

In the Matter of CONTINENTAL OIL COMPANY *and* INTERNATIONAL
UNION OF OPERATING ENGINEERS, LOCAL No. 550, AFL

Case No. 16-C-1207.—Decided February 26, 1946

DECISION
AND
ORDER

On November 29, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the respondent filed exceptions, with a supporting brief, to the Intermediate Report. None of the parties requested oral argument before the Board at Washington, D. C., and none was held.

The Board 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 brief of the respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as hereinafter modified.

We agree with the Trial Examiner that the respondent engaged in a campaign to discourage the organizational efforts of its employees. In the setting of the respondent's threats of and actual economic reprisal against its employees for engaging in organizational activities, as revealed by the respondent's interrogation of employees and prospective employees as to their union affiliation and activities, its clear intimation that it would employ no active union adherents, its direction that an employee should instruct other employees to vote against the Union, and the respondent's other similar conduct more fully outlined in the Intermediate Report, we also agree with the Trial Examiner's findings on the coercive effect of Superintendent Purswell's remarks at the May 1944 meeting.

The Trial Examiner further concluded, however, that the respondent, by requiring its employees to attend the May 1944 meeting at which it discussed their organizational activities, infringed upon the employees' constitutional right of free speech and free assembly, and that such compulsory attendance violated Section 8 (1) of the Act. We need not, and do not, pass upon nor adopt the Trial Examiner's conclusions in this regard.

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 respondent, Continental Oil Company, Ponca City, Oklahoma, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Taking or threatening to take economic reprisal against its employees because of their membership in, and other activities on behalf of, International Union of Operating Engineers, Local 550, AFL, or any other labor organization;

(b) Interrogating employees concerning their membership in, or other activities on behalf of, the above-named or any other labor organization;

(c) Directing employees to vote for or against the above-named or any other labor organization;

(d) Using abusive or threatening language to employees for resorting to the administrative processes of the Act;

(e) Interfering with its employees in the exercise of the right to self-organization, to form labor organizations, and to join or assist the above-named or any other labor organization.

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

(a) Post at its Rincon Field, Starr County, Texas, copies of the notice attached hereto, marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly 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;

(b) Notify the Regional Director for the Sixteenth Region (Fort Worth, Texas), in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

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, we hereby notify our employees that:

1. We will not take, or threaten to take, economic reprisals against our employees because of their membership in, and other activities on behalf of International Union of Operating Engineers, Local 550, AFL, or any other labor organizations.
2. We will not interrogate our employees concerning their membership in, or other activities on behalf of, the above-named or any other labor organization.
3. We will not direct our employees to vote for or against the above-named or any other labor organization.
4. We will not use abusive or threatening language to our employees for resorting to the administrative processes of the Act.
5. We will not interfere with our employees in the exercise of the right to self-organization, to form labor organizations, or to join or assist the above-named or any other labor organization.
6. All our employees are free to become or remain members of International Union of Operating Engineers, Local 550, AFL, or any other labor organization.

CONTINENTAL OIL 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.

INTERMEDIATE REPORT

Mr. William J. Scott, for the Board.

Messrs. William H. Zwick and *W. C. MacMillan*, of Ponca City, Okla., for the respondent.

Mr. J. E. Gililand, of Corpus Christi, Tex., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by International Union of Operating Engineers, Local No. 550, A. F. L., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated July 30, 1945, against Continental Oil Company, Ponca City, Oklahoma, 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 Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies

of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that the respondent, from about May 1944 to the date of the issuance of the complaint, (a) vilified, disparaged, and expressed disapproval of the Union, (b) interrogated its employees concerning their union affiliation, and (c) urged, persuaded, threatened, and warned its employees to refrain from assisting, becoming members of, or remaining members of the Union; and (2) that the respondent, by the foregoing conduct, engaged in unfair labor practices within the meaning of Section 8 (1) of the Act

Pursuant to notice, a hearing was held at Rio Grande City, Texas, on August 21, 1945, before Frederic B. Parkes, 2nd, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by an official representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

