

Conclusion

Under the present state of facts the *Midwest Piping* doctrine clearly applies, since no circumstances are present which take the case out of that rule. It is not an extension of that doctrine but a clear application. It is therefore concluded that the Respondent violated Section 8 (a) (2) and Section 8 (a) (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that the activities of the Respondent set forth in Section III, above, occurring in connection with its operations 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, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purpose of the Act.

It has been found that the Respondent rendered "other support" to the American Communications Association, CIO. The undersigned will recommend that the Respondent shall withdraw all recognition from the Association as the bargaining agent for the technician employees; shall completely disassociate itself from the Association as such representative; and shall not deal with it on any matters pertaining to grievances, labor disputes, wages, hours, or other conditions of employment as to said technicians.

In view of all the circumstances in this case a broad general cease and desist order seems uncalled for and is not recommended.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. International Brotherhood of Electrical Workers, AFL, and American Communications Association, CIO, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By rendering "other support" to the American Communications Association, CIO, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) and Sections 8 (a) (1) of the Act.

3. Said unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

[Recommended order omitted from publication in this volume.]

SCOTTEN DILLON COMPANY, PETITIONER *and* TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 13, AFL *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 82. *Case No. 7-RM-63. April 2, 1951*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before W. A. Reinke, hearing

officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

On May 29, 1950, Lodge No. 82, International Association of Machinists, herein called the IAM,¹ by letter to the Employer requested a meeting for the purpose of discussing a wage increase for the machine fixers or adjusters² employed at the Employer's Detroit, Michigan, tobacco plants. The record indicates that a verbal agreement was reached granting a wage increase, but that the Employer requested that negotiations be suspended until after a collective bargaining agreement was executed with the Tobacco Workers International Union, Local 13, AFL, herein called the Tobacco Workers.³ This agreement was executed on July 17, 1950, and thereafter the IAM attempted to resume negotiations but the employer refused on the ground that the IAM had not been certified by this Board as the bargaining representative for the fixers. On November 30, 1950, the Employer filed the instant petition for a representation election in a unit of machine fixers, alleging, in effect, that the IAM has presented a claim to the Employer to be recognized as the representative of the fixers as defined in Section 9 (a) of the Act.

The machine fixers have been and are currently part of the production and maintenance unit which has been represented by the Tobacco Workers for about 40 years. The Tobacco Workers opposes a separate unit for the fixers principally upon two grounds: (a) That the Tobacco Workers' existing agreement with the Em-

¹The Employer and the IAM entered into a collective bargaining agreement on September 9, 1949, covering the one machinist who is employed, which was to be automatically renewed from year to year, absent timely notice to modify or terminate. The record indicates this agreement is still in effect.

²The terms "adjuster" and "fixer" are used interchangeably. Hereafter, they will be referred to as "fixers."

³This agreement of July 17, 1950, amends a prior agreement of July 15, 1949, with the Employer containing an automatic renewal clause, and covers a unit of production and maintenance employees, including the machine fixers.

ployer bars the present proceeding;⁴ and (b) that the inclusion of the machine fixers in the same unit with the machinist is inappropriate because the interests of the fixers are more closely related to those of the production workers with whom they have been joined in a single unit for about 40 years. Although the petition in this case was filed by the Employer, the Employer contends that its current contract with the Tobacco Workers constitutes a bar to this proceeding.

The fixers work with two other categories of plant employees: (1) production machine operators, and (2) the machinist, included, respectively, in the existing production and maintenance unit, and in the existing machinist unit.

The fixers are responsible for adjusting, cleaning, and repairing a group of machines which are run by machine operators, and are used in the manufacture of tobacco products. Fixers are on duty throughout the day subject to call by the machine operators whose machines are not functioning properly. While the record indicates that one fixer spends all his time making small parts for certain machines for which catalogue parts are not available, the other fixers are engaged only in making minor repairs and adjustments to the machines, and do not have the skills necessary to make parts for the machines.

The general working conditions of machine operators and fixers are alike. Fixers have traditionally in the past been drawn from the ranks of the machine operators, and in the event of a reduction in fixer personnel, the fixer, under present conditions, enjoys plant-wide seniority, and may return to his job of machine operator. There is, however, no indication that any interchange exists between fixers and the machinist. Fixers are not required to serve any formal apprenticeship, such as is usually required of machinists.

The machinist, who is the only employee the Employer considers covered by the current contract with the IAM, has charge of all mechanical operations in the plant. He decides when new machine parts are needed, and is considered capable of making them by the Employer. When anything other than minor repairs are needed, the fixer must call the machinist to approve whatever action is needed, and to supervise the job. The machinist also must approve the shutting down of any machine for repairs.

Under the foregoing circumstances, we find insufficient basis for severing the fixers from the existing contract unit of production and maintenance workers, to which they have belonged for 40 years.⁵ Accordingly, we find the proposed unit inappropriate.

⁴ This agreement contains a union-security clause, alleged by the IAM to be illegal. In view of our dismissal of the petition on the ground that the unit sought to be served by the IAM is inappropriate, we find it unnecessary to resolve the contract-bar issue.

⁵ *Phillip Morris & Co., Ltd., Inc.*, 79 NLRB 56; 70 NLRB 274, 279.

Order

Upon the basis of the entire record in this case, it is ordered that the petition filed in the instant matter be, and it hereby is, dismissed.

SINCLAIR REFINING COMPANY *and* OIL WORKERS INTERNATIONAL UNION, CIO, PETITIONER. *Case No. 7-RC-1121. April 2, 1951*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Harold L. Hudson, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Reynolds].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section (2) (6) and (7) of the Act, for the following reasons:

The Petitioner seeks to represent a unit of truckers operating under a "commission marketer" agreement with the Employer in the metropolitan Detroit, Michigan, area. The Employer contends that the truckers are independent contractors and are therefore outside the coverage of the Act.

The Employer operates a bulk oil plant at Detroit and a pipeline terminal at Dearborn, a suburb of Detroit. The petitioner is presently the bargaining representative for a unit of salaried employees at both the bulk plant and the terminal. The truckers involved in this proceeding deliver both gasoline and fuel oil from the Dearborn terminal in their own trucks to the Employer's customers, and are paid a fixed amount per gallon delivered. The salaried truck drivers are occupied mainly in delivering gasoline and petroleum products other than fuel oil. They drive only equipment owned by the Employer.

In 1947 Sinclair discontinued its former practice of having salaried employees deliver fuel oil, and entered into agreements with truckers