

IN THE MATTER OF VEGETABLE OIL PRODUCTS COMPANY, INC., A CORPORATION and SOAP AND EDIBLE OIL WORKERS UNION, LOCAL NO. 18409

Case No. C-44.—Decided June 23, 1936

Vegetable Oil Products Industry—Interference, Restraint or Coercion: denial of right of employees to be represented by non-employees; questioning employees regarding union membership and activity; expressed opposition to labor organizations; circulating petition designating company-dominated union as representative of employees; persuading employees to refrain from joining union—*Discrimination:* discharge—*Reinstatement Ordered—Back pay:* awarded.

Mr. Leonard Janofsky for the Board.

Mr. C. W. Hobson, of Los Angeles, Cal., for respondent.

Mr. M. Melnicoe, *Mr. J. W. Buzzell* and *Mr. H. B. McMurray*, of Los Angeles, Cal., and *Mr. A. H. Peterson*, *Mr. E. F. Prior* and *Mr. C. A. Evans*, of Wilmington, Cal., for the Union.

Mr. Melvin C. Smith, of counsel to the Board.

DECISION

STATEMENT OF CASE

Upon charges duly filed by Soap and Edible Oil Workers Union, Local No. 18409, hereinafter called Local No. 18409, the National Labor Relations Board, by Towne Nylander, Regional Director for the Twenty-first Region, issued its complaint, dated November 12, 1935, against Vegetable Oil Products Company, Inc., Los Angeles, California, hereinafter called respondent. The complaint, and notice of hearing thereon, were duly served upon respondent and Local No. 18409 on November 12, 1935.

The complaint alleges that respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act, in that respondent, by its officers and agents, did discharge James C. Humphrey, Dale Fritts, Marshall Shafer, Harry Shephard, Reece L. Moore, Walter Crostic, H. L. Taylor, William D. Ensor, A. V. Price, F. E. Campbell, Lester Price, Frank L. Lee, Frank Williams, and John Williams, and refused and does now

refuse to reinstate them for the reason that they, and each of them, joined and assisted Local No. 18409, a labor organization, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection. Respondent filed an answer to the complaint admitting the allegations concerning its incorporation and place of business, and admitting the interstate sources of quantities of its raw materials and the sale and interstate transportation of certain of its finished products, but denying that such constitutes a continuous flow of commerce among the several states. Respondent's answer admits that respondent discharged and refused reinstatement to each of its employees named in the complaint, but denies the allegations in the complaint with respect to the unfair labor practices.

Pursuant to the notice thereof, A. P. Entenza, Trial Examiner duly designated by order of the Board, conducted a hearing on November 19, 1935, at Los Angeles, California. Respondent, appearing by counsel, participated in the hearing. Respondent moved to dismiss the complaint on the ground that the Board has no jurisdiction over respondent, and on the further ground that the Act is unconstitutional. The Trial Examiner denied the motion to dismiss. Respondent, alleging insufficient time in which to prepare its case, made a motion for a continuance of the hearing to December 2, 1935. The Trial Examiner granted the motion, and the hearing was resumed on December 2, 1935. Counsel for the Board made a motion that A. P. Entenza be disqualified as Trial Examiner for the Board on the ground that he had made a speech before Local No. 18409 subsequent to the issuance of the Board's complaint. The Trial examiner granted the motion. The rulings of A. P. Entenza, Trial Examiner, are hereby affirmed.

Thereafter, Charles F. Lowy, Trial Examiner duly designated by order of the Board, conducted the hearing on December 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 23, 24, 26, and 30, 1935, at Los Angeles, California. The complaint was amended at the hearing by counsel for the Board, by withdrawing Reece L. Moore from the list of individuals named therein, and adding H. L. Livesay thereto; and it was further alleged that respondent had discharged and refused to reinstate William F. Wyly because he was a member of a labor organization. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties.

Upon the record thus made, the transcript of the hearing and all evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on January 9, 1936, filed an intermediate report, finding and concluding that respondent had engaged in unfair labor practices affecting com-

merce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. The Trial Examiner recommended that the complaint be dismissed as to William F. Wyly; and ordered respondent to offer immediate and full reinstatement with back pay to James C. Humphrey, Dale Fritts, Marshall Shafer, Harry Shephard, Walter Crostic, H. L. Taylor, William D. Ensor, A. V. Price, F. E. Campbell, Lester Price, Frank L. Lee, Frank Williams, John Williams and H. L. Livesay, and offer immediate and full reinstatement to all of respondent's employees who struck on November 13, 1935, provided that said employees apply for such reinstatement either individually or through their union representatives within ten days.

Respondent thereafter filed exceptions to the record and intermediate report, making exceptions to the Trial Examiner's rulings upon its motions and objections, as well as to the Trial Examiner's intermediate report.

We find no error in the Trial Examiner's rulings upon respondent's motions and objections, and such rulings are hereby affirmed. As set forth below, we also find that the evidence supports the findings and conclusions made by the Trial Examiner in his intermediate report that respondent has engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act.

