

World Oil Co. and Teamsters Automotive Employees Union, Local No. 78, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 20-RC-11791

June 25, 1974

DECISION ON REVIEW AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND
PENELLO

On February 14, 1974, the Regional Director for Region 20 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit of employees at the Employer's six gasoline service stations in San Pablo, Concord, Sunnyvale, San Jose, and Morgan Hill, California, rejecting the Employer's contention that the station managers, the only individuals currently employed in the unit, are supervisory or managerial employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, as amended, the Employer filed a timely request for review of the Regional Director's Decision on the grounds, *inter alia*, that he departed from officially reported precedent in finding the station managers not to be supervisors, and that the petition should be dismissed as there are at present no employees in the unit.

On March 8, 1974, by telegraphic order, the request for review was granted and the election stayed pending decision on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and finds that no question exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act, for the following reasons:

The Employer is a California corporation engaged in the retail sale of gasoline and related automotive products at a number of self-service stations. The Petitioner filed the instant petition on December 19, 1973, for a unit of station attendants at six of the

Employer's stations in northern California at the aforementioned locations. At that time the Employer employed approximately 26 station attendants at these six stations. However, as a result of the recent "energy crisis," the Employer prior to the January 25, 1974, hearing date reduced the operations of the six stations to a single daytime shift, and discharged all station attendants, leaving only the station manager at five of the stations and a manager trainee at the sixth, together with the area manager who was responsible for operations at all six of the stations.

The Regional Director found that when station attendants were employed, the station managers had authority to assign work to attendants, to responsibly direct them in its performance, and to hire and discharge them. However, he further found that, in the absence of the employment of station attendants, the station managers are not supervisors within the meaning of the Act because they do not exercise supervisory authority over any employees. The Employer contends that the Regional Director erred in finding the station managers not to be supervisors, and that the absence of station attendants is temporary as it will reemploy them when the "energy crisis" is over. It argues, therefore, that no election may be held until a substantial complement of station attendants is employed in the requested unit. We find merit in the Employer's position.

Initially, the record establishes that prior to the termination of the station attendants the station managers were supervisors as defined in the Act by virtue of their possession and exercise of the authority, at a minimum, effectively to recommend the hire and discharge of employees.¹ Further, the Employer's market manager, Glenn Sapp, testified that when attendants are reemployed in the future, the station managers will resume the exercise of supervisory authority. While the Employer, at the hearing, was unable to predict when attendants would be reemployed, we take official notice of the fact that since the hearing there has been an easing of the "energy crisis" permitting a substantial increase in allocations of gasoline to retail service stations such as the Employer's. There is, therefore, a reasonable basis for concluding that station attendants will be reemployed in the foreseeable future.

¹ *Mars Oil Company and Lunar Oil Company*, 101 NLRB 669.

In view of the foregoing, we find that the "energy crisis" which caused the reduction in the Employer's operations and the termination of its attendants at the stations here involved created but a temporary hiatus in the opportunity of station managers to exercise their supervisory authority and therefore did not divest them of supervisory status.² In the

circumstances, as there were no employees in the unit at the time of the hearing, we shall dismiss the petition herein.³

ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.

² *Massachusetts Mohair Plush Company*, 115 NLRB 1516, 1523 (Americo Martin).

³ Our dismissal of the petition is without prejudice to the filing of a new petition when a substantial number of station attendants are employed.