

In the Matter of STANDARD OIL COMPANY OF CALIFORNIA and OIL WORKERS INTERNATIONAL UNION ORGANIZING CAMPAIGN, CIO

Case No. 21-R-2500.—Decided August 22, 1945

Mr. John M. Hall, of Los Angeles, Calif., for the Company.

Mr. Lindsay P. Walden, of Fort Worth, Tex., and *Mr. W. B. Taylor*, of El Segundo, Calif., for the Oil Workers.

Messrs. Rufus Bailey and *Arlo D. Poe*, of Los Angeles, Calif., for the Independent.

Mr. W. F. McConnell, of Alameda, Calif., for the Boilermakers.

Mr. Nick Cordil, of Los Angeles, Calif., for the Carpenters.

Mr. Albert Weisbord, of Washington, D. C., for the Engineers.

Mr. Herbert Ely, of Los Angeles, Calif., for the Culinary Workers.

Mr. C. S. McKinley, of Southgate, Calif., for the Plumbers.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by Oil Workers International Union Organizing Campaign, CIO, an organizing agency or facility of Oil Workers International Union, herein called the Oil Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Standard Oil Company of California, El Segundo, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Maurice J. Nicoson, Trial Examiner.¹ Said hearing was held

¹The Company contends that it was denied an "appropriate" hearing, on the grounds (1) that the Trial Examiner appeared for the Board in the instant case in a dual capacity, interrogating witnesses and also ruling upon the admissibility of evidence and motions presented to him, and (2) that Maurice J. Nicoson, who served as attorney for the Board in *Matter of Standard Oil Company of California*, Case No. 21-C-2167, a complaint proceeding more particularly discussed in Section IV, below, served as Trial Examiner in the instant proceeding and that this fact *per se* constitutes prejudice against the Company. We find no merit in these contentions.

In complaint hearings, a Board attorney formally presents evidence which bears upon the commitment of violations charged in the complaint. A Trial Examiner, appointed by the Board, serves in a judicial capacity at the complaint hearing and thereafter incorpo-

at Los Angeles, California, on June 8, 18, and 19, 1945. The Company; the Oil Workers; Independent Union of Petroleum Workers, herein called the Independent; International Union of Operating Engineers, herein called the Engineers; Culinary Workers and Bartenders Union, Local 814, herein called the Culinary Workers; United Association of Plumbers and Steamfitters, Local No. 550, A. F. of L., herein called the Plumbers; Los Angeles District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, herein called the Carpenters; and International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers, herein called the Boilermakers,² 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. During the course of the hearing, and again in its brief, the Company, on numerous grounds, moved to dismiss this proceeding. For reasons set forth below, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board. The Company's motion for oral argument is hereby denied.

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 California is engaged in the production, refining, transportation, sale, and distribution of petroleum and petroleum products. The Company, through its subsidiaries and affiliates, owns extensive oil lands throughout the United States and foreign

rates his rulings, findings, and recommendations in an Intermediate Report, which issues as an official document in the case and constitutes part of the formal record therein. The Board itself, upon the entire record, makes the final findings and issues an appropriate order. In this way, the dual responsibilities resting upon the Board in complaint proceedings are respectively served at the hearing and at each stage of the proceedings. In usual representation proceedings, however, which are merely investigatory in character and from which no final order issues, a single representative of the Board is all that is normally required to place in the record facts necessary for the determination of the issues. The "Trial Examiner's Statement in R-Cases," duly served upon the parties, makes clear his neutral functions and responsibilities. Since the Board necessarily makes its determination upon the facts adduced, and not upon any other criterion, the identity of the Trial Examiner is a matter of indifference, and the only material questions are (1) whether, through his rulings and general conduct of the hearing, all parties had ample opportunity to present in orderly and suitable manner matters pertinent to the issues and (2) that the entire record fully discloses the evidence required for a proper disposition of the issues. The duty of the Trial Examiner in representation cases is thus to present a complete record, upon which the Board, and not the Trial Examiner, may in the first instance determine the facts and predicate thereon pertinent conclusions.