Upon the evidence adduced at the hearing and from the entire record now before it, the Board makes the following:

FINDINGS OF FACT

I. RESPONDENT AND ITS BUSINESS

1. Respondent, Vegetable Oil Products Company, Inc., is and has been since January 1, 1926, a corporation organized under and existing by virtue of the laws of the State of Delaware, having an office in Wilmington, Delaware, merely for the purpose of fulfilling the Delaware statutory requirement.¹ Respondent is and has been since on or about July 10, 1926, qualified to do business in the State of California, having its principal office in Los Angeles, California, and an office and place of business at Wilmington, California, hereinafter called respondent's plant. It is now and has continuously been engaged at its plant in the production, sale and distribution of products ranging from crude oils to refined shortenings, margarine and other edible oils.

2. Respondent's manufacturing operations consist mainly of expelling oils from copra and oil bearing seeds and the processing of such

¹ Section 32—General Corporation Law of Delaware, as amended.

oils, and the processing of other oils which it has purchased. Raw materials used in the manufacture of respondent's finished products consist mainly of copra, sesame seed, hempseed, kapok seed, cottonseed oil, rapeseed oil, sardine oil, crude coconut oil, hempseed oil and palm oil.

Copra, the dried meat of coconuts, is purchased from sellers in the Philippine Islands. Approximately 12,000,000 pounds of copra were purchased and used by respondent during the ten months period ending October 31, 1935. Copra is purchased throughout the year and is delivered every 60 or 90 days from the date of purchase. Approximately 66 per cent of the copra is oil; however, only approximately 62 per cent is extracted, leaving approximately 34 per cent meal and four per cent loss. Part of the oil, obtained by crushing the copra, is sold by respondent in the crude state to soap manufacturers, and the balance is transferred to respondent's refinery where it is refined and made into oils to be used in the manufacture of oleomargarine, coconut oil shortening and soap. The meal is sold for use as cattle feed.

Sesame seed is imported by respondent from China. Respondent received approximately 18,000,000 pounds of sesame seed during the ten months period ending October 31, 1935; and used 15,000,000 pounds in its business during the same period. This seed is delivered in large quantities varying from 250 tons to 1,000 tons per cargo. Sesame seed is generally purchased in the fall of each year for delivery between December and March or April, at which times sufficient quantities are purchased, received and stored at respondent's plant to supply respondent's needs during the remainder of the year. All of the sesame seed purchased by respondent is crushed at its plant, and yields approximately 47 per cent oil, 48 per cent meal and five per cent loss. The oil is sold either in its crude state or is transferred to the respondent's refinery where it is refined for salad oils and shortenings. The meal is sold for use as cattle feed.

Hempseed is obtained, through various suppliers, from Manchuria. Respondent received approximately 3,000,000 pounds of hempseed during the ten months period ending October 31, 1935, and used approximately 1,000,000 pounds in its business during the same period. Hempseed is purchased by respondent throughout the year and stored in the warehouses at respondent's plant. All of the hempseed purchased by respondent is crushed at respondent's plant. It yields approximately 24 per cent oil, 70 per cent meal and six per cent loss. The oil is refined and specially treated by respondent to produce ingredients for the compounding of paint oils; however, it may be sold in its crude state to some purchasers who prefer to process their own oils. Small quantities of hempseed oil are further refined

and become an ingredient in certain of the shortenings produced by respondent. The meal is sold for use as cattle feed.

Kapok seed is obtained, through various suppliers, from the Dutch East Indies, principally Java. Respondent received approximately 3,500,000 pounds of kapok seed during the ten months period ending October 31, 1935, and used approximately 6,500,000 pounds in its business during the same period. Kapok seed is purchased throughout the year and stored in the warehouses at respondent's plant. All of the kapok seed purchased by respondent is crushed in its plant. It yields approximately 19 per cent oil, 72 per cent meal and nine per cent loss. The oil is either sold in its crude state or transferred to respondent's refinery, where it is refined to produce salad oils or shortening. The meal is sold for use as cattle feed or fertilizer.

Cottonseed oil is supplied to respondent from five principal sources. These sources, together with the amount of cottonseed oil received from each during the ten months period ending October 31, 1935, are as follows:

	<i>Pounds</i>
England -----	5, 659, 113
Japan -----	2, 431, 795
California -----	1, 130, 120
Texas -----	508, 694
Egypt -----	224, 103
Total -----	9, 948, 825

Respondent used 9,724,368 pounds of cottonseed oil in its business during the same period. The cottonseed oil is purchased throughout the year, and stored in tanks at respondent's plant. All of the cottonseed oil purchased by respondent is processed at respondent's plant. A portion of the cottonseed oil is deodorized. Large quantities are destearinated (the stearine is taken out), and other large quantities are bleached and hydrogenated (hardened by treatment with hydrogen). A portion of the bleached cottonseed oil is sold as white cottonseed oil. The destearinated and deodorized cottonseed oil is sold as salad oil, and the hydrogenated oil, after further processing, is used in the manufacture of shortening.

