

In the Matter of AMERICAN OIL COMPANY and OIL WORKERS'  
INTERNATIONAL UNION

*Case No. R-703.—Decided May 14, 1938*

*Oil Distributing Industry—Investigation of Representatives:* controversy concerning representation of employees; controversy concerning appropriate unit; employer's refusal to grant recognition of union; strike—*Unit Appropriate for Collective Bargaining:* all employees, excluding clerical and supervisory employees; history of collective bargaining relations with employer and in industry; desires of employees; contention of company that differentiation with respect to skill, wages, location of work, and working hours requires four separate units not upheld—*Representatives:* eligibility to participate in choice: employees hired during strike to participate in, where all striking employees were reinstated after strike—*Election Ordered*

*Mr. Samuel L. Spencer*, for the Board.

*Mr. C. H. Thompson*, of Baltimore, Md., for the Company.

*Mr. E. C. Conarty*, of Washington, D. C. for the Union.

*Mr. Sumner Marcus*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 24, 1937, Oil Workers' International Union, Local No. 403,<sup>1</sup> herein called the Union, filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of American Oil Company, South Washington, Virginia, and Rosslyn, Virginia, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On December 30, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National

<sup>1</sup> Although the petition was signed by the Oil Workers' International Union, it is clear both from the petition itself and from the evidence adduced at the hearing that the petition was filed in behalf of Oil Workers' International Union, Local No. 403.

Labor Relations Board Rules and Regulations— Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. The Board further ordered, pursuant to Article III, Section 10 (c) (2), of the Rules and Regulations, that this proceeding be consolidated with another proceeding based upon a petition filed by the Oil Workers' International Union requesting an investigation and certification of representatives of employees of the Company at its Curtis Bay, Maryland, plant. On February 18, 1938, the Board further ordered that the two proceedings be consolidated with a case based on charges filed by the Oil Workers' International Union against the Company alleging that the Company had engaged in unfair labor practices at its Curtis Bay, Maryland, plant, within the meaning of the Act. On March 1, 1938, the Board ordered that the present proceeding be severed from the other two cases and be continued as a separate proceeding.

On March 3, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to the notice, a hearing was held on March 12, 1938, at Washington, D. C., before Hugh C. McCarthy, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel; the Union was represented by its representative; and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the commencement of the hearing the Company filed an answer to the petition. 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 COMPANY

American Oil Company, a Maryland corporation, is wholly owned by Pan American Petroleum & Transport Company, and is engaged in the distribution and marketing of petroleum products for the latter company. American Oil Company maintains two bulk storage plants at South Washington, Virginia, and Rosslyn, Virginia. It also maintains bulk storage plants elsewhere, but this proceeding concerns only the two plants at South Washington and Rosslyn, Virginia. From these two plants, the Company's trucks distribute its products

to customers in adjacent territory in Virginia, Maryland, and the District of Columbia. Substantially all the Company's products are shipped to its two plants by tank car from Curtis Bay, Maryland, to which point they have been shipped previously by tank steamers from refineries in Texas. In 1937, the Company sold and distributed 458,310 barrels of petroleum products through its two plants. The Company admitted that it was engaged in interstate commerce.

## II. THE ORGANIZATION INVOLVED

Oil Workers' International Union, Local No. 403, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all employees of the Company, excluding clerical and supervisory employees.

## III. THE QUESTION CONCERNING REPRESENTATION

The Union was organized in the Company's plants about May 18, 1937. Representatives of the Union and the Company met during September, October, and November, 1937 to discuss wages, hours, and other working conditions in the Company's plants. The failure by the Company's executive committee to approve a tentative verbal agreement resulted in a strike on November 9, 1937. The strike was called off and all the men returned to work on November 17, 1937. While the evidence was conflicting as to whether the Company had agreed to negotiate with the Union within a short time after its members returned to work, it is clearly established that on December 15, 1937, the Company informed the Union that it would not negotiate further with it. At the hearing, counsel for the Company stated that the Company was willing to deal with the representatives of its employees, but that it was not in a position to ascertain authoritatively who such representatives were.