The instant record does not disclose that any party to these proceedings was denied an opportunity to introduce evidence pertinent to the issues.

² The Boilermakers appeared solely to protect its interest with respect to a contract with the Company covering certain employees more particularly described below, and not to make any other contention as to the issues within.

countries. The Company owns and operates refineries at Richmond, Bakersfield, and El Segundo, California, and, through subsidiaries, operates certain refineries in Texas and in British Columbia, Canada. During the past year the total amount of crude oil run through its California refineries, which resulted in the manufacture of many different kinds of products, was in excess of 75,000,000 barrels. A substantial portion of the finished products was shipped in interstate commerce.³

We find that the Company is engaged in commerce, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union Organizing Campaign is an organizing facility or agency of Oil Workers International Union, a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.⁴

Independent Union of Petroleum Workers is an unaffiliated labor organization, admitting to membership employees of the Company.

International Union of Operating Engineers, United Association of Plumbers and Steamfitters, Local No. 550, Los Angeles District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, International Brotherhood of Boilermakers, Iron Shipbuilders, and Helpers, and Culinary Workers and Bartenders Union, Local 814, are separate labor organizations affiliated with the American Federation of Labor, each admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

On September 29, 1944, the Oil Workers asked the Company for recognition as bargaining representative of employees of the Company's El Segundo refinery. On October 12, 1944, the Company refused the request. The Independent, the Plumbers, and the Engineers at the hearing made conflicting claims to represent employees at the El Segundo plant.

A statement prepared by a Field Examiner and other evidence introduced at the hearing indicates that the Oil Workers, the Plumb-

³ For a more complete statement of the Company's operations, see *Matter of Standard Oil Company of California*, 58 N. L. R. B. 560

⁴ The Company contends that the petition should be dismissed in that the facility of the Oil Workers, rather than the Oil Workers, *per se*, filed the instant petition for investigation and certification of representatives. We do not agree. The Oil Workers defines Oil Workers International Union Organizing Campaign as a facility or department of the International Union, to which is assigned the work of organizing employees for the Oil Workers. The full name of the Oil Workers, however, will appear on the ballot in any election in which it may participate as a result of the instant petition, in order that no party may be in doubt of the choices to be made for a bargaining representative therein.

ers, and the Culinary Workers represent substantial numbers of employees in their respectively proposed bargaining units.⁵

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 UNIT

Under integrated management at San Francisco, the Company operates within the State of California three refineries, located at El Segundo, Richmond, and Bakersfield, respectively. Each refinery functions under a plant manager and is capable of producing certain, if not all, products made by the Company. Employees at the several refineries have like skills. The El Segundo refinery is approximately 450 miles distant from the Richmond refinery, and approximately 150 miles distant from the Bakersfield refinery. The Oil Workers, the petitioner herein, contends that employees at the El Segundo

⁵ The Oil Workers submitted an affidavit of its representative, alleging that, among the employees in its proposed unit of approximately 1,200 employees, the Oil Workers had 513 members in good standing.

The Independent submitted an affidavit of its secretary, alleging that, among employees in its proposed unit, the Independent had 154 members in good standing. The record does not disclose the number of employees therein.

The Plumbers submitted, prior to the hearing, 17 authorization cards in its estimated unit of 80 employees and, during the course of the hearing, 68 additional cards.

The Engineers submitted 151 authorization cards, indicating its general organization among the Company's employees.

The Culinary Workers submitted at the hearing evidence that it represented 3 employees in its proposed unit of 15 employees, and was granted permission by the Trial Examiner to submit additional authorization cards before the close of the hearing. Six additional cards were in fact presented to the Trial Examiner after the close of the hearing and, for this reason, forwarded to the Board at Washington, D. C., with a motion duly served upon the parties for the proper consideration of these cards with reference to the issues in this proceeding. The Company, subject to its general objection noted below, and the Oil Workers agreed to the reception of these cards as evidence of the extent of organization of the Culinary Workers, and no other party has raised any objection to this procedure. We hereby grant the motion of the Culinary Workers, and we order that the 6 additional cards be, and are, hereby made part of the official record in this proceeding.

