Oklahoma, on September 16 and 17, 1937, before James C. Paradise, the Trial Examiner duly designated by the National Labor Relations Board, herein called the Board. At the hearing the Employees' Federation of The Texas Company filed a motion to intervene, which was granted by the Trial Examiner. On November 20, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot be held within ten days from the date of the Direction among the hourly rate employees, and the gatemen, janitors, barnmen, and countermen, excluding office and supervisory employees, who were employed by The Texas Company at its West Tulsa Works, Tulsa, Oklahoma, during the pay roll period next preceding the date of the Direction, to determine whether they desired to be represented by Oil Workers' International Union, Local No. 217, or Employees' Federation of The Texas Company, for the purposes of collective bargaining, or by neither.

Pursuant to the Direction, balloting was conducted on December 2, 1937. Full opportunity was accorded to all of the parties to this investigation to participate in the conduct of the secret ballot and to make challenges.

The Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties to the proceeding his Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results the Regional Director reported as follows:

Total number of eligibles.....	286
Total number of ballots counted.....	261
Total number of votes for Oil Workers' International Union, Local No. 217.....	207
Total number of votes for Employees' Federation of The Texas Company.....	53
Total number of blank ballots.....	1
Total number of void ballots.....	0
Total number of challenged votes.....	0

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Oil Workers' International Union, Local No. 217, has been designated and selected by a majority of the hourly rate employees, and the gatemen, janitors, barnmen, and countermen excluding office and supervisory employees, who were employed by The Texas Company at its West Tulsa Works, Tulsa, Oklahoma, during the pay-roll period next preceding the date of the Direction of Election, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, Oil Workers' International Union, Local No. 217, 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.