

will permit him to vote a challenged ballot in the election hereinafter directed.

We find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All pressmen and stereotypers at the Employer's establishment in Ocala, Florida, excluding all office clerical employees, guards, professional employees, and supervisors, as defined in the Act.

[Text of Direction of Election omitted from publication in this volume.]

ARKANSAS FUEL OIL COMPANY *and* J. A. LEE. *Case No. 16-CA-275.*
July 25, 1951

Decision and Order

On April 11, 1951, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, recommending that the complaint herein be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the charging party and the General Counsel filed exceptions to the Intermediate Report, and Respondent and the charging party filed briefs.

The request for oral argument is denied, because the record and briefs, in our opinion, adequately set forth the positions of the parties.

The Board¹ has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed.

Intermediate Report

STATEMENT OF THE CASE

Upon a charge filed by J. A. Lee, herein called the Charging Party, on June 5, 1950, the General Counsel of the National Labor Relations Board, by the

¹ 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].

Regional Director for the Sixteenth Region (New Orleans, Louisiana), herein called the General Counsel and the Board, respectively, issued a complaint dated February 13, 1951, against Arkansas Fuel Oil Company, herein called Respondent, alleging that Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act.

With respect to unfair labor practices, the complaint alleges in substance that Respondent, on or about June 1, 1950, discharged J. A. Lee, and thereafter refused to reinstate him for the reason that he joined or assisted Oil Workers International Union, C. I. O., herein called the Union, or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid and protection.

Copies of the charge, complaint, and notice of hearing thereon were duly served upon Respondent and the Charging Party.

Thereafter Respondent filed an answer to the complaint admitting the discharge of and the refusal to reinstate the Charging Party but denied that such action constituted unfair labor practices. As an affirmative defense it averred in a "Special Answer" certain facts supportive of a contention that the Charging Party was discharged for cause.

Pursuant to notice, a hearing was held at Longview, Texas, on March 8, 9, and 10, 1951, and at Shreveport, Louisiana, on March 12, 1951, before Stephen S. Bean, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and Respondent were represented by counsel and the Charging Party appeared in his own behalf. All were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues involved. A representative of the Union was in attendance but did not actively participate in the hearing.

A motion made by the General Counsel to conform the pleadings to the proof was granted without objection.

Opportunity was afforded all parties to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. The case was argued orally by the General Counsel, Respondent, and the Charging Party. Respondent filed a brief on March 12, 1951, and proposed findings of fact and conclusions which were received on March 26, 1951.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is and has been for a long period of time a corporation duly organized under and existing by virtue of the laws of the State of West Virginia, having its principal office and place of business in the city of Shreveport, Louisiana. Respondent also operates oil wells and/or refineries in several States, including Wyoming, Louisiana, Arkansas, Oklahoma, Kansas, Illinois, Mississippi, Virginia, and Tennessee. Respondent is now and has been at all times herein mentioned, continuously engaged at a place of business, hereinafter referred to as the "East Texas Area" (the only operation herein concerned) in the production, sale, and distribution of petroleum and related products. Respondent in the course and conduct of its business causes and has continuously caused a substantial amount of materials used in the production, sale, and distribution of petroleum and related products to be purchased, delivered, and transported in interstate commerce

from and through the States of the United States other than the State of Texas to its East Texas Area and causes and has continuously caused a substantial part of the products produced, sold, and distributed by it as part of its business to be supplied, delivered, and transported in interstate commerce to and through the States of the United States other than the State of Texas from its East Texas Area, and more specifically, during the past 12 months Respondent produced and transported in interstate commerce from its East Texas Area petroleum valued in excess of \$3,000,000 to points located outside the State of Texas.

Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Oil Workers International Union, C. I. O., and its Local No. 208, interchangeably called herein the Union, are labor organizations within the meaning of Section 2 (5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On June 1, 1950, J. A. Lee, the Charging Party, was discharged from his employment with Respondent by the latter's district superintendent, Arden I. Waggoner.

The General Counsel contends that the reason for this action was Lee's union activities.

Respondent contends that the only reason for this action was Lee's violation of a rule reading as follows:

At any time a Switcher leaves the job and forgets to shut off his well or wells, he will be immediately discharged—no exceptions.

This rule was promulgated May 12, 1941, and continued in effect on May 31, 1950.

