

IN THE MATTER OF WASATCH OIL REFINING COMPANY, EMPLOYER *and*
OIL WORKERS INTERNATIONAL UNION, C. I. O., PETITIONER

Case No. 20-R-2250.—Decided February 26, 1948

Mr. Wilford M. Burton, of Salt Lake City, Utah, for the Employer.
Mr. Willard Y. Morris, of Salt Lake City, Utah, for the Petitioner.

DECISION
AND
CERTIFICATION OF REPRESENTATIVES

Upon a petition duly filed, the National Labor Relations Board on May 23, 1947, conducted a prehearing election among the employees of the Employer in the alleged appropriate unit, to determine whether or not they desired to be represented by the Petitioner for the purposes of collective bargaining.

At the close of the election, a Tally of Ballots was furnished the parties. The Tally shows that there are approximately 111 eligible voters and that 107 ballots were cast, of which 57 were for the Petitioner, 32 were against the Petitioner, and 18 were challenged.

Thereafter, a hearing was held at Salt Lake City, Utah, on July 14, 1947, before Charles Y. Latimer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Employer's request for oral argument and for an opportunity to file a supplemental brief is denied inasmuch as the record and the brief already filed, in our opinion, adequately present the issues and positions of the parties.

On October 30, 1947, the Employer moved that the petition herein be dismissed on the ground that the Petitioner has failed to comply with the filing requirements of Section 9 (f), (g), and (h) of the Act. The motion to dismiss is hereby denied inasmuch as our records indicate that the Petitioner is now in full compliance with the Sections of the Act hereinabove mentioned.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of Chairman Herzog and Board Members Houston and Reynolds.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Wasatch Oil Refining Company, a Utah corporation, is engaged at its Woods Cross plant in the processing, selling, and distribution of petroleum products and automotive accessories. During the year 1946, the Employer purchased 600,000 barrels of crude oil valued at \$1,598,288, all of which were shipped to it from points outside the State of Utah.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED¹

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.²

IV. THE APPROPRIATE UNIT

The Petitioner contends that all production, operating, maintenance, transportation, and laboratory employees of the Employer at its plant in Woods Cross, Utah, excluding office and clerical employees, draftsmen, chemists, engineers, and all supervisors, constitute an appropriate bargaining unit. The Employer agrees generally to the inclusion and exclusion of the specific categories of employees specified by the

¹ In addition to the Petitioner described herein, the Employer contends that there is another interested labor organization, namely, the Wasatch Oil Employees Mutual Benefit Association, herein called the Benefit Association, which should have been notified and permitted to participate in the hearing. The record indicates, however, that the Benefit Association has admitted to the Employer that its Constitution and Bylaws do not permit it to act as a labor organization. Moreover, it is abundantly clear from the record that an opportunity was offered to but not accepted by the representative of the Benefit Association present at the hearing to intervene to protect whatever interest it might have had in this proceeding.

² We find immaterial to the question concerning representation the contention of the Employer that a consent election could have been arranged had its employees been given an opportunity to choose between the Petitioner and the Benefit Association.

Petitioner with the exception of the employees in its Sales Marketing and Transportation Department, herein called the transportation department, and those in its laboratory department, both of which departments the Employer would exclude from the unit.³ The parties are also in disagreement with respect to the disposition of certain challenged ballots hereinafter discussed.⁴

A. *Transportation department employees*: The Employer contends that there is no relationship between the working conditions and hours of employment of employees in the transportation department and those of employees in the plant proper. In this connection, it asserts that the work of large transport drivers, small truck drivers, painters, and pump mechanics is performed almost completely away from the plant. Although there is no persuasive history of collective bargaining at the Employer's plant,⁵ the Employer points, by way of analogy, to the history of bargaining at the Utah Oil Refining Company, hereinafter called Utah Oil, its only local competitor, and contends that the agreement executed on August 26, 1946, between Utah Oil and the Oil Workers International Union, C. I. O., hereinafter called the Oil Workers, does not include transportation department employees. It further asserts that the pattern noted above is consistent with the action of the Utah Labor Relations Board in refusing to certify the Oil Workers as bargaining representatives in a proposed unit of production and maintenance employees of Utah Oil where such unit included the transportation department employees. Finally, the Employer maintains that the employees in the transportation department are under separate supervision, that each department maintains individual cost account records, and that the services performed by one department for the other are charged against the account of the beneficiary of such interchange.