The Carpenters offered no cards or other evidence to indicate its organizational efforts among employees in any defined unit.

The Company contends that the Oil Workers does not presently show a sufficient interest among employees in its proposed unit to justify an election. We do not agree. We have frequently stated that what constitutes a sufficient interest to justify an election depends upon the surrounding circumstances at any given time. We consider among the factors contributing to the sufficiency of the showing made by a petitioning labor organization unfair labor practices committed by the employer involved and, even more specifically, the refusal of the employer to comply with the Board's order to cease and desist from the same and to take the required remedial steps to effectuate the policies of the Act. We found in recent complaint proceedings, more specifically noted below, that the Company had committed unfair labor practices, and the Company has refused to comply with our order regarding the same. As we have frequently stated, authorization or membership cards are required by the Board as an administrative precaution. They do not serve as proof of the precise number of employees who desire to be represented by a labor organization, but they do provide a reasonable safeguard against the indiscriminate use of Board proceedings by labor organizations having little or no following among employees in units claimed to be appropriate. Thus, in view of the limited purpose of the Field Examiner's statement, we do not permit any parties to challenge its truth. See *Matter of Lalamce & Grosjean Manufacturing Co.*, 63 N. L. R. B. 130; *Matter of H. G. Hill Stores, Inc.*, 39 N. L. R. B. 874.

refinery constitute an appropriate bargaining unit apart from employees at the other refineries. The Company and the Independent, however, contend that employees at the El Segundo refinery do not constitute an appropriate separate unit.

On March 8, 1938, the Board, in *Matter of Standard Oil Company of California*, Case No. R-265, dismissed a prior petition for investigation and certification of representatives of employees of the Company filed by the Oil Workers, on the ground that, in view of the history of collective bargaining between the Company and its employees on a system-wide basis through Standard Employees Association, herein called the S. E. A., their recognized bargaining representative, a unit limited to employees at the El Segundo refinery was not an appropriate bargaining unit.⁶

On June 7, 1943, the Board, upon charges duly filed, issued a complaint against the Company in *Matter of Standard Oil Company of California*, Case No. 21-C-2167, alleging, *inter alia*, that the Company had dominated and controlled the S. E. A. in violation of Section 8 (1) and (2) of the Act.

On September 4, 1944, while the complaint proceeding was pending decision, the Board issued a Decision and Direction of Elections in *Matter of Standard Oil Company of California*, Cases Nos. 20-R-1079 and 20-R-1109, finding that employees at the Company's Richmond refinery might constitute an appropriate bargaining unit apart from employees at the other refineries or might be a part of a system-wide unit, and ordered elections in three separate voting groups (a) among machinists, (b) among electricians, and (c) among residual production and maintenance employees at the Richmond refinery, deferring any finding as to the scope of the unit or units appropriate for such employees until the results of the elections should be disclosed.⁷ The Board specifically provided that any certification that it should thereafter issue in the representation proceedings would be made subject to its findings in the complaint proceedings then pending.

On November 13, 1944, the Board issued Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order in Case 21-C-2167, the complaint proceeding noted above, containing, *inter alia*, a finding that the S. E. A. was a company-dominated labor organization and ordering that the Company withdraw all recognition from the S. E. A. and disestablish it as the bargaining representative of any of the Company's employees.

On November 18, 1944, the Board issued a Supplemental Decision and Certification of Representatives in the consolidated representation cases, noted above, in which it found that electrical employees at the Richmond refinery constitute an appropriate unit and certified

⁶ See *Matter of Standard Oil Company of California*, 5 N. L. R. B. 750

⁷ See footnote 3, above.