On May 31, 1950, Lee left his job as a switcher and went home at the time his shift ended without shutting off wells it was part of his duty to attend. Several hours later a tank was discovered to be overflowing as a result of Lee's failure to shut off the wells.

Three other switchers, A. O. Westbrook, Gus Herring, and J. J. Powers, had also been discharged by Respondent on December 8, 1947, April 23, 1942, and January 2, 1945, respectively, for leaving their jobs without shutting off wells. A fifth switcher, W. L. Britt, who left his job without shutting off wells on March 21 or 22, 1949, was not discharged but was laid off without pay for 80 hours.

Herring, Powers, and Britt were not members of the Union. There is no evidence that any of them engaged in any union activities and I find Respondent did not know whether or not they were union members or engaged in any union activities. I find that Westbrook was a member of the Union. There is no evidence that he engaged in any union activities other than becoming a member and I find that Respondent did not know whether or not Westbrook was a union member and/or engaged in any union activities.

The Charging Party was an active union member and I find that Respondent knew of his membership and activities. He had been prominent in the organization of Local 207 in the summer of 1941, and after having been transferred from the East Texas Area to Liberty, Texas, filed unfair labor practice charges against Respondent, following which he was called back to the East Texas Area, subsequent to a hearing held in 1942. Following an election in 1942, which resulted in 23 ballots having been cast for and 26 votes having been cast against the Union, he was elected chairman of the workmen's committee

for the union members, and attempted to process grievances with Waggoner's predecessor, R. W. Sole, at that time Respondent's district superintendent. Sole declined to recognize the committee. In 1942 or 1943, Lee became trustee of the Oil Workers International Union, Local 207, and in 1942 or 1943 became its secretary-treasurer, a position he still holds. In 1944 and 1945 he was elected a member of the executive council for District No. 3 of Oil Workers International Union. The District embraced New Mexico, Louisiana, Arkansas, and a large part of Texas. In this capacity Lee attended a meeting of the council in Fort Worth, right after his election, having been granted a leave of absence for the purpose by Respondent. Three months later Sole denied him a second leave of absence to attend another meeting. Sole again denied Lee a leave of absence to attend a third meeting held 3 months still later, but on appeal to Respondent's vice president and general manager the request was granted. Thereafter he procured leave to attend union meetings whenever he requested it. There is no evidence, apart from his retention of his secretary-treasurership of the Local, that Lee engaged conspicuously in any union activities since 1945, when his membership in the executive council of the parent union terminated.

In support of the allegation that Lee was discharged because of his known union activities, the General Counsel introduced Lee's testimony, that when Waggoner talked with him on June 1, 1950, after Lee admitted he had left his job without turning off his wells, and before Waggoner discharged him, the question of the Union came up and Waggoner said he hadn't any objections to the Union, that some of the boys want it and some not, that if the Union wants to have an election however it goes it wouldn't make any difference to Waggoner, that several people had asked Waggoner how much salary Lee drew as secretary-treasurer of the Local and that he told them he didn't care how much salary Lee got he was sure Lee earns all he gets. Further evidence directed to the same purpose was introduced in the examination of a former employee, John Frymer, who testified that in late 1941 when he was assigned by Sole to the job of patrolling leases at night, Sole told him it was saboteur business, that he should watch the men, write in a book anything he found to be wrong, and that later Waggoner told him to watch employees Westbrook, Lipsey, and Hutchens; that Sole and Waggoner talked with him about the Union, that he reported violations of rules other than the 1941 regulation in question, by employees Jones and John Williams, whom he did not know to be union members; that employee Dick Williams, not a union member whom Waggoner wanted to catch away from his job while his lease was flowing, was catching gasoline out of a drip, and that Waggoner did not penalize any of the three; that he caught employee Westbrook off the job playing poker while his wells were flowing; that he told Waggoner employee Lipsey was leaning toward the Union; that he saw a tank which employee Herring, who so far as Frymer knew was not a union member, had allowed to flow over and that Herring was fired at the time and that as far as he knew Herring was not punished for any other violations of rules; and that in 1945, when he was transferred to take over supervision of the Wyoming district, Sole told him to question job applicants to see whether they are "union" or not and that Sole said he did not want a union up there.

