

In the Matter of STANDARD OIL COMPANY (INDIANA), EMPLOYER and  
OIL WORKERS INTERNATIONAL UNION, C. I. O., PETITIONER

Case No. 30-RC-104.—Decided December 15, 1948

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.\*

Upon the entire record in the case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act. The plant concerned in this proceeding is its Casper, Wyoming, refinery, one of six that it operates.

2. The labor organizations named herein claim to represent employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.<sup>2</sup>

4. The Employer and the Intervenor, or its predecessor Standard Employees Collective Bargaining Association, have bargained since 1937 on the basis of a unit of all non-supervisory employees at the Casper refinery.<sup>3</sup> Early in the hearing the Petitioner was allowed

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<sup>1</sup> The Intervenor, Central States Petroleum Union, Local 124, moved to dismiss the petition on the ground that the Petitioner submitted evidence of representation to complete its 30 percent showing several weeks after filing the petition, rather than within the 48-hour period specified in the Board's Statements of Procedure, Sec. 202.16. This motion is denied. As we have repeatedly stated, representation evidence is an administrative expedient, not subject to direct or collateral attack. See *Matter of Stokely Foods, Inc.*, 78 N. L. R. B. 842, and cases there cited.

\*Houston, Reynolds, and Murdock.

<sup>2</sup> The current contract between the Intervenor and the Employer is a year-to-year contract dated September 1, 1946. Because it has been opened for amendment by the parties, it is not urged as a bar to the petition filed August 4, 1948.

<sup>3</sup> At the Greybull, Sugar Creek, and Wood River refineries of the Employer a similar unit has been the basis of contracts with the Intervenor and its predecessor for the same period. At its Neodosha refinery secretaries, stenographers, and clerks who handle labor relations

to amend its petition<sup>4</sup> to exclude professional employees and office employees working under the supervision of the office manager, and to include clerical employees, if any, working under the supervision of refinery supervisors. Thus, with the possible exception of plant clerical employees the unit petitioned for covers only operating and maintenance employees.<sup>5</sup> The Intervenor and the Employer prefer a continuance of the all-employee unit, excluding only guards, watchmen, and supervisors.

At the Casper refinery there are approximately 511 operating and maintenance employees, 33 clerical employees, and 22 professional employees. Various employee benefit plans, sponsored by the Employer, apply to all employees alike and the Casper Employees Social and Athletic Association, to which the Employer sometimes contributes, is open to participation by all. Personnel records are centrally maintained and one pay roll is made up. From the record it appears that the bulk of employees are paid on an hourly basis, with professional and most clerical employees paid a salary. The Intervenor introduced in evidence numerous memorandum agreements executed over the years showing bargaining by it for all types of employees at the refinery, and pointed to the long no-strike record at Casper in support of its contention that the all-employee unit is appropriate.

*Office clerical employees:* All but 4 of the clerical employees work in the main office at Casper. The exceptions are the 3 clerks in the storehouse, the machine shop, and the instrument department, and the secretary to the chief chemist.<sup>6</sup> The Employer contends that the clerical employees, maintenance employees and "day process workers"<sup>7</sup> have the same hours, the same lunch period and the same overtime supper allowance, and that these employees frequently ride to and from work together. The Employer also contends that interchange is sub-

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files have been excluded from the unit since 1946. At the Whiting, Indiana, refinery, professional employees have been excluded since 1944, as well as secretaries, stenographers, and clerks handling labor relations correspondence and files.

<sup>4</sup>The unit as stated in the petition was: "All operating and maintenance employees presently employed at the Company's refinery at Casper, Wyoming. Including all employees set up in the appropriate unit in the agreement between the Company and the Central States Petroleum Union"

<sup>5</sup>Intervenor's motion to dismiss on the ground that the unit description in the petition is ambiguous is denied. All parties introduced testimony at the hearing on the unit issue as clarified by amendment, that is, the propriety of including office clerical employees and of giving professional employees the option of inclusion.

<sup>6</sup>The storehouse is a separate building, a quarter of a mile from the main office building. The instrument department is located in it. The machine shop is another separate building over a quarter of a mile from the main office. Although the three clerks employed at these locations are, like other clerical employees, under the final authority of the office manager, they receive work directions from refinery superintendents. The secretary to the chief chemist works in the research building, close to the main office.

