

(c) Notify the said Regional Director, in writing, within 20 days from the date of its receipt of this Decision, what steps the Respondent has taken to comply herewith.¹¹

B. The election in Case 30-RC-358 is set aside, and that proceeding is hereby vacated.

¹¹In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner 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 bargain upon request with Shopmen's Local Union #811, International Association of Bridge, Structural and Ornamental Iron Workers (AFL-CIO), as the exclusive representative of our production and maintenance employees.

WE WILL NOT threaten to close all or part of the plant or to reduce overtime because of our employees' choice of a collective-bargaining representative.

WE WILL NOT promise benefits to our employees in an effort to cause them to reject the Union as their bargaining representative.

WE WILL NOT in any like or related manner interfere with our employees in the exercise of their right to join or assist a labor organization, to bargain collectively, or to engage in concerted activities for mutual aid or protection.

WAUSAU STEEL CORPORATION,
Employer.

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

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 230, Commerce Building, 744 North Fourth Street, Milwaukee, Wisconsin 53203, Telephone 272-8600, Extension 3866.

Signal Oil and Gas Company and Teamsters, Chauffeurs, Warehousemen & Helpers Local 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.
Case 31-CA-207. August 24, 1966

DECISION AND ORDER

On May 18, 1966, Trial Examiner Louis S. Penfield issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Brown and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Trial Examiner's Decision, the exceptions, and the brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified below.

[The Board adopted the Trial Examiner's Recommended Order with the following modifications:

[1. Add the following as paragraph 2(b) and consecutively reletter the present paragraph 2(b) and those subsequent thereto:

["(b) Notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces."]

[2. Add the following to the notice attached to the Trial Examiner's Decision:

[WE WILL notify the above-named employee, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

[3. The address for Region 31, appearing at the bottom of the notice attached to the Trial Examiner's Decision, is amended to read: 10th Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California 90014, Telephone 688-5850.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case was heard before Trial Examiner Louis S. Penfield in Bakersfield, California, on January 27, 1966. The complaint, dated December 9, 1965, is based on a charge filed October 15, 1965. Copies of the charge and complaint were duly served on all parties.

The issue litigated was whether or not Signal Oil and Gas Company, herein called Respondent, violated Section 8(a)(1) and (3) of the Act by the alleged discriminatory discharge of one employee. The General Counsel claims such employee was discharged because he assisted and expressed support and sympathy for a labor organization which did not represent him, thereby having engaged in union and protected concerted activity. Respondent asserts the discharge to have been for cause.

Upon the record, including consideration of briefs filed by parties, and upon my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation with its principal place of business in Los Angeles, California. It is engaged in the refining and sale of petroleum products. This proceeding is concerned solely with its operations in Bakersfield, California. It is conceded that during the past year Respondent sold and shipped products valued in excess of \$50,000 from its California facilities to points located outside the State of California. I find Respondent to be engaged in a business which affects commerce within the meaning of the Act, and the assertion of jurisdiction to be warranted.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Chauffeurs, Warehousemen & Helpers Local 87, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called Teamsters; and Oil, Chemical and Atomic Workers International Union, AFL-CIO, Local 1-19, herein called Oil Workers, are each labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

At Bakersfield, California, Respondent operates a refinery and a pipeline division. It also employs truckdrivers to make deliveries of Respondent's oil products to retail outlets in a surrounding area. Fred Brown, dispatcher, supervises the work of the truckdrivers and is conceded to be a supervisor. Brown works under the immediate supervision of Malcolm D. Dawson, manager of Marketing Transportation. James Rasbury is the manager of Respondent's Employment Relations Department, which has general supervision of all aspects of the employment and termination of employees throughout all Respondent's operations. H. J. Stroud is a vice president of Respondent in charge of employee relations. Dawson, Rasbury, and Stroud all work out of Respondent's main office in Los Angeles.

The incidents which give rise to this proceeding took place in September 1965, and the record indicates no dispute of substance as to what occurred.

Respondent's refinery employees in Bakersfield are represented by Oil Workers. In September 1965, Oil Workers' contract was about to terminate, and negotiations were under way for a new agreement. Respondent's pipeline division and its truckdrivers in Bakersfield were at that time unrepresented.¹

Louis Evans was one of Respondent's nine truckdrivers working out of Bakersfield in the fall of 1965. Evans had been so employed for approximately 9 years. With regard to other Bakersfield truckdrivers, his seniority status was approximately midway. Evans was directly responsible to Fred Brown. Except for the matters to be related below, the record does not show Evans to have been active on behalf of, or to have expressed support for, Teamsters or any other labor organization during any part of his employment.