International Brotherhood of Electrical Workers as their bargaining representative. The Board further found that a majority of machinists at the Richmond factory had selected International Association of Machinists as their bargaining representative and provided that this organization should bargain for them in a unit including other machinists for whom the same organization was bargaining representative. Although the S. E. A. received a majority of votes cast in the residual production and maintenance group, the Board, in view of the proposed findings and order outstanding in the complaint case, made no finding with respect to the unit appropriate for these employees, pending the issuance of its final determination respecting the legality of the S. E. A. On May 19, 1945, however, the Board issued its Decision and Order in Case No. 21-C-2167, finding, *inter alia*, that the S. E. A. was a company-dominated organization and ordering the Company to disestablish the S. E. A. as bargaining representative of the Company's employees.⁸ Thereafter, the Board took no further action with respect to the unit appropriate for production and maintenance employees in the residual group at the Richmond plant.⁹

Thus, in 1938 we found that, under all the circumstances then present, a unit limited to the El Segundo refinery was not an appropriate unit for the Company's employees. The Company alleges that except for normal growth in its facilities, there has been no substantial change in the operation of its business since that time and contends that, under these circumstances, a unit limited to employees of the El Segundo refinery is not an appropriate unit at this time. We do not agree. In 1944 in the face of charges of unfair labor practices and the claims of several labor organizations to represent different groups of skilled, semi-skilled, and unskilled employees, we found that employees at the Richmond plant might function either as a separate unit or part of the system-wide unit. At the present time there is no legitimate labor organization which purports to represent a substantial number of the Company's production and maintenance employees

⁸ See *Matter of Standard Oil Company of California*, 61 N. L. R. B. 1251.

⁹ Petitions for enforcement and review, respectively, of the Board's order in the complaint proceedings are presently pending hearing in the Fifth Circuit. The Company, *inter alia*, contends that the investigation of the instant petition during the pendency of these appellate proceedings jeopardizes contract rights to which it is entitled as the employer of the employees herein concerned. The Company thus contends that the S. E. A. as the recognized bargaining agent of its employees and party to a contract on their behalf is a necessary party to these proceedings. We do not agree. We have frequently held that the choice of a bargaining representative by employees in an appropriate unit is not the immediate concern of their employer. Having found the S. E. A. to be a company-dominated organization, and having abrogated its contract with the Company and ordered the Company no longer to recognize the S. E. A. as bargaining representative of its employees, we will not permit the S. E. A. to intervene in this proceeding or to participate in the elections which we shall direct. Any certification of representatives which we may issue as a result of the instant petition may, however, upon appropriate motion, be vacated if our findings respecting the legality of the S. E. A. be set aside by a court of competent jurisdiction. See *Matter of New Idea, Inc.*, 25 N. L. R. B. 265, and *Matter of Baltimore Transit Company, The Baltimore Coach Co.*, 59 N. L. R. B. 159.

in a system-wide unit. Since no such labor organization has filed a petition for a unit on a system-wide basis and employees at this refinery constitute a well identified sector of the Company's working force, and since the Oil Workers has limited its present organizational efforts to employees at the El Segundo refinery, we find that a unit limited to employees at the El Segundo refinery constitutes an appropriate unit for the purposes of collective bargaining.¹⁰ Any such unit which may result from our investigation of the instant petition, however, shall not preclude a later determination as to the broader scope of a bargaining unit for the Company's employees upon a petition subsequently filed.

The several labor organizations herein involved seek to represent employees in the manufacturing division of the Company's operations at the El Segundo refinery and to exclude employees in certain other administrative divisions of the Company's operations, such as the motor transport division, the purchase and stores department, and the administration building. The manufacturing department, the largest of the administrative departments, includes employees commonly known as production and maintenance employees. Their work is under the general supervision of the general manager of the manufacturing department at San Francisco, but under the immediate direction of the plant manager at El Segundo. Employees in the manufacturing department include technical and professional employees, who are rated as "unclassified" employees, and ordinary production and maintenance employees, rated by the Company as "classified" employees, but more commonly known as hourly paid employees.

