

Esso Standard Oil Company and Fuel, Oil, Truck Drivers and Helpers, Oil Burner Service, Allied Employees Local No. 866, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case No. 22-RC-511. October 23, 1959

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before Robert T. Troup, a hearing officer of the National Labor Relations Board. 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 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].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations involved claim to represent employees of the Employer.¹

3. No 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 for the following reasons:

The Petitioner seeks to represent all hourly paid shoreside, operating, mechanical, and maintenance employees at the Bayonne, New Jersey, operations of the Employer's marine service department, herein called MSD, excluding office and plant clerical employees. The Petitioner contends that this unit is appropriate because of the collective-bargaining history affecting the Employer's employees. The Employer, B.M.E.U., and O.C.A.W. contend that the bargaining history establishes that the only appropriate unit is one which includes both the employees sought by the Petitioner and all clerical employees.

MSD came into existence in October 1958. Prior to this date its functions, supplying stores and making repairs to vessels of the Employer and its affiliates, were performed by Butterworth System, Inc., an affiliate of the Employer. At the time of MSD's establishment, B.M.E.U. had two contracts with Butterworth. One contract covered both the shoreside, operating, mechanical, and maintenance employees of the facilities subsequently transferred to MSD, and

¹ Oil, Chemical and Atomic Workers International Union, AFL-CIO, herein called O.C.A.W., and Bayonne Marine Employees Union, herein called B.M.E.U., intervened at the hearing on the basis of a showing of interest adequate for purposes of intervention.

also the employees at Butterworth's tank-cleaning and aircraft operations, which were not transferred to MSD. The other covered office and plant clerical employees who were also transferred to MSD. Subsequently, certain financial and accounting employees, who had been included in this latter unit, were transferred to the Employer's Bayway refinery. From the time it came into existence until January 1, 1959, MSD applied the terms of these contracts to the employees transferred to it; in January 1959, however, it informed B.M.E.U. that it intended to abandon these contracts and to negotiate a new contract. A new agreement had not been reached at the time this petition was filed.

The employees whom the Petitioner seeks to represent are those shoreside, operating, mechanical, and maintenance employees who were transferred from Butterworth to MSD; those it seeks to exclude, and whom the Employer, B.M.E.U., and O.C.A.W. would include, are the employees in the former office and plant clerical unit who were transferred to and remain with MSD. Although, as set forth above, the Petitioner asserts that its unit position is supported by the bargaining history, it is clear from the foregoing facts that the unit sought by the Petitioner does not conform to any previously existing unit; indeed, the separate units covered by the contracts between B.M.E.U. and Butterworth no longer exist, the employees sought by the Petitioner consisting of only a segment of one of such units and the employees it would exclude consisting of a segment of the other. In these circumstances, we shall attach no weight to the bargaining history between B.M.E.U. and Butterworth,² and shall consider *de novo* the unit placement of the employees whom the Petitioner would exclude from its requested unit, which is essentially a production and maintenance unit.

The employees in dispute herein are employed in MSD's ship repair, supply, and business services divisions. The supply division operates warehousing facilities, and orders services and material needed for ships. The clerical employees in that division are located in the warehouse, as are employees sought by the Petitioner, and as to whom there is no dispute. Receiving clerks receive goods and materials, and direct their delivery to the ships; or, if they are to be stored in the warehouse, arrange for their placement in stock. Their duties include physical handling of material. Purchase clerks, who interchange with receiving clerks, are responsible for procuring materials required by MSD, and advising the receiving clerks as to purchases made. They have no discretion in selecting suppliers. Storekeepers I and II arrange for shipment of materials and gather the timecards

² See *The Houston Corporation*, 124 NLRB 810.

of the material handlers. We find that these employees are plant clerical employees.³

In the ship repair division, which also includes employees sought by the Petitioner, the ship repair service clerk receives and verifies the accuracy of timecards submitted daily by mechanics and the ship repair service shop, orders materials, and receives and transmits work orders. We find that this employee is a plant clerical employee.⁴ The gyro services engineer is concerned with preventive maintenance of the ships' technical instruments, and also repairs equipment returned for inventory. There is no contention or evidence that he is a technical employee, and it is clear that he is not a clerical employee, although he was apparently included in the preexisting clerical unit. He is, however, clearly a maintenance employee.

In the business services division, the attest clerk checker counts and verifies delivery of fresh foods to MSD, verifies inventory, and ascertains whether materials and time allotted to each job are properly identified by the code number given to the job. The utility mail and file clerk is primarily engaged in carrying out MSD's responsibility to store files for other operations of the Employer, which is considered a warehouse function. This employee also distributes mail and requisitions throughout MSD. The mail, file, and stationery clerk, along with the above-mentioned responsibilities, is also responsible for the distribution of plant stationery and letters. The cashier payroll clerk's job is to consolidate on a control sheet all information concerning the time worked by the MSD employees and to forward a summary of this material to the Employer's data-processing operation at Bayway. This employee also maintains a window for cashing checks, and sells bus tickets to employees. We find that these employees are plant clerical employees.⁵

As we have found that all the disputed employees are either plant clerical or maintenance employees, they must necessarily be included in the production and maintenance unit sought by the Petitioner.⁶ However, neither the Petitioner nor O.C.A.W. has a showing of interest sufficient to warrant directing an election, and B.M.E.U. does not seek an election among these employees at this time. We shall, therefore, dismiss the petition.

[The Board dismissed the petition.]

³ *Haleyville Textile Mills, Inc.*, 117 NLRB 973, 974; *Wela Jet Services, Inc.*, 119 NLRB 489.

⁴ *Mixermobile Manufacturers, Inc.*, 119 NLRB 1617, 1619; *Wela Jet Services, Inc.*, *supra*.

⁵ *Garner Aviation Service Corporation, et al.*, 111 NLRB 191, 193; *Waterman Dock Company, Inc., et al.*, 89 NLRB 452, 454.

⁶ *Wm. R. Whittaker Co., Ltd.*, 117 NLRB 339, 344.