We find that a question has arisen concerning the representation of employees of the Company.

## IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON / COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and the District of Columbia, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE APPROPRIATE UNIT

At the time of the hearing there were 95 employees in the Company's plants. Of these employees, seven are clerks, two are superintendents, and one is a fuel oil dispatcher, none of whom are eligible to membership in the Union. The remaining number of employees consists of 48 truck drivers who transport the Company's products from its plants to its customers; 11 pump and tank mechanics, whose chief duties are the installation, removal, repair, and maintenance of pump and tank equipment installed upon the properties of the Company's customers and who also perform repair work on all the equipment at the plants; 11 pump and tank laborers who are unskilled and work on an hourly basis; and 15 laborers who work solely at the Company's plants in connection with the receipt, storage, and shipping of petroleum products.

The evidence shows that the two plants are but 3 miles apart and perform identical functions. The Company and the Union agree that the employees of both plants should be included in whatever unit or units the Board determines to be appropriate.

The Company contended in its answer that each of the four above-mentioned groups constitutes a unit appropriate for the purposes of collective bargaining on the ground that each group is differentiated from each of the others with respect to skill, the amount and basis of wages, the location of work, and working hours. The Union contended that all the employees of the Company's plants, excluding clerical and supervisory employees and fuel oil dispatchers, constitute an appropriate unit.

The Company did not introduce evidence in support of its contention. The Union, on the other hand, introduced evidence that all the employees came into contact with each other in the performance of their duties; that the 165 contracts which the Oil Workers' International Union had executed with other oil companies were made on behalf of all employees, excluding clerical and supervisory employees; and that the Company had entered into similar contracts with the Oil Workers' International Union in respect to the employees at the Company's plants at Boston, Massachusetts, and at Hartford, Connecticut. Furthermore, members of the Union who represented the truck drivers, the pump and tank mechanics, and the laborers testified that it was the desire of the members of these groups that they all be included in one unit for the purposes of collective bargaining.

We find that all the employees of the Company at its plants at South Washington, Virginia, and at Rosslyn, Virginia, excluding clerical and supervisory employees and fuel oil dispatchers, con-

stitute a unit appropriate for the purpose of collective bargaining and that said unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

The Union, both in its petition and at the hearing, claimed to represent a majority of the employees of the Company within the unit which we have found to be appropriate. The only evidence, however, which it introduced in support of its contention was the oral testimony of two of its officers. We find that the question which has arisen concerning the representation of the Company's employees can best be resolved by the holding of an election by secret ballot.

The Company and the Union agreed, subject to one qualification, that the Company's pay roll of March 1, 1938, should be used in determining eligibility to vote in the election. The Union contended that there should be excluded from this list all persons who were hired by the Company during the strike from November 9 to November 17, 1937. The Union conceded, however, that the Company took back all striking employees who applied for their positions after the strike was over. Under these circumstances, we can see no reason why the employees engaged by the Company during as well as after the strike should not be eligible to vote. Accordingly, eligibility to vote in the election will be determined by reference to the pay roll of the Company for March 1, 1938, excluding those employees who have since quit or have been discharged for cause.

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. A question affecting commerce has arisen concerning the representation of employees of American Oil Company, South Washington, Virginia, and Rosslyn, Virginia, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.
2. All the employees of the Company at its plants at South Washington, Virginia, and Rosslyn, Virginia, excluding clerical and supervisory employees and fuel oil dispatchers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

## DIRECTION OF ELECTION

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, 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 American Oil Company, South Washington, Virginia, and Rosslyn, Virginia, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifth Region, acting in this matter as the agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all the employees of the Company at its plants at South Washington, Virginia, and Rosslyn, Virginia, who were on the Company's pay roll for March 1, 1938, excluding clerical and supervisory employees, fuel oil dispatchers, and those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Oil Workers' International Union, Local No. 403, for the purposes of collective bargaining.