Rapeseed oil is imported from Japan. It is purchased under the general specification of "Shirashime" rapeseed oil, which is refined but not deodorized. Approximately 3,000,000 pounds of rapeseed oil were purchased and used by respondent during the ten months period ending October 31, 1935. Rapeseed oil is purchased by respondent throughout the year. It is stored either in tanks or drums at respondent's plant. Although the rapeseed oil is purchased in a partially refined state all of it requires and is subjected to further refining, deodorization and processing at respondent's plant, and

becomes a component part of the shortening manufactured by respondent.

Sardine oil and herring oil are received from California, Alaska and Oregon. The following amounts were received by respondent during the ten months period ending October 31, 1935:

	<i>Pounds</i>
California (sardine oil)-----	13,372,445
Alaska (herring oil)-----	1,227,100
Oregon (sardine oil)-----	615,280
Total-----	15,214,825

The herring oil, originating in Alaska, is purchased by respondent f. o. b. Seattle, Washington. A total of 11,510,956 pounds of sardine and herring oils were used by respondent in its business during the period mentioned above. These oils are purchased by respondent throughout the year, and stored in tanks at respondent's plant. All sardine and herring oils are hydrogenated, deodorized, refined or destearinated at respondent's plant, and used in the manufacture of hardened fish oil, paint oils or shortening.

It is sometimes difficult for respondent to obtain sufficient quantities of copra to meet its needs, in which event it purchases crude cocoanut oil from sellers in the Philippine Islands. During the ten months period ending October 31, 1935, respondent purchased and used 2,339,755 pounds of crude cocoanut oil. Crude cocoanut oil is purchased by respondent throughout the year. It is refined and processed and used in the manufacture of cocoanut oil products.

Hempseed oil and palm oil are purchased in small quantities by respondent for use in the manufacture of certain of its products. During the ten months period ending October 31, 1935, respondent purchased and used 20,401 pounds of hempseed oil; and purchased 38,560 pounds of palm oil, but used none of the palm oil it had purchased. The record does not indicate where respondent obtains the hempseed oil or palm oil.

3. During the ten months period ending October 31, 1935, 78.52 per cent of all raw materials received by respondent were shipped from foreign countries or points without the State of California; and during the same period 76.41 per cent of all raw materials used by respondent in the manufacturing of its finished products were shipped from foreign countries or points without the State of California.

4. Respondent's business consists largely of refining and processing various oils, all of which are done at respondent's plant, and usually consist of the following operations:

- (a) Neutralization by treating with caustic solutions.

(b) Bleaching by treating the oils with various bleaching materials.

(c) Filtering to remove any foreign materials as well as the clays used for bleaching purposes.

(d) Deodorization by treating the oils for the purpose of removing all characteristic odors and flavors.

(e) Hardening the oils by causing them to combine with pure hydrogen in the presence of a catalytic agent.

(f) Separation of nonliquid oils from liquid oils by refrigeration and filtration.

(g) Chilling and aerating oils, which are then packed as shortenings.

(h) Flaking. Some of the oils are hardened to such a point that when they are run over a chilling roll they form into hard flakes which are then packed in paper lined bags to be shipped.

Respondent also operates a mill in which oil is expelled from all of the copra and oil bearing seeds purchased by it. The expelling of the oils involves the following processing:

(a) Grinding the copra.

(b) Heating and drying the copra or oil bearing seeds.

(c) Running the copra or oil bearing seeds under high pressure through the expellers for the purpose of separating the oil from the meal.

(d) Filtering the crude oils in order to separate all fine particles of meal which may have passed through the expellers with the oils. A portion of the filtered oil is then sold as crude oil. The meal as it comes from the expellers is in hard flakes, varying in size but approximately one eighth inch in thickness. These flakes, known as "expeller cake", are then ground, packed and sold by respondent as cattle feed and fertilizer.

Respondent also manufactures industrial gas at its plant. It sells oxygen which is produced as a by-product in its electrolytic hydrogen plant, in which water is decomposed into its two constituents, hydrogen and oxygen. The hydrogen is used to harden the oils.

The operations of respondent fall into the following departments: copra mill; fish oil refinery; coconut oil refinery; finished products plant; margarine plant; and gas plant. All departments are located at and are a part of respondent's plant in Wilmington, California. The departments are operated as one plant; however, the departments are not necessarily interdependent. Certain of the departments may be operated without operating other departments.

5. The finished products manufactured by respondent, together with the total quantities sold by it and the respective quantities sold

without the State of California during the period between January 1, 1935, and October 31, 1935, inclusive, are as follows:

Product	Total quantity sold	Quantity sold for delivery without the State of California
	<i>Pounds</i>	<i>Pounds</i>
Meal.....	8,377,200	None
Vegetable oils.....	17,309,309	3,834,411
Fish oils.....	9,043,772	4,316,595
Shortenings.....	5,704,757	2,215,005
Salad oils.....	6,179,896	1,288,314
Margarine.....	2,025,525	209,118
Total	48,700,459	11,863,443

Thus, 24.36 per cent of all sales of the above products were billed to respondent's customers outside the State of California and delivered to common carriers for shipment. However, of the total quantity of products sold by respondent, 9,503,490 pounds were sold to purchasers within the State of California, who in turn sold their products both within and without the State of California, but so commingled other products with respondents' products that the quantity of respondent's products eventually sold and transported without the State of California cannot be determined. Respondent also billed to purchasers within the State of California, but delivered to common carriers for transportation to points named by the purchasers without the State of California, 96,987 pounds of the total quantity of products sold by respondent.

