

In the Matter of MID-Co GASOLINE COMPANY *and* INTERNATIONAL
ASSOCIATION OF MACHINISTS

Case No. 16-C-1468.—Decided July 30, 1948

Mr. James R. Webster, for the General Counsel.

Samuels, Brown, Herman & Scott, by *Mr. John M. Scott*, of Fort Worth, Tex., and *Mr. C. A. Middleton*, of Corsicana, Tex., for the Respondent.

Mr. Bliss Daffan, of Houston, Tex., and *Mr. L. M. Fagan*, of Fort Worth, Tex., for the Union.

DECISION

AND

ORDER

Upon a second amended charge filed on January 20, 1948, by International Association of Machinists, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Sixteenth Region (Fort Worth, Texas) issued a complaint dated April 21, 1948, against Mid-Co Gasoline Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, and Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act, as amended by the Labor Management Relations Act, 1947, Public Law 101, 80th Congress, First Session, Chapter 120, herein called the amended Act.¹ Copies of the complaint, the second amended charge, and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges in substance: (1) that the Respondent, in or about August and September 1946, interrogated its employees concerning their union affiliations, and urged, persuaded, threatened, and warned its employees to refrain

¹ So far as here material, the provisions of Section 8 (1) and (5) of the Act are continued in Section 8 (a) (1) and (5) of the amended Act. Likewise, the following provisions of the Act, mentioned herein, are reenacted in corresponding section numbers of the amended Act; Section 2 (5), (6), and (7), Section 7, Section 9 (a) and (b), and Section 10 (c). The Act and the amended Act are hereinafter jointly called the Acts

from assisting, becoming members of, or remaining members of, the Union; and that (2) on or about August 4, 1947, and at all times thereafter, the Respondent refused to bargain collectively with the Union as the exclusive bargaining representative of all the employees in an appropriate unit, although a majority of said employees had selected the Union as their collective bargaining representative. On or about April 30, 1948, the Respondent filed an answer, admitting certain allegations of the complaint, but denying that it had engaged in any unfair labor practices. The Respondent also moved that the complaint be dismissed on the ground that the Board lacked jurisdiction. For the reasons hereinafter stated, the motion to dismiss the complaint is hereby denied.

Thereafter all the parties, being desirous of obviating the necessity of a hearing herein, entered into a stipulation which set forth an agreed statement of facts. The stipulation provided that the parties waived their rights to a hearing before a duly authorized Trial Examiner; that the Board may make findings of fact and conclusions of law, and issue an order based upon the agreed facts; and that the charge, the complaint, the notice of hearing, the answer, and the stipulation shall constitute the entire record. The stipulation is hereby accepted and made a part of the record herein, and, in accordance with Section 203.51 of National Labor Relations Board Rules and Regulations—Series 5, the proceeding is hereby transferred to and continued before the Board.

Upon the basis of the aforesaid stipulation, and the entire record in the case, the Board² makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent agreed that certain portions of the record in an earlier case before the Board in which it was involved should be incorporated into the record herein,³ and conceded that its business is substantially the same as it was at the time of the hearing in that case. In the earlier case we found:

Mid-Co Gasoline Company, a Texas corporation, operates at Malakoff, Texas, a natural gasoline plant and a small refinery which process natural gas into natural and white gasoline, butane, kerosene, kerosene distillate, fuel oil, and residue gas. The Em-

² Pursuant to the provisions of Section 3 (b) of the Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Houston and Reynolds].

³ *Matter of Mid-Co Gasoline Company*, 74 N L R. B. 910.

ployer annually purchases raw materials valued at over \$100,000 from various oil and gas producers, all located within the State of Texas. It annually sells and delivers over \$300,000 worth of refined products to petroleum and refining companies within the State, which companies, in turn, sell said products locally. During a similar period, it sells a small portion of residue gas to the Athens Natural Gas Company, which supplies the fuel gas needs of the town of Athens, Texas; in addition, it delivers the remainder of the residue gas to pipe line gathering system of the Lone Star Gas Company, a public utility company which is itself engaged in interstate commerce. During the year 1946, the Lone Star Gas Company purchased from the Employer 2,018,610 M cubic feet of residue gas, valued at over \$100,000. This gas, which was thus intermingled with gas purchased from other refiners, was sold by the Lone Star Gas Company in the city of Dallas, Texas, to interstate carriers, and to other consumers, whose operations admittedly affect interstate commerce.²

We take judicial notice, in this connection, of the fact that we have heretofore asserted jurisdiction over the *Lone Star Gas Company* (52 N L R B 1058 and 61 N L R B 766), and over many of its customers. See, in this connection, the following cases involving customers of *Lone Star Gas Company*, *Matter of Ford Motor Company*, 26 N. L. R. B. 322, *Matter of Texas Textile Mills*, 58 N. L. R. B. 352, *Matter of The Guberson Corporation*, 59 N. L. R. B. 1091; *Matter of The Continental Gin Company*, 56 N. L. R. B. 1499; *Matter of Burrus Feed Mills*, 59 N. L. R. B. 425, *Matter of Dallas Power & Light Company*, 60 N. L. R. B. 1088, *Matter of Procter & Gamble Manufacturing Co.*, 62 N. L. R. B. 1262; *Matter of Sears, Roebuck Company*, 72 N. L. R. B. 566; and *Matter of The Texas Company*, 52 N. L. R. B. 457.

