

- In the Matter of GENERAL PETROLEUM CORP. OF CALIF. *and* PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS & WIPERS ASSN.
- In the Matter of ASSOCIATED OIL COMPANY *and* PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS & WIPERS ASSN.
- In the Matter of RICHFIELD OIL CORPORATION *and* PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS & WIPERS ASSN.
- In the Matter of HILLCONE STEAMSHIP COMPANY *and* PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS & WIPERS ASSN.
- In the Matter of UNION OIL COMPANY OF CALIFORNIA *and* PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS & WIPERS ASSN.
- In the Matter of TIDEWATER ASSOCIATED OIL *and* MARINE COOKS AND STEWARDS ASSN. OF THE PACIFIC COAST
- In the Matter of GENERAL PETROLEUM CORP. OF CALIF. *and* MARINE COOKS AND STEWARDS ASSN. OF THE PACIFIC COAST
- In the Matter of HILLCONE STEAMSHIP COMPANY *and* MARINE COOKS AND STEWARDS ASSN. OF THE PACIFIC COAST
- In the Matter of RICHFIELD OIL CO. OF CALIFORNIA *and* MARINE COOKS AND STEWARDS ASSN. OF THE PACIFIC COAST
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*Cases Nos. R-500 to R-514, inclusive.—Decided March 15, 1938*

*Water Transportation Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize petitioning unions as exclusive representative of its employees—Units Appropriate*

*for Collective Bargaining*: unlicensed personnel; history of collective bargaining relations with employer and in industry; substantial doubt as to majority status—*Elections Ordered*

*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 General Petroleum Corporation of California, Richfield Oil Corporation, Hillcone Steamship Company, Ltd., and Union Oil Company of California.

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

*Mr. Robert J. Fitzgerald*, of San Francisco, Calif., for the Firemen.

*Mr. E. F. Burke*, of San Francisco, Calif., for the Cooks and Stewards.

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

*Mr. Carl Tillman*, of San Francisco, Calif., for the Sailors Union of the Pacific.

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

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

On November 19, 1937, Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, herein called the Firemen, acting through the branch agent of its San Pedro Branch, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) five petitions alleging that questions affecting commerce had arisen concerning the representation of employees of General Petroleum Corporation of California, Tidewater Associated Oil Company,<sup>1</sup> Richfield Oil Corporation,<sup>2</sup> Hillcone Steamship Company, Ltd.,<sup>3</sup> and Union Oil Company of California,<sup>4</sup> respectively, 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 December 6, 1937, the Firemen, acting through the chairman of the San Francisco port committee, and Marine Cooks' and Stewards' Association of the

<sup>1</sup> Referred to in the Board's order directing investigation and hearing as Associated Oil Company and Tidewater Associated Oil.

<sup>2</sup> Referred to in the Board's order directing investigation and hearing as Richfield Oil Corporation and Richfield Oil Co.

<sup>3</sup> Referred to in the Board's order directing investigation and hearing as Hillcone Steamship Company.

<sup>4</sup> Referred to in the Board's order directing investigation and hearing as Union Oil Company of California and Union Oil Company.

Pacific Coast, herein called the Cooks and Stewards, each filed five similar petitions with the Regional Director for the Twentieth Region (San Francisco, California). On December 7, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Sections 10 (c) (3), 10 (c) (2), and 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the five cases from the Twenty-first Region be transferred to and continued in the Twentieth Region, ordered a consolidation of the five cases so transferred with the ten cases filed in the Twentieth Region for purposes of hearing, and ordered an investigation and authorized the Regional Director for the Twentieth Region to conduct it and to provide for an appropriate hearing upon due notice.

