

In the Matter of CONTINENTAL OIL COMPANY *and* THE INDEPENDENT
OIL WORKERS' UNION OF OKLAHOMA

Case No. 16-CA-44.—Decided December 14, 1948

DECISION

AND

ORDER

On May 18, 1948, Trial Examiner Max M. Goldman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto.

Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief. The Respondent's request for oral argument is hereby denied because the record and the exceptions and brief, in our opinion, adequately present the issues and the positions of the parties.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board Members.*

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief filed by the Respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Continental Oil Company, and its officers, agents, successors, and assigns, shall:

*Chairman Herzog and Members Houston and Gray.

1. Cease and desist from:

(a) Refusing to bargain collectively with The Independent Oil Workers' Union of Oklahoma, as the exclusive representative of all office and clerical employees at the Respondent's Ponca City, Oklahoma, refinery, excluding general office employees, confidential employees, and all supervisors within the meaning of the Act; and

(b) Interfering in any other manner with the efforts of The Independent Oil Workers' Union of Oklahoma to negotiate for, or to represent, the employees in the aforesaid bargaining unit as their exclusive bargaining agent.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with The Independent Oil Workers' Union of Oklahoma, as the exclusive bargaining representative of the employees in the bargaining unit described above, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post in conspicuous places at its refinery at Ponca City, Oklahoma, copies of the notice attached hereto, marked "Appendix A."¹ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the Sixteenth Region in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT engage in any acts in any manner interfering with the efforts of THE INDEPENDENT OIL WORKERS' UNION OF OKLA-

¹ In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted, before the words: "A Decision and Order" the words: "A Decree of the United States Court of Appeals Enforcing."

HOMA, to negotiate for or represent the employees in the bargaining unit described below.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our office and clerical employees at the Ponca City, Oklahoma, refinery, excluding general office employees, confidential employees, and all supervisors within the meaning of the Act.

CONTINENTAL OIL COMPANY,
Employer.

By -----
(Representative) (Title)

Dated -----

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Mr. Robert E. Mullin, for the General Counsel.

Messrs. R. O. Wilson and Harold Skinner, of Ponca City, Okla., for the respondent.

Mr. Lester R. Maris, of Ponca City, Okla., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by The Independent Oil Workers' Union of Oklahoma, herein called the Union, the General Counsel by the Regional Director for the Sixteenth Region (Fort Worth, Texas) of the National Labor Relations Board, herein called the Board, issued his complaint dated April 8, 1948, against Continental Oil Company, Ponca City, Oklahoma, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (a) (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint together with copies of the charge and notice of hearing thereon were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance that the respondent (a) on or about December 22, 1947, and thereafter, refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees within an appropriate bargaining unit, although a majority of the employees in such unit, on August 14, 1947, had designated and selected the Union as their representative for the purposes of collective bargaining, and (b) thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

In its answer, duly filed herein, the respondent admitted certain of the allegations, and denied it had engaged in any unfair labor practices within the meaning of the Act.

Pursuant to notice, a hearing was held on April 26, 1948, at Ponca City, Oklahoma, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the respondent, and the Union were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the hearing, the undersigned granted a motion by the General Counsel to conform the pleadings to the proof as to dates and minor variations and reserved ruling on the respondent's motion to dismiss the complaint. The motion is hereby denied. All the parties were afforded opportunity to present oral argument at the close of the hearing, and to file briefs and/or proposed findings of fact and conclusions of law with the undersigned. The parties presented oral argument, but did not submit proposed findings of fact or conclusions of law. A brief was received from the respondent.

Upon the entire record of the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Continental Oil Company, a Delaware corporation, is engaged in the processing of crude oil and in selling and distributing products derived therefrom. It maintains its principal office at Wilmington, Delaware, and operates refineries at Farmington, New Mexico; Wichita Falls, Texas; Glenrock, Wyoming; and Ponca City, Oklahoma, the operation involved in this proceeding. During the year 1947 purchases of raw materials for this plant were in excess of one million dollars in value and sales of its manufactures, which include gasoline, lubricating oils, greases and other petroleum products, were in excess of one million dollars in value. Currently, approximately 40 percent of the crude oil processed at the Ponca City refinery is shipped or piped there from points outside the State of Oklahoma. The refinery processes about 600,000 barrels of crude oil a month, of which approximately 60 percent is shipped or piped to points outside the State of Oklahoma. The respondent concedes, and the undersigned finds, that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

The Independent Oil Workers' Union of Oklahoma is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

The refusal to bargain

A. The appropriate unit and representation by the Union of a majority therein

On July 23, 1947, the Board issued a Decision and Direction of Election in Case No. 16-R-2099,¹ finding, among other things, that all office and clerical employees at the respondent's Ponca City, Oklahoma, refinery, excluding general office employees, confidential employees, supervisors, and all other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On August 14, 1947, pursuant to the Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director for

¹ *Continental Oil Company*, 74 N. L. R. B. 597.

the Sixteenth Region in which a majority of the employees selected the Union as their representative. No objections having been filed by any of the parties within the time provided therefor, the Board on October 20, 1947, certified the Union as the representative for the purposes of collective bargaining of the employees in the unit heretofore mentioned.