Of the 11,863,443 pounds of respondent's products sold to customers without the State of California, 4,714,826 pounds were sold f. o. b. destination, and 7,148,617 pounds were sold f. o. b. respondent's plant.

Respondent performs a service for other companies by processing certain of their oils for them. During the period between January 1, 1935, and October 31, 1935, respondent performed such a service on 16,289,177 pounds of oils. Of this amount 188,306 pounds were processed by respondent and delivered to points without the State of California. The remainder, amounting to 16,100,871 pounds, was processed by respondent and delivered to one customer within the State of California. This customer subsequently sold and delivered approximately 40 per cent of the 16,100,871 pounds of oil to points without the State of California.

Respondent also sold 20,891,130 cubic feet of oxygen and acetylene gas during the ten months period ending October 31, 1935, all of which was sold and delivered to customers within the State of California.

6. All the manufacturing and processing operations of respondent are conducted at its plant in Wilmington, California. Respondent owns no warehouses outside the State of California; however, it pays a rental fee for the storage of its finished products in public warehouses in New York, New York, Detroit, Michigan, Seattle, Washington, Pittsburgh, Pennsylvania, Cleveland, Ohio, and Portland, Oregon. Respondent maintains a salaried salesman throughout the year in the States of Washington and Oregon, but that portion of respondent's products which is sold without the State of California is sold principally through brokers.

7. The aforesaid operations of respondent constitute a continuous flow of trade, traffic and commerce among the several States and with foreign countries.

II. SOAP AND EDIBLE OIL WORKERS UNION, LOCAL NO. 18409 AND VEGETABLE OIL PRODUCTS COMPANY EMPLOYEES COUNCIL

A. *Organization*

(1) Soap and Edible Oil Workers Union, Local No. 18409

8. Soap and Edible Oil Workers Union, Local No. 18409, is a labor organization affiliated with the American Federation of Labor, having received its certificate of affiliation on August 7, 1933. It admits to membership any soap or edible oil worker employed in the Long Beach, California, area.

(2) Vegetable Oil Products Company Employees Council

9. Vegetable Oil Products Company Employees Council, hereinafter called the Council, was organized in 1933, subsequent to the organization of Local No. 18409, for the purpose of presenting employee grievances to the management of respondent. However, interest in the Council soon waned, no representatives of the employees were elected, no by-laws were adopted, and for almost a year it existed in name only.

In 1934 the management of respondent suggested to Ahlin, an employee of respondent, that he attempt to reorganize the Council. Ahlin found other employees of respondent who were interested in reorganizing the Council, and requested West, office manager of respondent, to draw up its by-laws. After obtaining permission from Pattison, president of respondent, West drew up by-laws for the Council by referring to by-laws of similar organizations. Representatives of respondent's employees in the various departments at respondent's plant were elected to represent such employees in the Council. Ahlin was elected secretary of the Council. Subsequently

West complimented Ahlin upon his success in reorganizing the Council, and told him that he was building up prestige with respondent that would do him good later on.

Respondent provides a place for the Council to hold its meetings, and employees are permitted to attend its meetings without any loss of pay. Any employee of respondent is eligible to membership in the Council. It collects no dues or fees from its members.

B. *Activity*

10. On February 1, 1934, about 90 per cent of approximately 114 employees then employed by respondent, were members of Local No. 18409. Membership in Local No. 18409 decreased considerably within the next three months, so that on or about May 1, 1934, approximately 65 per cent of respondent's employees were members of Local No. 18409.

On May 17, 1934, at the request of Local No. 18409, the Los Angeles Regional Board of the National Labor Board conducted an election among the employees at respondent's plant to determine whether respondent's employees wished to designate or select Local No. 18409 or the Council to represent them for the purpose of collective bargaining or other mutual aid or protection. Local No. 18409 won the election and was certified by the Los Angeles Regional Board as the representative of respondent's employees.

The record clearly indicates that subsequent to the organization of both the Council and Local No. 18409, respondent not only was vitally interested in the continued existence of the Council but also openly displayed a hostile attitude toward Local No. 18409. In June, 1934, several weeks after the election had been conducted by the Los Angeles Regional Board, West told Ahlin that Walter Crostic, an employee of respondent and member of Local No. 18409, that "men of his calibre are easily influenced by the bull they throw out at the union." West also told Ahlin that Stotts, another employee of respondent, was "on the spot" because he had been active in Local No. 18409. Respondent's hostile attitude toward Local No. 18409 is further shown in that at a meeting of the Council in July or August, 1934, Pattison, president of respondent, stated that he would not recognize Local No. 18409 and would never have anything to do with an "outside" organization, and that he did not think that employees who belonged to a union organization were loyal to respondent.