On September 24, 1965, Evans was in the dispatching office. At this time, Evans and Walt Bright, a pipeline employee with whom Evans was acquainted, engaged in a conversation in the presence of Dispatcher Brown. According to Evans, Bright asked him "what [he] thought of the refinery's voting a union strike" and Evans replied "good, good, I hope they do." Evans stated that he also remarked that he doubted if the strike would take place, and then Brown reminded both him and Bright that if there was a strike, both would be out of work.

On the same day Brown reported Evans' remark to his immediate superior, Malcolm Dawson. This report occurred in the course of a routine discussion with Dawson concerning the performance of employees. According to Dawson, Brown reported Bright's inquiry concerning the strike and reported that Evans had

¹The record does not show if the pipeline employees had ever been represented. Prior to 1962, the truckdrivers had been represented by Teamsters. During that year, both Teamsters and Oil Workers participated in a Board-conducted election for representation of truckdrivers. The employees voted for neither union to represent them, and at the time of the hearing, no new representative had been chosen.

remarked "I hope they do, maybe it will teach this cheap company something."² Brown made no recommendation to Dawson regarding Evans at the time he reported the incident, and Dawson gave him no instructions concerning Evans' future.

During the course of the following week, Dawson reported the incident as it had been related to him by Brown to Manager of Employment Relations Rasbury. At the time, neither Dawson nor Rasbury discussed the possibility of future action. On September 28 or 29, Rasbury and Dawson had occasion to meet with Vice President Stroud. The purpose of the meeting was to consider an employee relations problem unrelated to Evans. When they had completed discussion of the principal subject matter of the meeting, Rasbury asked Dawson to relate to Stroud the substance of the report about Evans. When Dawson had finished his narrative, Stroud said, "What kind of an employee have we got here," stating that, although this remark was not in itself sufficient reason for discharge, it constituted a reason for looking at Evans' record. Rasbury forthwith left Stroud's office returning shortly thereafter with Evans' personnel file. The three then went through the file covering Evans' entire employment history. The file disclosed that Evans was a chronic complainer, that he had been placed under surveillance on a suspected charge of stealing gasoline, and that he had been accused of, and was under investigation for, filing a fraudulent claim regarding health benefits for his wife under Respondent's health and welfare insurance policy. The file did not conclusively establish Evans' responsibility either for the alleged theft of the gasoline, or for the fraudulent character of the claim. After reviewing the file, however, Stroud said, "Why in the world are we keeping an employee like this on the payroll when we have one too many up there anyway?"³ It was thereupon agreed that Evans should be discharged, and that instructions should be given to Brown to effect the termination.

On Monday and Tuesday, September 27 and 28, Evans worked as usual. He did not work on September 29, and on September 30, he went to the dispatcher's office to ascertain when he would be sent out again. He was told by Brown that he was terminated. Evans testified that Brown showed him a termination slip and asked him to sign it. Evans refused to do so. The termination slip, prepared by Brown on instructions from Dawson, showed the following reason for termination, "Generally an unsatisfactory employee. Poor attitude. I feel that both the Company and the employee will be better off if he is terminated." Although Evans admits he was shown the slip, he states that he also asked Brown why he was fired, and that Brown replied, "because you have been over to the refinery talking to the employees about the union and the refinery called the main office in Los Angeles and had you fired." Evans states that he told Brown that this could not be true because he had not been hauling for the past few days and had not been near the refinery. Evans then told Brown that he was dissatisfied with what Brown had told him, and that he wished to call Dawson. Brown gave him Dawson's telephone number. Evans went home and called Dawson on the telephone. Evans testified that he told Dawson what Brown had said about his talking to the refinery employees, that Dawson immediately disclaimed knowledge of any such thing, that Dawson explained that Brown had reported Evans' remarks concerning the strike and that this had been discussed by Dawson with higher officials in the Company, and that a decision had been made that continued employment with Respondent would not be good for either the Company or for Evans. Brown denies the remark concerning the refinery employees, stating that, in response to Evans' inquiries concerning the reasons for discharge, he had only showed Evans the termination slip. Dawson's account of his conversation with Evans after the discharge is not materially different from that of Evans. Dawson acknowledges that Evans asked him why he had been discharged,

² Neither Brown nor Bright testified concerning Evans' remark on September 24. Dawson's testimony differs from that of Evans only with regard to the addition of the statement about "this cheap company." Both agree that Evans expressed the hope that a strike would occur. I see no significant difference between the versions. At the most, Dawson's version contains a more unflattering reference to Respondent, but the main thrust of both versions is an expression of hope by Evans that Respondent might be subjected to strike action by a group of employees with whom Evans was not directly involved.

³ Business was apparently somewhat slack at the time, and Evans and possibly others were not working steadily. There is no showing, however, that Respondent was actively considering termination of any of the drivers at that time as a result of slack work.

and that Evans told him that Brown had said it was because he talked too much at the refinery. Dawson admits that he queried Evans about his remark on September 24 about the strike, that he told Evans that Brown had reported the remark, and that the decision to discharge had thereafter been made by higher management because the "attitude that you have is not good for you or for the company."

