

In the Matter of THE PURE OIL COMPANY and OIL WORKERS  
INTERNATIONAL UNION LOCAL 265

Cases Nos. C-458 and R-468.—Decided July 11, 1938

*Oil Producing and Refining Industry—Interference, Restraint, and Coercion—Company-Dominated Union:* domination of and interference with formation and administration; support; furnishing propoganda and organization material; disestablished, as agency for collective bargaining—*Collective Bargaining:* charge of failure to bargain collectively, dismissed—*Contract:* with organization found to be company-dominated, held unlawful and void; employer ordered to cease giving effect to—*Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit; substantial doubt as to majority status; employer's refusal to recognize union as exclusive representative for collective bargaining—*Unit Appropriate for Collective Bargaining:* all employees, excluding supervisory and clerical employees; agreement of one organization not to admit employees over whom another organization had been granted jurisdiction by a parent body, not controlling when parent body no longer controls both organizations—*Election Ordered:* company-dominated union excluded from ballot.

*Mr. Warren Woods*, for the Board.

*Pope & Ballard*, by *Mr. Edward W. Ford* and *Mr. Parker L. Jacobson*, of Chicago, Ill., for the respondent.

*Mr. J. L. Coulter*, of Washington, D. C., *Mr. C. H. Youngblood*, of Muskogee, Okla., and *Mr. E. W. Johnson*, of Beaumont, Tex., for the Oil Workers.

*Mr. Benjamin B. Wheeler*, of Muskogee, Okla., for the Federation.

*Mr. L. A. Freeman*, of Kansas City, Kans., for the Boiler Makers.

*Mr. David Kaplan*, of Washington, D. C., and *Mr. L. G. Fenn*, of Tulsa, Okla., for the Machinists.

*Mr. Richard A. Perkins*, of counsel to the Board.

DECISION  
ORDER  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 18, 1937, Oil Workers International Union, Local 265,<sup>1</sup> herein called the Oil Workers, filed with the Regional Director for

<sup>1</sup>The petition was signed "International Association of Oil Field, Gas Well & Refinery Workers of America, Local 265." Upon a showing that the organization had adopted the name given in the text, the Trial Examiner allowed the Board's motion to amend the pleadings to conform to the correct style of the Oil Workers.

the Sixteenth Region (Fort Worth, Texas) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Pure Oil Company,<sup>2</sup> Muskogee, Oklahoma, herein called the respondent, 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 July 27, 1937, the Oil Workers filed with the Regional Director charges alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of the Act.

On November 2, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Sections 3 and 10 (c) (2), and Article II, Section 37 (b), of National Labor Relations Board Rules and Regulations—Series 1, as amended, directed an investigation of representatives, authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice, and ordered that the representation proceeding and the proceeding in respect to the alleged unfair labor practices be consolidated for the purpose of hearing.

On November 16, 1937, the Regional Director issued a complaint and a notice of hearing in the consolidated proceedings, copies of which were duly served upon the respondent, upon the Oil Workers, and upon Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, herein called the Federation, a labor organization claiming to represent employees directly affected by the investigation. The complaint alleged in substance that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (5) and Section 2 (6) and (7) of the Act, in that the respondent had dominated and interfered with the formation and administration of the Federation and had refused to bargain collectively with the Oil Workers. On November 26, 1937, the respondent filed its answer in which it admitted the allegations of the complaint relating to the nature of the respondent's business but denied the other material allegations.

Pursuant to the notice, a hearing was held from November 29 to December 7, 1937, before Karl Mueller, the Trial Examiner duly designated by the Board. On November 29, 1937, the Federation was on its motion granted leave by the Trial Examiner to intervene in the complaint proceeding. On the same day, International Association of Machinists, herein called the Machinists, and International Brotherhood of Boiler Makers, Iron Ship Builders, Welders, and Helpers of America, herein called the Boiler Makers, both labor organizations, asked and were granted leave to intervene in the repre-

<sup>2</sup> The respondent was designated "Pure Oil Company," in the charge, the petition, and the order directing an investigation.

sentation proceeding, and both filed briefs. The Board, the respondent, and the Federation were represented by counsel, and the Machinists, the Boiler Makers, and the Oil Workers were represented by union officials. All participated in the hearing from November 29 to December 7, 1937.