The Employer functions as an integrated business enterprise engaging in the refining, sale, and distribution of petroleum and petro-

³ Although the Employer did not raise this objection at the prehearing election or seek to challenge the ballots of the employees in these departments, the Board has held that the Employer is not precluded thereby from raising, at a subsequent hearing, any issue relevant and material to the investigation of the petition. See *Matter of Star Publishing Company*, 74 N. L. R. B. 120

⁴ At the hearing, the parties reached an agreement with respect to the inclusion or exclusion of certain challenged voters, namely: that the employee listed in Appendix A should be included in, and that the employees listed in Appendix B should be excluded from, the unit. In view of this agreement, we find it unnecessary to consider the challenges with respect to such employees.

⁵ Up to about May 6, 1947, the Employer carried on collective bargaining negotiations with the Wasatch Oil Employees Mutual Benefit Association, an independent organization of its employees, established in 1934, soon after the incorporation of the Employer's plant, to represent all the Employer's employees including the transportation department employees. However, inasmuch as no agreement of the parties was reduced to writing, the history of collective bargaining between the Employer and the Benefit Association can not be considered controlling. See *Matter of Radiomarine Corporation of America*, 75 N. L. R. B. 651.

leum products. To carry out its undertaking it has divided its Woods Cross operations into two principal departments, *viz.*: a refinery, operations and maintenance department, hereinafter called the refinery department, and the transportation department. The latter is under the supervision of a department manager who is responsible to a general manager in charge of the entire plant. The transportation department is located in a newly acquired area which is in the immediate vicinity of the refinery but separated therefrom by a highway and railroad. Within this area is a garage, a loading dock, and a marketing section. Of the approximately 107 eligible employees throughout the plant, about 33 or approximately 31 percent work in or out of the transportation area.⁶

The Employer points to the fact that the transportation department employees perform a large part of their duties away from the production and maintenance employees as supporting its contention that these employees should be excluded from the unit. While it is true that the large transport drivers,⁷ small truck drivers,⁸ painters and pump mechanics⁹ spend the major part, if not all of their time away from the plant and thus might appear to have few interests in common with the refinery employees, this factor would not alone justify the exclusion of these employees from a broad unit where, as here, the distribution of the Employer's products is an integral part of its overall operation. Furthermore, although many transportation employees work away from the plant, an interchange of employees has occurred in the past between the transportation and refinery departments.¹⁰ Accordingly, we are of the opinion that the difference in

⁶ Of the 33 employees in the transportation department, 24 are truck drivers, painters, and pump mechanics while the balance consist of various types of maintenance mechanics and plant clerical employees.

⁷ There are about 14 transport drivers who haul gasoline from points within the States of Wyoming, Idaho, Nevada, and Arizona to the Employer's plant in Utah where it is unloaded at the tank farm. This farm is in close proximity to the refinery. It takes approximately 1 full day for these drivers to complete a trip, consequently, practically all of their time is spent away from the plant.

⁸ The Employer has about 5 small-truck drivers who work under the direction of the shipping supervisor. Except for two full-time salesmen, these drivers are the Employer's only local salesmen and its most common contact with service stations located throughout the State. Their trucks are loaded at the loading dock or at the refinery depending upon the product that is being transported. Local truck drivers solicit, take and fill orders, and spend only such time at the plant as is necessary to load their vehicles.

⁹ There are approximately 5 painters and pump mechanics who repair and maintain the dispensing and operating equipment at service stations located throughout the State which sell the Employer's products. These employees spend from 75 to 90 percent of their time in the field.

