

In the Matter of ASSOCIATED OIL COMPANY *and* SAILORS UNION OF THE  
PACIFIC

In the Matter of UNION OIL COMPANY; *and* SAILORS UNION OF THE  
PACIFIC

In the Matter of GENERAL PETROLEUM CORP. OF CALIFORNIA *and*  
SAILORS UNION OF THE PACIFIC

In the Matter of HILLCONE STEAMSHIP COMPANY *and* SAILORS UNION  
OF THE PACIFIC

In the Matter of RICHFIELD OIL CO. OF CALIFORNIA *and* SAILORS UNION  
OF THE PACIFIC

*Cases Nos. R-477 to R-481, inclusive.—Decided March 9, 1938*

*Water Transportation Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employers to recognize petitioning union as exclusive representative of employees until certification by the Board; controversy concerning units appropriate for collective bargaining—*Units Appropriate for Collective Bargaining:* unlicensed deck personnel on tankers; barge employees not included; history of bargaining and desires of employees considered; occupational differences not determinative—*Elections Ordered:* eligibility to vote to be determined as of date of posting notice of election and date of balloting.

*Mr. John P. Jennings*, for the Board.

*McCutcheon, Olney, Mannon & Greene*, by *Mr. Farnham P. Griffiths* and *Mr. George E. Dane*, of San Francisco, Calif., for the Union Oil Company of Calif., General Petroleum Corporation of Calif., Hillcone Steamship Company, Ltd., and Richfield Oil Corporation.

*Mr. Daniel W. Hone*, of San Francisco, Calif., for the Tidewater Associated Oil Company.

*Mr. Harry Lundeborg* and *Mr. Milton D. Sapiro*, of San Francisco, Calif., for the S. U. P.

*Mr. J. C. Coulter*, of Long Beach, Calif., for the Oil Workers.

*Mr. E. J. Stillings*, of San Francisco, Calif., for the Inland Boatmen.

*Mr. W. H. Ashby*, of Associated, Calif., for the Associated Seamen.

*Mr. Walter T. Nolte*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On October 21, 1937, Sailors Union of the Pacific, herein called the S. U. P., filed with the Regional Director for the Twentieth Region (San Francisco, California) five petitions alleging that questions affecting commerce had arisen concerning the representation of employees of Tidewater Associated Oil Company, Union Oil Company of California, General Petroleum Corporation of California, Hillcone Steamship Company, Ltd., and Richfield Oil Corporation,<sup>1</sup> herein called the Companies, and requesting investigations and certifications of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 19, 1937, amended petitions were filed in the cases relating to General Petroleum Corporation of California, Hillcone Steamship Company, Ltd., and Richfield Oil Corporation. On November 26, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Sections 3 and 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a consolidation of the five cases for the purpose of hearing, and also ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 30, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon each of the Companies and the S. U. P., and also upon the Oil Workers International Union, Local No. 128, herein called the Oil Workers, upon the Inland Boatmen's Union of the Pacific, herein called the Inland Boatmen, upon the Associated Seamen's Association, herein called the Associated Seamen, upon the Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association, upon the Marine Cooks and Stewards Association of the Pacific Coast, and upon the American Radio Telegraphists' Association, labor organizations claiming to represent employees directly affected or who might be directly affected by the investigation. A notice of postponement of hearing was issued by the Regional Director on December 6, 1937, and duly served upon all of the above parties. Pursuant to the latter notice, a hearing was held on December 9 and 10, 1937, at San Francisco, California, before Jesse E. Jacobson, the Trial Examiner duly designated by the Board. The Board,

<sup>1</sup> Tidewater Associated Oil Company, Union Oil Company of California, Hillcone Steamship Company, Ltd., and Richfield Oil Corporation were erroneously called Associated Oil Company, Union Oil Company, Hillcone Steamship Company, and Richfield Oil Co. of California, respectively, in the Board's order directing an investigation and hearing.

each of the Companies, the S. U. P., the Oil Workers, the Inland Boatmen, and the Associated Seamen were represented by counsel or by their officers and agents, and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANIES

Stipulations were entered into by counsel for the Board and counsel for each of the Companies, in which certain facts concerning the nature and extent of the operations of the Companies were set forth. The stipulations show that each one of the Companies is engaged in the transportation of petroleum products by means of ocean-going tankers and that all of them except Hillcone Steamship Company, Ltd., also operate barges and self-propelled motor boats for the transportation of such products within the several major ports of the Pacific Coast. The four oil companies are also engaged in the production and marketing of petroleum products and the transportation operations of those concerns are incidental to such producing and marketing.

