

In the Matter of NATIONAL REFINING COMPANY and OIL WORKERS
INTERNATIONAL UNION, LOCAL NO. 420

Case No. R-576.—Decided March 4, 1938

Oil Refining Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize union as the exclusive bargaining agent until question of representation determined by Board—*Unit Appropriate for Collective Bargaining:* community of interest—*Representatives:* proof of choice: applications for membership in union—*Certification of Representatives:* upon proof of majority representation.

Mr. Peter Di Leone, for the Board.

Tolles, Hogsett, & Ginn, by Mr. Thomas M. Harmon, of Cleveland, Ohio, for the Company.

Mr. Edwin L. Swope, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On December 3, 1937, Oil Workers International Union, Local No. 420, herein called the Union, filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of National Refining Company, Findlay, Ohio, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On December 22, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On January 17, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to the notice, a hearing was held on January 25, 1938, at Findlay, Ohio, before Waldo C. Holden, the Trial Examiner duly designated by the Board. The Board and the Company

were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, originally organized in 1882 as a Delaware corporation, became an Ohio corporation about 1933. It is engaged in the refining, transporting, and marketing of petroleum products, and operates refineries at Findlay, Ohio, Coffeyville, Kansas, and Marietta, Ohio. The present case involves only the refinery located at Findlay, where there are employed approximately 175 persons.

All the crude petroleum used by the Company comes to the Findlay refinery by pipe lines from States other than Ohio. Five to ten per cent of the finished product of the Company is shipped outside of Ohio. The Company has not questioned the jurisdiction of the Board.

II. THE ORGANIZATION INVOLVED

The Oil Workers International Union, Local No. 420, is a labor organization, affiliated with the Committee for Industrial Organization, admitting to membership all refinery employees at the Findlay plant, excluding clerical, supervisory and sales employees, engineers, and masons.

III. THE QUESTION CONCERNING REPRESENTATION

The Union claims to represent a majority of the employees in the Company's refinery at Findlay, Ohio. The Company has indicated its unwillingness to recognize the Union as the exclusive bargaining agent unless the Board certifies that the Union represents a majority of the Company's employees.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company

described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The bargaining unit, alleged appropriate by the Union, is a unit composed of all employees of the Refinery, excluding supervisory and clerical employees. Representatives of the Union indicated at the hearing that they deemed it appropriate also to exclude from the unit sales employees, engineers, and masons.

The Union contends that O. Beckwith and C. J. Moomey, classified by the Company as employees of the production unit of the plant, should not be included in the unit due to the fact that their work is clerical in nature. Beckwith is employed in the storeroom. His duties are to wait on employees as they come to get such materials as may be necessary to their work. He makes a record of who gets the material and how much. Moomey is employed in the car shop. He has a position similar to Beckwith's in that he gets parts for employees and keeps records.

The Company objects to Merlin Jeffrey being included in the unit due to the fact that he is an employee of the Sales Department. His duties are to repair tank trucks and trucks that are used only in the Refinery. We feel that on the basis of all the facts, the interests of Beckwith, Moomey, and Jeffrey are closely related to those of the employees in the bargaining unit and we shall, therefore, include them within the unit.

We find that the employees of the Findlay Refinery excluding clerical, supervisory and sales employees, engineers, and masons, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

There was introduced in evidence at the hearing a list of the employees of the Company at the Findlay plant as of the pay-roll period ending December 3, 1937, excluding foremen, sales, and office workers. The list contained the names of two masons and one engineer who, we have found, should not be included within the bargaining unit. If the names of the two masons and the engineer are excluded from the list and the name of Jeffrey, who was employed during such period, is added, the list contains the names of all employees at the Findlay plant within the appropriate unit as of the pay-roll period ending December 3. Such employees number 178.

The Union submitted in evidence 137 membership application cards. The Company made no objection to the cards. A comparison of such cards and the Company's list of refinery employees as of December 3, revised as indicated above, shows that 133 employees whose names appear on the application cards were employed within the appropriate unit at the Findlay plant during the aforesaid period. Three of the signers could not be identified as employees of the Company. One application card, which was not signed, had the name of a person printed thereon who could not be identified as an employee of the Company. Nine other application cards were not signed by employees, but merely had the name of the employee printed thereon. Two of the cards were dated after December 3, 1937.

Even if these cards are eliminated from consideration there is clear evidence that 122 of the 178 employees within the appropriate unit desire representation by the Union.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purpose of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of National Refining Company, Findlay, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of the Refinery, excluding clerical, supervisory and sales employees, engineers, and masons, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Oil Workers International Union, Local No. 420, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 8, of National Labor Relations Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Oil Workers International Union, Local No. 420, has been designated and selected by a majority of the em-

ployees of National Refining Company, Findlay, Ohio, excluding clerical, supervisory and sales employees, engineers, and masons, as their representative for the purpose of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Oil Workers International Union, Local No. 420, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.