On December 22, 1937, counsel for the Board filed with the Trial Examiner a motion to reopen the record to receive newly discovered evidence and to stay the issuance of the Trial Examiner's Intermediate Report. Upon notice to all parties, a hearing on said motions was held on December 29, 1937. The respondent filed objections to the Board's motions. On December 31, 1937, the Trial Examiner issued an order reopening the record to receive further evidence and staying the issuance of his Intermediate Report.

Pursuant to notice, a further hearing was held on January 7, 1938, at Beaumont, Texas, before the same Trial Examiner. The Board and the respondent were represented by counsel and the Oil Workers by a union official. All participated in the hearing. There was no appearance for the Federation, the Boiler Makers, or the Machinists. At the opening of the second hearing the respondent objected to the reopening of the record on the ground that the Board's motion to reopen had been filed with the Trial Examiner rather than with the Regional Director as provided in said Rules and Regulations. The Trial Examiner overruled the objection. In our opinion any irregularity in the filing of the motion could not have prejudiced the respondent, which had due notice of each step in the proceeding. The Trial Examiner's ruling is affirmed.

At both hearings, full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of both hearings the Trial Examiner made several rulings on motions and on objections to the admission of evidence. At the close of the Board's case at the first hearing the Trial Examiner dismissed that part of the complaint which alleged that the respondent had caused to be published "The Voice of the Employees of the Pure Oil Company," a handbill attacking the Oil Workers. The evidence which had been adduced at the time this ruling was made did not support the allegation stricken, so that the Trial Examiner's ruling was correct when made. At the second hearing, evidence tending to support the allegation was introduced. We therefore reverse the ruling of the Trial Examiner in this respect. The Board has reviewed the other rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings, except as indicated above, are hereby affirmed. At various times during both hearings the respondent made several other motions to dismiss the complaint and various portions thereof. The Trial Examiner reserved decision thereon.

By order dated March 7, 1938, and amended order dated April 25, 1938, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered this proceeding to be transferred to and continued before it.

Pursuant to notice, a hearing was held before the Board on April 28, 1938, in Washington, D. C., for the purpose of oral argument. The Oil Workers, the Machinists, and the respondent participated.

The Board hereby denies the respondent's motions upon which the Trial Examiner reserved decision, except the motion to dismiss the complaint so far as it alleges that the respondent refused to bargain collectively with the Oil Workers. That motion will be granted, as will hereinafter appear.

Upon the entire record in the proceeding, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Pure Oil Company is an Ohio corporation engaged, directly and through more than 60 corporate subsidiaries, in acquiring and developing oil lands, producing, refining, transporting, and selling petroleum and petroleum products, including gasoline, kerosene, lubricating oils and greases, and carrying on operations incidental to the foregoing activities. The respondent owns and operates six refineries located in Ohio, Michigan, West Virginia, Texas, and Oklahoma. The product of these refineries is distributed through more than 750 bulk distributing plants and more than 15,000 retail outlets in 32 States.

This proceeding relates only to the respondent's refinery at Muskogee, Oklahoma. The Muskogee refinery processes gasoline, kerosene, and fuel oils. It consumes about 8,000 barrels of crude oil each day, and produces about 4,200 barrels of gasoline daily. Approximately 90 per cent of the gasoline produced by the Muskogee refinery is transported by pipe line to Okmulgee, Oklahoma, and there mingled with other gasoline and piped to northern States including Missouri, Illinois, Iowa, and Minnesota.

The respondent employs about 250 persons at its Muskogee refinery.

#### II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union, Local 265, a labor organization affiliated with the Committee for Industrial Organization, admits to membership "bona fide workers engaged in production, transportation, refining, and marketing of natural gas and petroleum products, and allied industries peculiar to the oil industry."

Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, is an unaffiliated labor organization. It admits to its membership all of the employees of the respondent in the Muskogee refinery except "employees in an administrative capacity and department foremen and assistant department foremen."

International Association of Machinists is a labor organization affiliated with the American Federation of Labor. It admits to membership employees in the oil industry whose work falls within its jurisdiction as defined in its constitution.