¹⁰ A witness for the Petitioner testified credibly to the effect that up to 6 months before the election openings in the refinery and transportation departments were posted throughout the plant and that employees in both departments were permitted to make applications for such positions. The Employer's general manager admits that an interchange of employees between departments has taken place in the past but asserts that no transfers were made during the 2-year period immediately preceding the hearing.

work location as between transportation and production and maintenance employees does not in itself require a separation of these groups for the purpose of collective bargaining.

With respect to the contract between Utah Oil and the Oil Workers, which the Employer asserts does not include transportation employees and upon which the Employer relies in support of its position, the record reveals that, while transportation employees as such are not mentioned in the agreement of August 1946, an amendment thereto dated October 23, 1946, specifically includes in the bargaining unit the "Salt Lake Division" which is charged with the transportation of gasoline products from the refinery site to stations in the vicinity of the plant. Furthermore, the classification "truck driver" appears in the schedule of wage rates established in the 1946 agreement. We are therefore of the opinion that the contract referred to by the Employer is not inconsistent with the proposed inclusion of transportation department employees in the production and maintenance unit sought by the Petitioner herein.

The Employer further urges, in support of its contention, the alleged refusal of the Utah Labor Relations Board to certify the Oil Workers as bargaining representative of all the production and maintenance employees at Utah Oil as well as the transportation department employees. We note, however, that on March 12, 1947, subsequent to the action of the State Board referred to above, the parties to this proceeding stipulated before the State Board to include the transportation department employees in the proposed production and maintenance unit; that pursuant to this stipulation, which was accepted by that Board, an election was conducted on March 17, 1947; and that on April 12, 1947, the Petitioner was certified in a unit which embraced the transportation department employees. Moreover, the evidence shows that about the time of the Oil Workers' request for certification as the representative of the Utah Oil employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called the Teamsters, had sought to bargain for the transport truck drivers. The Utah Oil situation is, therefore, clearly distinguishable from that in the instant proceeding where the Petitioner is the only labor organization which seeks to represent the transportation department employees.¹¹

There remains for consideration the Employer's contention that, since the departments are under separate supervision and have different cost accounting systems, they must be considered independent. The record discloses that, although each department is subject pri-

¹¹ In a similar situation the Board has included truck drivers in the over-all bargaining unit. See *Matter of General Ship & Engine Works*, 49 N L R B 1290

marily to local supervision with relatively independent authority, they have certain functional interrelations and are subject to over-all supervision and management policies.¹²

On the basis of the entire record, including the integration of interests in the two departments, the absence of any persuasive history of collective bargaining, the fact that transportation employees in the industry within the same competitive area are included in the over-all bargaining unit, the fact that the transportation department of the Employer is not confined to transportation workers but includes various maintenance employees similar to those in the production and maintenance unit, and the further fact that no other labor organization presently seeks to represent the Employer's transportation department employees in a separate unit, we are of the opinion that these employees may appropriately be included in the employer-wide unit of production and maintenance employees for the purposes of collective bargaining.¹³ Accordingly, we shall include the transportation department employees in the unit hereinafter found appropriate.

B. *Employees in the laboratory department*:¹⁴ The employees herein concerned are testers who perform routine chemical analysis. The Employer argues that these employees should be excluded from the unit because they have access to confidential information of a high competitive value. In this regard, the Employer contends that the data accessible to its laboratory employees concern the chemical composition of its products and furnish the basis for determining the market price of such products. While it may be true that information of some competitive value is accessible to the laboratory testers, these employees do not assist or act in a confidential capacity to persons who exercise managerial functions, and we are therefore of the opinion that they are not confidential employees.¹⁵ Nor do we believe that, by reason of their duties, they are professional employees within

¹² Although no seniority rights exist between the refinery and transportation department employees and an interchange of labor between these departments requires that an accounting charge be entered against the department benefiting thereby, it is clear from the record that both departments are governed by the same labor policy.