With respect to the interstate and foreign commerce aspects of the transportation activities of the Companies, the stipulations show the following:

1. *Tidewater Associated Oil Company.* In excess of 50 per cent of the products transported in tankers, barges, or self-propelled motor boats operating out of or within Pacific Coast ports are carried in interstate or foreign commerce.

2. *Union Oil Company of California.* Most of the products transported in tankers, barges, or self-propelled motor boats operating out of or within Pacific Coast ports are carried in interstate or foreign commerce.

3. *General Petroleum Corporation of California.* Most of the products transported in tankers, barges, or self-propelled motor boats operating out of or within Pacific Coast ports are carried in interstate or foreign commerce.

4. *Hillcone Steamship Company, Ltd.* Slightly less than one-half of the products transported in tankers operating out of Pacific Coast ports are carried in interstate commerce.

5. *Richfield Oil Corporation.* More than one-third of the products transported in tankers, barges, or self-propelled motor boats operating out of or within Pacific Coast ports are carried in interstate commerce.

## II. THE ORGANIZATIONS INVOLVED

Sailors Union of the Pacific is a labor organization unaffiliated with any national or international body, admitting to its membership all unlicensed deck personnel on tankers, barges, and self-propelled motor boats operated by the Companies on the Pacific Coast.

Oil Workers International Union, Local No. 128, is a labor organization affiliated with the Committee for Industrial Organization. It admits to its membership all unlicensed personnel on barges and self-propelled motor boats operated by the Companies within the several Pacific Coast ports.

Inland Boatmen's Union of the Pacific is a labor organization affiliated with the Committee for Industrial Organization. It admits to its membership all unlicensed personnel on barges and self-propelled motor boats operated by the Companies within the several Pacific Coast ports.

Associated Seamen's Association is an independent and unaffiliated labor organization. It admits to its membership all unlicensed personnel on tankers, barges, and self-propelled motor boats operated by the Associated Division of the Tidewater Associated Oil Company on the Pacific Coast.

## III. THE QUESTIONS CONCERNING REPRESENTATION

After the Pacific Coast maritime strike of 1934, the National Longshoremen's Board, appointed by the President of the United States, conducted an election and certified the International Seamen's Union as bargaining representative for the unlicensed maritime personnel on the Pacific Coast. At that time the S. U. P. was affiliated with the International Seamen's Union and was the branch of the latter organization directly concerned with unlicensed deck personnel as distinguished from other unlicensed personnel. The S. U. P. was represented at the bargaining conferences which followed the certification of the International Seamen's Union and participated actively as the direct representative of the unlicensed deck personnel. Those conferences, in so far as they related to the Companies here involved, terminated with the calling of a strike in the spring of 1935 and have never been resumed.

In the fall of 1937, representatives of the S. U. P. called upon the Union Oil Company of California and the Tidewater Associated Oil Company to grant it recognition as exclusive collective bargaining agent. In both instances the request was denied for the reason, as

understood by the representatives of the S. U. P., that exclusive recognition would not be granted until the procedure provided by the Act had been followed and certifications had been issued by the Board. The S. U. P. never approached the other three concerns here involved, believing that their position would be the same as that taken by the Union Oil Company of California and the Tidewater Associated Oil Company. It appears from the record that the other three concerns do, in fact, take similar positions.