11. In January, 1935, the number of respondent's employees had increased to approximately 191, and in April, 1935, respondent employed approximately 227 employees. However, apparently due to respondent's hostile attitude toward Local No. 18409, Local No. 18409

suffered a severe loss in its membership during the latter part of 1934, and between January and April, 1935, Local No. 18409 had only seven members.

In April, 1935, Local No. 18409 made plans for reorganization. A meeting hall was secured and a meeting of respondent's employees interested in Local No. 18409 was held on April 20, 1935. The record does not disclose the number present at this meeting, but it is indicated that a substantial majority of respondent's employees attended. Considerable discussion ensued concerning the Council, and a vote to dissolve the Council was carried. Thereafter, Local No. 18409 conducted an intense organization campaign.

On April 24, 1935, four days after the meeting of Local No. 18409, the Council held a meeting. Pattison attended the meeting and spoke to those present. He inquired in detail concerning the meeting of Local No. 18409 on April 20, and stated that he would rather deal with the Council and did not wish to see it dissolved, and that he would not deal with any organization which had "outside" influence. He further stated that he did not believe that any man who attended a union meeting was loyal to respondent and that any man that could not be loyal to respondent was better off not working in the plant. Pattison also announced that he would give all employees a ten per cent increase in wages (approximately five cents per hour), effective May 1, 1935.

Several days after April 24, 1935, Lowery, an employee of respondent, saw Morris, foreman in the refinery, post the following notice on a bulletin board:

"Attention: Departmental Delegate

"In the meeting with the management as of April 24, at 2:00 P. M., it seems advisable to remind you of what took place at that time; in other words, this will serve as an outline of the minutes of the meeting. Please give an unbiased outline of what was said at the meeting, and it is to be hoped that the following reminders may be a little helpful.

"(a) The 5¢ raise, passed upon at the Board meeting, April 15.

"(b) Mr. Pattison's stand against outside affiliation, and the consequent discord that is bound to occur. In this stand, he is backed by the Board.

"(c) His efforts in trying to get a satisfactory health and accident benefit plan patterned after the L. A. Gas & Electric Co. plan, and costing around 75¢ per month, per employee.

"(d) Only those that sign with the Council will be eligible for participating in the 'health & accident' plan."

Morris also posted the following notice at or about the same time:

“Notice to V. O. P. Employees

“Before signing the accompanying paper, please see your departmental representative and get the details of the last meeting with the management, and learn the advantages and disadvantages of an Employees Council, or outside affiliation.

“We, the undersigned, employees of the Vegetable Oil Products Company, Inc. and members of the Employees Council, refuse to recognize the action taken by a certain group of employees Saturday, April 20, and desire to have our elected representatives of the Employees Council continue to deal with the management.”

Although these notices purport to have been issued by the Council, they were posted by one of respondent's foremen and it seems clear that respondent, and not any group or organization of its employees, is solely responsible for the appearance of the notices. We are convinced that the timely appearance of the notices immediately subsequent to the attempted reorganization of Local No. 18409, was merely part of a well planned scheme on the part of respondent to permanently destroy Local No. 18409. It is true that these incidents occurred previous to July 5, 1935, the effective date of the Act. However, an examination of respondent's hostile, anti-union attitude throws light upon respondent's subsequent conduct.

12. On or about July 15, 1935, Prior, secretary and business representative of Local No. 18409, accompanied by Grillo, a representative of the American Federation of Labor, visited Pattison at his office and requested him to bargain collectively with Local No. 18409 as the representative of respondent's employees. Pattison flatly refused, and testified that he told Prior he would not bargain collectively with Local No. 18409 as the representative of respondent's employees but would bargain with any other group of employees or any individual. Thus, subsequent to July 5, 1935, respondent clearly displayed its attitude toward Local No. 18409 and openly challenged the rights Local No. 18409 had under the Act.

III. THE UNFAIR LABOR PRACTICES

13. The record clearly indicates that respondent's hostile and antagonistic attitude toward Local No. 18409 continued during the months of August, September and October, 1935. Employees were questioned from time to time by foremen and officials of respondent

concerning their activity and membership in Local No. 18409, and persuasive efforts were made by respondent to forestall its employees in their efforts to perpetuate the existence of Local No. 18409. For example, sometime during the early part of August, Taylor, an employee of respondent, was told by Van Fosson, master mechanic and chief engineer, "Don't join this damn one horse union they have got down there"; and in October, 1935, Jones, foreman, asked Harvey, an employee of respondent, if he had joined Local No. 18409, and told him that the time was near at hand when he would have to make up his mind one way or the other, and requested Harvey to advise him in the event any one asked him to join Local No. 18409.

The record clearly indicates that respondent knew in most instances which of its employees were members of Local No. 18409. The employees discussed their union membership and activity both among themselves and with their foremen; and most of the members of Local No. 18409 wore union buttons to and from work on the lapels of their coats. Thus respondent was armed with definite information concerning membership in Local No. 18409, and was in a position to strike at Local No. 18409 at any time it chose to do so.