International Brotherhood of Boiler Makers, Iron Ship Builders, Welders, and Helpers of America is a labor organization affiliated with the American Federation of Labor. It admits to its membership employees in the oil industry whose work falls within its jurisdiction as defined in its constitution.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Background*

The Oil Workers commenced organizing the respondent's employees in 1933, and were granted a charter from their international union in December of that year. In 1934 the Oil Workers discussed grievances with the respondent, but were not formally accorded recognition. During the same period there existed among the employees a labor organization known as the Employees Conference Plan, in the administration of which the respondent in some measure participated. This organization disappeared when the respondent omitted to call the annual election scheduled for March 1936.

In April 1936 the respondent, after conferring with international officers of the Oil Workers, promulgated a "Statement of Policy" providing a procedure for discussion of grievances presented by individuals or labor organizations. The Oil Workers accepted the statement, which by its terms was to be effective for one year, with the understanding that it gave the Oil Workers bargaining rights for such of their members as were employed by the respondent.

#### B. *The Federation*

In June 1937 the Federation came into existence. W. O. Hudson, a compressor operator at the Muskogee refinery, during the first week of June heard a rumor that the respondent had signed a closed-shop agreement with the Oil Workers covering the respondent's refinery at Toledo, Ohio. Hudson wished to avoid such an occurrence at the Muskogee refinery. He had read in the local newspapers about the formation of an "independent" organization among employees of the Humble Oil and Refining Company at Baytown,

Texas, and had heard that the Humble Plan had been adopted by employees of the respondent at its Smith's Bluff refinery at Port Neches, Texas. Hudson accordingly suggested to several employees at the Muskogee refinery, including Luther Allen, a stillman, Meredith Rogers, yield clerk, one Hutchinson, a boiler fireman, and one Eppley, absorption plant operator, the formation of a rival organization in order to block the Oil Workers' efforts. The group called a meeting of employees June 8 at the Muskogee Y. M. C. A. About 60 attended. The group chose temporary officers, among them a secretary-treasurer, Meredith Rogers. A committee of Federation organizers, including Hudson, asked Rogers to write the Humble Company to request information concerning the "independent" organization among its employees.

Rogers asked George T. Yost, superintendent of the Muskogee refinery, to secure the desired information from the respondent's Smith's Bluff refinery, where it was reported that a similar plan had been adopted. Rogers claims that he did not specify to Yost the nature of the information wanted, but that he merely asked Yost to write or call a person who was employed in the laboratory at the Smith's Bluff refinery, to ask for information "they" had received from the Humble Company. At the hearing Rogers said he could not remember the name of the individual he mentioned to Yost. Yost substantially corroborated this account of the request except that he stated that Rogers did not mention the name of any individual who might have the information. Yost admitted that at the time of the conversation he was aware that an "independent" organization had been formed at the Smith's Bluff refinery.

Soon after Rogers made his request of Yost, Yost received a telephone call from Frank S. Harrison, who was then at the Smith's Bluff refinery. Harrison was the respondent's safety director in charge of safety matters throughout the respondent's system of plants and other facilities. According to Harrison, he called Yost to discuss safety conditions at the Muskogee refinery. During the course of the conversation, Yost asked Harrison to secure some literature pertaining to the Humble organization. Harrison testified that Yost did not further specify the nature of the literature in question, nor did he suggest who might furnish it or how it might be obtained. Harrison stated at the hearing that he had not asked anyone to forward the information to Yost, but that "quite a lot" of the Smith's Bluff employees were in the office listening to Harrison's end of the telephone conversation, and that upon the conclusion of the conversation he said to the employees present "something about Yost wanting some information from the Humble."

Some time after asking Yost for the Humble information—the date is not given—Rogers received from Walter T. Hardin, chief

clerk at the Muskogee refinery, an envelope containing copies of the constitution and bylaws of the "independent" organization of employees at a Humble Company refinery, together with a copy of a handbill entitled "The Voice of the Employees of the Humble Oil and Refinery Company." The envelope had been opened before Rogers received it. He testified that he could not remember how the envelope was addressed. Hardin had received the envelope from Lucy Rashaw, secretary to Yost. Miss Rashaw could not recall receiving or delivering this material, but stated that she might have handled this item in the course of her general office routine in disposing of a large volume of correspondence. Yost testified that Miss Rashaw did mention to him the receipt of the correspondence in this language: "Here is some information that came in," and that he replied "Well, I suppose that was the information that was requested by Mr. Rogers. Pass that on." Yost stated that he did not see the contents of the envelope.