As further bearing upon the question of Respondent's motivation in discharging Lee, the General Counsel introduced the evidence of Albert O. Mattox to the effect that in 1941 Sole asked him on the lease he was switching if any of the organizers for the Union had ever been to see him, how he felt about it and that he (Sole) didn't want a union; that during a squirrel hunting trip that fall, Sole asked him how he felt about the Union, said that he didn't want a union,

and that sooner or later he would "get" every man who belonged to a union if it took him 10 or 20 years; that in the early part of 1942, Sole said that the fellows who didn't belong to the Union didn't have to worry about the men on night duty, that they weren't out then to watch them, and that he, Mattox, left a well on all night and a tank ran over along in 1940 or 1941, in 1941 he believes, that Sole never heard of it and he was not penalized.

On May 6, 1942, Respondent promulgated a rule which remained in effect on May 31, 1950, in part, imposing a penalty of a 2-week layoff for the first offense, and a permanent dismissal for the second offense, for leaving the lease while the wells are flowing.

Before February 6, 1948, it came to Sole's attention that Lee was home for lunch, absent from his lease, while his wells were flowing. When told by Sole this conduct violated Respondent's orders, Lee stated he had been told by his foreman, Charles McMullen, that it would be "O. K." for him to leave for lunch, provided nothing happened while he was gone but that if anything happened, Lee would be responsible. The following day Sole informed Lee he would put out another order. On February 6, 1948, Sole issued and promulgated the following order which remained in force on May 31, 1950.

There seems to be some misunderstanding among some of our employees regarding the letter of instructions or work orders that you have received at different times. My purpose in writing this letter is to advise you that all previous orders are still in effect and to try and save you from any trouble from violations.

In some instances, it is claimed that the foreman have allowed a change in certain orders without our knowledge or approval. Hereafter, any change from the original written orders referred to above must first have the approval of this office, and any waiver of any of the orders made previous to this time shall not be effective after this date.

On January 28, 1950, Sole's successor, Waggoner, issued and promulgated the following order which remained in effect on May 31, 1950.

This is to advise that any and all previous instructions, limitations and penalties provided for dilatory or negligent operation of the leases are still in full force as per written notices supplied to each of you.

You will be advised, by written notice, should any change be made in the present status of your operations.

Lee received copies of the four orders or rules dated May 12, 1941, May 6, 1942, February 6, 1949, and January 28, 1950. The intent of the orders of May 12, 1941, and May 6, 1942, had, according to the credited testimony of Sole, been discussed with Lee by Foreman McMullen (now deceased).

The General Counsel apparently contends that the 1941 and 1942 orders were discriminatorily applied, that the May 6, 1942, rule, rather than that issued on May 12, 1941, could have been applied to Lee's infraction, and that the imposition of the penalty contained in the earlier rule rather than an infliction of the milder punishment contained in the latter rule, affords an indication that Lee was not discharged for violating an order and warrants or requires an inference that he was discharged because of his union activities.

Quite obviously, the 1941 and 1942 rules were rather inartistically worded. But a superintendent out in an oil field cannot be expected to have an experienced legal draftsman at his elbow. Neither is it at all clear that Lee and his fellow switchers would have been able to comprehend lawyer's language as readily as they could their own superintendent's meaning. It would be unrealis-

tic to conclude that Lee did not at least believe from the fact, with which he admits his familiarity, that three other switchers had been discharged because they left their *jobs* without shutting off their wells, that the 1941 rule was applicable to his conduct, or that he did not believe, from the fact of his conversation with Sole and Sole's subsequent letter of February 6, 1948, that the 1942 order applied to situations similar to his going home to lunch leaving the *lease* while wells are flowing. (Emphasis supplied.) There is abundant testimony from both Sole and Waggoner as to the greater potentiality of danger, damage, and violation of the Texas Railroad Commission's oil production limitation requirements, in leaving a job without shutting off wells, than leaving the lease while the wells are flowing. True the word "permanently" does not appear in the 1941 order nor the word "temporarily" in the 1942 order. But I am convinced that the first rule was consistently construed by the Respondent and understood by the switchers, including Lee, to apply to men leaving upon completion of a job at the end of a shift, and that the second rule was with equal consistency interpreted and understood to apply to men leaving the lease for a short period of time during the course of their work for their own convenience and then returning to work before the completion of a job and the end of a shift. Further support of the fact that Lee realized he had infringed the 1941 order, lies in his admitted request that Waggoner conceal his violation from higher management.