The respondent contests the Board's unit finding urging that it results in an unduly artificial and impractical grouping of employees, because it excludes employees doing similar work in the general offices of the respondent at Ponca City and that the unit finding should combine the office and clerical employees at the refinery with the office and clerical employees at its general offices. As appears from the Decision and Direction of Election and from the record in the representation proceeding, these precise contentions were raised by the respondent in that case, and were there litigated and decided adversely to the respondent.

In the instant proceeding, the respondent, in support of its views concerning the Board's unit finding stated above, sought to adduce testimony relating to matter in existence at the time of the representation hearing. It was not shown that this testimony was newly discovered or unavailable or not known to the respondent at the time of that hearing, or that the respondent had not been given full opportunity to be heard. The issues having already been litigated, the undersigned excluded this testimony offered by the respondent.² It does not appear that the circumstances underlying the unit finding shown in the representation proceeding have materially changed.

The undersigned finds, in accordance with the Board's previous determination, that all office and clerical employees at the respondent's Ponca City, Oklahoma, refinery, excluding general office employees, confidential employees, supervisors and all other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.³

B. The refusal to bargain

On December 22, 1947, the respondent declined the Union's request to bargain in the certified unit, explaining that the refusal was based upon its position that the Board's unit determination was improper. The undersigned accordingly finds that the respondent on December 22, 1947, and at all times thereafter has

² *Allis-Chalmers Manufacturing Co. v. N. L. R. B.*, 162 F. (2d) 435, 440, and cases there cited. The matter excluded, which is essentially supplementary to and of the same general character as the testimony adduced at the representation hearing, appears in the transcript as a proffer.

³ The respondent also asserts in its answer "that the hearing in such representation proceeding (Case 16-R-2099) was conducted on April 29, 1947, Respondent's brief was filed May 20, 1947, and the case was decided on July 23, 1947, during the interim between the adoption and taking effect of the Labor Management Relations Act of 1947 and at a time when, according to the public press, approximately eight hundred (800) cases were pending before the National Labor Relations Board; that under such state of facts this Respondent believes and alleges that such action of the Board in creating the bargaining unit involved herein was taken without due consideration of the facts which were presented at such hearing and its own decisions in comparable cases; that such decision in said representation case could result only after rejection by the Board of all of the factors previously and since inaugurated and followed by the Board in determining what constitutes an appropriate bargaining unit; and that, therefore, such former action of the Board was and is arbitrary and capricious." The undersigned finds this contention to be without merit. As the General Counsel urged at the hearing, (a) there is substantial basis to support the Board's unit determination (see *Pittsburgh Plate Glass Company v. N. L. R. B.*, 313 U. S. 146, aff'g 113 F. (2d) 698, enf'g 15 N. L. R. B. 515), and (b) a presumption of administrative regularity attaches to Board decisions which presumption has not been overcome (see *N. L. R. B. v. Donnelly Garment Co.*, 330 U. S. 219).

refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that the activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent 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 REMEDY

Since it has been found that the respondent has engaged in unfair labor practices it will be recommended that the respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent upon request bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Independent Oil Workers' Union of Oklahoma is a labor organization, within the meaning of Section 2 (5) of the Act.
2. All office and clerical employees at the respondent's Ponca City, Oklahoma, refinery, excluding general office employees, confidential employees, supervisors, and all other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
3. The Independent Oil Workers' Union of Oklahoma was on December 22, 1947, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.
4. By refusing on December 22, 1947, and at all times thereafter to bargain collectively with The Independent Oil Workers' Union of Oklahoma as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act, as amended.
5. By said acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act, as amended.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the respondent, Continental Oil Company, Ponca City, Oklahoma, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with The Independent Oil Workers' Union of Oklahoma, as the exclusive representative of all office and clerical employees at the respondent's Ponca City, Oklahoma, refinery, excluding general office employees, confidential employees, supervisors, and all other supervisory employees; and

(b) Engaging in any other acts in any manner interfering with the efforts of The Independent Oil Workers' Union of Oklahoma, to negotiate for or represent the employees in the aforesaid unit as exclusive bargaining agent.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with The Independent Oil Workers' Union of Oklahoma, as the exclusive bargaining representative of all the employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post in conspicuous places at its refinery at Ponca City, Oklahoma, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the receipt of this Intermediate Report and Recommended Order what steps the respondent has taken to comply herewith.

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report and Recommended Order the respondent notified said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, effective August 22, 1947, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

MAX M. GOLDMAN,
Trial Examiner.

Dated May 18, 1948.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that :

WE WILL NOT engage in any acts in any manner interfering with the efforts of THE INDEPENDENT OIL WORKERS' UNION OF OKLAHOMA, to negotiate for or represent the employees in the bargaining unit described below.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is :

All our office and clerical employees at the Ponca City, Oklahoma, refinery, excluding general office employees, confidential employees, supervisors, and all other supervisory employees.

CONTINENTAL OIL COMPANY,
Employer.

By -----
(Representative) (Title)

Dated -----

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.