

IN the Matter of STANDARD OIL COMPANY OF INDIANA (SOUTH BEND DIVISION) and INTERNATIONAL BROTHERHOOD OF CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS OF AMERICA, CHAUFFEURS, TEAMSTERS & HELPERS LOCAL No. 364, A. F. OF L.

Case No. 13-R-2214.—Decided May 31, 1944

Mr. Merwin Bristol, of Chicago, Ill., for the Company.

Padway & Goldberg, by *Mr. I. E. Goldberg*, of Milwaukee, Wis., *Mr. Walter Biggs*, of South Bend, Ind., and *Mr. George Skerce*, of Michigan City, Ind., for the Teamsters.

Mr. Olen W. Hovarter, of Galveston, Ind., *Mr. Sam Newton*, of Porter, Ind., and *Mr. Herbert Miller*, of Knox, Ind., for the Association.

Mrs. Catherine W. Goldman, of counsel to the Board.

DECISION

DIRECTION OF ELECTIONS

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Chauffeurs, Teamsters, Warehousemen & Helpers of America, Chauffeurs, Teamsters & Helpers Local No. 364, A. F. of L. herein called the Teamsters, alleging that a question affecting commerce had arisen concerning the representation of employees of Standard Oil Company of Indiana (South Bend Division), South Bend, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George S. Freudenthal, Jr., Trial Examiner. Said hearing was held at South Bend, Indiana, on March 23, 1944. At the hearing Association of Standard Employees (South Bend Division) Inc., herein called the Association, moved to intervene; and the motion was granted. The Company, the Teamsters, and the Association appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

56 N. L. R. B., No. 192.

The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Standard Oil Company of Indiana, an Indiana corporation, is engaged in the manufacture and marketing of petroleum products in 14 States in the Middle West. Certain of its subsidiaries are engaged in producing and transporting crude petroleum.

The Company's South Bend Sales Division, the only division involved in this proceeding, embraces the northern portion of the State of Indiana. In this territory the Company maintains numerous warehouses and bulk plants, from which it carries on extensive marketing operations. During the year 1943, the value of net sales in the South Bend Sales Division exceeded \$9,500,000. The products distributed in the division are manufactured at the Company's refinery in Whiting, Indiana, which runs more than 100,000 barrels of crude petroleum a day. Substantially all the crude petroleum is brought to the refinery from outside the State of Indiana.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Chauffeurs, Teamsters, Warehousemen & Helpers of America, Chauffeurs, Teamsters & Helpers Local No. 364, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Association of Standard Employees (South Bend Division) Inc., is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

On September 1, 1940, the Company and the Association entered into a contract effective from that date for a period of 1 year, and from year to year thereafter unless terminated by either party on 30 days' written notice prior to September 1 of any year. Under the contract, the Association was recognized as the exclusive bargaining agency of the employees of the South Bend Sales Division; a procedure was established for handling questions which might arise and for the execution of agreements as such questions might be settled; and pro-

vision was included that nothing in the contract should conflict with the right of employees to join any other labor organization. The contract did not contain substantive terms in regard to wages or working conditions. Pursuant to the contract, the Company and the Association executed separate wage agreements covering commissioned and salaried employees, and negotiated concerning various allowances and expenses.

The Association contends that its contract of September 1, 1940, is a bar to this proceeding.¹ The contract, however, does not embody specific terms or conditions of employment. We are of the opinion that such a contract does not achieve stability in labor relations and does not constitute an effectual bargaining contract.² Accordingly, we find that the contract of September 1, 1940, does not operate as a bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Teamsters represents a substantial number of employees in the units hereinafter found appropriate.³

We find that questions affecting commerce have arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

The Teamsters requests three separate units, comprising: (1) commission agents and commission drivers; (2) truck transport drivers; and (3) salaried drivers other than truck transport drivers. The Company and the Association contend that a single unit covering all employees in the South Bend Sales Division is appropriate, and that such a unit has been established by their bargaining relations.