The General Counsel has laid particular emphasis upon the disparity of treatment accorded Lee and Britt, as proof of the fact that the discharge of the former was violative of the Act. There is no question that each left "the job and" forgot "to shut off his well or wells." I have found that Britt was not a member of the Union and that Respondent did not know whether he was a union member or engaged in any union activities. Therefore, it might well be sufficient to reject the General Counsel's contention on the basis that union considerations could not enter into Respondent's decision to make an exception to the 1941 rule in Britt's case. However, the facts with respect to Britt's leaving the job without shutting off his wells are that shortly before 4 p. m. quitting time on a stormy day, Waggoner called him away from his switching job to assist Waggoner move a pipe down a hill into a slew where a well was being drilled in connection with which it was desired to run pipe that night. The truck which had brought the pipes became stuck in mud and could not get down to the location where the pipes were to be run. Hence it was necessary to roll the pipes by hand from the place where the truck stuck. The two men proceeded to roll 150 to 160 joints of pipe, 18 to 20 feet long, weighing 16 pounds to 2 feet, until about 6 o'clock and after dark. Britt was tired out doing this arduous unaccustomed work and when it was completed Waggoner said to him in effect, "Let's get the hell out of here and go home." Both men then proceeded to their cars which were parked near the doghouse on Britt's lease and drove home, Britt failing to shut off one of his two wells. As a result a tank ran over. Waggoner said he considered he was to blame and interceded with Respondent's then general superintendent to prevent Britt being discharged, with the result that Britt was not discharged but given a 2-week layoff. Waggoner had recommended that no penalty should be imposed.

The General Counsel argues further that the offense for which Powers was discharged on January 2, 1945, although violative of the same rule as that applied to Lee, was Powers' third violation of the regulation and accordingly it should be considered that Lee was discharged for reasons proscribed by the Act, and not because he violated the rule. As found above, Powers was not a union member after 1941 and Respondent had not known whether or not he was a union member. Powers' testimony as to when he had "ran a tank over"

before January 1945 was exceedingly vague. He was twice penalized by the infliction of 10- and 15-day layoffs sometime before that date. But it is doubtful whether these two penalties were imposed for leaving the job without shutting off wells or leaving the lease while the wells were flowing. Powers testified he was not positive but he believed he had run over three tanks since 1941, that he did not know how many tanks he had run over, that he had run a tank over before 1941, and that on the occasion of his discharge he had "got through," gone home to bed, and when he returned to work had found a well open and the tanks running over. On this state of Powers' testimony I am unable to find that it has been shown by substantial evidence either that he had left a lease without shutting off his wells, between May 1941 and the date of the 1945 offense or if the 10- and 15-day penalties were imposed subsequent to May 1942, they were on account of leaving the lease with the wells flowing as distinguished from leaving the job at the end of the day without shutting off the wells. The only clearly definite fact established by Powers' evidence is that he was discharged for precisely the same infraction of rules as that for which Respondent avers it discharged Lee.

The General Counsel suggests that since the 1941 and 1942 rules were issued at a time when the Union was engaged in organizational activities and about the time the election was held, it should be considered they were promulgated for discriminatory purposes, that they were intended to apply only to union members, and that the fact of their adoption should be regarded as an indication of antiunion bias. I feel that the great weight of the evidence does not warrant the acceptance of these suggestions. There is no reason for doubting Lee's statement that only three of Respondent's employees are now members of the Union. The fact that in 1948 and again in 1950, when only a very few employees were union members, Respondent specifically drew to its switchers' attention the continuing existence of the 1941 and 1942 regulations goes far toward negating any notion that they have any connection whatsoever with union activities.

In another apparent effort to connect up Lee's discharge with his union interests, he testified that the question of the Union came up when he talked with Waggoner on June 1, 1950. If such a question were discussed, I am satisfied it "came up" not from Waggoner but from Lee who on the credited testimony of Sole had repeatedly said when they talked about anything, that if Sole wanted to start something he was ready and would take it up with the Board. Waggoner was not directly interrogated about this alleged reference to unionism but did testify (and his testimony is largely confirmed by Lee) that when he discharged Lee, the latter stated he was going to protest and that both men agreed there would be no hard feelings whatever the result. Taking Lee's testimony at face value, there was nothing said by Waggoner that could fairly be regarded as substantial evidence of any antiunion motivation or coercive conduct.