On December 8, 1937, the Regional Director issued a notice of consolidated hearing, copies of which were duly served upon each of the Companies, upon the Firemen, upon the Cooks and Stewards, and upon the Associated Seamen's Association, herein called the Associated Seamen, the Oil Workers International Union, Local 128, the Inland Boatmen's Union of the Pacific, and the Sailors Union of the Pacific, labor organizations claiming to represent employees which might be directly affected by the investigation. On December 10, 1937, the Regional Director issued a notice of postponement of consolidated hearing, copies of which were duly served upon all of the above-named parties. On December 14, 1937, the Regional Director issued a supplemental notice of consolidated hearing, copies of which were duly served upon all of the aforesaid parties. Pursuant to the notice, amended notice, and supplemental notice, a hearing was held on December 21, 1937, at San Francisco, California, before Jesse E. Jacobson, the Trial Examiner duly designated by the Board. The Board and each of the Companies were represented by counsel and the Firemen, Cooks and Stewards, Associated Seamen, and Sailors Union of the Pacific by their officers and agents. All except the Sailors Union of the Pacific participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to produce 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.

In the course of his examination of the secretary of the Firemen, who appeared as the sole witness for that organization, the Board's attorney introduced in evidence letters addressed to him by the branch agents of the San Pedro and Portland Branches of the Firemen, protesting against statements purportedly made at a previous

hearing by the secretary to the effect that the Firemen had relinquished jurisdiction over oil barges and asking that the letters be recorded in this hearing. Counsel for the Companies viewed the letters and other evidence in the record as challenging the authority of the secretary to represent the Firemen as a single labor organization and, just prior to the close of the hearing, filed an application for subpoenas,<sup>5</sup> asking *inter alia* for the appearance of the two branch agents as witnesses on behalf of the Companies and for the production of records and resolutions of their branches bearing upon the authority of the secretary to institute the present proceeding or otherwise act on behalf of the branches or the union as a whole, upon the present or prospective division of affiliation of the branches and members of the Firemen between the Committee for Industrial Organization and the American Federation of Labor, and upon the claims of jurisdiction over oil barges expressed in the above-mentioned letters from the two branch agents. The Trial Examiner denied the Application for Subpoenas for the reason that it was not timely. The Board has given due consideration to the Application for Subpoenas and finds that, whether or not such application was timely, it should be denied for the reason that the matters covered therein either relate to such questions of internal administration of a labor organization as are pertinent only under exceptional circumstances not found here or to questions sufficiently developed by the present record and are, therefore, unnecessary for the determination of the issues involved in this proceeding. The application is, therefore, denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANIES

All of the Companies involved in this proceeding were also involved in a hearing held on December 9 and '10, 1937, on five petitions filed by the Sailors Union of the Pacific and designated Cases Nos. R-477 to R-481, inclusive. On March 9, 1938, the Board issued a Decision and Direction of Elections<sup>6</sup> in the latter proceeding, in which it made findings of fact with respect to the business of the Companies. The same evidence relative to the operations of the Companies was introduced in each proceeding. The findings of fact with respect to the business of the Companies, made by the Board in the afore-mentioned Decision and Direction of Elections,<sup>7</sup> are, therefore, incorporated in and made a part of this Decision and Direction of Elections.

<sup>5</sup> Companies' Exhibit No 1

<sup>6</sup> See *Matter of Tidewater Associated Oil Company et al and Sailors Union of the Pacific*,  
5 N. L. R. B. 893

<sup>7</sup> See footnote 6.

## II. THE ORGANIZATIONS INVOLVED

Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association is a labor organization, shown by the record in this proceeding to be affiliated with the International Seamen's Union of America and through it with the American Federation of Labor but to be in the process of voting on the question of modifying such affiliation, admitting to its membership unlicensed personnel of the engine departments of tankers operated by the Companies out of Pacific Coast ports.

Marine Cooks' and Stewards' Association of the Pacific Coast is a labor organization which has recently severed its affiliation with the International Seamen's Union, American Federation of Labor, and has voted to affiliate with the Committee for Industrial Organization. The latter step had not been taken at the time of the hearing in this proceeding. It admits to its membership all personnel in the stewards' departments of tankers operated by the Companies out of Pacific Coast ports.

Associated Seamen's Association is an independent and unaffiliated labor organization. It admits to its membership all unlicensed personnel on tankers operated by the Associated Division of the Tidewater Associated Oil Company out of Pacific Coast ports.

