

In the Matter of STANDARD OIL COMPANY OF NEW JERSEY (LOUISIANA DIVISION) and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 767, AFFILIATED WITH AMERICAN FEDERATION OF LABOR

Case No. 15-R-1235.—Decided May 22, 1945

Messrs. Cecil Morgan and A. M. Curtis, of Baton Rouge, La., and Mr. C. H. Tuttle, of New York City, for the Company.

Mr. W. T. McCain, of Colfax, La., and Mr. J. D. Parker, of Baton Rouge, La., for the I. B. E. W.

Messrs. Clifford A. Neames, Charles Chavers, and L. F. Thomas, of Baton Rouge, La., and Mr. Carew V. Sullivan, of Greenwell Springs, La., for the Association.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Electrical Workers, Local Union 767, affiliated with the American Federation of Labor, herein called the I. B. E. W., alleging that a question affecting commerce had arisen concerning the representation of employees of Standard Oil Company of New Jersey, (Louisiana Division), Baton Rouge, Louisiana, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before LeRoy Marceau, Trial Examiner. Said hearing was held at Baton Rouge, Louisiana, on March 14, 15, and 16, 1945. The Company, the I. B. E. W., and Standard Oil Employees' Association, Independent, herein called 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The

¹ The Company which was described in the petition as Standard Oil Company of Louisiana, was subsequently merged with the Standard Oil Company of New Jersey as the Louisiana Division of the latter corporation. The petition has accordingly been amended to indicate the present name and status of the Company as the result of the said merger.

Company's motion to dismiss and the Association's motion to dismiss are hereby denied for reasons hereinafter stated. 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 New Jersey, a Delaware corporation, has its principal office in New York City. The Louisiana Division of the Company operates an oil refinery at Baton Rouge, Louisiana, the only plant involved in these proceedings. During the year 1944, the Louisiana Division of the Company refined approximately 135,000 barrels of crude oil per day, of which approximately 13,500 barrels were received from States other than the State of Louisiana. During the same period, approximately 12,000 barrels of selected polymer were shipped to the Baton Rouge refinery from points outside the State of Louisiana for further manufacture. The refinery processes such crude oil into 100 octane gasoline and other miscellaneous petroleum products, of which more than 50 percent is sold and transported to points outside the State of Louisiana. Approximately two-thirds of the total production of the refinery during the year 1944 was devoted to the national war effort.

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 Electrical Workers, Local Union 767, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the company.

Standard Oil Employees' Association (Independent) is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about September 9, 1944, the I. B. E. W. requested in writing that the Company recognize it as the exclusive bargaining representative for certain of the Company's employees at its Baton Rouge refinery and thereafter filed a petition for an investigation and certification of representatives. The Company replied that it would defer action on the request of the I. B. E. W. pending a determination of the proceedings initiated by the filing of the petition.

A statement of the Trial Examiner, introduced into evidence at the hearing, indicates that the I. B. E. W. and the Association each repre-

sents a substantial number of employees in the unit hereinafter found appropriated.²

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 DETERMINATION OF REPRESENTATIVES

The I. B. E. W. seeks a craft unit of electrical employees coextensive with the Company's electrical department, but excluding laborers therein. The Company and the Association, while not opposing the general character of the unit sought,³ contend that the claimed unit is inappropriate by reason of the Company's history of collective bargaining upon a plant-wide basis.⁴

The Company's history of collective bargaining dates from June 26, 1937, when the Association and the Company, then known as the Standard Oil Company of Louisiana, executed an exclusive bargaining agreement covering, with certain exceptions not relevant to the present case, all employees in the manufacturing department of the Baton Rouge refinery.⁵ This contract was replaced on June 20, 1942, by a new contract between the Company and the Association in substantially the same form with a provision for yearly automatic renewal after November 1, 1943. There is no contention that this contract is a bar to the present proceeding. In its operations under the contract, the Association has established a council of 56 members, 1 from each group of employees, for the purpose of handling all grievances that may arise from any of the groups represented by the council. The Association has also successfully initiated proceedings before the National War Labor Board for a general increase in wages for all employees covered by its contract with the Company.

So far as the relationship of electrical department employees to the Association is concerned, the record discloses that, following the organization by the I. B. E. W. of employees in the electrical department in 1937, the I. B. E. W. requested recognition from the Company as bargaining representative for the electrical group. The Company, however, declined to recognize the I. B. E. W. because of its existing

² The Trial Examiner reported that the I. B. E. W. and the Association had submitted 61 and 71 authorizations, respectively, out of a total of 133 employees whose names appear on the pay roll of March 12, 1945, in the unit claimed by the I. B. E. W.

³ The only dispute as to the classifications for inclusion within the electrical group concerns the category of subforemen whom the Company and the Association contend should be excluded as supervisory employees.

