

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

Case No. R-287.—Decided November 29, 1937

Chemical Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to negotiate with petitioning union because of prior contract with craft unions in one of three plants—*Unit Appropriate for Collective Bargaining:* daily pay-roll employees in three of employer's plants, exclusive of three craft groups in one plant as to which the factors determinative of their inclusion or exclusion from said unit are evenly balanced; where these factors are evenly balanced, the determining factor is the desire of the employees engaged in these crafts; as to these crafts the determination of the appropriate unit is made dependent upon the results of separate elections held among the employees therein—*Representatives:* proof of choice: signed petitions designating union as bargaining representative—*Elections Ordered:* in three craft groups; certification of representatives withheld until results of elections in three craft groups are known—*Certification of Representatives.*

Mr. John P. Jennings, for the Board.

Mr. Cornelius B. deBruyn, of San Francisco, Cal., for the Company.

Mr. Fred L. Phillips, of Long Beach, Cal., for Oil Workers International Union, Locals 5 and 128.

Mr. Paul C. Huybrecht, of San Francisco, Cal., for the Council and International Association of Machinists.

Mr. Amos H. Feely, of San Francisco, Cal., for International Brotherhood of Electrical Workers.

Miss Anne E. Freeling, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On July 21, 1937, Oil Workers International Union, Locals 5 and 128, herein called the Oil Workers, filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Shell Chemical Company, San Francisco, California, herein called the Company, and requesting an in-

vestigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 9, 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 13, 1937, the Regional Director issued a notice of hearing to be held at San Francisco, California, on September 20, 1937, copies of which were duly served upon the Company; upon the Oil Workers; upon Contra Costa Metal Trades Council, herein called the Council, a labor organization claiming to represent employees in the bargaining unit alleged in the petition to be appropriate; upon International Association of Machinists, herein called the I. A. M.; and upon International Brotherhood of Electrical Workers, herein called the I. B. E. W., the two last-named labor organizations being constituents of the Council.

Pursuant to notice, a hearing was held on September 20, 1937, at San Francisco, California, before Clifford D. O'Brien, duly designated by the Board as Trial Examiner. The Board, the Oil Workers, the Council, the I. A. M., and the I. B. E. W. were represented by counsel and the Company by its president, and 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 to all parties. No objections were made to the admission of any evidence at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Shell Chemical Company was incorporated in Delaware, February 18, 1929. Its stock is owned by De Bataafsche Petroleum Maatschappij, The Hague, the Netherlands, and Shell Union Oil Corporation, New York City, in equal amounts. The Company has no parent, subsidiary, or affiliated corporations. It has an office in San Francisco, and three plants located respectively at Shell Point, Martinez, and Dominguez, all in the State of California.

The Company manufactures and sells various products, the principal ones being ammonia, sulphate of ammonia, benzol, carbon, secondary and tertiary butyl alcohol, methyl ethyl ketone, isopropyl alcohol, acetone, diisopropyl ether, diacetone, and ammonium polysulphide.

The Company's purchases for the year 1936 amounted to \$3,300,000, of which \$140,000 were outside California. The Company sold during the year 1936, 102,201 tons of its products, of which 30,615 tons were for shipment outside California. The products are distributed all over the world by ship, railroad, and truck. These products are for the most part used as fertilizers, solvents, agricultural sprays, and as raw materials for other industries, such as the manufacture of nitric acid. However, the chief customers outside California are sugar planters, lacquer manufacturers, and manufacturers of artificial silk. The Company has sales agents at New York City; Los Angeles, San Francisco, Norwalk, and Hamilton City, California; Denver, Colorado; Tacoma, Washington; and in a number of foreign countries.¹

II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all persons working in the production, transportation, refining, and marketing of natural gas and petroleum products, and allied industries peculiar to the oil industry. Local No. 5, at Martinez, admits to membership employees of the Company working at its Martinez and Shell Point plants. Local No. 128, at Long Beach, admits to membership employees of the Company working at its Dominguez plant.

Contra Costa Metal Trades Council is a labor organization affiliated with the American Federation of Labor and is composed of locals of several international craft unions also affiliated with the American Federation of Labor. Of its constituents at the Shell Point plant, the I. A. M., the I. B. E. W., and International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, herein called the Boilermakers, are concerned in the issues involved in this case. The Council makes no contention as to membership in the Martinez and Dominguez plants.

III. THE QUESTION CONCERNING REPRESENTATION

Prior to May 26, 1936, the Company had executed separate agreements with several craft organizations affiliated with the American Federation of Labor governing wages, hours, and working conditions of certain employees at its Shell Point plant. On May 26, 1936, the Company entered into a written contract,² governing wages, hours, and working conditions of all employees at its Shell Point plant, with the Council, representing the I. A. M., the I. B. E. W., the Boilermakers, International Union of Operating Engineers, and

¹ Board's Exhibit No. 2.

