

In the Matter of WADHAM'S DIVISION OF SOCONY-VACUUM OIL COMPANY and SERVICE STATION ATTENDANTS, BULK PLANT AND GARAGE EMPLOYEES, LOCAL UNION #982, A. F. OF L.

*Case No. 13-R-2137.—Decided February 7, 1944*

*Messrs. J. H. Marshutz and Herbert T. Korth, of Milwaukee, Wis., for the Company.*

*Messrs. A. G. Goldberg and Joseph Caminiti, of Milwaukee, Wis., for the AFL.*

*Miss Gladys Walleman and Mr. Gregory J. Strike, of Green Bay, Wis., for the CUA.*

*Miss Frances Lopinsky, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a petition duly filed by Service Station Attendants, Bulk Plant and Garage Employees, Local Union #982, A. F. of L., herein called the AFL, alleging that a question affecting commerce had arisen concerning representation of employees of Wadham's Division of Socony-Vacuum Oil Company, Milwaukee, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Bernard Cushman, Trial Examiner. Said hearing was held at Milwaukee, Wisconsin, on December 3, 1943. The Company, the AFL, and Petroleum Workers Union of Wisconsin, affiliated with the Associated Unions of America, CUA, herein called the CUA, 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 CUA moved to dismiss the petition on the ground that a contract between it and the Company constitutes a bar to a present determination of representatives. For reasons hereinafter given, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

54 N. L. R. B., No. 178.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Socony-Vacuum Oil Company is a New York corporation, having its main offices in New York City. The Wadham's Division of that corporation is engaged in the manufacture and distribution of petroleum products, and operates over an area covering the States of Wisconsin, Michigan, Minnesota, and Iowa. During the year ending August 31, 1943, the Division purchased approximately \$9,000,000 worth of materials, 95 percent of which was shipped to it from points outside the State of Wisconsin. During the same period the Division sold approximately \$15,000,000 worth of products about 93 percent of which was sold in the State of Wisconsin.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

Service Station Attendants, Bulk Plant and Garage Employees, Local Union #982, AFL, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Petroleum Workers Union of Wisconsin, affiliated with Associated Unions of America, CUA, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

In 1938 the CUA<sup>1</sup> was certified by the Wisconsin Labor Relations Board as the exclusive representative of all employees of the Company in four separate units: (1) filling station attendants, (2) plant workers, (3) truck drivers, and (4) outside maintenance men. Since that time the CUA and the Company have executed annual agreements covering the employees in these four units. In July 1943 the AFL requested recognition as the exclusive representative of the plant workers of the Company. The Company replied that it would recognize the AFL only after certification. The AFL thereupon filed with the Board a petition for investigation and certification which was dismissed by the Regional Director for the reason that the AFL at that time did not submit sufficient evidence to indicate that it represented a substantial number of employees of the Company in the unit. On August 31, 1943, the then existing contract between

<sup>1</sup> The name of the Union at that time and until the present name was adopted on November 6, 1943, was Milwaukee County Independent Petroleum Workers Union of Wadham's Oil Company.

the CUA and the Company expired. On October 29, 1943, the AFL filed its petition in the instant case and on October 30, the Company received notice of the filing of said petition. Thereafter, on November 15, 1943, the Company and the CUA executed a contract covering the plant workers, effective from September 1, 1943, to October 31, 1944.

The Company and the CUA aver that the contract executed in November 1943 is a bar to a present determination of representatives, contending that the Board's dismissal of the July petition resolved all questions of representation raised by the AFL's request for recognition; that the AFL was thereby precluded from further asserting a claim of representation, and that the Company was then free to execute a binding contract with the CUA. There is no merit in these contentions. The dismissal of the petition filed by the AFL in July was without prejudice; the AFL has since that time submitted further evidence of representation.<sup>2</sup> Since the Company had notice of claims of the AFL prior to the signing of the contract, said contract is no bar to this proceeding.<sup>3</sup>

A statement of the Field Examiner introduced into evidence at the hearing indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.<sup>4</sup>

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.

#### IV. THE APPROPRIATE UNIT

The AFL in its petition requests a unit consisting of "all Bulk Plant employees of the Company at its Milwaukee Division, exclusive of all supervisory employees, office, clerical, salesmen and truck drivers." The Company operates two plants in the city of Milwaukee, one a lubricating oil and manufacturing plant, located at South 38th and West Orchard Streets, known as the West Plant; the other a main terminal and bulk plant located on Jones Island, known as the Jones Island Plant. The plants are approximately 7 miles apart. The AFL would include in the appropriate unit only the employees at the West Plant, while the Company and the CUA would include the loaders

<sup>2</sup> See *Matter of Geo. L. Mesker Co.*, 51 N. L. R. B. 528.

<sup>3</sup> See *Matter of Encor*, 46 N. L. R. B. 1035.