There remains for consideration the testimony of Frymer and Mattox, outlined earlier in this Report. I do not regard Frymer as a reliable witness. The general tenor of his testimony was that Sole's and Waggoner's instructions to him conveyed hints that he should watch the men in particular because of their union affiliations and that he reported violations of various rules or improper conduct on the part of three or four other employees who nevertheless were not penalized. Although Frymer professes to know who among the employees in the area he patrolled were, and who were not, members of the Union, I am satisfied and conclude that Respondent has not been proven to have known who were and who were not, with the exception of Lee and the possible exception of Lipsey, whom Frymer testified he reported to Waggoner as having union leanings. I am further satisfied on the credited testimony of Sole, Waggoner, and Frymer's

coworking guard, employee I. W. Foster, that Frymer's duties at the time he was patrolling the leases were to guard against prowlers, prevent thefts, and to check the condition of the leases to see that everything was in good shape, and that it has not been established that he received instructions to engage in conduct that might be regarded as indicative of antiunion motivation on the part of Respondent. I do not credit Frymer's testimony, denied by Sole, that the latter told him when Frymer went to Wyoming (to superintend a three-employee job) to inquire into the union interests of job applicants and that Sole did not want a union there.

Apparently an inference that Respondent did not enforce its rules impartially vis-a-vis union and nonunion adherents and hence discharged Lee because of his interest in the Union, is sought to be elicited from Frymer's testimony that Herring was not punished for other violations of which he was guilty, apart from the violation of the 1941 regulation for which he was discharged. It is difficult for me to follow this reasoning in face of the fact that there is no substantial evidence that management was aware of any other rule infringements by Herring and the fact that he, a nonunion member, when once found in delict, was forthwith discharged. If any conclusion is to be deduced from the circumstances of Herring's employment and his ultimate discharge it is quite the contrary to that which the General Counsel would seem to desire to have made. Neither am I able to conclude from the fact that Jones and John and Dick Williams were not penalized for breaking rules apart from the 1941 rule in question, that Lee, who himself was not penalized for a violation of the 1942 rule, was discharged because he was a union advocate.

Mattox, who at one time had had pleasant relations with Sole, has for a number of years been on unfriendly terms with him because of his mistaken feeling that Sole was responsible for his not having received a release for transfer to other employment during the war. I find that the two men did talk about union affairs about 9 or 10 years before Lee's discharge. Whatever was said then has but a minimum of significance with respect to what might have been Sole's attitude toward unions in 1950. I can readily believe that during the course of their squirrel hunting Sole did manifest some interest in how his companion felt about unions, and that he may well have left the impression with Mattox that he did not favor unionization. But I seriously doubt, and find it has not been established, that Sole told Mattox he was going to "get" every man who belonged to a union, or that fellows who didn't belong to the union did not have to worry about the men on night duty because they were not out to watch them. I credit the testimony of Sole to the effect that, in the main, his talk with Mattox was occasioned by Mattox showing him some union leaflets that commented adversely upon Sole inviting employees out hunting during an organizational campaign and that there was more or less joking back and forth between Mattox, Enzer, another employee, and Sole at that time. It is my opinion there is no justification for attaching any weight to these casual comments of the remote past.

Although there is some uncertainty whether Mattox left his work without shutting off his wells before or after May 12, 1941, it most certainly cannot be said, in view of Mattox' admission Sole never heard of the incident, that the fact Mattox was not discharged furnishes support to the contention that Lee, known to have violated the May 12, 1941, rule, was discharged for the reasons alleged in the complaint.

Sole participated in the discharges of Westbrook, Herring, and Powers. Whether or not they were union members played no part in the decision to discharge them for violation of the same rule as that which brought about Lee's

discharge. As a matter of fact, two of the three were not union members and Sole was oblivious of the affiliations of the third. He was involved in the discharge of Britt to the extent of resisting Waggoner's request that an exception be allowed to a rule that provided no exceptions should be made, to such a degree that Waggoner appealed to higher authority and ultimately gained Sole's acquiescence. Assuming, *arguendo*, it could be found on any aspect of the evidence, that Sole's motivation in discharging other violators of the rule stemmed from his opposition to collective bargaining, this record contains no support for finding that Sole was in any way implicated in the discharge of Lee. It must follow then that any presumed attitude on Sole's part cannot be imputed to Waggoner, who testified (there being no substantial evidence to the contrary) that he assumed the entire responsibility for discharging Lee.