² Board's Exhibit No. 6.

International Hod Carriers, Building and Common Laborers Union of America. (The charters of the two last-named labor organizations have since been recalled for lack of membership.) This contract is terminable upon thirty days' notice. No such notice has been given by any of the parties, although on April 29, 1937, the Council notified the Company that it desired to make certain amendments to the contract. The Council was thereupon informed that the Company would not negotiate further with it until the question of the status of the Oil Workers was settled.

In April and May 1937, the Oil Workers, claiming to represent the majority of daily pay roll employees at the Shell Point plant, requested the Company to negotiate a contract with it. This the Company claimed it was unable to do in view of the contract it had with the Council purporting to apply to all the employees at the Shell Point plant. However, the president of the Company, in May 1937, said he was willing to bargain with whatever organization represented the majority of his employees at the Shell Point plant, and agreed to the suggestion of the Oil Workers that the matter should be submitted to the Board, the president of the Company to refrain from negotiating with any representatives until the Board should determine the question, and then to be guided by the Board's decision. The Oil Workers thereafter decided, in accordance with the requests of its members, that the daily pay roll employees at the Shell Point plant should be included in one unit with the daily pay roll employees at the Martinez and Dominguez plants.

We find that a question has arisen concerning the representation of employees of Shell Chemical Company at its Shell Point, Martinez, and Dominguez plants.

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 Oil Workers contends that all the daily pay roll employees of the production and operating units of the three plants constitute a unit appropriate for the purpose of collective bargaining. Monthly pay roll employees are engineers, chemists, administrators, clerks, foremen, and operators, and are not included because of their highly specialized training and closer relation to the management. None of

the unions herein involved claims to represent these monthly pay roll employees.

The Council contends that the machinists, electricians, and boiler-makers employed at Shell Point constitute three separate units appropriate for the purpose of collective bargaining (although it seeks to represent all three of these units jointly), and makes no contention in regard to the other plants. It appears that there are no craftsmen at the Martinez and Dominguez plants. The Company has a contract whereby it borrows such employees, when they are needed, from the Shell Oil Company, which operates refineries at Martinez and Dominguez.

The president of the Company has expressed his willingness to bargain with one or several units, in accordance with whatever may be the Board's decision.

In view of these facts, and inasmuch as the Council has made no claim to membership in the Martinez and Dominguez plants, it appears that all the daily pay roll employees at the Shell Point plant, outside of the three craft groups, and all of the daily pay roll employees at the other two plants belong together in a single unit.

The history of collective bargaining at the Shell Point plant, as outlined in Section III above, indicates that the Company bargained originally with the separate craft organizations, and thereafter with the Council, which represented the several craft groups and negotiated an agreement, the terms of which applied to all the employees at the Shell Point plant. Since the Oil Workers made a claim to represent the majority of the employees, the Company has refused to bargain with any organization until the Board determines the proper bargaining representatives, thus leaving negotiations at a standstill. A number of employees who were, and still are, members of the craft unions, signed the petitions designating the Oil Workers as their bargaining representative.

It therefore appears that the considerations as to the unit or units to which the craft groups should belong are sufficiently evenly balanced so that the determining factor should be the desires of the men themselves.³ As indicated in Section VI below, the evidence as to their desires is conflicting. Consequently, elections in the three craft groups at the Shell Point plant become necessary. The Board's determination of the unit or units to which each of these craft groups should belong will then depend upon the results of the elections which the Board will direct. Such of the three craft groups as indicate a preference for representation by their respective craft unions will constitute separate units. However, this will not preclude the Council from being designated by the individual craft.

³ See *Matter of The Globe Machine and Stamping Co.*, 3 N L R. B 294.

unions as their joint representative to deal with the Company for the purpose of collective bargaining. Such of the three craft groups as indicate a preference for representation by the Oil Workers will be included within the same unit as the non-craft employees.

VI. THE DETERMINATION OF REPRESENTATIVES

The Oil Workers, a few days before the hearing, circulated petitions⁴ at all three plants which were signed by its members and other employees wishing to designate it as their bargaining representative. Approximately 231 out of 301 employees at Shell Point signed these petitions. About 24 of those signing were, and apparently still are, members of their respective craft unions, but signed the petitions apparently with the idea that a single bargaining unit would function more efficaciously. Approximately 41 out of the 55 daily pay roll employees at the Martinez plant signed these petitions. Although there was oral evidence at the hearing that 77 out of 104 eligible employees signed the petitions at the Dominguez plant, those petitions were not actually submitted in evidence, having been lost in the mails.

