

In the Matter of RICHFIELD OIL CORPORATION and MARINE ENGINEERS
BENEFICIAL ASSOCIATION No. 79

Case No. R-711.—Decided June 2, 1938

Water Transportation Industry—Investigation of Representatives: controversy concerning representation of employees: majority status disputed by employer; employer's refusal to grant recognition of union—*Unit Appropriate for Collective Bargaining:* licensed marine engineers employed on the seven tankers operated by employer; no controversy as to—*Representatives:* proof of choice: comparison of pay roll with union membership application cards—*Certification of Representatives:* upon proof of majority representation.

Mr. David Sokol, for the Board.

McCutchen, Olney, Mannon & Greene, by *Mr. Farnham P. Griffiths* and *Mr. George E. Dane*, both of San Francisco, Calif., for the Company.

Mr. Harry D. Norman, of San Pedro, Calif., for the Union.

Mr. J. H. Krug, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On February 3, 1938, Marine Engineers' Beneficial Association, No. 79,¹ herein called the Union, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Richfield Oil Corporation, Los Angeles, California, 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 March 7, 1938, 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 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.

¹ It appears from the record that this is the correct name of petitioner. The name appearing in the petition is Marine Engineers Beneficial Association No. 79.

On March 29, 1938, the Regional Director issued a notice of hearing, copies of which were served upon the Company, upon the Union, upon the Central Labor Council at Los Angeles, California, affiliated with the American Federation of Labor, and upon the Los Angeles Industrial Union Council, affiliated with the Committee for Industrial Organization. Pursuant to the notice, a hearing was held on April 11, 1938, at Los Angeles, California, before Jesse E. Jacobson, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel; the Union was represented by its business manager; and all parties 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. 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 ²

Richfield Oil Corporation, organized under the laws of Delaware, has its principal office at Los Angeles, California. The Company is engaged (1) in the production, purchase, and sale of crude petroleum, natural gas, and casinghead gasoline, (2) in the transportation of crude petroleum and refined products by pipe lines and by tank ships, (3) in the refining of crude petroleum, and (4) in the sale and distribution of petroleum products in the Pacific Coast territory and for export. All of the properties of the Company relating to the production, purchase, sale, transportation, and refining of crude petroleum, natural gas, and petroleum products are located within California. During the period from March 13, 1937, to December 31, 1937, approximately 17 per cent of the Company's total sales of refined petroleum products consisted of export sales; approximately 16 per cent consisted of tank-car sales from the Company's refineries in California to points outside California; and approximately 67 per cent consisted of sales to retail dealers, consumers, and others from the Company's bulk distributing plants and facilities. The Company maintains bulk distributing facilities in the States of California, Washington, Oregon,

² Substantially all of the facts in this section are derived from a stipulation entered into between counsel for the Board and counsel for the Company.

Arizona, Nevada, Idaho, and Utah, to which it ships refined petroleum products from its refineries located in California.

The Company owns seven tank ships and four barges. During the period from March 13, 1937, to December 31, 1937, the Company transported by tankers moving on the high seas out of California ports approximately 9,134,149 barrels of crude oil and petroleum products, of which approximately 3,662,811 barrels were transported between California ports and ports outside of California, and approximately 5,471,338 barrels were transported between California ports.

We find that the Company is engaged in traffic, transportation, and commerce among the several States and between the United States and foreign countries, and that the men engaged in the operation of the tankers of the Company are directly engaged in such traffic, transportation, and commerce.

II. THE ORGANIZATION INVOLVED

Marine Engineers' Beneficial Association, No. 79, is a labor organization, affiliated with the Committee for Industrial Organization. The Union, which has its headquarters at San Pedro, California, is a local of National Marine Engineers' Beneficial Association, herein called the N. M. E. B. A. It admits to membership all licensed engineers employed on the seven tank ships owned and operated by the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In November 1937, the San Francisco local of the N. M. E. B. A. requested the Company to recognize it as the exclusive bargaining representative of the licensed marine engineers employed on the Company's tankers. The Company refused on the ground that a majority of these employees did not desire to be represented by affiliates of the N. M. E. B. A. At the hearing counsel for the Company stated that its position was unchanged and that the Company desired a Board election to determine the matter. The Union claimed that it had jurisdiction to represent for the purposes of collective bargaining all the licensed engineers employed on the Company's tankers who were members in any local of the N. M. E. B. A. The Company did not dispute this claim. The Union's assertion that it had been designated as collective bargaining agency by a majority of the employees in the appropriate unit was contested by the Company.

We find that a question has arisen concerning representation of employees of the Company and that such question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE APPROPRIATE UNIT

In its petition and at the hearing the Union claimed that the licensed marine engineers employed on the seven tankers operated by the Company constituted a unit appropriate for purposes of collective bargaining.

No evidence was introduced which would justify a deviation from our rulings in similar previous decisions³ that the licensed engineers constitute an appropriate unit.