<sup>4</sup> The Field Examiner reported that the AFL submitted 24 designation cards, all of which bore apparently genuine original signatures, 19 of which correspond with the names of persons listed on the Company's pay roll for October 21, 1943, which contained the names of 65 persons in the appropriate unit. The Company and the CUA assert that the Field Examiner's report, on its face, refutes the AFL's claim of substantial representation. Since the CUA's contracts provide for loss of seniority by employees who lose good standing in the CUA, we find that the showing made by the AFL is sufficient. See *Matter of Sayles Fumishing Plants, Inc.*, 49 N. L. R. B. 532.

and the checkers at the Jones Island Plant. The Jones Island Plant was not acquired by the Company until 1940. At that time the Company and the CUA extended the plant workers' unit to include the loaders and checkers at that plant.<sup>5</sup> During the years 1941 and 1942, 14 employees were transferred from the West Plant to the Jones Island Plant, which employed 10 loaders and checkers during that period. Each plant has a separate superintendent but all hiring is done at the West Plant. The maintenance employees at the West Plant perform the maintenance work at the Jones Island Plant.<sup>6</sup>

Since the loaders and checkers at the Jones Island Plant have been represented in the same unit with employees in the West Plant from the time that the former plant has been in operation, and in view of the fact that the work of those loaders and checkers is similar to that done by employees at the West Plant, we shall include them in the unit.

The AFL would exclude and the Company and the CUA would include foremen, assistant foremen, and powerhouse employees in the unit. All these employees have been covered by the CUA contracts with the Company.

There are about eight foremen employed by the Company. They spend on an average of 75 percent of their time in manual labor but are paid approximately \$8 per week more than the ordinary employees. All foremen have a right to recommend hire, discharge, and discipline. The assistant foremen spend about 90 percent of their time in manual labor. They substitute for the foremen in the latter's absences but at no time do they have the right to make recommendations concerning the status of employees. We find that the foremen are supervisory employees and shall exclude them from the unit, but that the powers and authority of the assistant foremen are not such as to warrant placing them in the same category. We shall, accordingly, include assistant foremen in the unit.

The powerhouse employees comprise a second-class engineer and three firemen. The AFL's basis for their exclusion is the fact that another AFL union has jurisdiction over such employees. In view of the long history of bargaining in which the powerhouse employees have been apart of the plant unit, we shall include them in the unit.

The Company employs seasonal drivers to supplement its staff of truck drivers during its peak season in delivering fuel oil. The amount of time these drivers spend on the road varies from 4 $\frac{2}{3}$  to 11 $\frac{1}{2}$  months. During the rest of the year such drivers are employed in the plant performing production work. Prior to the time that

<sup>5</sup> The other employees at Jones Island are clerical employees and truck drivers whom all parties would exclude

<sup>6</sup> The maintenance men involved in the unit are to be distinguished from the employees represented by the CUA in a separate maintenance unit, herein referred to as outside maintenance men. The outside maintenance men service the filling stations

the Company consolidated its pay roll they were carried on the plant pay roll when working in the plant and on the drivers' pay roll when driving. They are presumably paid according to the rate of the job being performed. The Company and the CUA contend that the seasonal drivers are part of the truck drivers' unit and should be excluded from the plant unit. The AFL insists that inasmuch as they spend varying amounts of time in the plant, at least those who spend a major portion of their time in the plant should be included in the plant unit. Although the Company contends that it considers these employees as drivers, it is our opinion that, to the extent that they devote their working time performing the functions of plant workers, subject to the wage rates and working conditions established through collective bargaining or otherwise for the plant workers, they are necessarily a part of the plant unit. We hold that they are included in the appropriate unit during such periods as they are engaged in work in the plant. The question of the eligibility of the seasonal drivers to vote in the election will be considered in Section V, *infra*.

We find that all plant employees of the Company in its Milwaukee Division, including loaders and checkers at the Jones Island plant, assistant foremen, and powerhouse employees but excluding all office and clerical employees, salesmen, outside maintenance men, filling station attendants, truck drivers, foremen, and all 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.

#### 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.

We are of the opinion, and we find, that only those seasonal drivers who during the past year or so much thereof as they have been in the Company's employ, have worked in the plant at least 50 percent of their time have a sufficiently substantial interest in the conditions of employment in the plant unit and in the outcome of the election in that unit to entitle them to vote in the election hereinafter directed. Accordingly, seasonal truck drivers in the Company's employ at the time of the election who have worked in the plant

more than 50 percent of their time (1) during the 12 months preceding the date of this Direction, or (2) during the period of their employment if less than 12 months, are eligible to vote in the election.

### 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 Wadham's Division of Socony-Vacuum Oil Company, Milwaukee, Wisconsin, 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 Thirteenth 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, and the findings in Section V, above, 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 any 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 Service Station Attendants, Bulk Plant and Garage Employees, Local Union #982, A. F. of L., or by Petroleum Workers Union of Wisconsin, affiliated with Associated Unions of America, CUA, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.