

Direction open and count the challenged ballots of James E. White, W. T. Robinson, Henry E. Deskins, Newton Wileman, Benjamin F. Spradlin, Ernest Brown, and Robert W. Mittendorf, and shall thereafter prepare and cause to be served upon the parties a supplemental tally of ballots, including therein the count of these challenged ballots.

WESTERN EQUIPMENT COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE No. 1712, AFL, PETITIONER

WESTERN EQUIPMENT COMPANY *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 370, AFL, PETITIONER

WESTERN EQUIPMENT COMPANY *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL No. 983, AFL, PETITIONER. *Cases Nos. 19-RC-824, 19-RC-825, and 19-RC-862. November 8, 1951*

Decision and Direction of Elections

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Daniel J. Harrington, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel. [Chairman Herzog and Members Houston and Murdock].

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. 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

¹ International Union of Operating Engineers, Local No. 370, AFL, herein called the Operating Engineers, moved to dismiss the intervention by International Association of Machinists, Local Lodge No. 1712, AFL, herein called the IAM, in Case No. 19-RC-825, on the ground of surprise. By its intervention in Case No. 19-RC-825, the IAM seeks to represent the employees covered by its separate petition in Case No. 19-RC-824. As the Operating Engineers was served with a consolidated notice of hearing, its motion is denied.

² The Operating Engineers urges a current contract between the Employer and Pocatello (Idaho) Building Trades Council as a bar to the IAM's petition and to its intervention based on the Operating Engineers' petition in Case No. 19-RC-825. The Operating Engineers is party to this contract as a member of the Pocatello Building Trades Council. As the Operating Engineers itself raised a question concerning representation as a petitioner herein, its own contract assertedly covering the employees involved cannot now bar the proceeding. We therefore find it unnecessary to pass upon the sufficiency of the contract as a bar to the IAM's petition.

4. The Operating Engineers and the Employer propose an all-inclusive unit of the Employer's employees subject to certain specific exclusions—set forth in detail below—as to which all parties are in agreement. Opposed by the Employer and the Operating Engineers, the IAM requests a separate unit limited to the railroad crew employees. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 983, AFL, herein called the Teamsters, seeks to represent—with the approval of all parties—all truck drivers, warehousemen, and related categories, more specifically detailed below.

The Employer, one of a group of contractors engaged in building Atomic Energy Commission facilities in Arco, Idaho, is responsible for the repair and maintenance of the general construction equipment used on the project. It operates warehouses, a supply depot, and a railroad "spur" about 20 miles long, which connects the Union Pacific Railroad with the warehouses and other facilities in the Arco project. In addition, about 125 employees of the Employer maintain, repair, and—to an extent undisclosed in the record—operate various kinds of construction equipment, including bulldozers, shovels, hoists, and other machinery.

One four-man train crew operates a Diesel locomotive on the Arco project tracks. Pursuant to assignments made by an Atomic Energy Commission dispatcher, this train crew picks up freight cars from a Union Pacific siding, and delivers them to warehouses and other facilities throughout the project. The train crew is composed of a conductor, an engineer, a brakeman, and a switchman. Under the general supervision of the Employer's master mechanic, these employees have, in the main, the duties implied by their titles. Their contacts with others of the Employer's employees are few; although locomotive repairs are made by the same mechanics who repair construction equipment, there is no showing in the record that this leads to more than casual contact between the train crew and those mechanics. The Employer's witness testified that in case of sickness or absence of a train crew member, any other employee could be "classified" and assigned to the crew temporarily. No instance of any such assignment was given, however, and on the record as a whole it is apparent that railroad crew employees are not interchangeable with others of the Employer's workmen. All of the Employer's Arco employees are subject to certain security and safety regulations. The train crew is also required to operate equipment in accordance with the safety rules of the Union Pacific Railroad.