In the instant case, as in the prior proceeding, the Respondent challenged our right to assert jurisdiction over its operations. We have reexamined the facts in the light of the applicable law and find no reason to disturb our prior finding and assertion of jurisdiction. Accordingly, we hereby adopt the above findings of fact and upon the basis thereof we find that the Respondent is engaged in commerce, within the meaning of the Acts.⁴

II. THE ORGANIZATION INVOLVED

International Association of Machinists is a labor organization, which admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

During the months of August and September 1946, the Respondent, through its duly authorized agents and representatives, interrogated

⁴ *N. L. R. B. v T. W. Phillips Gas & Oil Co.*, 141 F. (2d) 304 (C. C. A. 3), enforcing 51 N. L. R. B. 376; *Matter of Hamilton Gas Corporation*, 72 N. L. R. B. 269; *Matter of James C. Ellis*, 72 N. L. R. B. 474, and cases cited therein.

its employees as to whether or not they were affiliated with the Union. The Board has consistently held, and we find, that such activities of the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Acts.⁵

B. *The refusal to bargain*

1. The appropriate unit; representation by the Union of a majority therein

The parties agree, and we find, that all production and maintenance employees of the Respondent employed at its Malakoff, Texas, plant, including the mechanic, assistant mechanic, and chief engineer, but excluding truck drivers, office and clerical employees, and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of the Acts.

We also find, in accordance with the agreement of the parties, that since on or about December 18, 1946, the Union has been the exclusive bargaining representative of all employees in the above unit for the purposes of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

2. The refusal to bargain

The Respondent admits that since on or about August 4, 1947, it has refused to bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit. We accordingly find that the Respondent thereby violated Section 8 (5) of the Act and Section 8 (a) (5) of the amended Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with its operations as described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and that it take certain affirmative action which will effectuate the policies of the amended Act.

⁵ See *H J Heinz Co v N. L. R. B.*, 311 U. S. 514, aff'g 110 F. (2d) 843 (C. C. A. 6), enf'g 10 N. L. R. B. 963; *Matter of Ames Spot Welder Co, Inc*, 75 N. L. R. B. 352, *Matter of Sohio Pipe Line Company*, 75 N. L. R. B. 858.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following :

CONCLUSIONS OF LAW

1. International Association of Machinists is a labor organization, within the meaning of Section 2 (5) of the Acts.

2. All production and maintenance employees of the Respondent employed at its Malakoff, Texas, plant, including the mechanic, assistant mechanic, and chief engineer, but excluding truck drivers, office and clerical employees, and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Acts.

3. International Association of Machinists was on December 18, 1946, and at all times thereafter has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Acts.

4. By refusing on August 4, 1947, and at all times thereafter, to bargain collectively with International Association of Machinists, as the exclusive representative of all employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act and Section 8 (a) (5) of the amended Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Acts, the Respondent has engaged, and is engaging, in unfair labor practices, within the meaning of Section 8 (1) of the Act and Section 8 (a) (1) of the amended Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Acts.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Mid-Co Gasoline Company, Corsicana, Texas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from :

(a) Refusing to bargain collectively with International Association of Machinists as the exclusive bargaining representative of all production and maintenance employees at its Malakoff, Texas, plant, in-

cluding the mechanic, assistant mechanic, and chief engineer, but excluding truck drivers, office and clerical employees, and supervisors;

(b) Interrogating its employees as to their union affiliation;

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Acts.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act, as amended:

(a) Upon request, bargain collectively with International Association of Machinists as the exclusive representative of all production and maintenance employees at its Malakoff, Texas, plant, including the mechanic, assistant mechanic, and chief engineer, but excluding truck drivers, office and clerical employees, and supervisors, with respect to grievances, labor disputes, rates of pay, wages, hours, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Malakoff, Texas, copies of the notice attached hereto marked "Appendix A."⁶ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Sixteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply therewith.

⁶ In the event that this Order is enforced by decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words: "A DECISION AND ORDER," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT interrogate our employees as to their Union affiliations.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our employees are free to become or remain members of this union, or any other labor organization.

WE WILL bargain collectively upon request with the above-named Union as the exclusive representative of all employees in the bargaining unit described herein with respect to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at the Malakoff, Texas, plant, including the mechanic, assistant mechanic, and chief engineer, but excluding truck drivers, office and clerical employees, and supervisors.

MID-Co GASOLINE COMPANY,

Employer.

By _____

(Representative)

(Title)

Dated _____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.