## III. THE QUESTIONS CONCERNING REPRESENTATION

On November 19, 1937, the secretary of the Firemen wrote to each of the Companies on behalf of his organization, asking for an opportunity to negotiate for the unlicensed personnel of the engine departments. All of the Companies replied, but interviews were had with only two, Union Oil Company of California and General Petroleum Corporation of California. In the course of the interviews, both Companies took the position that no exclusive recognition as a collective bargaining agent would be given to the Firemen until the procedure under the Act had been followed. It appears from the evidence that all five Companies question the Firemen's claims of representation of a majority of the unlicensed personnel in the engine departments of their tankers.

The Cooks and Stewards sent letters to each of the Companies sometime prior to the hearing, asking for an opportunity to negotiate for the personnel of the stewards' departments. All of the Companies replied, but, as in the case of the Firemen, only the Union Oil Company of California and the General Petroleum Corporation of California were interviewed by representatives of the Cooks and Stewards. In the course of the interviews, both Companies took the position that no exclusive recognition as a collective bargaining agent would be given to the Cooks and Stewards until the procedure

under the Act had been followed. It appears from the evidence that all five Companies question the Cooks and Stewards' claims of representation of a majority of the unlicensed personnel in the stewards' departments of their tankers.

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

Since five petitions involving the Companies were filed by the Firemen in both the Twentieth and Twenty-first Regions, there are two petitions by that organization for consideration in respect to each company. Each of the petitions filed in the Twenty-first Region seeks a bargaining unit composed of the unlicensed personnel in the engine departments of all tankers operated by one of the Companies out of Pacific Coast ports. The petitions filed in the Twentieth Region are substantially similar in all respects, except that they fail to limit the tankers to those operated out of Pacific Coast ports. However, it appears from the record that they are intended to be so limited. For the purposes of this decision, therefore, the proceeding is the same as it would have been had the Firemen filed only one petition for each company.

The Firemen has existing bargaining agreements with shipping operators on the Pacific Coast other than the operators of tankers, in which the bargaining unit is the same as that claimed by it in this proceeding. There is apparently no other labor organization representing the employees claimed by the Firemen, except where the Associated Seamen represents such employees of Tidewater Associated Oil Company. While the Firemen admits that some problems are common to all departments of a ship, it is maintained that the qualifications for employment and working conditions in the engine, deck, and stewards' departments vary sufficiently to give rise to distinctions for bargaining purposes. The record also shows that the Firemen has been bargaining for the unlicensed personnel of the engine departments of vessels as separate units since its organization in 1883.

The five petitions filed by the Cooks and Stewards, while directed toward the same companies involved in the petitions filed by the Firemen, recite that all unlicensed men in the stewards' departments of all tankers and barges operated by each of the Companies constitute units appropriate for collective bargaining. The secretary and treasurer of the Cooks and Stewards, who was the only representative of and witness for that organization at the hearing and who was the signer of its petitions, testified that the use of the word "barges" in

the petitions was a mistake and that they should be limited to tankers only. He also testified that it was the intention of the organization to limit the petitions to tankers operating out of Pacific Coast ports, though no such limitation had been stated in the petitions.

The Cooks and Stewards has contracts with some Pacific Coast shipping concerns in which the bargaining unit is the same as that claimed by it in this proceeding. While it is admitted that employees in the stewards' departments have certain interests in common with the employees in other departments on board ship, such as the engine and deck departments, the Cooks and Stewards maintains that the qualifications and the nature of the work are so basically different from the other departments that a separate unit for the stewards' departments is appropriate. The Cooks and Stewards has historically represented and bargained for personnel of the stewards' departments, at times in cooperation with labor organizations representing employees of the other departments and at other times independently.

Since the appropriate units claimed by the Firemen include only the unlicensed personnel of the engine departments and those of the Cooks and Stewards only the unlicensed personnel of the stewards' departments, there is no conflict whatever in the claims of the two organizations. Their respective petitions might have been heard in separate proceedings and dealt with in separate decisions had not the Companies involved been the same.