It is apparent from these facts that the train crew employees have interests quite different from those of all others of the Employer's Arco workers. They do a distinctive type of work, and have few con-

tacts with the mechanics and maintenance men who comprise most of the unit sought by the Engineers. Although subject to the general supervision of the master mechanic, they operate under assignments given by the Atomic Energy Commission dispatcher and are subject to the day-to-day supervision of the conductor. In view of the train crew's distinctive interests and working conditions, we find that they may, if they so desire, constitute a separate appropriate bargaining unit apart from all other employees.³ They may, of course, also be represented together with the bulk of the Employer's workmen.

We shall, therefore, make no final unit determination at this time, but shall be guided in part by the desires of the railroad crew employees, as expressed in a separate election. If a majority vote for the IAM, they will be deemed to have expressed a desire to constitute a separate bargaining unit.

The record shows that the train crew *conductor* receives general instructions from the Atomic Energy Commission dispatcher, who notifies him where various freight cars are to be delivered by the train crew. The conductor, acting upon these instructions, directs the rest of the train crew in the performance of their duties. There is some suggestion in the record that the conductor is classified as a foreman; in any event, it shows that he handles minor grievances of others on the crew, and that he can recommend disciplinary action affecting them. Although he has no power to hire or discharge train crew employees, this power being vested in the master mechanic, it is clear from the record, and we find, that the conductor responsibly directs the other members of the train crew in the performance of their day-to-day tasks. Accordingly, we find that he is a supervisor as that term is defined in the Act, and we shall exclude him from the voting group.

Accordingly, we shall direct that separate elections be conducted among the Employer's employees in the following voting groups:

Voting Group No. 1: All railroad crew employees of the Employer at its Arco, Idaho, operations, excluding the conductor, guards, professional employees, all other employees, and all supervisors as defined in the Act.

Voting Group No. 2: All employees of the Employer at its Arco, Idaho, operations, including all employees engaged in the erection, dismantling, operation, maintenance, and repair of all hoisting and portable machines and construction machinery and equipment, and engaged in maintaining and repairing railroad equipment, excluding railroad crew employees, the conductor, truck drivers, warehousemen,

³ *Gifford-Hill & Company, Inc., et al.*, 90 NLRB 428; *United Motor Service, Inc.*, 59 NLRB 351.

parts warehousemen, service station employees, tire, battery, and gas men, truck greasers, office and clerical employees, professional employees, guards, and all supervisors as defined in the Act.⁴

In accordance with the agreement of the parties, and on the record as a whole, we also find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All truck drivers, warehousemen, parts warehousemen, service station employees, tire, battery, and gas men, and truck greasers, employed at the Employer's Arco, Idaho, operations, excluding the parts manager and assistant parts manager, office and clerical employees, guards, professional employees, all supervisors as defined in the Act, and all others of the Employer's employees.⁵

[Text of Direction of Elections omitted from publication in this volume.]

⁴The unit description set out in the petition of the Operating Engineers, includes among the duties of the employees the word "supervising," and qualifies the exclusion of supervisors by use of the phrase "excluding valid supervisors." Although the record indicates that the "supervising" duties are related to machine erection rather than to managerial functions, we have corrected the unit described to conform with the Board's established practice.

⁵Both the IAM and the Operating Engineers disclaimed any interest as to the employees in this unit. Accordingly, we shall direct that only the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 983, AFL, appear on the ballot in the election directed in this unit.

MICHIGAN-CALIFORNIA LUMBER COMPANY *and* LUMBER AND SAWMILL WORKERS LOCAL UNION No. 2749, AFFILIATED WITH UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL, *and* INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL UNION No. 13-286, CIO, PETITIONER. *Case No. 20-RM-79. November 8, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Louis S. Penfield, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

¹Lumber and Sawmill Workers Local Union No. 2749, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL, herein called the LSU, moved to dismiss the petition upon the grounds that (a) an existing contract is a bar, (b) International Woodworkers of America, Local Union No. 13-286, CIO, herein called the IWA, does not claim to represent an appropriate unit, and (c) an election at the present time is premature. For the reasons given hereinafter, the motion to dismiss is hereby denied.