The Oil Workers contends that all classified production and maintenance employees at the Company's El Segundo refinery, including employees of the California Research Corporation, but excluding all office and clerical employees, telephone operators, cafeteria employees, office janitors, photo reproduction employees, militarized guards, technical, professional, and administrative employees,¹¹ foremen operators A and C and job foremen B, characterized as shift foremen, the main pump house oil dispatcher, all employees for whom the Boilermakers presently bargains under contract, and other employees

¹⁰ Cf *Matter of Pacific Gas and Electric Company*, 40 N. L. R. B. 591.

¹¹ The employees in these work categories proposed by the Oil Workers for exclusion from the unit are employees not generally classed as refinery production employees, and are usually excluded from units of production and maintenance refinery workers. The S. E. A. included in its bargaining unit all or most of these categories, but since we have found the S. E. A. a company-dominated organization, we give little weight to the type of bargaining unit it fostered. It is further against our established practice to include in production and maintenance units militarized guards and technical and office employees. All clerical employees of the Company are subject to common office supervision and are frequently interchanged, and all employees in the administration building are physically separated from refinery workers.

in the marketing department, in the building operations department and at the San Pedro Terminal. The Independent would include in the production and maintenance unit employees at the San Pedro Terminal and would place employees of the California Research Corporation in a separate bargaining unit apart from other production and maintenance employees. The Engineers takes no position as to employees at the San Pedro Terminal or employees of the California Research Corporation. The Plumbers seeks a unit of all pipe fitters and their helpers, lead burners, instrument men, and welders working in the pipe-fitting department at the El Segundo refinery doing maintenance and construction work and fabricating work from blueprints and sketches, but excluding all employees included in the Boilermakers' contract.¹² The Culinary Workers confines its interest to cafeteria employees at the refinery.¹³ The Oil Workers would exclude cafeteria workers from its production and maintenance unit; the Independent would include them.

The Company bargains with the Boilermakers for employees within its craft jurisdiction at the El Segundo refinery and with other craft organizations, with respect to employees subject to their respective jurisdictions, at other refineries of the Company. We found in the prior representation proceeding affecting the Company's Richmond employees¹⁴ that no single type of unit has been adopted in the oil industry in California. For this reason, in view of the several contentions of the labor organizations, parties hereto, the scope of their organization among the Company's employees, and the bargaining on a craft basis at other refineries, we shall hold separate elections among employees in the three groups of employees proposed as separate bargaining units, and we shall make our final determination of the appropriate unit or units for the employees concerned when the results of the election shall have been disclosed.¹⁵

We shall include in one voting group all cafeteria workers at the El Segundo refinery, excluding supervisory employees, in accordance with our usual definition of that term. The Culinary Workers and the Independent are the only labor organizations claiming to represent these employees, and we shall provide that they may participate in the election to be held among cafeteria workers.

¹² The record discloses that welders are included in the Boilermakers' contract. The Plumbers does not desire to include in its unit any welders covered therein.

¹³ The Company opened its cafeteria to employees generally on June 19, 1945, the day on which the hearing closed. Employees working therein fall within work categories usually found in cafeterias.

¹⁴ See *Matter of Standard Oil Company of California*, 53 N. L. R. B. 560, noted in footnote 3, above.

¹⁵ The Carpenters proposed no clearly defined unit and, as noted in footnote 5, above, offered no proof of its representation among the Company's employees. Under these circumstances, we shall not attempt to carve out from the residual voting group employees subject to the Carpenters' craft jurisdiction.

We shall include in a second voting group all pipe fitters and pipe-fitters' helpers, lead burners, and instrument men, and welders working in the pipe-fitting department and doing maintenance and construction work and fabricating work from blueprints and sketches, excluding supervisory employees and all employees presently represented by the Boilermakers. The Oil Workers, the Independent, and the Plumbers each claims to represent these employees, and we shall provide that these three labor organizations may participate in the election among them.

We shall include in a third residual group production and maintenance employees. The labor organizations interested in representing these employees generally agree with respect to the categories of employees proposed for inclusion by the Oil Workers. The Oil Workers and the Independent disagree, however, with respect to the inclusion of employees of the California Research Corporation and employees at the San Pedro Terminal.