Following the introduction of all evidence, the undersigned granted, without objection, a motion by counsel for the Board to conform the pleadings to the proof as to dates and minor variances. At the same time, the respondent moved to dismiss the complaint on the grounds (1) that the evidence adduced by the Board failed to sustain the complaint and (2) that the statements and conduct complained of were privileged under the constitutional guarantee of free speech. The undersigned reserved ruling upon this motion. For the reasons set forth below, the motion is hereby denied. Upon the conclusion of the hearing, all parties waived oral argument and indicated that they would not file briefs with the undersigned.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Continental Oil Company, a Delaware corporation having its principal office and place of business in Ponca City, Oklahoma, is engaged in the production, transportation, manufacture, and sale of petroleum and related products. Its operations produce oil in 11 States of the United States, including the State of Texas¹. The products of its operations enter into interstate commerce. The respondent concedes that it is subject to the Board's jurisdiction.

II. THE ORGANIZATION INVOLVED

International Union of Operating Engineers, Local 550, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

1. Sequence of events

The first indication of employee interest in self-organization occurred the last of April or the first of May 1944, when one Lynch, a representative of the

¹The instant proceeding is concerned with the respondent's operations at its Rincon field in Starr County near Rio Grande City, Texas.

American Federation of Labor, visited the Rincon field and a meeting was held in the evening after working hours in the yard of the Fain Drilling Company, about three-fourths of a mile from the respondent's Rincon office. Between 18 and 25 employees of the Rincon field attended the meeting. The advantages of self-organization were discussed and several employees filled out membership application cards.

The next morning Farm Boss Ernest Enyard notified the employees that W. Monroe Purswell, district superintendent of the respondent's Rincon and Cameron fields and Navarro properties, desired to meet with all Rincon employees in the garage. The employees assembled at 10 that morning, on the respondent's property during working hours. Farm Boss Enyard and District Foreman Clem Christenson, both admittedly supervisory employees, also attended the meeting. Superintendent Purswell took charge of the meeting and, according to his testimony, addressed the employees, in part,² as follows:

. . . I said to those boys . . . I wanted to talk to them a little bit about the union. And I told each and every one of them, I impressed it. I think I said it over twice, that regardless of whether you joined the union, whether you belonged to it now, or whether you don't, that it will not make any difference in your standing with the Continental Oil Company. And then I told them about the fellows that come out and negotiated these unions, these organizers . . . I told these boys that those fellows had a job to do. They made their living doing that very thing, and it was to their interest to go out and organize these men because they profited by it, but I says "Now, before you boys go too far with these fellows, . . . Each and every one of you weigh it out carefully as to what they tell you. They might think they can do a lot for you that they can't. But go ahead and listen to them and then use your own heads. Each one of you has got a head on your own shoulders, and weigh the thing out carefully before you make any definite move either way" . . . I told those fellows that I would think that thing over very carefully and not get my name on a ledger . . . some future date . . . that I'd be ashamed of having there . . . I asked them "Do you boys, any of you remember seven or eight or nine or ten years ago, how the Ku Klux Klan swept the country around here," . . . how many of them now that you know that were engaged in that thing will admit it and own up to it? . . . "Now boys, whether you belong to the union, whether you join it or don't join it, it has no reflection on you one way or the other."

Purswell testified, in addition, that during the meeting he asked employee Ned Reese "how much money it had cost him to get this job and hold his job out here with the Continental Oil Company," that Reese had replied, "It hadn't cost him anything," and that Purswell thereupon said:

Well, that's the American way of doing these things; that's the way it should be done. There should be no law or no fixed rule by any group whereby a man had to go out and buy, or pay somebody for the privilege of earning a living for himself and his family.

Upon the credible testimony of witnesses called by the Board and by the respondent, the undersigned finds that in addition to the remarks above quoted from Purswell's testimony, Purswell also expressed the following sentiments at the garage meeting: (1) That he wondered why the employees wanted "to organize a Union" which was composed of "just a bunch of racketeering sons-of-

² Purswell admitted that he was unable to recall everything that he had said at the meeting.

bitches",³ which was interested only in collecting dues from the employees, and which could do the employees no good, (2) that if the employees "went union, it would sure as hell be union" and "things would be different," (3) that an earlier personal experience of belonging to a union had been unsatisfactory to him and had produced no benefits for him, (4) that it would be better for the employees "to take out insurance policies instead of joining the union",⁴ and (5) that by paying dues to a union, the employees were paying for their jobs and for "somebody else to tell [them] what to do."⁵

Purswell testified and the undersigned finds that Purswell's "primary purpose for calling" the garage meeting was "the sincere hopes that the desired effects would be effected; that those fellows wouldn't organize" and that he assembled the employees "to let the boys know how I felt about" their organizational efforts. Although Purswell professed at the hearing not to be opposed to "organized labor," he stated that he was "against racketeering . . . and that is what we have got" and that "the type of unions," such as the charging Union, "that we have this day and time is no good." Employees, including Farm Boss Enyart, expressed their varying opinions regarding the Union before the meeting adjourned.