At the time of his conversation with Yost, Harrison was aware of the existence of an "independent" labor organization among the respondent's employees at the Smith's Bluff refinery. Testimony of several Smith's Bluff employees at the latter hearing establishes that in May 1937 Harrison conferred several times with employees who formed such an organization. The employees' testimony tends to show that Harrison told the Smith's Bluff employees about the labor organization at the Humble refinery. Several employees from the respondent's Smith's Bluff refinery went to the Humble refinery at Baytown, Texas, and secured copies of the constitution and bylaws of the Humble organization. Thus it is clear that the information Rogers wanted was available at the Smith's Bluff refinery, and that Harrison knew what was meant. But it does not appear who sent the information to Muskogee. The secretary-treasurer of the Smith's Bluff organization denied that he had sent it, and stated that he had inquired among the Smith's Bluff employees whether any of them had sent it, and had not been able to find anyone who had done so. But the material was in fact received at Muskogee.

On June 25, Hudson arranged for the publication of a handbill made up in the form of a newspaper and entitled "The Voice of the Employees of the Pure Oil Company of Muskogee, Oklahoma." The handbill was chiefly devoted to a violent attack upon the Committee for Industrial Organization and its leaders. Most of the material appearing in the handbill was copied from the Humble publication. In preparing copy for the publication Hudson was assisted by Benjamin Wheeler, a local attorney, who charged no fee for this service. Among the items of copy furnished the printer was a leaflet entitled "A Message to Employees: Facts about the Wagner Act." We have heretofore considered the identical leaflet and found that it gives

employees a distorted and misleading account of their rights under the Act.<sup>3</sup> This document is on the stationery of the National Association of Manufacturers, but no credit therefor was given in the "Voice of the Employees of the Pure Oil Company." Hudson and a group of employees arranged for widespread distribution of the handbill. On June 28 the Federation adopted a constitution and a set of bylaws patterned after the forms obtained from Smith's Bluff.

Meanwhile, Oil Workers officials were trying to negotiate a contract with the respondent covering the Muskogee refinery. On June 14, and again on June 17, they saw Yost for that purpose. Yost informed Oil Workers representatives that he did not have authority to deal with them, and that negotiations must await the arrival of J. S. Stubbs, the respondent's personnel director. Yost also questioned whether the Oil Workers represented a majority of the employees. At one of these meetings C. H. Youngblood, local president of the Oil Workers, stated, "We have a company union down here." Yost replied, "Yes, but you don't have to belong to it."

Oil Workers officials arranged to meet Stubbs at Muskogee July 13 to discuss the proposed agreement. Stubbs arrived in Muskogee several days prior to that date. On July 10, several of the Federation organizers, having heard that Stubbs was in town, called on him and expressed a desire to be recognized. The testimony of members of this committee indicates that they were not clear as to just what they were seeking, except that they wanted to resist the Oil Workers. Stubbs informed the committee that they must represent a majority of the employees if they wanted an agreement with the respondent. He further advised them that they might represent clerical workers but that they should exclude supervisory employees. At that time the Federation had about 96 members, including clerical workers—less than a majority in the bargaining unit discussed at this conference. The Federation organizers continued to enroll members, and on July 12 a committee from the Federation informed Stubbs that they represented 103 employees. Later the same day Stubbs wired officials of the Oil Workers, cancelling the projected meeting set for July 13, advising them that he was informed that the Oil Workers did not represent a majority of the refinery employees, and expressing his willingness to treat with the Oil Workers as a minority group. On July 14 Stubbs again met the Federation committee. Committee members counted out about 103 membership application cards in Stubbs' presence, but he did not examine the signatures or compare them with any pay-roll list. On his own motion, Stubbs proposed a form of contract which the respondent had entered into with Oil Workers locals and with unaffiliated unions at other refineries. The

<sup>3</sup> *Matter of Mansfield Mills, Inc. and Textile Workers Organizing Committee*, 3 N. L. R. B. 901.

