

BUCKEYE OIL COMPANY, CHEMICAL PULP DIVISION *and* INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL, PETITIONER. *Case No. 32-RC-516. October 21, 1952*

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 John E. Cienki, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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-member panel [Members Houston, Styles, and Peterson].

Upon the entire record in this case, 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.

4. The appropriate unit:

The Employer, an Ohio corporation, operates plants in a number of southern cities. The plants involved in this proceeding are its Jackson Avenue plants in Memphis, Tennessee. They consist of a chemical pulp division, herein called Pulp, and an oil mill, herein called Oil. A routine-and-control laboratory and an oil-mill laboratory operate in connection with Pulp and Oil respectively. In addition, there is a chemical division laboratory, which engages in work not only for Pulp and Oil, but for all plants of the Employer.

The Petitioner seeks a unit confined to production and maintenance employees of Pulp, including machine tenders, as well as the laboratory technicians and other nonprofessional employees in the chemical division laboratory. The Intervenor (Local 19, Distributive, Processing and Office Workers of America) contends that, as to scope, the unit should also include the employees of Oil, who have been part of the bargaining unit in the past. As to composition, the Intervenor would exclude the machine tenders in Pulp and laboratory technicians in the chemical division laboratory. The Employer is neutral, except that, as to composition, the Employer, like the Intervenor, would exclude the machine tenders.

Pulp and Oil are separate plants and, with regard to production and maintenance, are subject to separate immediate supervision. The employees of each plant punch separate time clocks and appear on sepa-

rate payrolls. There is no functional integration between the respective production operations, Pulp producing cellulose in bulk and sheet form from cotton linters and Oil producing oil and meal from soybeans. The two plants thus generally require different skills. However, both plants are located within the same yard and utilize the same machine shop, car pool, and facilities for unloading heavy materials. Pulp supplies Oil with water, power, heat, riggers, and a yard crew. The employees of both plants use the same parking lot, washrooms, and lockers. There has been some interchange and transfer of personnel.¹ All employees are hired through the same employment office, where personnel records are maintained together, and where the payrolls are prepared by the same clerk. Control of both plants respecting matters of policy and administration, including labor relations, is centered in one superintendent. Furthermore, there has been an 11-year history of collective bargaining between the Employer and the Intervenor, under various names, covering both plants as a single unit.²

Upon the entire record, including the long history of collective bargaining covering both plants and the centralized control respecting labor relations and other policy matters, we find that a unit limited to the Pulp employees is inappropriate³ and that only a unit embracing both the Pulp and Oil employees is appropriate.⁴

There remains for consideration the inclusion or exclusion of the machine tenders in Pulp and the laboratory technicians in the chemical division laboratory.

The machine tenders: These individuals are responsible for the quality of the finished cellulose in sheet form, from its production on the sheet mill to its packaging. Formerly there was some question as to whether or not they were included in the unit. However, following a grievance presented by the Intervenor relating to the machine tenders,⁵ and shortly before the present petition was filed, their as-

¹ In 1951, four mechanics were transferred from Pulp to Oil and then were transferred back. Three common laborers were transferred from Oil to Pulp to work in the same capacity, and one to work as a tractor driver. One bean sampler was transferred from Oil to Pulp to be a lint weigher, and one painter was transferred from Pulp to Oil to be a millwright.

² In 1941, after a Board Decision and Direction of Election, the Intervenor (then called United Cannery, Agricultural, Packing and Allied Workers of America, Local 19, CIO) was certified as bargaining representative for the more comprehensive unit. 36 NLRB 76; 37 NLRB 48. In 1950, after a stipulation for certification upon a consent election, the Intervenor (then called Food, Tobacco, Agricultural and Allied Workers Union of America, Local 19) was again certified as bargaining representative for the same unit, and in 1951, after a consent election agreement, was likewise certified under its present name. 32-RC-261; 32-RC-365.

³ *Hanovia Chemical and Manufacturing Company*, 90 NLRB 650.

⁴ Although the unit found appropriate is broader than the unit sought by the Petitioner, we shall nevertheless direct an election, since the Petitioner's showing of interest in the more comprehensive unit is sufficient. However, the Regional Director is authorized to permit the Petitioner to withdraw its petition without prejudice upon timely request.