⁴ The Company also contends that the unit is inappropriate because of the failure of the I. B. E. W. to include therein certain employees who perform work of an electrical nature in departments other than the electrical department.

⁵ The Company's contract with the Association followed the recognition by the Company of the Association as bargaining representative upon the latter's presentation of evidence that it represented a majority of the Company's employees.

contract with the Association. The I. B. E. W. members thereafter joined the Association and were successful in electing to the council from the electrical group, employee representatives who were very active and favorable to the I. B. E. W. The relationship thus established remained satisfactory until the latter part of 1940 when membership among the electrical workers in the Association declined and the Association by notice dated October 31, 1940, suspended the electrical department representative from the council of the Association. During the period from October 31, 1940, to July 16, 1943, when certain electrical employees who were members of the Association informally selected a representative to the Association council, there was no representative on the council from the electrical department to handle the grievances of electrical employees.⁶ On July 16, 1943, upon the resumption of relations between the Association and the electrical department through the informal appointment of a representative to the Association council, a question arose with respect to the authority of such appointee to represent the electrical department employees. During July or August of 1943, the I. B. E. W. procured the signatures of 112 employees in the electrical group to a petition stating that they did not consider the council member thus selected as authorized to represent the electrical department. On August 9, 1943, the I. B. E. W. wrote to the Company enclosing this petition. Shortly thereafter, a committee from the I. B. E. W. called on the general manager of the Company, discussed the petition, and demanded recognition. The Company stated that it could not grant recognition because of its contract with the Association, but that it would be glad to accept personal grievances. In the course of several conferences on this subject, the general manager suggested that the I. B. E. W. might be able to work out an agreement with the Association.

Pursuant to this suggestion, the I. B. E. W. communicated with the Association and reached an oral agreement under which the I. B. E. W. would nominate a candidate and the Association would then appoint him as member of the council to represent the electrical group. The agreement thus made became effective on November 27, 1943, with the nomination of a representative selected by the I. B. E. W. and continued until June 15, 1944, when the Association permitted a representative of the electrical group to be elected by members of the Association without the prior approval of the I. B. E. W. This development resulted in attempts on the part of 13 electrical department employees to have the check-off of their dues to the Association discontinued, together with another demand by the I. B. E. W. that the Company recognize it as bargaining representative for electrical employees and

⁶ In the absence of a representative from the electrical department, the officers of the Association undertook to handle grievances which might arise in the electrical group. So far as appears, however, only one grievance was handled during this period.

the filing of the present petition for investigation and certification of representatives.

The Company and the Association contend that the foregoing history of relations between the Association and the employees of the electrical department establishes conclusively the acquiescence of the electrical employees in a course of bargaining conducted on a plant-wide basis through the agency of the Association. The record discloses, however, that while electrical department employees have on two different occasions cooperated with and participated in the collective bargaining procedure of the Association, the electrical department employees have throughout the period from 1937 down to and including the date of the filing of the petition, maintained their identity as a group, which identity has been recognized by both the Company and the Association, not only in the preservation of a separate department for electrical employees, but also in the oral agreement between the I. B. E. W. and the Association, which in effect gave to employees of the electrical department the status of an autonomous group within the framework of the Association.⁷ Moreover, it appears that since the latter part of 1940 when, subsequent to their becoming members of the Association, the electrical department employees first indicated their dissatisfaction with the Association and began to withdraw therefrom, the employees of the electrical department have generally refrained from using the Association for the settlement of grievances which have been largely handled on an individual basis with the aid of I. B. E. W. representatives.⁸ Further, the electrical employees have protested against inclusion in a more comprehensive unit without provision for maintaining their rights to self-representation, and have sought on numerous occasions to be represented by their own craft organization.

While we have held in certain instances that, where members of a craft merge their identity in a plant-wide unit and participate voluntarily in the benefits of collective bargaining upon a broader basis, they will not thereafter be awarded the right of separate representation,⁹ we have also recognized the inherent right to self-determination on the part of craft employees who have maintained their group identity and have protested inclusion in the larger unit, particularly where

⁷ See *Matter of Symington Gould Corporation*, 53 N. L. R. B. 552 at 555, where the Board considered among other factors warranting the severance of a craft group, the fact that the Company and the contracting union had in effect recognized that the craft employees constituted a group separate and apart from the other production and maintenance employees.

⁸ The activity of the Association in the handling of grievances for employees of the electrical department in recent months has for the most part been confined to the period following the filing of the present petition.

