

In the Matter of **KENDALL REFINING COMPANY, and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 803, A. F. L.**

*Case No. 6-R-1043.—Decided December 30, 1944*

*Mr. Ola C. Cool, of New York City, and Mr. W. M. Magee, of Bradford, Pa., for the Company.*

*Mr. Charles L. Miller, of Bradford, Pa., and Mr. Robert A. Warner, of Erie, Pa., for the Union.*

*Miss Melvern R. Krelow, of counsel to the Board.*

**DECISION  
AND  
DIRECTION OF ELECTION**

**STATEMENT OF THE CASE**

Upon a petition duly filed by International Union of Operating Engineers, Local 803, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Kendall Refining Company, Bradford, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. Said hearing was held at Bradford, Pennsylvania, on November 14, 1944. The Company and the Union 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. 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**

Kendall Refining Company is a Pennsylvania corporation, engaged in the production and refining of oil with properties in the State of New York and the Commonwealth of Pennsylvania. The Company

- 59 N. L. R. B., No. 243.

has a refinery in Bradford, Pennsylvania, including related operations at Fosterbrook, Pennsylvania. During the past 12-month period, the value of crude oil used by the Company amounted to approximately \$4,000,000, of which about .5 of 1 percent was shipped to the Company from points outside the Commonwealth of Pennsylvania. During the same period, the Company's production, consisting of lubricants, greases, and petroleum specialties, was valued at approximately \$9,000,000, of which about 90 percent was shipped outside the Commonwealth of Pennsylvania.

The Company admits for the purpose of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

International Union of Operating Engineers, Local 803, affiliated with the American Federation of Labor is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

We find that a question affecting commerce has 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 UNIT

The parties are in general agreement that all employees employed in, or attached to the Company's refinery at Bradford, including Fosterbrook, pipe-line employees, stock clerk and his helper, and the main and job order clerk, but excluding laboratory, office and clerical employees, salesmen, administrative employees, foremen, assistant foremen, and all other supervisory employees constitute an appropriate unit. They are in disagreement, however, with respect to the field or production employees. The Union desires their ex-

<sup>1</sup> The Field Examiner reported that the Union submitted 149 designation cards; that the cards were dated as follows: 30 in 1943, 13 between January and June, inclusive, 1944, and 106 between July and September, inclusive, 1944. There are approximately 315 employees in the unit.

clusion, whereas the Company contends that they should be included.

The Company has divided its operations into three administrative divisions, refinery, pipe-line, and production. Each has its own superintendent and supervisory structure. The employees of the production department are engaged in duties relating entirely to obtaining the crude oil from the ground. They engage in drilling and tool dressing. The oil is pumped directly from the wells into the field tanks by the production employees and the pipe which is connected to the field tanks from the wells is connected and maintained by those employees. It is clear, therefore, that their responsibility ends with the field operation. The pipe-line employees, on the other hand, engage in duties which initiate the refinery operations whereby crude oil is manufactured into petroleum products. They gauge the oil in the field tanks, connect the pipe line from the field tanks to the individual tanks on the "tank farm," the latter being considered part of the refinery, and being located about 2,000 feet from the refinery. The transmission of the oil from the field tanks to the farm tanks and from the farm tanks to the refinery is the responsibility of the pipe-line employees. They also operate the pump stations which are located between the field tanks and the tank farm and which are considered part of the pipe-line department. Although the Company maintains a separate pay roll for the production department, the pipe-line department and the refinery employees are on one pay roll. The operations of the refinery and the pipe-line department are closely integrated, and we are of the opinion that the interests of the employees of these two departments are sufficiently different from those of the production employees to justify their constituting a separate unit appropriate for the purposes of collective bargaining.

We find that all employees employed in, or attached to the Company's refinery at Bradford, Pennsylvania, including Fosterbrook, the pipe-line department, the stock clerk and his helper, and the main and job order clerk, but excluding production employees, laboratory employees, office and clerical employees, salesmen, administrative employees, foremen, assistant foremen,<sup>2</sup> and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit 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 question concerning representation which has arisen be resolved by an election by secret ballot among the

<sup>2</sup> William A. Knapp is deemed to be excluded as falling within this category.

employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

### 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 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Kendall Refining Company, Bradford, Pennsylvania, an election 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 Sixth 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 unit 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 the 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 election, to determine whether or not they desire to be represented by Int. Union of Operating Engineers, Local #803, A. F. of L.,<sup>3</sup> for the purposes of collective bargaining.

---

<sup>3</sup> The Union requested to appear on the ballot in the manner set forth above.