

the employees of Tampco Piping, Inc., A. A. Pruitt, and T. A. Newman to engage in concerted refusals in the course of their employment to perform services for their respective employers with an object of (1) forcing or requiring said employers to cease doing business with Monsanto Chemical Company, or (2) forcing or requiring Monsanto Chemical Company or J. F. Pritchard & Company to cease doing business with Sline Industrial Painters.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

4. The Respondent has not engaged in unfair labor practices with respect to the work stoppage of April 12, 1957, on the job site of Monsanto Chemical Company.

[Recommendations omitted from publication.]

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**Anderson's Super Service, Inc. and Local 977, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America,<sup>1</sup> and Local 758, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Joint Petitioners.** *Case No. 18-RC-3465. April 23, 1958*

## DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Eighteenth Region among the Employer's employees in the agreed appropriate unit. Thereafter, a tally of ballots was furnished to the parties. The tally shows that, of approximately 18 eligible voters, 7 cast valid ballots for, and 5 cast valid ballots against, the Joint Petitioners, and that 5 cast ballots that were challenged by the Joint Petitioners. The challenges are, therefore, sufficient in number to affect the results of the election.

In accordance with the Board's Rules and Regulations, the Acting Regional Director conducted an investigation of the challenges, and on January 24, 1958, issued his report on challenged ballots and recommendation for certification of representatives. The Acting Regional Director found that the employees whose ballots were challenged were not eligible to vote in the election and recommended that the challenges to their ballots be sustained. He also recommended that the Board certify the Joint Petitioners as the exclusive collective-bargaining representative of the employees in the agreed unit. Thereafter, the Employer filed timely exceptions to the Acting Regional Director's report and recommendations.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Fanning].

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<sup>1</sup> The Board having been notified by the AFL-CIO that it deems the Teamsters' certificate of affiliation revoked by convention action, the identification of this union is hereby amended.

Upon the entire record in this case, including the stipulation of the parties, the Acting Regional Director's report, and the Employer's exceptions, the Board makes the following findings:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations 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 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 employees at the Employer's Montevideo, Minnesota, plants, including warehousemen and truckdrivers, but excluding office clerical employees, commissioned salesmen, other salesmen, guards, and all supervisors as defined in the Act.<sup>2</sup>

5. The Employer is engaged at Montevideo in the bulk oil and petroleum products business and in the tire recapping business. Both businesses are, at least in part, seasonal. The employment peak in the oil business occurs sometime after January 1; the employment peak in the tire business occurs during the fall. The employees whose ballots were challenged work in both operations. In its exceptions, the Employer takes issue with the Acting Regional Director's conclusions but points to no specific factual error on his part, nor does it state any new facts in support of its exceptions. We shall therefore consider the challenged ballots on the basis of the facts set forth in the Acting Regional Director's report.<sup>3</sup>

*Vergil D. Gerdes and Robert H. Gort*: The Joint Petitioners challenged the ballots of these persons on the ground that they were temporary employees. Since 1953 and 1956, respectively, Gerdes and Gort have been employed by a road construction company, whose main office is located about 23 miles from the Employer's plants. Its season normally runs from April to November, and during the off-season Gerdes and Gort customarily either draw unemployment benefits or secure temporary employment elsewhere. In November 1957, when their construction work ended for the season, they were hired by the Employer in the tire recapping business to take care of its usual fall increase. They had not previously worked at recapping tires, and at the time they were hired they informed the Employer that they expected to work for it permanently only if they could not get better jobs elsewhere. At the time of the election, they were in a 90-day probationary period and were not eligible for insurance or vacation benefits. Their hourly rates were substantially less than those at which they are paid

<sup>2</sup> Our unit finding is in substantial accord with the agreement of the parties

<sup>3</sup> Cf. *National Foundry Company of New York, Inc*, 112 NLRB 1214

when they do construction work. Their regular construction jobs will probably be available again in April. In these circumstances, there does not appear to be any reasonable expectancy of continued employment with the Employer. We therefore find, in agreement with the Joint Petitioners, that they are temporary employees.<sup>4</sup> Accordingly, we find them ineligible to vote in the election and sustain the challenges to their ballots.