However, the petitions from the Shell Point and Martinez plants were put in evidence, with full opportunity afforded the Company for cross-examination with regard to their authenticity. The names on these petitions were checked against pay rolls⁵ submitted by the Company. The petitions from the two plants contain enough signatures to constitute a majority of the eligible employees in the three plants. More than half of those signing were members of the Oil Workers. Thus these petitions justify a certification by the Board of the Oil Workers. But, since the limits of the unit to be represented by the Oil Workers will depend upon the results of the elections held among the crafts, such certification will be withheld until those results are known.

CONCLUSION OF LAW

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

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

⁴ Board's Exhibit No. 11.

⁵ Board's Exhibits Nos. 3 and 4.

DIRECTION OF ELECTIONS

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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Shell Chemical Company, elections by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director of the Twentieth 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 daily pay roll employees at the Shell Point plant who fall within the groups described below and who were on the pay roll of the Company as of July 21, 1937, excluding those who have since quit or been discharged for cause:

(a) Those employed as machinists, machinists' helpers, and machinists' apprentices to determine whether they desire to be represented by the International Association of Machinists, affiliated with the American Federation of Labor, or Oil Workers International Union, affiliated with the Committee for Industrial Organization, for the purpose of collective bargaining, or by neither;

(b) Those employed as electricians, electricians' helpers, and electricians' apprentices to determine whether they desire to be represented by the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, or Oil Workers International Union, affiliated with the Committee for Industrial Organization, for the purpose of collective bargaining, or by neither;

(c) Those employed as boilermakers, boilermakers' helpers, and boilermakers' apprentices to determine whether they desire to be represented by the International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, affiliated with the American Federation of Labor, or Oil Workers International Union affiliated with the Committee for Industrial Organization, for the purpose of collective bargaining, or by neither.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTIONS

December 11, 1937

On November 29, 1937, the National Labor Relations Board, herein called the Board, issued a Direction of Elections in the above-entitled proceeding, the elections to be held within fifteen (15) days

from the date of Direction, under the direction and supervision of the Regional Director for the Twentieth Region (San Francisco, California). The Board, having been advised that a longer period is necessary, hereby amends the Direction of Election issued on November 29, 1937, by striking therefrom, wherever they occur, the words, "within fifteen (15) days from the date of this Direction," and substituting therefor the words, "within twenty-five (25) days from the date of this Direction."

[SAME TITLE]

SUPPLEMENTAL DECISION

AND

CERTIFICATION OF REPRESENTATIVES

December 31, 1937

STATEMENT OF THE CASE

On July 21, 1937, Oil Workers International Union, Locals 5 and 128, herein called the Oil Workers, filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Shell Chemical Company, San Francisco, California, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 9, 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 13, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company; upon the Oil Workers; upon Contra Costa Metal Trades Council, herein called the Council, a labor organization claiming to represent employees in the bargaining unit alleged in the petition to be appropriate; upon International Association of Machinists, herein called the I. A. M.; and upon International Brotherhood of Electrical Workers, herein called the I. B. E. W., the two last-named labor organizations being constituents of the Council. Pursuant to the notice, a hearing was held on September 20, 1937, at San Francisco, California, before Clifford D. O'Brien, duly designated by the Board as Trial Examiner. On November 29, 1937, the Board issued a Decision and Direction of Elections which provided that three elec-

tions be held within fifteen (15) days of the date of the Direction. In its Decision the Board made no final determination as to the appropriate unit for the purpose of collective bargaining with the Company. The Oil Workers had contended that all the daily pay roll employees of the production and operating units of the three plants of the Company constituted a single appropriate unit, and put in evidence petitions signed by a majority of the daily pay roll employees of the three plants designating the Oil Workers as their collective bargaining representative.

The Council, however, contended that its three constituent unions at the Shell Point plant, the I. A. M., the I. B. E. W., and International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, herein called the Boilermakers, constituted three separate appropriate units (although it sought to represent all three of these units jointly), and made no claim in regard to the other two plants. The Board stated that since either contention could be sustained, it would direct that separate elections be held for the three described groups, and it would decide the issue on the basis of the preference indicated by the employees in the elections. It therefore directed that one election by secret ballot be held among the Company's machinists to determine whether they desired to be represented by the I. A. M., the Oil Workers, or neither; that another be held among the electricians to determine whether they desired to be represented by the I. B. E. W., the Oil Workers, or neither; and that a third be held among the boilermakers to determine whether they desired to be represented by the Boilermakers, the Oil Workers, or neither, for the purpose of collective bargaining.

In its Decision the Board stated that all the daily pay roll employees at the Shell Point plant, outside of the three craft groups, and all the daily pay roll employees at the other two plants belonged together in a single unit. As to this unit, the Board stated that the Oil Workers had introduced satisfactory evidence of majority. Consequently, no election was necessary among these employees since the Oil Workers could be certified as their collective bargaining representative. However, since the limits of the unit to be represented by the Oil Workers depended upon the results of the elections held among the craft groups, such certification was withheld until those results were known.