California Research Corporation is a wholly owned subsidiary of the Company and is engaged in testing equipment and in general research. The division of this subsidiary at the El Segundo plant works closely with the manufacturing department and ordinary production and maintenance workers who carry out the plans of the highly trained professional and technical employees, who direct the work, are sometimes interchanged with ordinary refinery workers. We included employees in the California Research Corporation working at the Richmond plant in the three voting groups of employees at that plant and we included certain craft employees of California Research Corporation in appropriate craft units with employees of the Company at the Richmond refinery. The inclusion of employees of the California Research Corporation working at the El Segundo plant in a unit with production and maintenance employees of the Company at that refinery appears not inappropriate. On July 26, 1945, however, a new petition for investigation and certification of representatives in Case No. 21-R-2988 was filed by the Independent, alleging that employees of California Research Corporation in a system-wide group constitute an appropriate unit apart from employees at the Company's refineries. Pending our investigation of this petition, we shall make no finding with respect to the unit or units appropriate for employees of California Research Corporation, reserving our decision with respect to the inclusion of any such employees in the unit covering employees in the El Segundo refinery until we have fully considered the new petition. We will exclude employees of California Research Corporation from the voting group of production and maintenance employees at the El Segundo refinery.

The San Pedro Terminal is a department of the manufacturing division at the El Segundo refinery, although located some 18 miles

distant from the refinery proper. From 45 to 50 production and maintenance employees working under a foreman and assistant foreman, subject to the supervision of the manager at the El Segundo refinery, perform at the San Pedro Terminal substantially the same type of work as that performed by production and maintenance employees at the refinery. There are also employed at the San Pedro Terminal 5 or 6 employees working in the marine department who have no direct concern with the operational work of the manufacturing division. We will include production and maintenance employees of the manufacturing department at the San Pedro Terminal in the same voting group with such employees at the El Segundo refinery.

With respect to the proper placement of shift foremen, the parties disagree. The Oil Workers contends that shift foremen are supervisory employees and should therefore be excluded, as such, from any bargaining unit for employees of the Company. The Plumbers would include shift foremen in its proposed unit. In the elections held among production and maintenance employees in the Richmond plant, we included foremen described as foremen operators A, B, and C, known as "shift" foremen, on the ground that these employees at the Richmond refinery had no effective power to make recommendations affecting the status of employees under them. The instant record, however, shows that shift foremen at the El Segundo refinery make merit increases and that their recommendations have weight to affect the status of employees working under them. Under these circumstances, we shall exclude shift foremen from voting in the elections which we shall direct.

We shall include in the third residual voting group all classified production and maintenance employees in the manufacturing department at the Company's El Segundo refinery, including employees at the San Pedro Terminal, but excluding employees of the California Research Corporation, all office and clerical employees, telephone operators, office janitors, photo reproduction employees, militarized guards, technical, professional, and administrative employees, all employees represented by the Boilermakers, employees in the marketing department and employees in building operations department, foremen operators A and C and job foremen B, commonly known as shift foremen, the main pump house oil dispatcher, all cafeteria employees, all pipe fitters and pipe-fitters' helpers, lead burners, instrument men, and welders working in the pipe-fitting department and doing maintenance and construction work and fabricating work from blueprints and sketches, and all other supervisory employees. We will provide that the Oil Workers, the Engineers, and the Independent, all of whom claim to represent these employees, participate in the election among this residual group.

V. THE DETERMINATION OF REPRESENTATIVES

As noted above, we find that the questions concerning representation which have arisen may best be resolved by separate elections by secret ballot.