We find that questions have arisen concerning representation of employees of the Companies and that such questions tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### IV. THE APPROPRIATE UNITS

The S. U. P. claimed that the appropriate units for purposes of collective bargaining should consist of all unlicensed deck personnel employed by each of the Companies on tankers and barges operated on the Pacific Coast. (It was stipulated by all parties that the word barges should be deemed to mean both tow barges and self-propelled motor boats.) The Inland Boatmen and the Oil Workers intervened only as to the barge employees, claiming that such employees should not be included in a single unit together with the employees on tankers. Neither of the latter two organizations claimed jurisdiction over the tankers, membership among such employees, or any interest in the question concerning their representation. The Associated Seamen, interested only in the representation of the employees of the Tidewater Associated Oil Company, claimed members on tankers and barges alike. This organization expressed no preference with regard to combining barge and tanker employees in one unit or creating two separate units and offered no evidence on the question. None of the three intervening organizations requested, as a part of their petitions of intervention, that elections be held. They only asked to be placed on the ballots in the event that the Board ordered elections on the basis of the petitions of the S. U. P. According to their respective positions in this proceeding, none of them desire the holding of elections at the present time.

Many divergent factors appear in the record relative to the issue thus developed between the S. U. P. on the one hand and the Inland Boatmen and the Oil Workers on the other. Much was said by both sides concerning jurisdiction over barge employees. While the S. U. P. maintained that its jurisdiction over bargemen dates from its organization in 1885, no showing of any exercise of such jurisdiction was made. The Inland Boatman claimed jurisdiction identical with that exercised by their predecessor, the Ferryboatmen's Union, and introduced testimony to the effect that the latter organization had members among the bargemen as early as 1932. At that time, and until 1936,

both the Ferryboatmen's Union and the S. U. P. were affiliated with the International Seamen's Union, with apparent agreement as to their respective spheres of jurisdiction. There is no evidence that either the S. U. P. or the Inland Boatmen have ever bargained for the barge employees of the Companies here involved. There is uncontroverted evidence to the effect that, when the S. U. P. participated in negotiations for unlicensed personnel in 1935 following the certification of the International Seamen's Union, the bargemen were not included. The Oil Workers has represented and has bargained for certain barge employees of General Petroleum Corporation of California since 1933.

It appears that the S. U. P. keeps no record of the employment of its members; either by company or by ship, and it was unable at the hearing to claim membership among bargemen separately from membership among employees on tankers. Although this organization laid claim to substantial membership among the unlicensed deck personnel on both tankers and barges operated by the Companies, it did not show that any of the employees so claimed were actually serving as bargemen. The Inland Boatmen and Oil Workers claimed that substantial majorities of the bargemen employed by the Companies were members of one or the other of their organizations and maintained that they knew of no bargemen belonging to the S. U. P. or having expressed a desire that it represent them.

There appear to be very few fundamental distinctions between the duties of unlicensed deck personnel on tankers and barges. Men trained on tankers, and who have obtained able-bodied seamen's certificates for such work, could transfer to barges and do similar work there. It was claimed, however, that barge operators prefer men trained on barges and that, while some bargemen had transferred to such work from the tankers, most of them were trained on barges. Certain distinctions do arise because barge operations are confined within individual ports while the tankers are engaged in coastwise and ocean travel. For example, bargemen in one port have little or no contact with bargemen in another port and may be subject to widely different working conditions even though employed by the same company, but neither the contacts nor the problems of men working on tankers are comparably localized. Such differences have manifested themselves in wage differentials among bargemen from port to port and localized unionization and bargaining as contrasted with the coast-wide organization of tanker employees.

An additional factor is that the Inland Boatmen and the Oil Workers admit to membership all unlicensed personnel on barges whether working on deck or in the engine room or stewards' department. Should they compete with the S. U. P. in an election involving only deck personnel they would be abandoning the unit for bargemen

traditionally claimed by them. On the other hand, the S. U. P. has never admitted engine room or steward's department personnel to membership and is, by tradition and also by reason of its present position, opposed to the larger unit classification of barge employees.

Because of the complicating factors with respect to the question of representation of barge employees which are apparent from the record, because the S. U. P. has failed to show that it represents such employees or has in the past bargained or attempted to bargain for them, and because the record does not show that the barge employees desire at this time to have a determination of representatives, we feel that the unlicensed deck personnel on barges should not participate in an election, either separately or jointly with the unlicensed personnel on tankers. In so holding, we are not required to decide the question of whether or not under different circumstances barge and tanker employees should be placed in one unit or separate units, and we do not intend to preclude the possibility of a subsequent test of the desires of the barge employees by any of the parties to the present proceeding.