On October 29, 1935, Wilson, foreman in the copra mill, posted the following notice on a bulletin board, and said to a group of employees nearby, "You men had better remember that this time, too":

"OCTOBER 29, 1935.

"Regardless of any statement which may be made by any person or group, this company will continue to operate its plant on an open shop basis; and will continue to deal with its employees as in the past.

"VEGETABLE OIL PRODUCTS COMPANY, INC.

(Signed) W. D. YORK."

Thereafter the following employees of respondent, all of whom, with the exception of Wyly, were members of Local No. 18409, were discharged:

Name	Employed	Date of discharge
James C Humphrey.....	2 years, 3 months.....	October 31, 1935
Dale Fritts.....	1 year.....	October 31, 1935
Marshall Shafer.....	10 months.....	October 31, 1935
Harry Shephard.....	3 years, 1½ months.....	October 31, 1935
Walter Crostic.....	5 years, 1 month.....	November 5, 1935
H L Taylor.....	4 months.....	November 5, 1935
William D Ensor.....	11 years, 1 month.....	November 5, 1935
A V Price.....	3 years, 2¼ months.....	November 5, 1935
F E Campbell.....	9½ months.....	November 5, 1935
Lester Price.....	3 years, 1½ months.....	November 5, 1935
Frank L Lee.....	2 years, 2¼ months.....	November 5, 1935
Frank Williams.....	6 months.....	November 5, 1935
John Williams.....	2½ months.....	November 5, 1935
H L Livesay.....	8 months.....	November 5, 1935
Wilham F. Wyly ¹	2½ months.....	November 12, 1935

¹ Wyly belongs to Steam and Operating Engineers' Union, No. 235.

14. *Humphrey, Fritts, Shafer and Shephard* were employed in the copra mill. Humphrey was employed as a relief operator one day each week, at which time he operated ten expeller machines. During the remainder of each week he was engaged in maintenance work. On October 27, 1935, Humphrey was working as relief operator. It was testified to in behalf of respondent that on October 27, 1935 the copra elevators jammed and Wilson, foreman, found Humphrey smoking outside the mill instead of tending to his job, and respondent contends that this was its main reason for discharging him. However, the evidence shows that a crew of five men, including Humphrey, were working on the expeller machines, and it is the duty of the "front end man" to watch the elevators, and that Humphrey was not the "front end man." The evidence further shows that it was a customary practice for respondent's employees, including the foremen, to go outside the mill three or four times each day for the purpose of smoking.

Fritts, Shafer and Shephard were all employed on the same shift and worked full time on the expeller machines. Shephard was an operator and Fritts and Shafer were helpers. Respondent contends that it discharged Fritts, Shafer and Shephard because of inefficiency in that they did not extract the maximum amount of oil from the copra, and that the entire shift seemed non-cooperative. Respondent also contends that Humphrey failed to extract the maximum amount of oil from the copra during the time he was employed as a relief operator, one day each week.

Respondent's records of the average percentage of oil extracted from the copra by each of the four shifts working in the copra mill show that during September and October, 1935, Fritts, Shafer and Shephard extracted from one-tenth to one-half of one per cent less oil than the operators on the other three shifts. However, respondent's records were conclusively proven to be inaccurate and unreliable. It was shown that the operators of the expeller machines on the other shifts made a practice of submitting as a test sample, mash with a low content of oil instead of the mash which had actually been expelled from their machines. Consequently the chemical analysis did not show the true percentage of oil extraction. It was not shown that Fritts, Shafer and Shephard ever failed to submit a true test sample of the mash expelled from their machines.

Phillips, employed on the same shift with Humphrey, testified that Humphrey was an efficient worker. Daniels, an employee of respondent, testified that Wilson, foreman, told him on November 6, 1935, that "Fritts was a good man, a good worker, but had this firing coming" and that "Shafer was a good man also, but was very

hot-headed." When Shafer received his pay from Wilson, at the time he was discharged, Wilson told Shafer that his work had been satisfactory and he would like to keep him on the job, but that word came from the office that he would have to go. At the time Shephard was discharged, Wilson said, "Well, it has come to this." Shephard asked him why he was being discharged, and Wilson replied, "Make what you want of it." West, office manager, also talked with Shephard, and told Shephard he "was a bad morale to the men."

Croctic, Taylor and Frank Williams were employed in respondent's salad oil department. Croctic and Taylor were operators, and Williams was a helper. Croctic had been employed by respondent more than five years and had been made an operator in June, 1935. Respondent contends that he was inefficient and, because of his inability to write, had to depend on his helper, Williams, to make out his daily reports. In view of Croctic's long period of service we may assume that respondent knew that he was unable to write before promoting him to the position of operator. Croctic admitted that he had inadvertently spilled some oils and was subsequently reprimanded by Morris, his foreman. However, this occurred more than one week before he was discharged. At the time Croctic was discharged he was given no reason for the termination of his employment.

