

In the Matter of **KENDALL REFINING COMPANY, EMPLOYER and OIL
WORKERS INTERNATIONAL UNION, CIO, PETITIONER**

Case No. 6-R-1375.—Decided August 5, 1946

Messrs. O. C. Cool and S. J. Brill, of New York City, for the Employer.

Mr. William R. Wonsettler, of Oil City, Pa., and *Mr. Forrest Sparks*, of Coraopolis, Pa., for the Petitioner.

Messrs. Charles L. Miller and Martin C. McIntyre, of Bradford, Pa., for the Operating Engineers.

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

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Bradford, Pennsylvania, on June 4, 1946, before W. G. Stuart Sherman, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Kendall Refining Company is a Pennsylvania corporation, engaged in the production and refining of oil with properties in the State of New York and the Commonwealth of Pennsylvania. The Employer has a refinery in Bradford, Pennsylvania, including related operations at Fosterbrook, Pennsylvania. During the past 12-month period, the value of crude oil used by the Employer amounted to approximately \$4,699,000 in value, of which about .5 of 1 percent was shipped to the Company from points outside the Commonwealth of Pennsylvania. During the same period, the Employer's products, consisting of lubricants, greases, and petroleum specialties, were valued at approximately \$10,205,581, of which about 90 percent was sold and shipped outside the Commonwealth of Pennsylvania.

The Employer admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization, affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

International Union of Operating Engineers, herein called the Operating Engineers, is a labor organization, affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner contends that all employees employed in or attached to the Employer's refinery at Bradford, Pennsylvania, including Fosterbrook, a stock clerk and his helper, and watchman, but excluding pipe-line employees, production employees, the main and job order clerk, laboratory employees, office and clerical employees, salesmen, administrative employees, foremen, assistant foremen, and all other supervisory employees within the Board's usual definition, constitute an appropriate unit. The Employer, although not objecting to the inclusion or exclusion of specific classifications requested by the Petitioner, contends that the unit should extend beyond the refinery, and include the employees of both the pipe-line and the production departments. The Operating Engineers takes a position intermediate between that of the Employer and the Petitioner, and contends that the appropriate unit should include both refinery and pipe-line department employees, but exclude production department employees in harmony with the unit previously found appropriate by the Board in an earlier proceeding involving employees of the Employer.¹

With respect to the Petitioner's contention that the appropriate unit should be limited to refinery employees and exclude both pipe-line² and production department employees, it appears that the refinery constitutes a separate department; that transfers of em-

¹ See *Matter of Kendall Refining Company*, 59 N. L. R. B. 1334.

² The Petitioner first indicated its desire to exclude pipe-line employees by a motion at the hearing to amend its petition which originally included pipe-line employees in the claimed appropriate unit.

ployees between the refinery and other departments are infrequent and that the majority of the employees in one department do not come into contact with employees in any other department of the Employer during the normal course of their employment. On the other hand, it appears the function of the refinery is closely integrated with that of the pipe-line department. Moreover, although the Petitioner has apparently made little or no effort to organize employees in departments other than the refinery the Operating Engineers has extended its organization beyond the refinery, and has organized employees in the closely related pipe-line department.

The Petitioner requests that an appropriate unit be found, based largely on the extent of its organization among the refinery employees herein concerned. However, the Board customarily will not predicate a unit finding on the extent of one union's organization where organization of the employees by a rival union has been effected in a broader appropriate bargaining unit.³ In the present instance, the record indicates that there has been substantially no change in the Employer's operations, its administrative organization or the duties of the employees in the disputed departments since the earlier proceeding.⁴ Under the circumstances, we see no reason to depart from our previous finding with regard to the appropriate unit.⁵ Accordingly, we are of the opinion that the employees of the refinery and pipe-line departments, taken together, have interests sufficiently different from those of the production employees to warrant their establishment in a separate unit for the purposes of collective bargaining,⁶ but the refinery employees should not be segregated from those in the pipe-line department.

We find that all employees employed in or attached to the Employer's refinery at Bradford, Pennsylvania, including Fosterbrook, the pipe-line department, the stock clerk and his helper, and watchmen, but excluding the main and job order clerk, production employees, laboratory employees, office and clerical employees, salesmen, administrative employees, foremen, assistant foremen, and all or 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

³ See *Matter of Great Lakes Pipe Line Company*, 64 N. L. R. B. 1296, 1299, and cases cited therein.

⁴ The only change in duties as reported in the record concerns an employee in the classification of main and job order clerk who has since been transferred to the office pay roll and whom all parties agree should be excluded from the appropriate unit.

⁵ See *Matter of The Mathieson Alkali Works*, 55 N. L. R. B. 1100; *Matter of Kennecott Copper Corporation, Chino Mines Division*, 64 N. L. R. B. 1377.

⁶ See *Matter of Sunray Oil Corporation*, 61 N. L. R. B. 1648.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Kendall Refining Company, Bradford, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, as amended, 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 those employees 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 International Union of Operating Engineers, AFL, 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.