

In the Matter of SOCONY-VACUUM OIL COMPANY, INCORPORATED and
GENERAL TRUCK DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL UNION
No. 498, A. F. of L.

Case No. 17-R-711.—Decided January 8, 1944

Mr. James P. Kem, of Kansas City, Mo., for the Company.

Mr. James H. Barnes, of Kansas City, Kans., for the AFL.

Mr. Frank E. Reinhardt, of Kansas City, Mo., for the Association.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by General Truck Drivers, Warehousemen & Helpers, Local Union No. 498, A. F. of L., herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Socony-Vacuum Oil Company, Incorporated, at its lubricating plant on Eagle Road, Kansas City, Kansas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert S. Fousek, Trial Examiner. Said hearing was held at Kansas City, Missouri, on November 15 and 16, 1943. The Company, the AFL, and The Employees Association of Socony-Vacuum Company, Incorporated, herein called the Association, 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Socony-Vacuum Oil Company, Incorporated, a New York corporation, is engaged in the production, manufacture, and distribution

of petroleum and petroleum products. Among its many operations, the Company maintains a divisional office at 925 Grand Avenue, Kansas City, Missouri, a lubricating plant at 9th and Eagle Road, Kansas City, Kansas, a gasoline terminal on property adjacent to the lubricating plant, and a bulk distributing plant on Roanoke Road, Kansas City, Missouri. A substantial amount of the products distributed by the Company from these plants originates in States other than the States of Kansas and Missouri.

The Company admits and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

General Truck Drivers, Warehousemen & Helpers, Local Union No. 498, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

The Employees Association of Socony-Vacuum Oil Company, Incorporated, is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During the early part of August 1943, the AFL requested recognition as the exclusive bargaining representative of the Company's employees at its Eagle Road lubricating plant. The Company has refused to grant such recognition until the AFL has been certified by the Board in an appropriate unit. The Company further contends that it is presently under contract with the Association and that said contract is a bar to the instant proceeding.

The contract which the Company urges as a bar was executed on March 23, 1942, and by its terms was to be effective for a period of 1 year and indefinitely thereafter, being terminable upon 60 days' notice. Since the contract is now terminable at will, we find that it is not a bar to a present determination of representatives.¹

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.²

We find that a question affecting commerce has 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.

¹ The AFL contends that the contract is no bar for the further reason that the Association has ceased to exist as a labor organization. In view of our findings above, it is unnecessary to consider this contention.

² The Field Examiner reported that the AFL submitted 12 application-for-membership cards bearing apparently genuine signatures of persons listed on the Company's pay roll of August 15, 1943, which contained the names of 19 employees in the appropriate unit. The Association relies upon its contract and an authorization petition dated January 2, 1943, to establish its interest.

IV. THE APPROPRIATE UNIT

The AFL contends that all employees at the Company's Eagle Road lubrication plant, excluding office and clerical employees, guards, chemists, and supervisory employees constitute an appropriate bargaining unit. The Company and the Association contend that the appropriate unit should include the employees at both the Eagle Road plant and the Roanoke plant.

The Roanoke plant, in Kansas City, Missouri, is a city distribution plant from which the Company distributes its products to local retailers. It is in the Southern District of the Company's Sales Division. Its personnel consists of salesmen, truck drivers, office employees, and one or two warehousemen. The Eagle Road plant is approximately 7 miles from the Roanoke plant, in Kansas City, Kansas. It is part of the Company's Marketing Division and its supervision is entirely separate from that of the Roanoke plant. This plant is maintained for the purpose of compounding and blending oils and greases, cleaning and reconditioning barrels and other containers, and warehousing and preparing oils and greases for shipment in interstate commerce. At the lubrication plant are employed approximately 20 warehousemen and maintenance men, 2 chemists, and 3 office employees. The Gasoline Terminal is located next to the lubrication plant, but since none of the parties contends it should be included in the unit and the record contains little evidence pertaining to it, we shall not be concerned with it in this proceeding. These 3 operations function independently of one another and there is virtually no interchange of personnel among them. Clearly, therefore, a unit confined to 1 plant may be appropriate.

The Company and the Association contend that all previous bargaining has covered both the Roanoke and the Eagle Road plants and that this history of bargaining proves the appropriateness of the two-plant unit. The association was organized in 1938, but there is no evidence that it was successful in obtaining a contract with the Company until 1942. The Company acquired the Eagle Road plant in 1940 and thereafter the Association represented the employees there as well as at the Roanoke plant. The constitution and bylaws of the Association provide for at least one meeting per year and for election of officers annually. The record discloses, however, that the last election of officers was in 1940, that these officers are still handling the affairs of the Association,³ and that there has not been a meeting since June 1942, although the bylaws require that the annual meeting shall

³ The president of the Association testified that there has not been a sufficient number of members present at a meeting since 1940 to permit the election of new officers. The bylaws reveal that three persons constitute a quorum.

be in January of each year. The last grievance of any sort which was handled by the Association arose in January or February 1941. In July 1943, a committee representing the employees of the Eagle Road plant called upon the superintendent of that plant to attempt to secure a wage increase for its employees and the plant superintendent discussed the matter with them. We are not persuaded that the facts set forth above reveal a history of bargaining such as to preclude a finding that the single-plant unit urged by the AFL is appropriate.

We find that all employees of the Company at its lubrication plant on Eagle Road, Kansas City, Kansas, but excluding office and clerical employees, guards, chemists, and all 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.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Socony-Vacuum Oil Company, Kansas City, Kansas, 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 Seventeenth 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 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 ex-

cluding those employees who have since quit or been discharged for cause, and who have not been rehired or reinstated prior to the election, to determine whether they desire to be represented by General Truck Drivers, Warehousemen & Helpers, Local Union No. 498, affiliated with the American Federation of Labor, or by The Employees Association of Socony-Vacuum Oil Company, Incorporated, for the purposes of collective bargaining, or by neither.