The record indicates that Taylor was a competent and conscientious worker. Several weeks before his discharge Morris complimented him on his work. Morris testified that his work had been satisfactory, and that he did not recommend his discharge. Taylor admitted that he had been reprimanded for smoking in the plant in August, 1935, but that he had been told since it was the first time to think nothing about it. Taylor testified that he never smoked at respondent's plant thereafter. Shortly after Taylor was discharged York, superintendent, told him, "We' have decided to make some changes around here and you may have been fired unjustly." York testified that he discharged Taylor because of reports he had received that Taylor had smoked in the salad oil building and had been "away from his duties." There was no evidence to show that Taylor had neglected his duties at any time.

Frank Williams was employed as Croctic's helper. Morris testified that he recommended the discharge of both Croctic and Williams because "the shift wasn't satisfactory, and I had to make a change," and that several times they had failed to make out an "inventory ticket" for oil which had been brought into the salad oil department. However, Williams, like Croctic, was given no reason why his employment was being terminated.

Lester Price and *Campbell* were employed in respondent's fish oil plant. Price was an operator, and Campbell was a helper. Price was a member of the shop committee of Local No. 18409 in May, 1934, at which time the shop committee met with Pattison and York. At the time Price was discharged, Whittington, night foreman, told him, "I am just here to hand you your check, and I cannot say anything about it." York testified that Price seemed indifferent and unresponsive and, believing he would progress no further, let him go. However, Whittington testified that Price obeyed orders and was not indifferent, and that he performed his work very well.

At the time Campbell was discharged, Whittington told him to go to the office and get his check and said, "I suppose you know what this is for." Campbell replied, "Well, I suppose it is the union," and Whittington said, "Well, there isn't anything I can do about it." Morris testified that Campbell did not take his work seriously and that he sometimes found him standing around with his hands in his pockets. York testified that Campbell seemed indifferent to his work. However, Whittington testified that Campbell paid attention to business; and that although he sometimes saw him standing with his hands in his pockets, it was on occasions when it was necessary for Campbell to watch a gauge or thermometer for a period of 15 to 20 minutes.

Ensor was employed as an autoclave operator. When Ensor was discharged Morris gave him his check and said, "You got it." Morris made no further statement, and did not tell Ensor why he was being discharged. West testified that Ensor had been negligent in loading oil on a car, but admitted that his negligence had not been discovered until after he had been discharged.

A. V. Price was employed as a catalyst operator. In June, 1934, Price accused another employee of being a "scab". He was reprimanded at that time by respondent and laid off for a period of one week. However, it is shown that respondent made no complaint concerning either his work or conduct thereafter. At the time Price was discharged York merely told him that a "change was being made for the good of the company."

Lee was employed in respondent's barrel room, loading drums and barrels from the cocoanut refinery. At the time Lee was discharged West told him that he was "making changes for the benefit of the company." West and York testified that on several occasions there had been an unexplained appearance of foreign substances in drums and barrels prepared for shipment. However, it was shown that two other employees worked with Lee in the barrel room, and no evidence was offered to show that any of the employees in respondent's barrel room were responsible for the foreign substances which

were found in certain drums and barrels of oil. York further testified that Lee was indifferent to his work. However, Wright, his foreman, testified that Lee was a conscientious workman, and was not indifferent to his work.

John Williams, son of Frank Williams, was employed in respondent's refinery, packing soap stock in barrels. He was discharged by Morris. When Williams questioned Morris concerning the reason for his discharge, Morris said, "Well, there is no reason." Respondent contends that Williams was discharged because of a reduction in its force. Although Morris testified that his work had been satisfactory, it is apparent that respondent made no effort to place Williams in another job at its plant.

Livesay operated a carton machine in respondent's finished products department. Chamberlin, foreman, discharged Livesay, and told him he did not know why he was being discharged. Livesay said, "I suppose it is because I belong to the union," and Chamberlin made no reply. York testified that he approved Livesay's discharge because Chamberlin reported that Livesay would frequently leave his machine during working hours. However, Navius, an employee of respondent who worked with Livesay, testified that Livesay was a good workman and did not leave his machine more often than was customary among the operators in the department.

Wyly was employed by respondent in August, 1935, for temporary work on the boilers in respondent's plant. Wyly completed this work on or about November 1, 1935, and requested respondent to give him another job. York told Wyly that he would try him out as an operator in the gas plant, but could give him no assurance of steady work until he had proven himself satisfactory to Stovall, an engineer employed by W. F. H. Shultz Co. to erect a hydrogen plant for respondent and train men to operate it. Wyly began work in the gas plant on November 4, 1935. Stovall testified that in his opinion Wyly would not make a good operator because he was not active and "just didn't seem to grasp the idea." Stovall recommended that Wyly be taken out of the gas plant, and respondent discharged him. Wyly is not a member of Local No. 18409, but belongs to the Steam and Operating Engineers' Union, No. 235. The record indicates that Wyly was not competent to assume the duties assigned to him in the gas plant, and there is no evidence to show that he was discharged by respondent because of his membership in a labor organization. Therefore, the complaint with respect to Wyly will be dismissed.

