

In the Matter of AMERICAN OIL COMPANY *and* OIL WORKERS INTERNATIONAL UNION, LOCAL NO. 403, C. I. O.

Case No. 5-R-1620.—Decided November 16, 1944

Mr. C. H. Thompson, of Baltimore, Md., for the Company.

Mr. T. J. McCarthy, of Arlington, Va., for the Union.

Mr. Ben Grodsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, Local No. 403, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Oil Company, Baltimore, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Sidney J. Barban, Trial Examiner. Said hearing was held at Baltimore, Maryland, on October 16, 1944. The Company and the Union 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

American Oil Company is a Maryland corporation with its principal place of business at Baltimore, Maryland, where it is engaged in the distribution and marketing of petroleum and petroleum by-products. During 1943 the Company received many million gallons of gasoline and motor oils from points outside the State of Maryland. Such gasoline and motor oils were blended and stored in Maryland

and were ultimately shipped to points in many States and the District of Columbia. During 1943 the Company shipped to its plants in Virginia, from points outside the State of Virginia, in excess of 500,000 gallons of gasoline and motor oils. The only plants involved in this proceeding are the Company's plants at Warrenton, Winchester, Culpeper, and Fredericksburg, all in the State of Virginia.

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

II. THE ORGANIZATION INVOLVED

Oil Workers International Union, Local No. 403, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.¹

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union 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.

IV. THE APPROPRIATE UNIT

The Union seeks a unit comprising all of the Company's employees, including plant managers at its plants located at Warrenton, Winchester, Culpeper and Fredericksburg, Virginia, but excluding branch managers, and all other supervisory employees. The Company contends that plant managers should be excluded from the unit because they are supervisory employees and contends further that each plant should constitute a separate bargaining unit because of varying conditions in each community and lack of interchange of employees.

The Company has three principal divisions in which its plants in Virginia are set up. One division is administered through an office in

¹ The facts elicited at the hearing clearly prove that, although the Company refused so to stipulate, the Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act.

² The Field Examiner reported that the Union submitted 7 cards, all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll which contained the names of 8 employees in the alleged appropriate unit; and that the cards were dated June 1944.

Roanoke, Virginia, another through an office at Richmond, Virginia, and the third through an office in Washington, D. C. The Washington office has under its supervision plants at Rosslyn, Warrenton, Winchester, Culpeper, and Fredericksburg in Virginia, and LaPlata in Maryland. All Virginia plants under the Washington office are located in the same general area in northern Virginia, the farthest from Washington being Winchester, Virginia, about 70 miles from Washington. LaPlata, Maryland, is separated from the other plants by the Potomac River and is approximately 25 miles from Washington.

The Board had occasion to consider the matter of a unit of employees of two plants of the Washington office division. In that case³ we were asked to establish and we found appropriate, a unit of employees of the Company's South Washington and Rosslyn plants. These two plants have since been merged and both are presently known as the Rosslyn plant. The Union currently represents employees of this plant.

The plants involved in this proceeding are storage facilities for petroleum products. These products are brought into each plant by transport truck or tank car and are stored there in large storage tanks and drums. The products are then redistributed to the Company's customers in trucks owned by the Company and driven by truck drivers in the Company's employ at each plant. There are three employees at the Warrenton plant: a plant manager and two truck drivers. At Winchester there are four employees: a branch manager, a plant manager, and two truck drivers. At Culpeper there are three employees: a branch manager, a plant manager, and a truck driver. At Fredericksburg there are three employees: a branch manager, a plant manager-truck driver, and a truck driver.

The Union has made no attempt to organize the employees in any of the Company's divisions except the Washington division. Organization of the Company's employees at the plants at Warrenton, Winchester, Culpeper, and Fredericksburg was undertaken by the Union at the request of the employees involved. No attempt has been made to organize the employees in the LaPlata, Maryland, plant, the only other plant in the Washington division, because no request was made. The Company does not urge that employees in the LaPlata plant should be included in the unit. The Company contends that each plant constitutes a separate appropriate unit because the plants are not interrelated, their operations are separate and distinct, and the problems at one plant are not essentially those at the others. While there is no interchange of employees, there is a single wage scale applicable to all these plants and working conditions are similar. The Company also has a uniform vacation policy, leave of absence policy, sick leave

³ *Matter of American Oil Company*, 7 N. L. R. B. 210.

policy, annuity program, and group insurance program open to all employees in all the plants in question. Under the circumstances it is clear that employees at the four Virginia plants involved herein have sufficient community of interest to be treated as a single unit for the purposes of collective bargaining. We shall, therefore, include employees in the Company's Warrenton, Winchester, Culpeper, and Fredericksburg plants, all in the State of Virginia, in the proposed unit.

The Company contends that the plant managers should be excluded from the proposed unit because they are supervisory employees. The Union contends that, in the plants in question, they are for the most part clerical employees who also act as yardmen and to some extent perform the same duties as the truck drivers. However, the plant managers have the power to recommend the hire, discharge, and discipline of employees, and their recommendations are given effective weight. In the Fredericksburg plant there is a plant manager-truck driver. While this employee drives a truck about half the time, he nevertheless has the same powers and duties of supervision as the other plant managers. We shall exclude the plant managers at Winchester, Warrenton, and Culpeper and the plant manager-truck driver at the Fredericksburg plant from the appropriate bargaining unit.

We find that all truck drivers at the Company's plants at Warrenton, Winchester, Culpeper, and Fredericksburg, Virginia, but excluding branch managers, plant managers, the plant manager-truck driver at the Fredericksburg plant, 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. The Regional Director is hereby authorized to conduct the election in whole or in part by mail.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with American Oil Company, Baltimore, Maryland, 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 Fifth 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 the 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 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, to determine whether or not they desire to be represented by Oil Workers International Union, Local No. 403, C. I. O., for the purposes of collective bargaining.