<sup>7</sup>There is a shift differential in effect at the Casper refinery. Apparently clerks work only on the day shift. No testimony was taken as to the number and type of employees on other shifts.

stantial considering the size of the clerical staff, as evidenced by 14 transfers between 1938 and 1948 from the clerical to the mechanical or operating departments, or to the inspection laboratory, or vice versa. However, lines of promotion exist within the clerical group and within the refinery group, but not across these groups. It also appears that office workers have a separate "hiring-in" point from other employees.

The Employer concedes that as a general rule the Board has found production and maintenance units proper in oil refineries, excluding office clerical employees. But it argues that, as its main office is in Chicago, all clerical employees at the Casper refinery are in effect factory or plant clericals, whom the Board often includes in a production and maintenance unit.<sup>8</sup> The record does not support the Employer's position with respect to the clerical employees generally at Casper, but only with respect to the three clerks in the storehouse, the machine shop, and the instrument department. All the other clerical employees at Casper have little contact with the operating and maintenance employees and we think no persuasive reason has been advanced for departing from the Board's general practice of excluding office clerical employees from a unit of physical workers.<sup>9</sup>

*Professional employees:* The professional employees at Casper are engineers with college degrees. They work under the supervision of the chief engineer. Historically it has been the Board's policy to exclude professional and technical employees from units of production and maintenance employees.<sup>10</sup> However, the Employer contends that under Section 9 (b) (1) of the amended Act the Board lacks authority to *exclude* these professional employees without affording them a separate election. We think it clear from the wording of the section that it is only when the Board deems it appropriate to *include* professional employees in a unit with non-professional employees, that the professionals must be given a separate election to determine whether they shall be included. When the Board determines, as it does here, that they should be *excluded*, the Act requires no vote by them.

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<sup>8</sup> The Employer also argues that a strike by the clerical employees at Casper, if they were represented as a separate unit, would cause a shut-down of the entire refinery due to inability to continue shipments. This may be true, but the fact that a strike by one group of employees is likely to throw another group out of work, does not alone control the issue whether the community of interest between the two groups is sufficient to warrant or require their placement in a single bargaining unit.

<sup>9</sup> *Matter of Savage Arms Corporation*, 62 N. L. R. B. 1156; *Matter of Standard Oil Co. (Ohio)*, 48 N. L. R. B. 1291 (Toledo Refinery); 52 N. L. R. B. 802 (Cleveland Refinery); 53 N. L. R. B. 925 (Lima Refinery); *Matter of Standard Oil Co. (New Jersey)*, 56 N. L. R. B. 1590 (Bayonne Refinery); 57 N. L. R. B. 650 (Bayway Refinery); *Matter of Standard Oil Co. (California)*, 63 N. L. R. B. 471 (El Segundo Refinery); 67 N. L. R. B. 139 and 79 N. L. R. B. 1466 (Richmond Refinery).

<sup>10</sup> *Matter of Continental Motors Corporation*, 73 N. L. R. B. 888.

We find that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All operating and maintenance employees at the Employer's Casper, Wyoming, refinery, including the stockman,<sup>11</sup> the storehouse clerk,<sup>12</sup> the machine shop clerk, and the instrument department clerk, but excluding all office clerical employees,<sup>13</sup> all professional employees,<sup>14</sup> and all guards, watchmen and supervisors as defined in the Act.

### DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by Oil Workers International Union, C. I. O., or by Central States Petroleum Union, Local 124, or by neither.

<sup>11</sup> The stockman receives and unpacks materials, and supplies parts to employees on requisition.

<sup>12</sup> The storehouse clerk is not to be confused with the four storehouse *material* clerks who work in the main office and keep a running inventory of materials. The latter are excluded from the unit with other main office clerical employees.

<sup>13</sup> The secretary to the chief chemist is excluded along with the office clerical employees.

<sup>14</sup> The parties agreed that the three employees who do manual work in the research department assisting the chemists are non-professionals and belong in the over-all unit.