The Associated Seamen petitioned to intervene with respect to all matters involving the Tidewater Associated Oil Company.<sup>8</sup> Although it claims to represent both the unlicensed personnel of the engine departments and the unlicensed personnel of the stewards' departments on all tankers operated by the Tidewater Associated Oil Company out of Pacific Coast ports, it does not maintain that the units claimed by either the Firemen or the Cooks and Stewards are necessarily inappropriate. The position of the Associated Seamen is that its name should be placed on the ballots if elections are held among the unlicensed engine departments' personnel or the unlicensed stewards' departments personnel of all tankers operated by the Tidewater Associated Oil Company out of Pacific Coast ports. Since its formation in 1935, this labor organization has bargained with the Tidewater Associated Oil Company on behalf of all unlicensed personnel on its tankers on the Pacific Coast irrespective of department. No written agreement exists, the bargaining having been carried on entirely through exchange of correspondence.

We find that the unlicensed personnel of the engine departments of all tankers operated by each of the Companies out of Pacific Coast ports constitute units appropriate for the purposes of collective bar-

<sup>8</sup> Board Exhibit No. 18.

gaining 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.

We find also that the unlicensed personnel of the stewards' departments of all tankers operated by each of the 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.

#### V. THE DETERMINATIONS OF REPRESENTATIVES

The Firemen claimed that it numbered among its members 80 per cent of the unlicensed personnel of the engine departments of tankers operated out of Pacific Coast ports by General Petroleum Corporation of California, Richfield Oil Corporation, and Hillcone Steamship Company, Ltd., and 75 per cent of such employees of Union Oil Company of California and Tidewater Associated Oil Company. The Associated Seamen claimed as members 60 per cent of such employees of Tidewater Associated Oil Company. None of the claims were substantiated by proof. All of the Companies questioned the claims of the Firemen to the extent that they tended to show representation of a majority of the employees within a unit and took the position that, irrespective of any membership claims, an election was necessary to test accurately the desires of the employees with respect to representation for the purposes of collective bargaining.

On the basis of reports from organizers and branches of the organization, the witness for the Cooks and Stewards claimed that its membership included 80 per cent of the unlicensed personnel in the stewards' departments of tankers operated by each of the Companies out of Pacific Coast ports. The Associated Seamen claimed 55 per cent of such employees of Tidewater Associated Oil Company. The claims of the Cooks and Stewards were questioned by all of the Companies in so far as they tended to show a disposition on the part of a majority of the employees to have the Cooks and Stewards act as their agent for purposes of collective bargaining.

All three labor organizations concerned with the matter asked that elections be held to determine the questions concerning representation. 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 no-

tices 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 personnel of the engine department or stewards' department 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 such unlicensed 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 personnel of the engine departments of all tankers operated by each of the 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.

3. The unlicensed personnel of the stewards' departments of all tankers operated by each of the Companies out of Pacific Coast ports also 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 General

Petroleum Corporation of California, Tidewater Associated Oil Company, Richfield Oil Corporation, Hillcone Steamship Company, Ltd., and Union Oil Company of California, 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 personnel of the engine departments of all tankers operated out of Pacific Coast ports by General Petroleum Corporation of California, Richfield Oil Corporation, Hillcone Steamship Company, Ltd., and Union Oil Company of California, respectively, to determine whether or not they desire to be represented by the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association for the purposes of collective bargaining; and among the unlicensed personnel of the engine departments of all tankers operated out of Pacific Coast ports by Tidewater Associated Oil Company, to determine whether they desire to be represented by the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association or by the Associated Seamen's Association for the purposes of collective bargaining, or by neither; and it is further

**DIRECTED** that similar elections shall be conducted in like manner among the unlicensed personnel of the stewards' departments of all tankers operated out of Pacific Coast ports by General Petroleum Corporation of California, Richfield Oil Corporation, Hillcone Steamship Company, Ltd., and Union Oil Company of California, respectively, to determine whether or not they desire to be represented by the Marine Cooks' and Stewards' Association of the Pacific Coast for the purposes of collective bargaining; and among the unlicensed personnel of the stewards' departments of all tankers operated out of Pacific Coast ports by Tidewater Associated Oil Company, to determine whether they desire to be represented by the Marine Cooks' and Stewards' Association of the Pacific Coast or by the Associated Seamen's Association for the purposes of collective bargaining, or by neither.