*Albert W. Burmeister:* The Joint Petitioners challenged Burmeister's ballot on the ground that he was a salesman and, as such, was specifically excluded from the unit. Since 1946, Burmeister has been employed in the Employer's oil business, servicing customers' equipment in their homes or places of business. During the past year, he has also worked as a part-time fuel salesman, calling on customers on a regular sales route 2 days a week. Burmeister spends the rest of his time in pricing and selling tires in and about the Employer's tire re-capping plant. Full-time salesmen work under the overall supervision of the Employer's president and under the separate immediate supervision of its sales manager; Burmeister works only under the supervision of the president. Apparently, full-time salesmen are paid on a commission basis only; Burmeister is paid a weekly salary plus a commission computed on a different basis.<sup>5</sup> In view of these facts, and the further fact that the Employer is training Burmeister to be a full-time salesmen, we find that his interests lie with the other salesmen. We therefore find him ineligible to vote in the election and sustain the challenge to his ballot.<sup>6</sup>

*Gerald Melvin Lund:* The Joint Petitioners challenged Lund's ballot on the ground that he was not an employee of the Employer. Primarily, Lund operates a 160-acre farm near Montevideo. However, since June 1957, he has also driven an oil transport truck for the Employer. He works only when called, working more regularly during the winter than during the summer. He does not receive the same vacation and insurance benefits as regular or full-time employees. We find that Lund, who works only when needed and when his primary occupation permits, is a casual employee, and therefore that he does not have a sufficient community of interest with the regular employees in the unit to permit him to vote in the election.<sup>7</sup> Accordingly, we find him ineligible to vote and sustain the challenge to his ballot.

*Loyd Hendrickson:* The Joint Petitioners challenged Hendrickson's ballot on the ground that he was a salesman and therefore excluded from the unit. Hendrickson works in the Employer's bulk oil department. He and two other employees, a transport driver

<sup>4</sup> Cf. *Central Mutual Telephone Company, Inc.*, 116 NLRB 1663 at 1667.

<sup>5</sup> Plant employees are paid on an hourly rate basis.

<sup>6</sup> Cf. *The Firestone Tire and Rubber Company—Firestone Textiles Division*, 112 NLRB 571 at 572.

<sup>7</sup> *F. W. Woolworth Company*, 119 NLRB 452.

and a truckdriver, constitute the department. Hendrickson and the truckdriver work together and deliver petroleum products. He also solicits new business when making deliveries, and spends the greater part of his time in such activity. In addition, he solicits new business during his free time. He receives a salary but no commissions on sales; apparently, his salary is substantially greater than the wages received by the other two employees in the department. Although Hendrickson is frequently referred to as the manager of the bulk oil department, there is no evidence that he regularly has or exercises any of the specific powers of a supervisor as set forth in Section 2 (11) of the Act, and we therefore find that he is not a supervisor. As Hendrickson appears to be primarily a salesman, we find that he is excluded from the unit. Accordingly, we find Hendrickson ineligible to vote and sustain the challenge to his ballot. As the tally of ballots now discloses that the Joint Petitioners won the election, we shall certify the Joint Petitioners as the exclusive bargaining representative of the employees in the agreed appropriate unit.

[The Board certified Local 977, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Local 758, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America as the designated collective-bargaining representative of the Employees of Anderson's Super Service, Inc., Montevideo, Minnesota, in the agreed appropriate unit.]

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**Cooper Alloy Corporation (Aircraft Division) and John F. Shallcross**

**Local 5250, United Steelworkers of America, AFL-CIO and John F. Shallcross.** *Cases Nos. 22-CA-52 and 22-CB-27. April 25, 1958*

DECISION AND ORDER

On July 19, 1957, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Company and the Respondent Union had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Company filed exceptions to the Intermediate Report with a supporting brief.<sup>1</sup>

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<sup>1</sup> The Respondent Company's request for oral argument is hereby denied as, in our opinion, the record, exceptions, and brief adequately present the issues and positions of the parties.