At its El Segundo refinery the Company employs school boys or minors to work during the summer vacation in tasks suited to their strength and experience. In general, these employees do not operate equipment, but serve as helpers in various departments. Most of these employees return to school, when the fall term opens, but some of them remain and become permanent employees. The Oil Workers would exclude the minors from its proposed bargaining unit. Since the summer is now far advanced, it appears that minors who intend to terminate their employment and return to school in the fall have little interest in their employment status at the refinery and can be readily identified. Those who remain in the refinery will of course share employment interests with other employees. We will make no distinction between minors doing temporary work and employees doing permanent work, so far as the scope of any unit is concerned. We will, however, provide that minors or school boys working during the summer who do not intend to remain at the refinery on the opening of school in the fall shall be ineligible to vote in the elections.

The Engineers contends that no election should be held among employees at the El Segundo refinery until the force and effect of the Company's unfair labor practices have been dissipated. As noted above, the Company has refused to comply with our order in Case No. 21-C-2167. Union organization has, however, progressed in spite of the Company's unfair labor practices. Since a substantial number of employees at the El Segundo refinery has indicated a desire for collective bargaining, we will not delay the elections until the Company may see fit to comply with our order.

The Company contends that if any election is to be held at this time employees in the armed services for whom it has current addresses should be permitted to vote by mail. At the hearing, the Oil Workers stated that it had no objection to their participation in the election. We desire that all employees who fall within the description of the voting groups have an opportunity to vote so far as it may be practicable. We shall provide that employees in the armed services who present themselves at the polls may vote in the elections. For reasons which we have set forth in a prior decision, we will make no provision that employees in the armed services may vote by mail.¹⁶ Employees on military leave, as the Company contends, retain their status as employees. We see, however, no reason to delay the elections until

¹⁶ See *Matter of Mine Safety Appliances Company*, 55 N. L. R. B. 1190

their return and thus postpone the opportunity of employees presently at work in the refinery to designate a bargaining representative. When it is demonstrated that servicemen have returned to their employment with the Company in numbers sufficient to comprise a substantial percentage of employees in any appropriate unit in which we have certified a collective bargaining representative, a new petition for investigation and certification of representatives may be filed with the Board, thus enabling employees presently in the armed services to affirm or change the bargaining representative selected in their absence.

Those eligible to vote in the separate elections which we shall now direct shall be all employees in the respective voting groups described in Section IV, above, who were employed during the pay-roll period immediately preceding the date of the issuance of this Decision and Direction of Elections, subject to the limitations and additions set forth in the Direction.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Standard Oil Company of California, El Segundo, California, separate 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 Twenty-first 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 employees in the three groups described below, 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 school boys and minors who are working during the summer vacation and expect to terminate their employment and return to school when it opens in the fall and employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections:

(1) All cafeteria employees at the El Segundo refinery, 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, to determine whether they desire to be represented by Culinary Workers and Bartenders Union, Local 814, or by Independent Union of Petroleum Workers, for the purposes of collective bargaining, or by neither;

(2) All pipe fitters and pipe-fitters' helpers, lead burners, instrument men, and welders at the El Segundo refinery, who are working in the pipe-fitting department doing maintenance and construction work and fabricating work from blueprints and sketches, excluding all employees represented by International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, shift foremen, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by United Association of Plumbers and Steamfitters, or by Oil Workers International Union, or by Independent Union of Petroleum Workers, or by none; and

(3) All classified production and maintenance employees in the manufacturing department at the Company's El Segundo refinery, including employees at the San Pedro Terminal, but excluding employees of the California Research Corporation, office and clerical employees, telephone operators, office janitors, photo reproduction employees, militarized guards, technical, professional, and administrative employees, all employees represented by International Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers of America, employees in the marketing department and employees in the building operations department, foremen operators A and C and job foremen B, commonly known as shift foremen, all cafeteria employees, all pipe fitters and pipe-fitters' helpers, lead burners, instrument men, and welders working in the pipe-fitting department and doing maintenance and construction work and fabricating work from blueprints and sketches, 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, to determine whether they desire to be represented by Oil Workers International Union, or by Independent Union of Petroleum Workers, or by International Union of Operating Engineers, for the purposes of collective bargaining, or by none.

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

[See, *infra*, 63 N. L. R. B. 889, for Supplemental Decision and Amended Direction of Elections.]