On December 11, 1937, the Board issued an Amendment to the Direction of Elections postponing the date thereof. Pursuant to the Direction of Elections as amended, secret ballots were conducted on December 17, 1937, under the direction and supervision of the Regional Director for the Twentieth Region. Full opportunity was afforded all the parties to this investigation to participate in the conduct of the secret ballots and to make challenges. On December 20,

1937, the said 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 an Intermediate Report on the elections. No objections or exceptions to the Intermediate Report were filed by any of the parties.

As to the results of the secret ballots, the Regional Director reported as follows:

Machinists, machinists' helpers, and machinists' apprentices

| | |
|---|----------------|
| Total number of ballots counted..... | 39 |
| Total number of ballots for International Association of Machinists, A. F. of L..... | 36 |
| Total number of ballots for Oil Workers International Union, C. I. O..... | 3 |
| Total number of ballots for neither of the above..... | 0 |
| Total number of blank ballots..... | 0 |
| Total number of void ballots..... | 0 |
| Total number of challenged ballots..... | ¹ 4 |

Electricians, electricians' helpers, and electricians' apprentices

| | |
|---|----------------|
| Total number of ballots counted..... | 5 |
| Total number of ballots for International Brotherhood of Electrical Workers, A. F. of L..... | 3 |
| Total number of ballots for Oil Workers International Union, C. I. O..... | 2 |
| Total number of ballots for neither of the above..... | 0 |
| Total number of blank ballots..... | 0 |
| Total number of void ballots..... | 0 |
| Total number of challenged ballots..... | ² 1 |

Boilermakers, boilermakers' helpers, and boilermakers' apprentices

| | |
|--|---|
| Total number of ballots counted..... | 7 |
| Total number of ballots for International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, A. F. of L..... | 0 |
| Total number of ballots for Oil Workers International Union, C. I. O..... | 7 |
| Total number of ballots for neither of the above..... | 0 |
| Total number of blank ballots..... | 0 |
| Total number of void ballots..... | 0 |
| Total number of challenged ballots..... | 0 |

¹ As the challenged ballots would not affect the result of this balloting they were not counted.

² It was agreed beforehand by all the parties that the ballot of one employee who had been discharged, according to the Company, for cause, would be challenged and not counted if he were not reemployed before the date of the election. Since he was not reemployed his challenged vote was not counted.

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

SUPPLEMENTAL FINDING OF FACT

We find that the following groups of the employees of Shell Chemical Company constitute units appropriate for the purpose of collective bargaining, and that such units insure to the employees of the

Company the full benefit of the right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act:

(a) Machinists, machinists' helpers, and machinists' apprentices, at the Shell Point plant;

(b) Electricians, electricians' helpers, and electricians' apprentices, at the Shell Point plant; and

(c) Production and operating employees on the daily pay rolls of the Company at its three plants, exclusive of those employees who fall within groups (a) and (b).

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

SUPPLEMENTAL CONCLUSION OF LAW

The following employees of Shell Chemical Company constitute units appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act:

(a) Machinists, machinists' helpers, and machinists' apprentices, at the Shell Point plant;

(b) Electricians, electricians' helpers, and electricians' apprentices, at the Shell Point plant; and

(c) Production and operating employees on the daily pay rolls of the Company at its three plants, exclusive of those employees who fall within groups (a) and (b).

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by 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 Association of Machinists has been designated and selected by a majority of the machinists, machinists' helpers, and machinists' apprentices of Shell Chemical Company, San Francisco, California, employed at its Shell Point plant, as their representative for the purpose of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, International Association of Machinists is the exclusive representative of all such employees for the purpose of collective bargaining in respect to wages, rates of pay, hours of work, and other conditions of employment; and

IT IS HEREBY CERTIFIED that International Brotherhood of Electrical Workers has been designated and selected by a majority of the electricians, electricians' helpers, and electricians' apprentices of Shell Chemical Company, San Francisco, California, employed at its Shell Point plant, as their representative for the purpose of collective bar-

gaining, and that, pursuant to the provisions of Section 9 (a) of the Act, International Brotherhood of Electrical Workers is the exclusive representative of all such employees for the purpose of collective bargaining in respect to wages, rates of pay, hours of work and other conditions of employment; and

IT IS HEREBY CERTIFIED that Oil Workers International Union has been designated and selected by a majority of the production and operating employees on the daily pay rolls of Shell Chemical Company, San Francisco, California, employed at its three plants, exclusive of machinists, machinists' helpers, machinists' apprentices, electricians, electricians' helpers, and electricians' apprentices employed at the Shell Point plant, as their representative for the purpose of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Oil Workers International Union is the exclusive representative of all such employees for the purpose of collective bargaining in respect to wages, rates of pay, hours of work, and other conditions of employment.