We find that the unlicensed deck personnel on the tankers operated by each of the several Companies out of Pacific Coast ports constitute units appropriate for the purposes of collective bargaining and that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.<sup>2</sup>

#### V. THE DETERMINATION OF REPRESENTATIVES

The S. U. P. claimed that its membership included approximately 70 per cent of the unlicensed deck personnel on tankers and barges operated by the Tidewater Associated Oil Company, 80 per cent of such employees of the Union Oil Company of California, 80 per cent of such employees of the General Petroleum Corporation of California, 90 per cent of such employees of the Richfield Oil Corporation, and 100 per cent of the unlicensed deck personnel on tankers of the Hillcone Steamship Company, Ltd. Since the S. U. P. failed to make separate claims of representation for barge and tanker employees, there is no way to apply the above claims to the unit hereinabove found to be appropriate. But, while the representation claims of the S. U. P. were challenged by the Inland Boatmen and the Oil Workers to the extent that they were intended to cover barge employees, no party to the proceeding seriously disputed the applicability of such claims to tanker employees. Furthermore, the record indicates that the tanker employees involved in this proceeding outnumber the barge

<sup>2</sup> See *Matter of Wilmington Transportation Company and Inland Boatmen's Union of the Pacific, San Pedro Division*, Case No. R-339, decided December 31, 1937, 4 N. L. R. B. 750

employees to a considerable degree and that the controlling factor in the representation claims of the S. U. P. was, therefore, that of the tanker employees.

The several Companies took the position that they were not ready to accept the membership claims of the S. U. P. and that in any event they were not certain that a majority of their employees desired to be represented by it. In the case of the Tidewater Associated Oil Company, the Associated Seamen claimed a membership among unlicensed deck personnel on tankers paralleling and in many instances overlapping that claimed by the S. U. P. We find that the questions which have arisen concerning the representation of employees can best be resolved by the holding of elections by secret ballot. We will direct that these elections be held as soon as possible under the direction and supervision of the Regional Director for the Twentieth Region, who shall determine in her discretion the exact time and place and procedure for posting notices of election and for balloting on each tanker, provided, however, that each tanker be posted with a notice of election, a sample ballot, a list of employees eligible to vote, and a notice of the time and place where balloting will be conducted, at some port of call on the Pacific Coast prior to the port where balloting is to be conducted, or, in the event that a tanker is to be posted and voted in the same port without an intervening trip, at least 48 hours before balloting is conducted.

Those eligible to vote will be the members of the unlicensed deck personnel who are employed on a tanker operated by one of the Companies out of Pacific Coast ports when it is posted and who are still employed as unlicensed deck personnel at the time balloting takes place, provided, however, that if any person so employed be transferred from one tanker to another tanker of the same company during the time the election among the employees of that company is being held, he shall be entitled to vote but once.

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

#### CONCLUSIONS OF LAW

1. Questions affecting commerce have arisen concerning the representation of employees of Tidewater Associated Oil Company, Union Oil Company of California, General Petroleum Corporation of California, Hillcone Steamship Company, Ltd., and Richfield Oil Corporation, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The unlicensed deck personnel on tankers operated by each of the several Companies out of Pacific Coast ports constitute units

appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

### DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Tidewater Associated Oil Company, Union Oil Company of California, General Petroleum Corporation of California, Hillcone Steamship Company, Ltd., and Richfield Oil Corporation, elections by secret ballot shall be conducted as soon as convenient, and beginning as promptly as practicable after the date of this Direction, in conformity with the rules set forth hereinabove for the conduct of elections, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the unlicensed deck personnel on tankers operated out of Pacific Coast ports by Union Oil Company of California, General Petroleum Corporation of California, Hillcone Steamship Company, Ltd., and Richfield Oil Corporation, respectively, to determine whether or not they desire to be represented by the Sailors Union of the Pacific for the purposes of collective bargaining, and among the unlicensed deck personnel on tankers operated out of Pacific Coast ports by Tidewater Associated Oil Company, to determine whether they desire to be represented by the Sailors Union of the Pacific or by the Associated Seamen's Association for the purposes of collective bargaining, or by neither.