Employee B Franklin Jackson testified that following the garage meeting, the employees "were all kinda scared." The organizational movement lapsed immediately after Purswell's discussion with the employees and no further interest in self-organization was evidenced by the employees for about 9 months.

Employee D. W. Cowan testified that he did not attend the garage meeting but a few days later was asked by Purswell how he "felt concerning the union" and what he knew about two men who had come out to the lease with Organizer Lynch and that when he told Purswell that the two men in question were looking for jobs, Purswell stated, "There's two sons-of-bitches that are not going to work here." Purswell did not deny Cowan's testimony but admitted that he made the statement regarding the two men accompanying Lynch because he had interviewed the men and found that one was too old to perform the work and that the other was inexperienced and for the additional reason that he "assumed that they were connected with that organizer" Lynch. In view of the credible nature of the testimony of Cowan and Purswell's admission, the undersigned finds that Purswell made the statement attributed to him by Cowan and also inquired as to Cowan's opinion of the Union.

According to the uncontroverted and credible testimony of employee Tyler, about January 8, 1945, he inquired of Purswell whether a friend of Tyler might transfer to the Rincon lease from another operation in the "Panhandle" and Purswell asked if Tyler knew of his friend's "feeling toward the union." Tyler testified without contradiction and the undersigned finds that when Tyler stated that his friend was employed in an organized field but he did not know whether his friend was a union adherent, Purswell said, "I don't want any more union agitators down here than I could help."

³ Purswell admitted that he had referred to the union organizers as racketeers but denied the expletive attributed to him by several Board witnesses. From his observation of the witnesses and for the reasons below set forth, the undersigned does not credit Purswell's denial.

⁴ Purswell admitted that he possibly made this statement.

⁵ On cross-examination, Purswell stated that he did not recall making a statement to this effect. However, on direct examination, he testified, as noted previously, that there should be no "law or . . . fixed rule" requiring an employee "to go out and buy, or pay somebody for the privilege of earning a living . . ." In view of this admission, as well as from his observation of the witnesses, the undersigned finds that Purswell made the statements set forth in the text.

Sometime in February 1945, interest in self-organization revived with the appearance of the Union. A meeting was scheduled one evening in February to be held in Rio Grande City. Employee Ollie Breeden testified that immediately prior to his leaving the Rincon field to attend this meeting, Purswell told him, "You better go in there and tell that bunch of goats to vote against that union." On cross-examination by counsel for the Board, Purswell denied that he made the statement attributed to him by Breeden. Purswell admitted, however, that he had a conversation with Breeden on the evening in question and he told Breeden "along with 5 or 6 of the other boys, that I wanted them to go [to the meeting] because we wanted full representation" but did not say anything to them about not voting for the Union. In view of the statements made by Purswell earlier in regard to the Union and the fact that Purswell admitted having had a conversation about the Union with Breeden on the evening of the scheduled union meeting, as well as the undersigned's observation of the witnesses, the undersigned does not credit Purswell's denial and finds that he made the statements attributed to him by Breeden.

About 27 employees assembled at the union meeting in Rio Grande City. A majority voted to affiliate with the Union that evening and officers were elected.

Witnesses for the Board testified that immediately following the affiliation of the employees with the Union, Purswell's attitude toward the employees changed completely. Whereas he had formerly been friendly to them and had frequently gone fishing or hunting with them, he was thereafter no longer "neighborly or friendly" but avoided the employees and spoke only when "forced" to do so. Purswell admitted that his attitude changed and attributed such change to the fact that the day following the union meeting in February, the employees seemed embarrassed and quiet; whereupon Purswell testified, "I decided that maybe I had better play the same game. So I started in myself. I would walk by those fellows and never see them; but if one of them ever recognized me and spoke to me, I have never failed yet to recognize them."