The evidence clearly fails to sustain respondent's contentions that the remaining 14 employees were discharged for incompetency, inefficiency, failure to obey instructions or because of a reduction in

the force. The record convinces us that the discharge of these men, when viewed in conjunction with respondent's hostile attitude toward Local No. 18409 and its conduct in attempting to discourage membership in Local No. 18409, was due to their membership and activity in Local No. 18409. With the exception of Wyly, respondent discharged no employees who were not members of Local No. 18409.

We find that respondent has discriminated in regard to the hire and tenure of employment of James C. Humphrey, Dale Fritts, Marshall Shafer, Harry Shephard, Walter Crostic, H. L. Taylor, William D. Ensor, A. V. Price, F. E. Campbell, Lester Price, Frank L. Lee, Frank Williams, John Williams, and H. L. Livesay, for the purpose of discouraging membership in Local No. 18409, and that by such acts, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. EFFECT OF UNFAIR LABOR PRACTICES ON COMMERCE

15. On November 13, 1935, a strike, called by Local No. 18409, became effective at respondent's plant. Of approximately 270 workers at respondent's plant, about 260 employees went out on strike. Approximately 252 of the employees on strike were members of Local No. 18409. Respondent ceased operations, but subsequently commenced operations on a small scale and employed new employees, a few at a time. The record does not disclose the number of new employees so employed. Respondent's plant was picketed continuously during the period of the strike.

The strike was called as a protest against respondent's action in discharging certain of its employees, members of Local No. 18409, which we have already considered. The strike was indorsed by the California State Federation of Labor, the Central Labor Council of San Pedro and Wilmington, California, and several labor unions in the vicinity of respondent's plant, including the International Longshoremens's Association, Local 38-82. Respondent's products were placed on an "unfair to labor" list. The strike seriously interrupted respondent's operations, substantially reduced and diminished its normal volume of business and curtailed shipments in interstate commerce to and from its plant.²

16. On the basis of experience in respondent's plant and in other plants, respondent's conduct as set forth in findings 13 and 14 above,

² On February 24, 1936, Local No. 18409 entered into a written agreement with respondent, officially terminating the strike and removing respondent's products from the "unfair to labor" list. Respondent agreed to reinstate 110 or more of the strikers and place the remainder, members of Local No. 18409, on a preferential list for future employment. The matter of the employees named in the complaint issued by the Board, discharged previous to the strike, was left to the Board for determination.

and each item of such conduct, has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

RESPONDENT'S EXCEPTIONS

Respondent's exceptions to the Trial Examiner's intermediate report are based mainly on the contentions that his findings of fact, conclusions and recommendations are not sustained by and are contrary to the evidence. The findings of fact set forth above are in substantial accord with those of the Trial Examiner, whose intermediate report we find to be supported by the evidence.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. Soap and Edible Oil Workers Union, Local No. 18409, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. By its discharge and refusal to reinstate James C. Humphrey, Dale Fritts, Marshall Shafer, Harry Shephard, Walter Crostic, H. L. Taylor, William D. Ensor, A. V. Price, F. E. Campbell, Lester Price, Frank L. Lee, Frank Williams, John Williams, and H. L. Livesay, and each of them, for the reason that they and each of them joined and assisted Local No. 18409, respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

3. By its discharge and refusal to reinstate the persons aforesaid, as set forth in paragraph 2 hereof, and each of them, respondent did discriminate and is discriminating in regard to hire and tenure of employment of said persons and each of them, and did thus discourage and is thus discouraging membership in Local No. 18409, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

4. The unfair labor practices in which respondent has engaged and is engaging are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

5. By its discharge and refusal to reinstate William F. Wyly, respondent has not engaged in unfair labor practices, within the meaning of Section 8, subdivisions (1) or (3) of the Act.

ORDER

On the basis of the findings of fact and the conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders:

A. That respondent, Vegetable Oil Products Company, Inc., and its officers and agents, shall:

1. Cease and desist from discouraging membership in Local No. 18409 or any other labor organization of its employees, by discrimination in regard to hire and tenure of employment or any term or condition of employment;

2. Cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

3. Take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act:

(a) Offer to James C. Humphrey, Dale Fritts, Marshall Shafer, Harry Shephard, Walter Crostic, H. L. Taylor, William D. Ensor, A. V. Price, F. E. Campbell, Lester Price, Frank L. Lee, Frank Williams, John Williams, and H. L. Livesay, employment in the respective positions formerly held by them with all rights and privileges previously enjoyed; and

(b) Make whole said James C. Humphrey, Dale Fritts, Marshall Shafer, Harry Shepard, Walter Crostic, H. L. Taylor, William D. Ensor, A. V. Price, F. E. Campbell, Lester Price, Frank L. Lee, Frank Williams, John Williams, and H. L. Livesay, for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequently to his discharge.

(c) Post immediately notices to its employees in conspicuous places at its plant, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

B. That the complaint is hereby dismissed as to the allegations of discriminatory discharge of William F. Wyly.