Three of the seven tankers operated by the Company have their home ports on the Atlantic and Gulf coasts. The record discloses no reason for excluding the engineers employed on these three ships from the appropriate bargaining unit. The Union claims members among these engineers. At the hearing the Union introduced undisputed evidence showing that it had secured from other locals of the N. M. E. B. A. jurisdiction over the licensed engineers on these three tankers. Under the circumstances we are of the opinion that the appropriate bargaining unit should include the 28 licensed engineers employed on all 7 tankers.

We find that the licensed marine engineers employed on the seven tankers operated by the Company constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to 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.

V. THE DETERMINATION OF REPRESENTATIVES

The Union introduced in evidence 21 membership application cards. By consent of the parties the original cards were withdrawn and photostatic copies substituted. Twenty of the 21 names appearing on the application cards correspond with the names of employees in the appropriate unit on the Company's pay roll.⁴ The Union's business manager, H. D. Norman, testified that he saw eight of the applications signed. The Company made no objection to their authenticity. It objected to the introduction of two of these eight applications on the

³ *Matter of Panama Rail Road Company and Marine Engineers Beneficial Association*, 2 N. L. R. B. 290; *Matter of Seas Shipping Company and National Marine Engineers' Beneficial Association Local No 33*, 2 N. L. R. B. 398.

⁴ Board Exhibit --o. 3(a) to (g), inclusive. The pay rolls from which the names were taken are dated during the period between the date of the filing of the petition and the date of the hearing. One application card bears the name of an employee who was on vacation at the time of the hearing. We find it unnecessary to consider this card in determining whether the Union has shown that it has been designated by a majority as collective bargaining agency.

ground that, according to the evidence, the two applicants had not been actually admitted to membership.⁵ This objection was properly overruled by the Trial Examiner. By signing the applications, the two applicants sufficiently designated the Union as their representative for purposes of collective bargaining. Norman was not present and did not see the remaining application cards for membership in the Union signed.⁶ On the basis of his knowledge of the Union books and records he testified that nine of the men whose names appeared on these applications were members in good standing. The books and records were not introduced in evidence, but Norman exhibited his file cards showing payments of dues and counsel for the Company was afforded an opportunity to examine the dues cards. While the Company questioned the authenticity of these application cards, it made no effort to introduce evidence tending to show that the applications were not signed by the employees whose names appeared thereon. Nor did the Company offer in evidence specimens of the signatures of these employees, or explain why such evidence was not offered. Under the circumstances, we find that the Company's objections to the authenticity of the nine application cards under consideration are groundless. We conclude that at least 17 licensed marine engineers employed on the tankers operated by the Company have signed applications for membership in the Union.

The Company directed attention to the dates on which the applications were signed. Of the 17 applications, only 5 are dated within a period of 1 year preceding the date of the petition. Of the remaining 12, 1 is dated in the year 1936, 2 in 1935, 2 in 1934, and 6 in 1933; and the twelfth application does not reveal in what year it was signed. Although the Company did not make its position as to the dates explicit, it was apparently under the impression that a certification of the Union, without the holding of an election, would be barred by the fact that so many of the applications were executed long prior to the date of the filing of the petition. We are of the opinion, however, that the dates borne by the application cards offer no obstacle to a certification, in view of the following considerations. The N. M. E. B. A. is a long-established labor organization, and it is to be expected that the members of its locals continue their membership over a period of years. In addition, Norman testified from his knowledge of the Union records, including the dues cards, that all

⁵ One of these was an application for reinstatement by a former member who had been dropped for nonpayment of dues

⁶ Norman testified that the man whose name appears on one of these Petitioner Exhibit No 10 had applied for membership in the San Francisco local, No 97, of the National Marine Engineers' Beneficial Association. This exhibit, however, appears to be an application for membership in No. 79. Owing to the conflict between the testimony and the exhibit, we shall disregard this application.

the 17 employees whose names appeared on the application cards, with the exception of the 2 not yet admitted to membership,⁷ were members in good standing. Although the Company was afforded an opportunity to inspect the dues cards, it did not challenge any of Norman's testimony which was based on the dues cards. No evidence was adduced at the hearing tending to show that any of the employees whose names appeared on the application cards had joined another labor organization or had revoked their designation of the Union as collective bargaining agency. We conclude that at least 17 employees in the appropriate unit have designated the Union as their representative for the purposes of collective bargaining. Since this constitutes a majority of the 28 employees included in the unit, we find it unnecessary to consider the authenticity or the effect of two applications for membership in locals of the N. M. E. B. A. other than the Union.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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 Richfield Oil Corporation, Los Angeles, California, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

2. The licensed marine engineers employed on the seven tankers operated by the Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Marine Engineers' Beneficial Association, No. 79, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Rela-

⁷ These two applications were dated, respectively, March 8, 1938, and January 30, 1938. See footnote 5, supra.

tions Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Marine Engineers' Beneficial Association, No. 79, has been designated and selected by a majority of the licensed marine engineers employed on the seven tankers operated by Richfield Oil Corporation, Los Angeles, California, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Marine Engineers' Beneficial Association, No. 79, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.