Federation committee signed the agreement as submitted. It provided for the recognition of the Federation as exclusive bargaining representative and for the continuation of the respondent's statement of labor policy until amended by mutual consent.

An effort was made at the hearing to establish that supervisory officials of the Muskogee refinery counseled employees to stay out of the Oil Workers and impliedly favored the Federation. The statements quoted are so remote and so equivocal as to be unimportant. There was also testimony that the Federation organizers solicited members openly in the refinery, presumably with the acquiescence of the management. This is countered by equally impressive evidence of solicitation on the premises by the Oil Workers.

The respondent, however, is clearly chargeable with furnishing the Federation the organization and propaganda material. It is true that the exact source of the material at the Smith's Bluff refinery is unknown. However, Harrison repeated Yost's request for the material to employees at Smith's Bluff under such circumstances as would account for its transmittal, and Harrison did this with full knowledge of what was involved. Moreover, Rogers received the material through official channels at the Muskogee refinery. Yost obviously knew the general nature of the literature which he forwarded to Rogers. The respondent's contention that Yost merely did a favor for Rogers in transmitting the latter's request to Smith's Bluff and securing the literature for him is untenable. Instead of a favor, this was a positive act of interference and support when performed by the employer for an organization of employees in process of formation. By delivering to Rogers the organization forms and sample handbill, which the management had evidently inspected, the respondent plainly indicated its approval of the formation of the Federation. That organization adopted the constitution and bylaws furnished by the respondent, with minor alterations, and used the propaganda material to combat the Oil Workers at a time when the respondent's statement of labor policy had expired and the Oil Workers was demanding a contract with the respondent.

It may well be that the initial impetus toward the formation of an unaffiliated labor organization came from among the employees. Had the organization grown and taken form without the respondent's help it might well have been entitled to represent employees. But when an opportunity arose to aid the Federation in such a matter as to determine its structure and its policy, the respondent saw fit to interfere. And having so interfered, the respondent, on the eve of the meeting previously arranged with the Oil Workers, was willing to accept on faith the Federation's claim of majority status, well knowing that the Oil Workers was pressing for a contract. Immediately upon being informed of the Federation's colorable title to a majority

Stubbs hastened to cancel his appointment with the Oil Workers. The respondent's alacrity in bringing forth a contract when the Federation had apparently demanded none evinced the respondent's eagerness to establish the Federation as the employees' representative upon a firm contractual basis. When Stubbs rejected the Oil Workers' request to bargain collectively, the primary purpose of the respondent's aid and support of the Federation was accomplished.

We find that by the above-described course of conduct the respondent has dominated and interfered with the formation and administration of the Federation and has contributed support to it, and that the respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Since the respondent dominated and interfered with the formation and administration of the Federation and contributed support thereto, the respondent's contract of July 14, 1937, with the Federation is unlawful and void.<sup>4</sup>

### *C. The alleged refusal to bargain collectively*

#### 1. The appropriate unit

The charge alleged that "the refinery employees" constituted a unit appropriate for the purposes of collective bargaining. The complaint avers that prior to the date of the alleged refusal to bargain the respondent had recognized the Oil Workers as representative of a majority of the employees at the Muskogee, Oklahoma, refinery. This allegation is not borne out by the proof, and is mentioned here only because it implies a definition of an appropriate unit. In their petition for investigation and certification of representatives the Oil Workers asserted that a unit composed of "entire refinery except clerical and supervisory employees" was appropriate.

In its motion to intervene the Federation alleged that the production, maintenance, and clerical employees of the respondent at its Muskogee refinery constituted an appropriate bargaining unit. A number of clerical workers belonged to the Federation, which bargained for them as well as for other employees. Since we have found that the respondent dominated and interfered with the formation and administration of the Federation and contributed support thereto, the experience of the Federation in collective bargaining is not significant and cannot be accorded weight as indicative of the employees' own desires concerning the definition of a unit appropriate for the purposes of collective bargaining. The respondent urges that clerical workers should be included in the bargaining unit. Clerical employees are ordinarily excluded from a unit composed largely of manual workers unless all the labor organizations involved desire

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<sup>4</sup> *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation) and Textile Workers Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604.

their inclusion. We shall follow our usual practice and exclude clerical employees. The exclusion of supervisory employees is a matter of course in the absence of special considerations, and is here contested by none of the parties. Supervisory employees will also be excluded.