¹³ See *Matter of General Ship and Engine Works*, *supra*; *Matter of Roy Stephens, Incorporated*, 73 N. L. R. B. 431; *Matter of Socony-Vacuum Oil Company, Inc.*, 73 N. L. R. B. 895; cf. *Matter of General Petroleum Corporation of California*, 39 N. L. R. B. 1180; *Matter of Standard Oil Company of California*, 67 N. L. R. B. 139; *Matter of Standard Oil Company (Ohio), Cleveland Division*, 63 N. L. R. B. 1248. In the latter three cases the Teamsters sought to represent transportation employees in a separate unit and the Board, under such circumstances, excluded such employees from the over-all unit.

¹⁴ This department embraces the chief chemist, the assistant chemist, the Road Oil Chemist, the Knock Machine Tester and six testers. The parties have agreed to exclude the chemists, which group includes the chief chemist, the assistant chemist, and the Road Oil Chemist. With respect to the Knock Machine Tester, the evidence does not indicate that he is professionally qualified or that he has duties higher than a routine tester. Accordingly, we find that he is substantially on the same level as the laboratory testers.

¹⁵ See *Matter of Denver Dry Goods Company*, 74 N. L. R. B. 1167.

the meaning of the Act. Accordingly, we shall include the laboratory testers in the appropriate unit.

C. Individual employees challenged at the election: Of the 18 challenges at the time of the election, 8 were interposed by the Employer, 1 by the Petitioner, and 9 by the Board.¹⁶

1. The seven ballots challenged by the Employer
Theodore Burnham, Rodney Stringham, Joseph Wood, J. F. Hatch

The ballots of these four employees were challenged on the ground that they are supervisors. The Petitioner argues that, even if we assume these employees have supervisory authority, they are not supervisors because their supervisory authority has never been exercised.¹⁷ The evidence discloses that the employees hereinabove mentioned are stillmen; that during the second and third shifts they are in full charge of the refinery with one to three employees under their supervision; and that, while the plant is under the direction of the regular supervisory force during the first or day shift, the stillmen, nevertheless, retain the right effectively to recommend changes in the status of employees in their group and responsibly to direct or to assign them to various types of work. It appears that stillmen are supervisors within the meaning of the Act. Accordingly, we shall sustain the challenges to their ballots and exclude them from the unit.

Thomas Mitchell: The Employer challenged the ballot of this employee on the ground that he is a supervisor. The record indicates that Mitchell is chief motor mechanic under Parley Doubray, the truck boss and garage foreman, who is admittedly a supervisor within the meaning of the Act. Mitchell confers with, instructs, and responsibly directs the activities of junior mechanics and other service employees, who, in the performance of their duties, come to him for advice and assistance. When the truck boss and garage foreman is away from the plant, as is frequently the case, Mitchell assumes complete control of the garage and exercises full supervisory authority over the employees therein. We find that this employee is a supervisor within the meaning of the Act. We shall, therefore, sustain the challenge to his ballot and exclude him from the unit.

Harold Holder, Glen Ingles: The ballots of these employees were challenged on the ground that they are supervisors. The Employer

¹⁶ As indicated above, agreement was reached at the hearing with respect to the inclusion and exclusion of eight of the challenged voters, of which six were challenged by the Board, one by the Employer, and one by the Petitioner.

¹⁷ The Board has held that employees with acknowledged supervisory authority may be found to be supervisors although they have never exercised such authority. See *Matter of The Hamilton Tool Company*, 58 N. L. R. B. 257, *Matter of American Tool Works Company*, 59 N. L. R. B. 862.

contends that the duties of Holder and Ingles are on the same supervisory level as those of Gilbert Huffman, the bull gang foreman, and Lester Lemon, the chief welder, both of whom the parties have agreed should be excluded from the unit. The record reveals that all of the afore-mentioned employees work under the immediate direction of C. W. Redd, the superintendent of plant maintenance and construction, and that each directs the activities of a specific group of maintenance employees. Thus, Holder, the chief pipe fitter, is charged with full responsibility for the work of 5 to 7 pipe fitters. He designates where these men are to work, what they are to do and who is to work with them. Similarly, Ingles is engaged in carpenter and design work and has 5 to 10 subordinates who regularly assist him. He has authority effectively to recommend a change in the status of any of the employees under his supervision. We find that Harold Holder and Glen Ingles are supervisors within the meaning of the Act. Accordingly, we shall sustain the challenges to their ballots and exclude them from the unit.