On all the evidence, I conclude there is no warrant for finding that Waggoner was motivated by antiunion considerations in his decision respecting Lee. I have not overlooked the testimony that Lee had been prominent in the organization of Local 207 in the summer of 1941 and after having been transferred from the East Texas Area to the Liberty, Texas, field, unfair labor practice charges were filed against Respondent, following which he was called back to the East Texas Area subsequent to a hearing held in 1942. This is quite ancient history and but for the fact that the General Counsel saw fit to introduce the testimony by way of background, I would not have discussed it in a case where it does not seem necessary to indulge in an encyclopedic recitation of all the evidence or to refer to testimony unessential to a determination of the issues and where such conciseness as is compatible with a broad understanding of the contentions of the parties should suffice. Under other circumstances, in another case, where a pattern of an employer's continual hostility to union objectives has been shown, evidence of this character, remote though it may be, could well be given significance. Under the facts of the case at bar, however, there is in my opinion such inconsiderable indication of antiunion motivation, that intimations of what may have been an unfair labor practice expiated many years ago, furnish no adequate foundation for an inference Lee was discharged because of his union activities, as persistent as I am satisfied they were.

Respondent had the right to promulgate the rule of May 12, 1941, and to discharge any employee for its violation. It was an important regulation, having as its purpose securing compliance with the law against overproduction, to prevent waste of oil and possible damage to property and life. Lee violated this rule, and only the discovery of an overflow by a third person after Lee left the lease for the day with his wells still flowing, prevented the waste of considerable oil, a violation of the Texas Railroad Commission's and Federal Tender Board's rules, and possible land or more serious damage.

It is well established and fundamental that the Act does not prevent an employer, acting in good faith, from promulgating and enforcing rules and regulations bearing some reasonable relation to the conduct of its business; that membership in a union and active participation in union affairs is no guarantee against an employee being discharged and that only when a discharge is motivated by such union membership or participation, is the Act violated; that the Act does not make the Board either "guardian or ruler" over employees or empower the Board to substitute its judgment for that of an employer as to what is sufficient cause for discharge; and that an employer may discharge an employee for a good reason or a bad reason or for no reason at all provided the discharge is not based upon opposition to union activities.

Were we here confronted with a situation where the only pertinent facts were that Lee known to be a prominent union advocate and Britt known not to be interested in or a member of the Union, were the only two employees who had violated the 1941 rule and that Lee had been discharged and Britt had not, no great doubt as to Respondent's motives might exist. But such is not the situation. Three other employees have been shown to have been discharged for the same reason as that which brought about Lee's dismissal, regardless of union activity involvement. Respondent did not know if Britt was a member of or favored the Union. Waggoner, who called Britt away from his regular duties, felt he was more responsible for not having reminded Britt to shut off his wells than Britt was for not having remembered to do so, after the two men had finished their exhausting job and Waggoner had in substance told Britt to go home. Under these circumstances it was reasonable for Respondent to conclude there were extenuating features distinguishing Britt's conduct from that of Westbrook, Herring, Powers, and Lee. It cannot be said that in the interests of fairness and, in view of the right of Respondent, in good faith, to exercise reasonably its judgment as to what is sufficient cause for discharge, Respondent's decision to make an exception to the "no exceptions" provision of its rule was discriminatory. On another occasion Lee's violation of the 1942 rule in leaving his lease with his wells flowing was excused when he asserted he had been told by his foreman he could do so. In that instance the veracity of Lee's assertion, I find on Sole's credited testimony, was not questioned and the Respondent's judgment was that the existence of extenuating circumstances contraindicated the imposition of the penalty provided by the rule. In both instances, one where Respondent knew the employee was a leader in union activities, and the other where Respondent had no knowledge of the employees' union predilections, justice was indiscriminately tempered with mercy.

Whether in view of the harm likely to follow and the liabilities possibly to ensue upon a violation of the 1941 rule, the penalty of discharge was proper or too harsh is the affair of Respondent, not the Board.

On all the evidence, I find without merit and reject the various contentions of the General Counsel.

In view of the foregoing conclusions, I find that the evidence warrants no finding that Respondent committed unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act. It will therefore be recommended that the complaint be dismissed in its entirety.

On the basis of the foregoing and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Arkansas Fuel Oil Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. Oil Workers International Union, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act and its Local 207 is a labor organization within the meaning of Section 2 (5) of the Act.
3. Arkansas Fuel Oil Company has not engaged in any of the unfair labor practices alleged in the complaint.

Recommendations

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in the case, I hereby recommend that the complaint be dismissed in its entirety.