The Boiler Makers and the Machinists in their motions for leave to intervene each claim that those employees at the Muskogee refinery who fall within their respective craft "jurisdictions" as defined in their constitutions should be excluded from the unit alleged to be appropriate in the Oil Workers' petition. Neither the Boiler Makers nor the Machinists asked for certification in any unit composed of workers falling within their respective jurisdictions. At the oral argument before the Board in Case No. C-458 the Machinists' representative stated that they had no interest in the determination of a unit appropriate for the purposes of collective bargaining in this case, provided that the unit here found appropriate should extend only to the respondent's Muskogee refinery, and that the Machinists' position with respect to other oil refineries be not disturbed in this proceeding. The complaint and the petition relate only to employees of the respondent at its Muskogee refinery, so that the Machinists' interests in other refineries are not in jeopardy in this proceeding.

In support of their claims that members of their crafts should be detached from the plant unit, the Boiler Makers and the Machinists relied on contracts made between each of them and the Oil Workers' predecessor, International Association of Oil Field, Gas Well, and Refinery Workers of America, whereby the Oil Workers' predecessor agreed to respect the craft jurisdictions of the Boiler Makers and the Machinists. These agreements were made at a time when all the contracting parties were subject to the authority of the American Federation of Labor. Since the date of the contracts, the Oil Workers has affiliated with the Committee for Industrial Organization. We have said of the contract with the Machinists,

The question of whether this agreement is still in effect, since the two parties to it no longer recognize the jurisdiction of the same parent body, does not concern us here. At least in the absence of a parent body to which the parties might look for the enforcement of such an agreement, it cannot be given controlling weight.<sup>5</sup>

We recently reached the same conclusion with respect to the Boiler Makers contract.<sup>6</sup>

<sup>5</sup> *Matter of The Texas Company, West Tulsa Works and Oil Workers International Union, Local No. 217*, 4 N. L. R. B. 182.

<sup>6</sup> *Matter of Waggoner Refining Company, Inc., and W. T. Waggoner Estate and International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731.

There is no evidence that any of the employees at the Muskogee refinery belong to either the Boiler Makers or the Machinists or have authorized either organization to represent them. Officers of the craft organizations estimated that two employees should be classified as coming under the jurisdiction of the Boiler Makers and nine under the jurisdiction of the Machinists. One employee, a member of the Oil Workers, testified that by reason of the nature of his work he would prefer to be represented by the Boiler Makers, but that he had never been solicited to join that organization.

The Oil Workers has been organizing the employees at the respondent's Muskogee refinery since 1933 on an industrial basis. The craft unions here make no showing of substantial membership and we see no reason to find any other than a plant unit to be appropriate.<sup>7</sup>

We find that all the employees of the respondent at its Muskogee, Oklahoma, refinery, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

## 2. Representation in the appropriate unit

As stated in Section III B, above, the respondent on July 13, 1937, refused to recognize the Oil Workers as exclusive representative for the purposes of collective bargaining. The respondent furnished at the hearing a list of persons employed at the Muskogee refinery during July 1937. It appears therefrom that at the time of the alleged refusal to bargain the unit which we have found to be appropriate for the purposes of collective bargaining included 185 employees. The Oil Workers produced records tending to show that at that time it was authorized to represent 85 of the employees.

Since the Oil Workers did not represent a majority of the employees in an appropriate unit on July 13, 1937, the respondent was not bound to bargain collectively with the Oil Workers as the exclusive representative of the employees in an appropriate unit. The allegations of the complaint with respect to the alleged refusal to bargain collectively within the meaning of Section 8 (5) of the Act will therefore be dismissed.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III B, above, occurring in connection with the operations of the re-

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<sup>7</sup> *Matter of Allis-Chalmers Manufacturing Company and International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159.

spondent 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

We have found that the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection. We shall order the respondent to cease and desist from such practices.

