

In the Matter of PETROLEUM IRON WORKS COMPANY and INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, WELDERS AND HELPERS OF AMERICA

In the Matter of THE PETROLEUM IRON WORKS COMPANY OF TEXAS and STEEL WORKERS ORGANIZING COMMITTEE

*Cases Nos. R-428 and 429.—Decided January 18, 1938*

*Steel Products Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize and bargain with union until question of representation is determined by Board—*Units Appropriate for Collective Bargaining:* (1) employees in fabricating department except machinists and unskilled laborers; (2) employees of steel barrel and drum department; no controversy between two labor organizations, each claiming to represent separate units—*Representatives:* proof of choice: signed authorizations; membership application cards—*Certification of Representatives:* upon proof of majority representation.

*Mr. Warren Woods*, for the Board.

*Mr. L. B. Coppinger*, of Houston, Tex., for the Company.

*Mr. J. N. Davis*, of Kansas City, Kans., and *Mr. P. J. Martin*, of Beaumont, Tex., for the Brotherhood.

*Mr. H. A. Rasmussen*, of Houston, Tex., for the S. W. O. C.

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

## DECISION

AND

## CERTIFICATION OF REPRESENTATIVES

### STATEMENT OF THE CASE

On June 14, 1937, International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America, herein called the Brotherhood, 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 Petroleum Iron Works Company of Texas, Beaumont, Texas, 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 19, 1937, Steel Workers Organizing Committee, herein called the S. W. O. C., filed a similar petition with the same Regional

Director.<sup>1</sup> On August 10, 1937, and October 7, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered investigations and authorized the Regional Director to conduct them and to provide for appropriate hearings upon due notice. On October 7, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2), of the Rules and Regulations, ordered a consolidation of the two cases for the purposes of hearing.

On October 16, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Brotherhood, and upon the S. W. O. C. Pursuant to the notice, a hearing was held on November 8, 1937, at Beaumont, Texas, before Madison Hill, the Trial Examiner duly designated by the Board. The Board and the Company, represented by counsel, and the Brotherhood and the S. W. O. C., represented by their officers and agents, participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

The Company was incorporated in Texas, March 25, 1929, and operates a single works at Beaumont, Texas. While all of the stock of the Company is owned by American Republics Corporation, it has no close operating relationship with any of the other subsidiaries of that organization. The Company fabricates large steel storage tanks for use in the oil producing, oil refining, chemical, cement, and other industries, and, to a limited extent, fabricates other types of oil refinery equipment. It also manufactures small steel barrels and drums for use by the oil industry in the transportation and sale of petroleum products. The fabrication work on the one hand and the manufacture of barrels and drums on the other are carried on in two separate buildings about one-half mile apart without interchange or interrelation of equipment, materials, or workers.

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<sup>1</sup>The petition of the Brotherhood describes the Company as "Petroleum Iron Works Company", while the petition of the S. W. O. C describes it as "The Petroleum Iron Works Company of Texas". The correct name of the Company is "Petroleum Iron Works Company of Texas".

The raw materials used are steel plates and steel sheets, paints, lumber, welding rods, rivets, and plugs. Steel plates, which constitute a major portion of all the raw materials, are shipped direct to the Company by rail from producers in such centers as Birmingham, Alabama; Youngstown, Ohio; and Pittsburgh, Pennsylvania. A very small percentage of these steel plates come from Fort Worth, Texas. The bulk of the other raw materials is obtained direct from producers or warehouses in the State of Texas. Heavy machinery used by the Company is purchased from manufacturers located throughout the northeastern section of the United States.

The Company has a force of three salesmen, two in Texas and one in New York City. However, all bids are prepared and contracts closed at Beaumont or Houston, Texas. In 1936, the Company's gross receipts were in excess of one and one-half million dollars. Of the business transacted in that year, 98.045 per cent was done in Texas. The remainder of the business was done in the neighboring States of Oklahoma and Louisiana. While nearly all of the Company's sales and deliveries are made and completed within the State of Texas, chief among its customers are such organizations as Gulf Oil Company, Pure Oil Company, Humble Oil Company, Magnolia Oil Company, and the Texas Company.

## II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America is a labor organization affiliated with the American Federation of Labor, admitting to its membership boilermakers, welders, layer-outs, flange-turners, fabricators, punch and shearmen, burners, tackers, drillers, cranemen, tankmen, fitters, and helpers employed in the Company's fabricating department.

Steel Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. It is engaged in organizing steel workers under charters issued by the Amalgamated Association of Iron, Steel and Tin Workers of North America. All of the employees in the steel barrel and drum department of the Company are eligible to membership under the charter of Local No. 2003 issued by the Amalgamated in August 1937.

## III. THE QUESTIONS CONCERNING REPRESENTATION

In May 1937, the Brotherhood addressed a letter to the Company asking recognition as exclusive bargaining agent for the employees of the fabricating department working in the classifications included within its organization and setting forth that it actually represented a substantial majority of such employees. The Company refused recognition on the ground that an election conducted by the Board

would be the only proper way of determining representatives. Thereupon the Brotherhood filed its petition.