2. The three remaining ballots challenged by the Board

W. C. Leslie: The Board's agent challenged this employee on the ground that his name did not appear on the Employer's pay-roll eligibility list. At the hearing, the parties stipulated that Leslie was a temporary employee who worked as a laborer during the summer months. We shall sustain the challenge to his ballot on the ground that he was not a regular employee and therefore was ineligible to vote in the election.

Keith Gunderson: The ballot of this employee was challenged by the Board's agent on the ground that his work classification was one which the parties had agreed to exclude from the unit. The record indicates that Gunderson, as an assistant chemist, falls within the professional classification of chemist as distinguished from routine testers. The parties have agreed that chemists, as such, should be excluded from the appropriate unit.¹⁸ Accordingly, we shall sustain the challenge to his ballot and exclude him from the unit.

Ed Johnson: This employee's ballot was challenged by the Board's agent apparently on the ground that he is a supervisor. Johnson, a pump mechanic in the transportation department, has one or more employees working under his direction.¹⁹ On Johnson's recommendation one of his assistants was discharged and another engaged. We

¹⁸ The Board is precluded under Section 9 (b) (1) of the Act from including professional employees in a unit of non-professional employees unless a majority of such professional employees vote for inclusion in such unit.

¹⁹ See footnote 9, *supra*.

find that Johnson is a supervisor within the meaning of the Act. We shall, therefore, sustain the challenge to his ballot and exclude him from the unit.

We find that all production, operating, and maintenance employees at the Employer's Woods Cross, Utah, plant, including employees in its transportation department, the laboratory testers, and the employee listed in Appendix A, but excluding all office and clerical employees, draftsmen, chemists, the assistant chemists, engineers, the employees listed in Appendix B, and all supervisors as defined in the Act,²⁰ constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

Subsequent to the hearing, the Employer filed an objection to the validity of this proceeding and sought to have it set aside on the ground that the Board's practice of conducting an election before hearing is no longer valid under the Act, as amended, even as to elections held before the effective date of the amendment. We have previously considered this objection to the prehearing election procedure and found it to be without merit.²¹ Accordingly, the Employer's objection to the proceeding is hereby rejected.

As the Tally shows that a majority of the valid votes counted have been cast for the Petitioner, and because the challenged ballots are insufficient in number to affect the results of the balloting, we shall certify the Petitioner as the collective bargaining representative of the employees in the unit heretofore found appropriate.

CERTIFICATION OF REPRESENTATIVES

IT IS HEREBY CERTIFIED that Oil Workers International Union, C. I. O., has been designated and selected by a majority of the employees in the unit described in Section IV, above, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

²⁰ Excluded are the following named employees whom we have herein found to be supervisors

Theodore Burnham
J F Hatch
Glen Ingles

Rodney Stringham
Thomas Mitchell
Ed Johnson

Joseph Wood
Harold Holder

²¹ *Matter of Lehigh River Mills*, 75 N. L. R. B. 280, *Matter of Farmers Feed Co., et al.*, 75 N. L. R. B. 617.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Certification of Representatives.

APPENDIX A

AGREED INCLUSION

Adrian Hepworth----- Treater.

APPENDIX B

AGREED EXCLUSIONS

Edward Mitchell-----	Clerk.
Theodore Green-----	Clerk.
Lorin D. Parkin-----	Plant Engineer.
Frederick U. Leonard-----	Draftsman.
Keith Winegar-----	Road Oil Chemist.
Lester Lemon-----	Chief Welder.
Gilbert Huffman-----	Bull gang foreman.