Employee Tyler testified, without contradiction, and the undersigned finds that shortly after the February meeting of the Union and the change evidenced in Purswell's attitude to the men, Tyler asked Purswell if he believed Tyler was a union organizer or agitator, that Purswell replied, "Not necessarily" and inquired the reason for the question. When Tyler explained, according to his credible testimony, that the change in Purswell's attitude was the cause for his query Purswell asked, "What good do you think anybody will get out of the Union anyway? . . . What good do you think it will do for the men out here?" Tyler further testified that he explained the various benefits the employees hoped to obtain through the efforts of the Union and that Purswell replied, "If any man here thinks it will keep him from getting fired, if he belongs to the Union, he is wrong."⁶

Employee L. T. Swearingen testified that about 10 days after the February meeting of the Union and after the change in Purswell's attitude, Swearingen told Purswell that it was Swearingen's hope that Purswell and one Conway were not "carrying any chips" on their shoulders because the employees had joined the Union, and Swearingen assured him that the employees had no "hard feelings" toward Purswell or Conway. According to Swearingen, Purswell became angry and said, "It hurt me deeply that you boys went and joined the Union without saying anything to me about it . . . From now on, everything is going to go the straight and narrow: from now on, I will run this oil patch."

⁶ Purswell was not questioned with respect to this colloquy and did not deny the statements attributed to him by Tyler. The undersigned finds that Purswell made the statements as testified to by Tyler.

Purswell did not specifically deny the statements attributed to him by Swearingen but merely generally denied the truth of Swearingen's testimony concerning the garage meeting. Since Swearingen's testimony regarding Purswell's speech at the garage meeting is in many respects identical to Purswell's admission above set forth, it is clear that Purswell's denial of Swearingen's testimony is not entitled to credence. Furthermore, Swearingen impressed the undersigned as an especially earnest and truthful witness and he accordingly finds that Purswell made the statements testified to by Swearingen.

According to the uncontroverted and credible testimony of employee Cowan, before the employees joined the Union they had "more or less a flexible working schedule," whereby they were privileged to take time off for essential personal business provided they worked the full number of hours per day or, alternatively, if they had worked more hours than scheduled on one day, they might on succeeding days take off the number of overtime work hours. However, after the organizational activities started, according to Cowan, the employees were required to work a set shift of 8 hours, without the privileges of taking time off that theretofore existed.

Employee Albert Wicks testified that when he and John Hiller applied for employment with the respondent on March 22, 1945, Purswell asked him how he "felt about the Union" and said, "Well, all I want you to know is that you do not have to belong to the Union to work out here at Continental." Hiller was unable to recall definitely whether Purswell inquired as to their union membership but stated that when Purswell gave them application blanks, he warned them that they might be approached by union adherents and said, "I just want to tell you that you don't have to join to have a job here." Purswell did not testify with respect to this incident. The undersigned finds that Purswell made the query attributed to him by Wicks and the statement attributed to him by Wicks and Hiller.

On May 7, 1945, the Union filed with the Board a charge alleging that the respondent had engaged in conduct violative of Section 8 (1) of the Act. Employee Swearingen testified that on May 11, 1945, Purswell entered Swearingen's office, flung on Swearingen's desk a letter from the Board's Regional Director relating to the filing of the unfair labor practice charge, and asked Swearingen "Do you know anything about that? I understand you are the secretary of that thing." Swearingen further testified that when he admitted his secretaryship but suggested that Purswell consult either the representative or the president of the Union about the letter from the Regional Director, Purswell said, "Well, you dirty—dirty sons of bitches, what are you trying to do? Are you trying to push me into the river? . . . You are damned sure going to have to prove I have been discriminating against you."