We have also found that the respondent has dominated and interfered with the formation and administration of the Federation and has contributed support thereto. We shall order the respondent to cease and desist from so doing, and in addition to withdraw recognition from the Federation and disestablish that organization as representative of any of its employees for purposes of dealing with the respondent.

#### VI. THE QUESTION CONCERNING REPRESENTATION

As stated in Section III B, above, on July 13, 1937, the respondent, by J. S. Stubbs, its personnel director, refused to recognize the Oil Workers as exclusive representative of the respondent's employees at the Muskogee refinery for purposes of collective bargaining, although the Oil Workers at that time claimed to represent a majority of such employees.

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

#### VII. 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 respondent 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.

#### VIII. THE DETERMINATION OF REPRESENTATIVES

The respondent employed during the month of November 1937, immediately preceding the first hearing herein, a total of 176 persons in the unit which we found appropriate in Section III, C, 1, above. At the hearing the Oil Workers introduced in evidence a petition pur-

porting to bear the signatures of 101 employees who had authorized the Oil Workers to represent them. Oil Workers officials testified that the signatures were affixed to the petition at various times beginning in September 1937. The respondent and the Federation stipulated that each person whose name appeared on the petition would, if called as a witness, testify that he had signed the same in the manner indicated by the Oil Workers. The respondent and the Federation reserved the right to question whether the persons named in the petition were actually employees of the respondent. A comparison of the signatures on the petition with the names on the respondent's pay roll for November 1937 indicates that only 85 of the signatures on the petition can be identified as belonging to persons on the pay roll. The Oil Workers therefore has failed to show its authority to represent a majority of the 176 workers in the appropriate unit during the most recent period upon which the record furnishes any information, and is not entitled to certification upon the basis of the membership records in evidence.

We find that the question which has arisen concerning the representation of employees of the respondent can best be resolved by holding an election by secret ballot. Since we have found that the respondent dominated and interfered with the formation and administration of the Federation and contributed support thereto, we shall make no provision for the designation of the Federation upon the ballot.

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

#### CONCLUSIONS OF LAW

1. Oil Workers International Union, Local 265, Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, International Association of Machinists, and International Brotherhood of Boiler Makers, Iron Ship Builders, Welders, and Helpers of America are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by dominating and interfering with the formation and administration of Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, and contributing support to it has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. A question affecting commerce has arisen concerning the representation of employees of The Pure Oil Company, Muskogee, Oklahoma, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

7. All the employees of the respondent at its Muskogee, Oklahoma, refinery, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Pure Oil Company, Muskogee, Oklahoma, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, or the formation or administration of any other labor organization of its employees, and from contributing support to Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, or to any other labor organization of its employees;

(b) From recognizing Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, as representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work;

(c) From giving effect to its contract of July 14, 1937, with Employees Federation of the Pure Oil Company of Muskogee, Oklahoma;

(d) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act.

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

(a) Withdraw all recognition from Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, as representative of any of its employees for the purpose of dealing with the respondent con-

cerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, as such representative;

(b) Immediately post notices in conspicuous places throughout its Muskogee, Oklahoma, refinery and maintain such notices for a period of thirty (30) consecutive days, stating (1) that the respondent will cease and desist as aforesaid, (2) that the respondent will withdraw all recognition from Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, is disestablished as such representative, and (3) that the contract made with Employees Federation of the Pure Oil Company of Muskogee, Oklahoma, on July 14, 1937, is void and of no effect;

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

And it is further ordered that the allegations of the complaint with respect to the respondent's refusal to bargain collectively within the meaning of Section 8 (5) of the Act be, and they hereby are, dismissed.

#### 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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

**DIRECTED** that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with The Pure Oil Company, Muskogee, Oklahoma, an election by secret ballot shall be conducted at such time as the Board will in the future direct, under the direction and supervision of the Regional Director for the Sixteenth Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all the employees of the respondent at its Muskogee, Oklahoma, refinery who were employed by the respondent within a period to be determined by the Board in the future, excluding supervisory and clerical employees, to determine whether or not they desire to be represented by Oil Workers International Union, Local 265, for the purposes of collective bargaining.