Discussion of the Issues and Concluding Findings

The General Counsel contends one motivating reason for Evans' discharge to have been Respondent's belief that Evans had been talking to the refinery employees "about the union." To support this, General Counsel relies solely on the statement which Evans attributes to Brown when Evans allegedly asked about the reason for his termination. I am not persuaded that the record will support such a conclusion. Evans not only did not talk "about the union," or anything else, with the refinery employees, but it is not shown that any information came to the attention of management officials which might have caused them to believe that he had done so. Thus, it is not directly shown that Brown, or anyone else, reported such conduct on Evans' part to higher management, and I find no other circumstances in the record which will support an inference that those who made the decision to discharge believed this to have happened. Evans' uncorroborated testimony is not convincing in the face of Brown's denial that he made a statement of this nature. It is true that Brown's denial would be more impressive if it had come in a narrative of the sequence of the events of the discharge rather than in response to a direct question. However, even in the record context, I find it difficult to believe that Brown would have advanced such a reason after having been directed to discharge Evans because of his poor attitude, and after having spelled out such reason in writing on the termination slip which he presented to Evans. Moreover, even if the statement be attributed to Brown, it is not shown that knowledge of such activity by Evans reached higher management officials before they made the decision to terminate him. Accordingly, I place no reliance whatsoever on Respondent's alleged belief in Evans' "union" talks with refinery employees as a motivating factor in his discharge.

General Counsel contends, however, that Evans' remark expressing hope that the refinery employees would strike, is both an expression of support for the union activity of his fellow employees, and protected concerted activity. It is urged that the record shows the remark to have precipitated the discharge, thereby rendering it unlawful. Respondent denies the remark to be such an expression, and urges the sole cause for the discharge to be the personnel file disclosures showing Evans to be somewhat less than a wholly desirable employee. Respondent argues the remark to Bright to have been merely a casual one made to an acquaintance indicating no more than a measure of dissatisfaction with the employer, and contends that it cannot properly be regarded as an assertion of a protected right involving a call to group action.

I find no need to evaluate the material in Evans' file relating to his desirability as an employee. It may be assumed that, absent other considerations, the file contained material which reflected sufficiently on Evans' general attitude that it might have justified his discharge. The overriding consideration, however, is that insofar as the file revealed past derelictions, there is no showing that any of this would have come to the attention of higher management at this time, had not the report of Evans' remark to Bright expressing his approval of the strike caused management to question his desirability as an employee and to institute the investigation. Respondent's present claim that the remark was casual and innocuous is belied by its past response. Brown, for some unexplained reason, regarded this as of enough significance that he reported it on the same day to his immediate superior. Dawson, far from brushing it off, took it upon himself to pass it on to the manager of employment relations. The manager of employment relations then arranged that it be brought to the attention of an executive vice president of the corporation. The vice president attached sufficient import to it to direct scrutiny of Evans' entire record. There is no explanation why the report of a casual or passing remark should have undergone such a process of escalation. Thus, we find a report of a so-called casual remark carrying such an impact that it precipitates an investigation which would not have been undertaken otherwise, and we see that investigation resulting directly in the discharge. Thus, the discharge becomes unlawful if the remark which precipitated it properly can be construed as falling within the area of protected employee rights.

Although the remark on its face is somewhat mild in nature, I can only regard it as an expression of sympathy and support by Evans for a group of his fellow employees who had announced that they might undertake collective action in support of demands they were making against their employer. In effect, Evans expressed common cause with the refinery employees in furtherance of their strike, even though he was not a part of the refinery group, and even though the strike would have the undoubted effect of putting him out of work. In one sense, the remark may not be a call to concerted action, but it does express support by Evans of such action by his fellow employees in another unit. Striking employees seek all the support they can get. When fellow employees not directly involved in the strike, but affected by it, express support, they often do so in the hope of reciprocal support at a later time. Thus, Evans' remark may be regarded as an expression of support for the proposed union activity of his fellow employees, made in anticipation that he or his group might receive similar support should the occasion arise. I find this to be a form of protected activity for his own aid and protection, as well as an expression of support for a labor organization of his fellow employees. Discharge for such expression would clearly interfere with rights protected by the statute, and would tend to discourage membership in a labor organization. As we have seen, it was this very remark which set in motion the chain of events that resulted in Evans' discharge. Accordingly, I find that Evans was discharged because he expressed himself as in sympathy with, and in support of, the strike activity of his fellow employees, that by engaging in such conduct, he was engaging in activity protected by the statute, and that his discharge, therefore, was violative of both Section 8(a)(1) and (3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section III, above, occurring in connection with the operations of Respondent discussed in section I, above, have a close, intimate, and substantial relation with 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 Respondent has engaged in unfair labor practices violative of Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I am not convinced that the record shows a disposition upon Respondent's part to flout the policies of the Act generally, and accordingly I shall not recommend a broad cease-and-desist order, but shall only require that it cease and desist from engaging in any like or related conduct.