Purswell admitted that he took the letter from the Regional Director to Swearingen and asked him what he knew about it. According to Purswell, Swearingen replied, "the Union man will take care of that;" whereupon, Purswell told Swearingen, "Well, I have an idea there is a penciled copy of that thing around here somewhere and . . . you are going to get a chance to prove that." Purswell denied that he had made the abusive statement attributed to him by Swearingen. Upon the entire record, the undersigned does not credit Purswell's denial. As noted previously, Swearingen impressed the undersigned as an especially earnest and honest witness. Moreover, it appears that this incident led him voluntarily to terminate his employment with the respondent about 17 days later. Purswell's earlier activities and statements with respect to the Union, particularly his language employed in the garage meeting and the change in attitude evidenced by him after the employees affiliated with the Union, typify a

temperament and speech habits from which it would be likely for such remarks to emanate. The undersigned credits Swearingen's version of the colloquy with Purswell in regard to the Regional Director's letter and finds that Purswell made the statements attributed to him by Swearingen.

On May 25, 1945, the Board conducted a consent election to determine whether the respondent's employees desired to be represented by the Union for the purpose of collective bargaining. Of the 16 ballots cast, 11 were for the Union and 5 were against the Union. The day following the election, the respondent's garage in which the employees were accustomed to service and repair their automobiles in their free time, was locked at 5 p. m., the close of the workday. At the same time it locked the gates into the garage yard where the air and water lines were.⁷ The removal of the privilege for the use of these facilities created a great hardship for the employees since the Rincon lease on which they worked and lived was a considerable distance from the nearest town where comparable services were available and since the use of their automobiles was necessary in the performance of the duties of most employees. Purswell and Luther Pearce, who was a mechanic in the garage, testified that the garage was closed and the yard gates locked, on the order of Purswell, because some equipment and tools had disappeared from the garage and that this was not the first time that the garage had been locked at the close of the working day. However, they admitted that on the earlier occasions when the garage facilities were locked, the key was left in a box near the entrance so that employees might enter and use the garage in their free time. Although employees complained, no explanation for the closing was given until about the middle of June when the matter was discussed at a meeting between representatives of the Union and the respondent, who were negotiating a collective bargaining contract. In view of Purswell's statements and attitude toward the Union and his announcement after the employees affiliated with the Union that "From now on, everything is going to go the straight and narrow . . . I will run this oil patch," as well as the change to a strict 8-hour work shift for all employees, the undersigned finds that Purswell ordered the garage and yard to be locked the day following the Board election because the employees had, contrary to his desires, chosen the Union as their statutory representative.⁸

2. Conclusions

The foregoing findings establish that the respondent, through District Superintendent Purswell, engaged in a campaign designed to discourage the organizational efforts of its employees. The undersigned is of the opinion that the respondent, in doing so, has exceeded the limits of free expression and has engaged in a course of conduct violative of Section 8 (1) of the Act.

It cannot be said that the statements concerning the Union and its organizers made by Purswell in his speech at the garage meeting and also on other occasions were a temperate argument against the Union as an employee representative.⁹ Admittedly, the intended effect of the speech by Purswell and the use in reference to the union organizers of such appellations as "racketeering sons-of-bitches" was to discourage the employees from joining the Union. Contained in Purswell's opprobrious description of the Union and its leaders were implications of economic reprisals to be visited upon the employees should they choose the Union as a

⁷ Therefore, the employees had had access to the garage at all times.

⁸ Upon negotiation with the respondent and ultimately upon appeal to officials of the respondent in San Antonio, the garage facilities were made available again to the employees about the first of July 1945.

⁹ Compare *N. L. R. B. v. American Tube Bending Co.*, 134 F. (2d) 993 (C. C. A. 2), cert. den. 320 U S 768.

bargaining agent. Thus, Purswell stated that if the employees "went union, it would sure as hell be union" and "things would be different." Delivered in a setting where the listeners were economically dependent upon, and compelled to give heed to the speaker, the whole tenor of the speech was to coerce the employees into rejecting the Union's organizational efforts.

By compelling its employees to assemble during working hours on the respondent's premises to listen to Purswell's anti-union statements, the respondent, through Purswell, not only effected an illegal use of its economic power over its employees in order to interfere with their choice of a bargaining representative but also violated the employees' "fundamental right" of self-organization,¹⁰ which is part of the right of free speech and also of free assembly.¹¹ It is clear that the right of free speech includes the right to refrain from speaking.¹² Similarly, concomitant with the right of free assembly is the right to refrain from assembling, which in respect to self-organizational purposes is protected by the Act. Thus, the expression of opinions and the choice of place, manner, and means respecting their self-organization is guaranteed employees free from employer interference. By Purswell's addressing his anti-union remarks to a "captive audience" of employees, the respondent infringed upon the employees' right of free discussion and assembly and also upon their right to organize without interference on the part of the respondent. The employer's right of free speech cannot afford it immunity for such conduct.