⁵ A machine tender disciplined an employee by laying him off. The Intervenor then presented a grievance based on the fact that both the machine tender and the employee were in the bargaining unit. After the grievance proceeding, with its resultant redefinition

signment was broadened to include stacking, cutting, and packing the finished product, and their authority was redefined to include disciplining and, in cases of serious misconduct, discharging employees. At the same time, their pay was increased. Notice of their duties and powers was given to them and their subordinates. Without passing upon the previous status of the machine tenders, we find, upon a careful scrutiny of the record, that machine tenders are now supervisors and, therefore, shall exclude them from the unit.⁶

The laboratory technicians: These employees, 24 in number, work in the chemical division laboratory, along with 20 admitted professional employees, 2 mechanics, 3 helpers, and 1 janitor. The parties agree to exclude the professional employees and to include the mechanics, helpers, and janitor. However, the Petitioner and Intervenor disagree as to the placement of the laboratory technicians, who have not previously been in the bargaining unit. These technicians, for the most part, have had at least a high school education and must undergo on-the-job training for 1 to 2 years. Unlike the other employees in the unit, they are salaried. They are supervised by chemists and other professional employees, whom they assist in tests and problems requiring knowledge of scientific apparatus peculiar to the cotton linter industry. Often they must exercise their own judgment, which, in certain cases, is heavily relied on. We find that these laboratory technicians are technical employees and, in accordance with the Board's usual policy, shall exclude them from the production and maintenance unit.⁷

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees employed in the Employer's Jackson Avenue chemical pulp division and oil mill at Memphis, Tennessee, including the routine-and-control laboratory employees⁸ and oil mill laboratory employees⁹ and mechanics, helpers, and janitors in the chemical division laboratory, but excluding the laboratory technicians in the chemical division laboratory, professional employees, office and cler-

of authority and raise in pay for the machine tenders, described hereinafter, the Intervenor agreed with the Employer that the machine tenders were excluded from the bargaining unit.

⁶ *The Spicer Manufacturing Division of Dana Corporation*, 95 NLRB No. 115; cf. *American Finishing Company*, 86 NLRB 412, 416-18.

⁷ Cf. *Bell Aircraft Corporation*, 98 NLRB 1277; *Swift & Company, Technical Products Plant, Hammond, Indiana*, 98 NLRB 746.

⁸ The parties agreed to include these employees.

⁹ The Petitioner took no position as to the placement of the oil mill laboratory employees in the broader unit; the Intervenor would exclude them. Since the record is insufficient to determine at this time the status of these employees, we shall permit them to vote subject to challenge and shall pass upon such challenges if it develops that the election would be thereby affected.

ical employees, watchmen, guards, machine tenders, and other supervisors as defined in the Act.

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

SWIFT & COMPANY and UNITED PACKINGHOUSE WORKERS OF AMERICA,
CIO, PETITIONER. *Case No. 17-RC-1374. October 21, 1952*

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 Eugene Hoffman, 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 this case to a three-member panel [Members Houston, Styles, and Peterson].

Upon the entire record in this case, 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

4. The appropriate unit:

The Petitioner seeks a unit of all production and maintenance employees at the Employer's plant in Kansas City, Missouri, including plant cafeteria employees, hourly paid scalers and order fillers in the city sales department, hourly paid dock checkers, hourly paid scalers, hourly paid storeroom employees, and all dressing room attendants, excluding truck drivers and dispatchers, weekly paid dock checkers, weekly paid scalers, weekly paid storeroom employees, all office and clerical employees, plant clerks, employees in the em-

¹ Due to extenuating circumstances, the hearing officer granted the motion of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Department Store, Package Grocery, Paper House, Liquor and Meat Drivers, Helpers and Warehousemen, Local No. 955, AFL, to intervene in this proceeding contingent upon the production of a current showing of interest within 2 days of the close of the hearing. As this organization has failed to produce the requisite showing within the allotted time, the motion to intervene is denied. *Boeing Airplane Company*, 86 NLRB 368.

² In its brief, the Intervenor, National Brotherhood of Packinghouse Workers, Local No. 12, CUA, questioned the compliance status of the Petitioner. The fact of compliance by a labor organization which is required to comply is a matter for administrative determination and is not litigable by the parties. Moreover, the Board is administratively satisfied that the Petitioner is in compliance. *Swift & Company*, 94 NLRB 917.