Having found that Respondent has unlawfully discharged Louis Evans, I shall recommend that Respondent be ordered to offer immediate and full reinstatement to Evans to his former or substantially equivalent position, and make him whole for any loss of earnings he may have suffered because of the unlawful discharge, by payment to him of a sum of money equal to the amount of wages he would have earned from the date of his discharge to the date he is either reinstated or offered reinstatement together with interest thereon at the rate of 6 percent per annum, and that the loss of pay and interest be computed in accordance with the formula and method prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing and Heating Co.*, 138 NLRB 716, to which the parties hereto are expressly referred.

CONCLUSIONS OF LAW

On the basis of the foregoing findings of fact, and upon the entire record in this proceeding, I make the following conclusions of law:

(1) Signal Oil and Gas Company is, and has been at all material times, an employer engaged in a business affecting commerce within the meaning of Section 2(2) and (7) of the Act.

(2) By discharging Louis Evans, as found above, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) 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.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, I recommend that Respondent, Signal Oil and Gas Company, its agents, successors, and assigns, shall:

1. Cease and desist from interfering with the rights of its employees to engage in activities for their mutual aid and protection, or in support of any labor organization, by their discharge or other discriminatory treatment, or in any like or related manner restraining or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

a. Offer to Louis Evans immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights or privileges, and make him whole for any losses he may have suffered as the result of his discharge in the manner prescribed above in the section entitled "The Remedy."

b. Preserve and, upon request, make available to the Board, or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to an analysis of the backpay due.

c. Post at its usual place of business, including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix A."⁴ Copies of the said notice to be furnished by the Regional Director for Region 31, after being signed by Respondent, shall be posted by it immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in such conspicuous places. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

d. Notify the Regional Director for Region 31, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply therewith.⁵

IT IS FURTHER RECOMMENDED that, on or before 20 days from the date of its receipt of this Trial Examiner's Decision, Respondent notifies the Regional Director that it will comply with the foregoing recommendations, the National Labor Relations Board issue an Order requiring Respondent to take the action aforesaid.

⁴ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be ordered by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order," shall be substituted for the words "a Decision and Order."

⁵ In the event that this Recommended Order is adopted by the Board, paragraph 2(d) hereof shall be modified to read, "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner 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 interfere with the rights of our employees to engage in activities for their mutual aid or protection, or in support of any labor organization, by their discharge or other discriminatory treatment, or in any like or related manner restrain or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL offer Louis Evans immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and WE WILL make him whole for any loss of pay he may have suffered as a result of his discharge.

SIGNAL OIL AND GAS COMPANY,
Employer.

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

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 17th Floor, U.S. Post Office and Courthouse, 312 North Spring Street, Los Angeles, California, Telephone 688-5840.

**Purity Food Stores, Inc. (Sav-More Food Stores) and Local 1435,
Retail Clerks International Association, AFL-CIO. Case
1-CA-4644. August 26, 1966**

SUPPLEMENTAL DECISION AND ORDER

On February 3, 1965, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,¹ finding that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Charging Union, as collective-bargaining representative of employees at Respondent's retail food market in Peabody, Massachusetts, and by engaging in an unlawful course of conduct designed to undermine the Union's status as majority representative. Thereafter, the Board filed a petition with the United States Court of Appeals for the First Circuit for enforcement of its Order. The court denied enforcement of the 8(a)(5) portion of said Order and remanded the case solely for consideration of certain factual matters to which the Board's original Decision made no reference and upon which Respondent relies in contending that a single store unit is not appropriate for collective bargaining herein.² Thereafter, briefs were filed by the Respondent, the Charging Union, and the General Counsel.

In the light of the court's comment that Respondent "is certainly correct" in contending that the Board's initial unit determination "ignores substantial parts of the record, and misstates and misconstrues other parts . . .," the Board has painstakingly reexamined the entire record including the court's Decision and the briefs of the parties. In view of the multiplicity of factual issues, their varying significance and clarity, and our disagreement with certain of Respondent's representations of the record, we have set forth, in footnotes below, those factual matters which pertain to our findings, pointing up their relative importance to the basic issue before us for determination. Initially, however, it appears appropriate to excerpt fully from Respondent's brief to the court, the facts upon which Respondent relies in contesting the appropriateness of a single-store unit herein.

¹ 150 NLRB 1523

² *N.L.R.B. v Purity Food Stores, Inc. (Sav-More Food Stores)*, 354 F.2d 926 (C.A. 1).

160 NLRB No. 53.