Purswell's threats and derogatory statements against the Union and its leaders are peculiarly significant when considered in the light of his subsequent conduct. A few days after the garage meeting, he told employee Cowan that two men who had accompanied the union organizer to the oil field in the search for employment were "not going to work here." The implication that the reason he would not employ them was their association with the Union was admitted by Purswell at the hearing. Similarly, when employee Tyler asked Purswell about the possibility of a friend's transfer to the Rincon lease, Purswell immediately inquired as to the friend's union affiliation and indicated that the transfer would not be effected since Purswell did not "want any more union agitators down here." These statements are plainly coercive in effect since they patently demonstrate to employees the manner in which District Superintendent Purswell exercised economic power in connection with persons associated with or members of a union.

That Purswell achieved the effect he admittedly desired, that is, the rejection of the Union by the employees, is revealed by the fact that following his speech the employees were "scared" and abandoned their organizational efforts.

Upon the revival of the employees' interest in self-organization some 9 months later, Purswell immediately interfered with the movement to launch the Union by advising employee Breeden to attend the first union meeting and "tell that bunch of goats to vote against that union." After a majority of the employees determined to join the Union in February, Purswell at once evidenced his displeasure with their choice by replacing his former convivial demeanor with an attitude of cold hauteur toward his employees. When employees, concerned by Purswell's change in manner, attempted to placate him, he again disparaged the Union by inquiring of employee Tyler what benefits he hoped to receive from the Union and by admitting to employee Swearingen that it "hurt" Purswell deeply

¹⁰ *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1.

¹¹ *Hague v. Committee for Industrial Organization*, 307 U. S. 496, wherein the Court stated, "The right to discuss and inform people concerning the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly." See also *Thomas v. Collins*, 323 U. S. 516.

¹² *Board of Education v. Barnette*, 319 U. S. 624.

that the employees had joined the Union. At the same time, Purswell voiced further implied threats of economic reprisals against the employees because of their affiliation with the Union. Thus, he informed employee Tyler that "if any man here thinks it will keep him from getting fired, if he belongs to the Union, he is wrong." and stated to Swearingen that "From now on, everything is going to go on the straight and narrow; from now on, I will run this oil patch." In compliance with these threats, shortly thereafter the flexible working schedule was replaced by a more rigid system and after a majority of the employees chose the Union as their statutory representative in the Board's election, the privilege of using the respondent's garage for the service and repair of the employees' cars was revoked by Purswell. Furthermore, Purswell's inquiry as to the attitude of Wicks and Hiller toward the Union and his abusive language and statements made to Swearingen relative to the Regional Director's letter constituted additional interference, restraint, and coercion.

Upon the entire record, the undersigned is convinced and finds that the acts and statements of Purswell, outlined above, were integral parts of a course of conduct whereby the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act¹³

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 the operations of the respondent 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 unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. International Union of Operating Engineers, Local No. 550, A. F. L., is a labor organization, within the meaning of Section 2 (5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Continental Oil Company, Ponca City, Oklahoma, and its officers, agents, successors, and assigns, shall:

¹³ See *Matter of M E Blatt Company*, 38 N. L. R. B. 1210, and 47 N. L. R. B. 1055, enf'd 143 F. (2d) 268 (C. C. A. 3), cert. den. 323 U. S. 774; *Matter of Agar Packing & Provision Corporation*, 58 N. L. R. B. 738.

1 Cease and desist from :

(a) In any 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 Union of Operating Engineers, Local No 550, A F. L., 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 Act

2 Take the following affirmative action which the undersigned finds will effectuate the policies of the Act :

(a) Post at its Rincon Field, Starr County, Texas, copies of the notice attached hereto, marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly 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 ;

(b) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C, an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy upon each of the parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

FREDERIC B PARKES, 2ND,
Trial Examiner.

Dated November 29, 1945.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that :

We will not in any 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 Union of Operating Engineers, Local No. 550, A. F. L., 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.

CONTINENTAL OIL COMPANY,
Employer.

Dated----- By-----
(Representative) (Title)

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