⁹ See *Matter of American Can Company*, 13 N. L. R. B. 1252; *Matter of The Procter and Gamble Manufacturing Company*, 52 N. L. R. B. 661; *Matter of Harnischfeger Corporation*, 55 N. L. R. B. 1176; *Matter of Brewer Dry Dock Company*, 56 N. L. R. B. 973; and *Matter of York Corporation*, 61 N. L. R. B. 462.

no consideration was given to the merits of a separate craft unit on the occasion of the establishment of plant-wide bargaining relations.¹⁰ Under the circumstances of the present case, we are of the opinion that the bargaining history of the Company is not determinative of the present issue and that the electrical employees herein concerned have not, by their actions during the period covered by the bargaining history aforesaid, forfeited any right that they may have had to separate representation by their own craft organization for the purposes of collective bargaining.¹¹ Accordingly, we find that electrical employees may constitute a separate bargaining unit or be included in the existing comprehensive unit. Therefore, before making a final determination with respect to the appropriate unit, we shall first ascertain the desires of the employees themselves, as reflected by an election. Upon the results of the election will depend in part our determination with respect to the appropriate unit.

There remains for consideration the question as to whether the employees of the electrical department constitute by themselves a recognizable craft group apart from employees who, it is alleged, perform electrical work in other departments of the Company, together with the question as to the inclusion or exclusion of subforemen.

With respect to the question concerning the character of the electrical department group as recognizable craft unit, the Company contends that the electrical department does not constitute a proper basis for a craft unit by reason of the fact that it does not include all employees whose work is of an electrical nature. In support of its contention, the Company urges that certain employees with electrical training in the powerhouse and instrument departments should be included within a craft unit of electrical employees. The record indicates, however, that not only do the so-called electrical employees in the powerhouse and instrument departments have nonelectrical classifications, but also that the instrument department employees are required to have knowledge of refinery operations beyond that needed by the electrical department employees in the performance of electrical maintenance work. It is admitted by the Company that the reason why electrical department employees are maintained in a separate department and under separate supervision is that they perform a type of work which is not similar to that of any other group; and that the work of the instrument department is very diversified and is per-

¹⁰ See *Matter of Bendix Products Division of Bendix Aviation*, 39 N. L. R. B. 81; *Matter of Tampa Florida Brewery, Inc.*, 42 N. L. R. B. 642; *Matter of Aluminum Company of America*, 42 N. L. R. B. 772; *Matter of Westinghouse Electric & Manufacturing Company, Louisville Ordnance Division*, 49 N. L. R. B. 445; *Matter of Santa Cruz Portland Cement Company*, 52 N. L. R. B. 444; *Matter of Goodyear Tire & Rubber Company*, 55 N. L. R. B. 918; *Matter of General Electric Company (Lynn River Works and Everett Plant)*, 58 N. L. R. B. 57; *Matter of Moore Drop Forging Company*, 60 N. L. R. B. 494.

¹¹ See *Matter of General Electric Company (Lynn River Works and Everett Plant)*, 58 N. L. R. B. 57; *Matter of Phelps Dodge Corporation*, 60 N. L. R. B. 1431.

formed both by employees with electrical training and by employees identified with other crafts.¹² Under these circumstances, we find that the electrical department employees in electrical classifications are sufficiently identifiable as members of a distinct craft to warrant the severance of such group apart from employees who perform electrical work of a different type in other departments of the Company.

With regard to the question of including or excluding subforemen from the group of electrical department employees, it appears from the testimony of numerous witnesses in a position to know the extent of the authority and responsibilities of subforemen, that such employees have authority to make effective recommendations as to the status of employees under their supervision; that they approve employees sent to them by the head of the department; that they handle grievances for employees under their immediate supervision and also attend conferences where management problems are discussed and instructions given with respect thereto. We find that subforemen are supervisory employees within the meaning of our usual definition. We shall, accordingly, exclude them from the group of electrical department employees among whom an election is to be hereinafter directed.

We shall direct that an election by secret ballot be conducted among all employees in electrical classifications and helpers in the electrical department of the Company at its Baton Rouge refinery, excluding laborers, the general foreman, the assistant general foreman, subforemen and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or otherwise effectively recommend such action, who were employed during the pay-roll period immediately preceding the date of the Direction of Election, subject to the limitations and additions set forth therein, to determine whether they desire to be represented by the I. B. E. W. or the Association. If a majority of the employees in this voting group select the I. B. E. W. as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, a majority of these employees choose the Association, then they will have thereby indicated their desire to be part of the established unit presently represented by that organization.

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

¹² A witness for the Company testified that the Company's goal was to make the work of the instrument department a separate craft.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Standard Oil Company of New Jersey (Louisiana Division), Baton Rouge, Louisiana, 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 Fifteenth 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 voting group set forth 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 International Brotherhood of Electrical Workers, Local Union 767, affiliated with the American Federation of Labor, or by Standard Oil Employees Association (Independent), for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.