In August 1937, the S. W. O. C., through the collective bargaining committee of the local, asked the Company for recognition as the exclusive bargaining agent for all employees in the steel barrel and drum department. The Company again withheld recognition pending a determination of representatives by the Board and the S. W. O. C. filed its petition.

We find that questions have arisen concerning representation of the employees of the Company.

#### IV. THE EFFECT OF THE QUESTIONS CONCERNING REPRESENTATION UPON COMMERCE

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

#### V. THE APPROPRIATE UNITS

The Brotherhood asserts that approximately 70 employees, including boilermakers, welders, layer-outs, flange-turners, fabricators, punch and shearmen, burners, tackers, drillers, cranemen, tankmen, fitters, and helpers, employed in the fabricating department of the Company constitute an appropriate bargaining unit. It seeks to exclude from the unit employees not in its general trade classification such as machinists, who are separately organized, clerical employees, and unskilled laborers.

The S. W. O. C. asserts that the employees of the steel barrel and drum department of the Company constitute an appropriate bargaining unit and by its petition claims to represent all employees working in that department irrespective of classification. Evidence introduced at the hearing by the S. W. O. C. demonstrated a community of interest among all employees of the steel barrel and drum department.

There is no conflict whatever between the two labor organizations on the question of appropriate bargaining units or representation of employees within such units. In fact, both labor organizations introduced evidence at the hearing to the effect that there was no conflict in their claims and no interrelation of operation or interchange of workers between the two bargaining units. Both specified that they did not claim to represent any employees outside of the unit recited in their petition.

Although the Company moved to dismiss the Brotherhood's petition for lack of proof of an appropriate unit, it introduced no evidence to establish the inappropriateness of either unit.

We find that the boilermakers, welders, layer-outs, flange-turners, fabricators, punch and shearmen, burners, tackers, drillers, cranemen, tankmen, fitters, and helpers employed in the fabricating department of the Company constitute a unit, herein called the first unit, appropriate for the purposes of collective bargaining; that all employees working in the steel barrel and drum department of the Company constitute another unit, herein called the second unit, appropriate for the purposes of collective bargaining; and that said units will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing the Brotherhood introduced in evidence authorizations, signed by 55 persons who represented themselves to be employees of the Company, designating and authorizing the Brotherhood to act for them in all matters pertaining to wages and working conditions. The authorizations were presented to the Company on May 18, 1937, and the authenticity of the signatures as of that date was admitted by the Company at the hearing. The record of the hearings shows that on June 14, 1937, the date of the Brotherhood's petition, there were 68 employees in the fabricating department within the craft classifications and that the signatures of 54 of those employees appeared on the authorizations. On November 5, 1937, the last pay roll date prior to the hearing, there were 51 employees within the same classifications on the Company's pay roll. Of these, 36 had signed authorizations. Both the Company and the Brotherhood agreed to the correctness of the above figures.

The S. W. O. C. submitted 93 executed membership application cards but did not introduce them in evidence. The Company and the S. W. O. C. agreed that as of August 18, 1937, 82 of the 93 signers of membership applications were employed in the steel barrel and drum department. There is no evidence with regard to the number on the pay roll as of the above date. It was also agreed between the same parties that on November 5, 1937, there were 58 employees in the steel barrel and drum department and that the signatures of 51 of those employees appeared upon the membership applications. The S. W. O. C. introduced in evidence a blank form of membership application, indicating that each applicant thereby authorized it to act as a collective bargaining agency in all matters

pertaining to pay rates, wages, hours of employment, and other conditions of employment.

We find that the Brotherhood has been designated and selected by a majority of the employees in the first unit as their representative for the purposes of collective bargaining and that the S. W. O. C. has been designated and selected by a majority of the employees in the second unit as their representative for like purposes. Each is, therefore, the exclusive representative of all the employees in its respective unit for the purposes of collective bargaining, and we will so certify.

Upon 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. Questions affecting commerce have arisen concerning the representation of employees of Petroleum Iron Works Company of Texas, Beaumont, Texas, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The boilermakers, welders, layer-outs, flange-turners, fabricators, punch and shearmen, burners, tackers, drillers, cranemen, tankmen, fitters, and helpers employed in the fabrication department of the Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act; and all employees working in the steel barrel and drum department of the Company constitute another unit appropriate for similar purposes, within the meaning of said Section 9 (b).

3. International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America is the exclusive representative of all the employees in the first unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act; and Steel Workers Organizing Committee is the exclusive representative of all the employees in the second unit for similar purposes within the meaning of said Section 9 (a).

#### 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, 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 Ship Builders, Welders and Helpers of America has been designated and selected by a majority of the boilermakers, welders, layer-outs, flange-turners, fabricators, punch and shearmen,

burners, tackers, drillers, cranemen, tankmen, fitters, and helpers employed in the fabrication department of Petroleum Iron Works Company of Texas, Beaumont, Texas, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, International Brotherhood of Boilermakers, Iron Ship Builders, 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; and

IT IS ALSO CERTIFIED that Steel Workers Organizing Committee has been designated and selected by a majority of all employees employed in the steel barrel and drum department of Petroleum Iron Works Company of Texas, Beaumont, Texas, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Steel Workers Organizing Committee 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.