

In the Matter of THE PURE OIL COMPANY and OIL WORKERS INTERNATIONAL UNION (C. I. O.)

Case No. 8-R-1314.—Decided June 19, 1944

Mr. Russell Packard, for the Board.

Messrs. Allen C. Hutchinson, Jr., and Ben A. Harper, of Chicago, Ill., for the Company.

Mr. Wilbur Sudbrack, of Cincinnati, Ohio, for the Union.

Mr. C. D. Lindrooth, of Newark, Ohio, for the Independent.

Mr. David Findling, of counsel to the Board.

DECISION

AND

ORDER

On October 21, 1943, Oil Workers International Union (C. I. O.), herein called the Union, filed with the Regional Director for the Eighth Region (Cleveland, Ohio), herein called the Regional Director, a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Pure Oil Company, Newark, 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 October 30, 1943, the Union, the Company, and Oil Refinery Employees Independent Association, herein called the Independent, a labor organization named in the petition as being then the recognized bargaining representative of the Company's employees, entered into a "Stipulation For Certification Upon Consent Election."

Pursuant to the stipulation, an election by secret ballot was conducted on November 5, 1943, under the supervision of the Regional Director. On November 6, 1943, the Regional Director issued and duly served upon the parties an Election Report. As to the balloting and its results the Regional Director reported as follows:

Approximate number of eligible voters.....	172
Count of ballots:	
Total ballots cast.....	170
Total ballots challenged.....	6
Total void ballots.....	1
Total valid votes counted.....	163
Votes cast for Oil Workers International Union (C. I. O.).....	70
Votes cast for Oil Refinery Employees Independent Association.....	93
Votes cast for neither.....	0

On November 8, 1943, the Union filed objections to the election, alleging in substance that the Company had engaged in certain conduct preventing a free choice of representatives. Thereafter, the Regional Director investigated the objections, and on December 16, 1943, issued and duly served on the parties a Report on Objections. He found that the objections raised substantial and material issues with respect to the election and recommended that the Board set the election aside.

On January 12, 1944, the Board having duly considered the matter and determined that the objections did raise substantial and material issues with respect to the election, issued an order directing a hearing thereon and referring the case to the Regional Director for the purpose of conducting the hearing. Such hearing on objections was held at Newark, Ohio, on February 15 and 16, 1944, before J. J. Fitzpatrick, Trial Examiner.¹ The Board, the Company, and the Independent appeared and participated by counsel, and the Union by its representative, and all 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.

Upon the entire record in the case,² the Board makes the following:

FINDINGS OF FACT

Three or four weeks before the election, Assistant Foreman Bryant Ewing told employee Franklin Moore, who was an outspoken Union supporter, that it was his understanding that if the Union got into the plant, it would demand a 48-hour week, which would necessarily create a surplus of employees, and that there would be lay-offs and, he implied, a reduction in severance pay. He also suggested to Moore, while admitting that the latter's work was satisfactory, that it would be best for him to take advantage of a severance settlement and leave the Company's employ. About the same time, another assistant foreman, Kenneth Roof, likewise asked Moore during working hours if the latter would consider accepting a severance settlement and returning to farming. In other conversations with Moore at about this time and at other times prior to the election, Ewing and Roof severally declared in substance that the employees should not join the Union but should adhere to the Independent, disparaged the Union as radical

¹ In the meantime, by order dated February 2, 1944, the Board had consolidated the representation proceeding with an unfair labor practice proceeding against the Company (Case No. 8-C-1619), initiated by charges filed by the Union with the Regional Director on January 31, 1944. The hearing was held in the consolidated cases. The Board, having considered the matter and deeming it necessary to effectuate the purposes of the Act, hereby orders, pursuant to Article II, Section 36 (d) and Article III, Section 13 (c) 4 of National Labor Relations Board Rules and Regulations—Series 3, that the cases be, and they hereby are, severed.

² The Company and the Independent filed briefs in the unfair labor practice case (see note 1, *supra*), which the Board has duly considered in making its findings in the instant proceeding.

and unable to gain additional advantages for the working men, and stated that the Union had caused trouble at the Company's Toledo plant, which it had succeeded in organizing.³ Ewing warned Moore, further, that although the Newark plant would continue to operate for the duration of the war, the Company might close it down thereafter, particularly if any labor trouble developed. Similarly, during the week before the election, Ewing told employee Charles O. Kurtzholz that the employees did not need the Union to get what they wanted; he asked employee James DeLancey if the latter thought he was doing the "right" thing by joining the Union; he declared to DeLancey that the Company had always treated the employees fairly; and he advised the same employee that affiliation with the Union would cause "hard feelings" among the men. During the period shortly before the balloting, Superintendent E. E. McPherson likewise engaged several employees in conversations in which he openly espoused the Independent as opposed to the Union, declared to one of the men, Wilson Bradford, that if the Union succeeded there might be "trouble" such as had occurred at Toledo, and asked Bradford if the latter did not think that if the men did have a union and trouble, the Company would not be more likely to close the plant after the war than if there were no such trouble.⁴

On October 29, 1943, at a dinner party for the employees and their families which was sponsored and paid for by the Company, Dr. C. A. Sundberg, a professional speaker who had been hired for the occasion, referred during the course of his extemporaneous speech, to the cooperation between the Company and the employees in the past and the good things the Company had done for the working men, and told the employees, near the conclusion of his remarks, that they should not tear down in a day what it had taken the Company years to build up.⁵ In view of the circumstances and timing of this speech, we find that the men could reasonably regard Sundberg's remarks as having reference to the Union's coming into the plant,⁶ and that the fair implications of the statements were that the men should adhere to the Independent and that conditions at the plant might deteriorate if the Union won the election. Moreover, we find that the employees might have just cause to believe, in all the circumstances, that Sundberg spoke for, and that his statements represented the views of, the Company. Accordingly, the Company was under a duty at least to disavow his remarks. It did not do so, however.

