

In the Matter of CITIES SERVICE OIL COMPANY, PETTYS ISLAND REFINERY DIVISION and OIL WORKERS INTERNATIONAL UNION, CIO

Case No. 4-R-1594.—Decided February 28, 1945

*Mr. George H. Colin*, of New York City, and *Mr. E. M. Keely*, of Philadelphia, Pa., for the Company.

*Messrs. H. P. Medler* and *Forrest Sparks*, of Philadelphia, Pa., for the C. I. O.

*Messrs. Gene R. Mariano*, *Charles Cannon*, *James May* and *Norman Rubright*, of Camden, N. J., and *Mr. Edward Dawson*, of Gloucester, N. J., for the Independent.

*Mr. Bernard Goldberg*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, CIO, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Cities Service Oil Company, Pettys Island Refinery Division, Pettys Island, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on January 26 and 30, 1945. The Company, the C. I. O., and Pettys Island Independent Oil Workers Union, herein called the Independent, 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

Cities Service Oil Company is a Pennsylvania corporation engaged in the business of refining and distributing petroleum products.

Among its several refineries is one situated on Pettys Island, New Jersey, with which this proceeding is concerned. During the year ending October 31, 1944, the Pettys Island refinery used raw materials consisting of cracking stock, Hoffman crude oil and lube and grease base stocks valued at more than \$1,000,000, of which 95 percent was shipped to the plant from points outside the State of New Jersey. During the same period, this plant produced finished products consisting of gasoline, kerosene, fuel oil, and other products valued at more than \$3,000,000, of which 95 percent was shipped to points outside the State of New Jersey.

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 ORGANIZATIONS INVOLVED

Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Pettys Island Independent Oil Workers Union, unaffiliated, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused the C. I. O.'s request that it be recognized as the bargaining representative of the Company's production and maintenance employees on the ground that a presently existing contract with the Independent precludes such recognition. Following certification by the Board after an election,<sup>1</sup> the Company and the Independent on July 11, 1942, entered into a collective bargaining contract which provided as follows: "This agreement shall continue from July 11th 1942 to July 11th 1943 and if not terminated at the end of that period by forty-five (45) days prior written notice, one party to the other, shall continue thereafter until terminated by either party on forty-five (45) days written notice or amended in writing by mutual consent." The Independent contends that the contract is a bar to this proceeding since it has not been amended and no notice of termination has been served by either party to the contract. However, the contract is one now terminable at will by either party on 45 days notice and hence is not a bar to this proceeding.<sup>2</sup>

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<sup>1</sup> *Matter of Cities Service Oil Company, Pettys Island Refinery Division*, 40 N. L. R. B. 502 and 38 N. L. R. B. 1055

<sup>2</sup> *Matter of La Plant-Choate Manufacturing Co., Inc.*, 29 N. L. R. B. 40.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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 have agreed generally that a unit of all production and maintenance employees at the Company's Pettys Island Refinery Division, including barge captain and laboratory pusher, but excluding office manager, superintendent, assistant to superintendent, process foreman, plant engineer, foreman in charge of treating plant, foreman of refinery pumpers, foreman of refinery yard labor, foreman of machine shop, paymaster, draftsman, foreman of power plant, foreman of bulk loading-tank unloading, warehouse foreman, tank car repair foreman, personnel manager, foreman of barge and domestic material, chemist in charge of laboratory, chemist foreman in charge of compounding, foreman grease department, night superintendent, and other supervisory employees, is appropriate. The sole disagreement exists with respect to the inclusion or exclusion of office and clerical employees: the C. I. O. urges that they be excluded, the Independent that they be included, while the Company takes no definite position but prefers that the clerks be excluded as they are from production and maintenance units in its other plants.

The Company employs about 15 clerical employees, among whom are stenographers and clerks who do billing work and prepare the plant's pay rolls. The permanent office of the clerks with the exception of the shipping clerk and storeroom clerk is on the second floor of the warehouse and is separated from the production and maintenance departments.<sup>4</sup> The storeroom and shipping clerks work on the first floor of the warehouse. It is the general policy of the Board to exclude office clerical employees from production and maintenance units because of the diversity of background, work, and interests of the 2 groups of employees.<sup>5</sup> But clerical employees who work outside the main office in close association with the production and main-

<sup>3</sup> The Field Examiner reported that the C. I. O. submitted 103 membership applications; that the names on 98 of the applications also appeared on the Company's pay roll of December 4, 1944, which contained the names of 189 employees in the appropriate unit; and that all the applications, except 15 which were undated, were dated between August 1944 and November 1944. The Independent relies on its contract to establish its interest.

<sup>4</sup> Since 1943, because of the shortage of manpower, some of the men clerks have been working part time principally on week-ends at laboring jobs in and about the plant. However, this laboring work is not part of their regular duties as clerks, but is in addition thereto.

<sup>5</sup> *Matter of Westinghouse Electric & Manufacturing Company*, 53 N. L. R. B. 1073; *Matter of Boston Edison Company*, 51 N. L. R. B. 118.

tenance employees are included in bargaining units with the latter because they have a greater community of interest with such employees than with the office clerical group. In accord with our policy, we shall include the storeroom clerk and the shipping clerk in the unit but shall exclude the office clerical employees.<sup>6</sup>

We find that all production and maintenance employees at the Company's Pettys Island Refinery Division, including barge captain, laboratory pusher, storeroom clerk, and shipping clerk, but excluding office clerical employees, paymaster, draftsman, office manager, personnel manager, superintendent, assistant to superintendent, night superintendent, process foreman, plant engineer, foreman in charge of treating plant, foreman of refinery pumpers, foreman of refinery yard labor, foreman of machine shop, foreman of power plant, foreman of bulk load-tank unloading, warehouse foreman, tank car repair foreman, foreman of barge and domestic material, chemist in charge of laboratory, chemist foreman in charge of compounding, foreman of grease department, 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 employees in the appropriate unit who were employed during the payroll 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 Cities Service Oil Company, Pettys Island Refinery Division, Pettys Island, New Jersey, 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 Fourth Region, acting in this matter as agent for the National Labor

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<sup>6</sup> *Matter of Kearney & Trecker Corporation*, 60 N. L. R. B. 148; *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 531.

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 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 they desire to be represented by Oil Workers International Union, CIO, or by Pettys Island Independent Oil Workers Union, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.