In its South Bend Sales Division the Company maintains three types of stations: A stations, which are large stations operated by salaried men under the supervision of a salaried agent; B stations, which are smaller bulk stations operated by commission agents under the supervision of salesmen; and C stations, which are between the A and B

¹ The Association does not contend that the subsequent wage agreements bar this proceeding. The Company does not assert any of the contracts as bars.

² See *Matter of Henry Weiss Mfg. Co., Inc.*, 49 N. L. R. B. 511; *Matter of Corn Products Refining Co.*, 52 N. L. R. B. 1324.

³ The Field Examiner reported that the Teamsters submitted 120 application cards; that the names of 109 persons appearing on the cards were listed on the Company's pay roll of January 1, 1944; that there are 228 employees in the unit requested by the Teamsters; and that the cards were dated between August and November 1943, with the exception of 1, which was dated July 1935.

The Association relies upon its contract to show its interest in this proceeding. In addition, it submitted at the hearing a list containing the names of 174 employees who had voluntarily authorized the Company to check-off Association dues; 150 of the names appear to be the names of drivers. The Field Examiner reported that there were 359 employees in the unit requested by the Association.

stations in volume and size and are operated by salaried and commissioned employees, under the supervision of either salaried agents or salesmen.

Throughout the division the Company employs commission agents and commission drivers, who make deliveries of specified orders and also peddle within a particular geographic area. They work on a commission basis; carry various types of insurance, and are permitted to extend unauthorized credit for which they are held responsible. They are subject to the authority of the persons supervising the stations out of which they operate. The duties and conditions of employment of the commission agents and commission drivers are comparable.

The Company also employs truck transport drivers, who haul large loads from one of the Company's refineries to the bulk stations in the South Bend Sales Division.⁴ They operate out of a truck transport terminal, and are under the separate supervision of the superintendent of truck transports. They are known as "over-the-road" drivers, and drive a different type truck than do the other drivers. By reason of their duties they are subjected to special hazards and have special problems, such as allowances for meals and stop-overs.

The third group of drivers employed by the Company is the salaried drivers other than truck transport drivers. They make city deliveries of petroleum and petroleum products and haul barrels and packages from large to smaller bulk stations.

The Teamsters contends that the difference in duties and working conditions of the three groups of drivers indicates the feasibility of three separate units. It also states that it is the policy of that union to organize the three types of drivers separately. The Company and the Association contend, however, that a division-wide unit as covered by their contract is appropriate. Although the contract purports to cover all employees in the South Bend Sales Division, it appears, as indicated above, that the parties have actually bargained separately for commissioned and salaried employees. Moreover, they have entered into no specific negotiations concerning truck transport drivers, who were employed subsequent to the execution of their contract and wage agreements. We are not convinced, therefore, that the contract and negotiations between the Company and the Association have so stabilized collective bargaining upon a division-wide basis that separate units of drivers are inappropriate. Under the circumstances, we are of the opinion that sufficient diversity of interest and independence exists between the three groups of drivers to warrant the establishment of three separate units. The Teamsters, however, has failed to make

⁴ The truck transport operation is a recent development formerly handled by contracting carriers.

any showing of interest among the salaried drivers other than truck transport drivers. Consequently, we shall dismiss the petition insofar as it applies to them.

We find that (1) all commission agents and commission drivers, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action; and (2) all truck transport drivers, operating out of the Company's Michigan City Truck Transport Terminal, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action; constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

The Teamsters requests that its name appear on the ballots as Teamsters Local No. 364, A. F. of L. The Association requests that its name appear as Association of Standard Employees (South Bend Division) Inc. The requests are hereby granted.

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, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Standard Oil Company of Indiana (South Bend Division), South Bend, Indiana, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees

who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine whether they desire to be represented by International Brotherhood of Chauffeurs, Teamsters, Warehousemen & Helpers of America, Chauffeurs, Teamsters & Helpers Local No. 364, affiliated with the American Federation of Labor, or Association of Standard Employees (South Bend Division) Inc., for the purposes of collective bargaining, or by neither.

ORDER

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed insofar as it requests an investigation of the question concerning representation of salaried drivers, other than truck transport drivers, of Standard Oil Company of Indiana (South Bend Division).