

Petitioner, and upon the entire record, fuel oil dispatchers, service dispatchers, telephone order clerks, and service mechanics employed at the Employer's Mount Vernon and Tarrytown, New York, tank stations, excluding clerical and office employees, guards, watchmen, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

WESTERN HYWAY OIL COMPANY *and* CHAUFFEURS, TEAMSTERS & HELPERS, LOCAL NO. 150, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL, Petitioner. Case No. 20-RC-2238. July 13, 1953

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 Natalie P. Allen, 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 organization involved claims 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 Petitioner seeks a unit of all permanent truckdrivers employed by the Employer at its West Sacramento, California, bulk oil plant, excluding seasonal drivers and plant employees. The Employer, relying on the alleged integration of its operations, interchange among its employees, and collective-bargaining practice in that area, contends only a unit including both its drivers and plant employees is appropriate. The Employer takes no position as to the placement of the seasonal drivers. There is no history of collective bargaining among any of the Employer's employees.

The Employer, a California corporation, is engaged in the wholesale marketing of oil products at its West Sacramento bulk plant where bulk oil products are received and stored and from which they are distributed. Among its facilities are a tank "farm" for storing the oil products and a marine dock where barges tie up to unload their oil cargoes.

Generally, the permanent drivers, 13 in number, perform duties consisting of assisting plant men in the fueling and loading of truck transports, which occupies a minor portion of their time, delivering the load to distributors in the Sacramento area, and returning to the plant for reloads. The plant employees include 4 plant men, 3 loaders, 1 yardman, and 1 plant clerk. The plant men and loaders are engaged primarily in loading of the trucks. They also take inventory and assist in the unloading of barges. The yardman does general cleanup and maintenance work in the yard and office and infrequently assists in barge unloading. The plant clerk works in the plant office, which is the headquarters for both drivers and plant employees, doing the necessary paper work and assisting in the dispatching of trucks.

All regular employees enjoy similar employment benefits.¹ Also, plant men frequently move the trucks around the plant area and during emergencies plant men may be assigned as drivers. However, drivers are paid on a different basis and receive higher wages than plant employees,² work different schedules, and have different immediate supervision. Furthermore, transfer from the driver category to the plant has been infrequent,³ no plant employees have been transferred to the driver classification, and drivers do not interchange with other employees.

We believe that the integration of the Employer's operations and the interchange of the Employer's personnel are not sufficient to affect the identity of the truckdrivers as a separate group.⁴ Nor do we believe the alleged practice of collective bargaining in the Sacramento area is sufficient to bar representation on other than a plantwide basis. We find therefore that the Employer's truckdrivers constitute a separate appropriate unit.

There remains for consideration the placement of the seasonal drivers. The fuel oil season extends from approximately October 1 to May 1. During the season the Employer leases fuel transport trucks and hires the owners as drivers. These seasonal drivers perform the same duties as the permanent drivers and generally are subject to the same conditions of employment.⁵ Of the Employer's current complement of 13 permanent drivers, 2 were hired as seasonals and have remained under steady employ for more than 18 months. During the past heating season the Employer hired approxi-

¹Since May 1, 1953, both plant employees and drivers have been eligible on the same basis for paid holidays. Prior to this, drivers were not, whereas plant employees were, entitled to paid holidays.

²Drivers are paid an hourly rate and receive \$400 per month. They receive straight pay rather than incentive pay for overtime. Plant employees are paid on a salary basis ranging from \$300 to \$380 per month. They receive time-and-a-half for work over 40 hours per week.

³There have been only three instances of transfer from driver to plant categories

4Q-F Wholesalers, Inc., 85 NLRB 582.

⁵Seasonal drivers do not receive sick leave and are not eligible for the Employer's pension plan. Since May 1, 1953, the seasonal drivers are eligible for vacations, whereas they formerly were not

mately 25 seasonal drivers who worked an average of 5 or 6 months. Many are rehired from season to season. We find that the seasonal drivers are properly included in the unit with the permanent drivers and in view of the tenure of their employment are eligible to vote.⁶

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 permanent and seasonal drivers employed by the Employer at its West Sacramento, California, plant, excluding all other employees, guards, and supervisors as defined in the Act.⁷

5. Because the season in the Employer's fuel oil business has passed, we shall not direct an election at this time. Following our customary practice in seasonal industries, we shall direct that the election be held during the Employer's next season at or near the employment peak on a date to be determined by the Regional Director, among the employees in the appropriate unit, who are employed during the payroll period immediately preceding the date of the issuance by the Regional Director of the notice of election.

[Text of Direction of Election omitted from publication.]

⁶See Fox DeLuxe Foods, Inc., 96 NLRB 1132; cf. California Spray-Chemical Corp., 86 NLRB 453.

⁷In its petition the Petitioner also sought to exclude part-time drivers from the unit. The Employer was silent on this matter. Since it appears such drivers are employed only on infrequent occasions and for short periods of time, we find the part-time drivers are casuals and ineligible to vote.

INTERNATIONAL FURNITURE COMPANY *and* UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 188, AFL. Case No. 10-CA-1393. July 14, 1953

DECISION AND ORDER

On April 13, 1953, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. Except as noted below, the rulings are hereby

¹Pursuant 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, Murdock, and Peterson].