³ There had been a strike at this plant

⁴ The foregoing is based upon the credible testimony of employees Moore, Kurtzholz, DeLancey, Parker Pheneger, William H Fessler, and Bradford. Neither McPherson, Ewing, nor Roof testified, although McPherson attended the hearing and there was no showing of the unavailability of Ewing or Roof as witnesses

⁵ This finding is based upon uncontroverted and credible testimony of employees Walter Winters, Fessler, and Kurtzholz, who were present. Sundberg was not called as a witness.

⁶ Several employees testified in substance that they so construed the remarks.

On November 1, 1943, which was 4 days before the election, the Company granted, effective immediately, the previous request of the Independent to reduce the probationary period of new employees from 90 to 30 days. The effect of the change was to raise the wages of eight probationary employees \$29.50 per month. The Independent immediately posted a notice on its bulletin board in the plant, announcing and taking credit for the concession. The 90 day probationary period had apparently been the rule for many years. Moreover, while the matter of its reduction had been under consideration by the Independent's bargaining committee for some time, so far as appears no formal request was made to the Company to remedy the situation until October 27, 1943, which was shortly after the Union had petitioned for certification and shortly before the election was agreed upon. In these circumstances, and in light of the whole course of the Company's unneutral conduct and the manner in which the Independent quickly took credit for the adjustment, we think it reasonable to infer, as we do, that the adjustment was requested by the Independent and was granted by the Company, at the time it was, in order to assist the Independent as opposed to the Union in the election.

On November 2, 1943, Superintendent McPherson caused to be mailed to all employees eligible to vote in the election, a letter on company stationery, as follows:

Because of its importance to each of us at the Heath Refinery I was prompted to discuss and clarify the reason for the election November 5 at our party last Friday night. I did not for the reason that I felt it might not be best to call attention to a question so seriously affecting each of us on such an occasion, an occasion planned long in advance of the developments prompting the election. Since time and conditions do not permit my discussing this matter with each of you individually as I should like to do, I am writing this same letter to each of you so that you may know of the very great importance I attach to this election. I feel that I would be shirking my responsibility and obligation to you not to do so.

For a long number of years we have worked together here at Heath. We have had our problems in connection with wages and working conditions, as well as our individual and personal problems both at the plant and as they affected our homes and our families. We have always discussed these openly and freely as individuals who respect one another are bound to do when there is a personal interest in the other's well being. We have had a common interest in our work and in our desire for our continued welfare and security by making our operations at the Heath Refinery an efficient link in the refining industry. Throughout

these years by working out these problems among ourselves we know that we have been able to work together for our common good and to such an extent that most of us have enjoyed, through good times and bad, many continuous years of employment. These years have been spent under working conditions and with wages that have not only been the equal to but the envy of many of our neighbors.

You are now to have an election on November 5, Friday, to determine who is to represent you in the future regarding all these various things which so vitally affect the welfare of all of us and those dependent upon us. Will we in the future be able to work out our problems among ourselves, or are we to have an outside party, who has not played a part in our past or had an interest in us, represent you? If it is to be an outside group are you sure that their interests are the same as yours and mine and that they will continue to be so? Have they accomplished more elsewhere than we have here at Heath? Satisfy yourself that you know the leadership of this outside party and what it stands for as well as you know what your leadership has stood for in the past.

The election will be held under the direction and supervision of the National Labor Relations Board just as was the election of June 17, 1941, at which time you selected the Oil Refinery Employees Independent Association as your sole representative to represent you in matters pertaining to wages and working conditions. The election has been called by the N. L. R. B. at the request of the Oil Workers International Union (CIO) and we have agreed to it as we are required to do in accordance with the provisions of the National Labor Relations Act.

It is important that you understand that the outcome of this election will determine who is to be the sole representative of all of you with the only right to represent you in matters of wages and working conditions. The decision will be based on a majority of those voting, which is very different from a majority of those entitled to vote. For this reason, I urge you to vote and express your wishes.

It is important that you understand that your vote will be by secret ballot and no one by any means can know how you vote other than yourself. It is important that you understand that you are free to vote as you feel at the time you cast your ballot and are in no way bound or obligated by any membership you may hold, application you may have made, or preference or opinion you may have previously expressed or held.

I wish to assure you that not only as the superintendent of the Heath Refinery, but also as one who has grown up with you, that irrespective of the decision rendered by your voting on Fri-

day, I will continue as in the past to deal honestly and fairly with whatever representative may be your choice.

I cannot urge you too strongly to discuss this subject with your families as all may be affected by your choice and, above all, be sure to vote on Friday.

Yours very truly,

(signed) E. E. McPHERSON.

Whatever might be our views as to the propriety of such a letter if it stood alone, we find that the letter, when appraised, as it must be, in connection with the totality of the Company's conduct during the period in question, and particularly the oral statements of McPherson, Ewing, and Roof, described above, not only constituted to the employees an expression of the writer's views, but carried with it an intimation of economic reprisal should the employees fail to heed their employer's obvious wishes.

We find that the Company's above-described course of conduct during the period preceding the election prevented an expression by the employees therein of their free and uncoerced wishes as to representation. We shall therefore set the election aside. We shall direct a new election at such time as the Regional Director advises us that circumstances permitting a free choice among the employees have been restored.

ORDER

IT IS HEREBY ORDERED that the election held on November 5, 1943, among the employees of The Pure Oil Company, Newark, Ohio, be, and it hereby is, set aside.