

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

WESTERN REFINING WHOLESALE, INC.¹

Employer

and

Case 28-RC-080650

**CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION 492**

Petitioner

DECISION AND DIRECTION OF ELECTION

Chauffeurs, Teamsters and Helpers Local Union 492 (the Petitioner) seeks to represent a unit of all finished product drivers, lube drivers, and warehouse employees employed by Western Refining Wholesale, Inc. (the Employer) at its facility located at 4020 Broadway SE, Albuquerque, New Mexico. The unit sought by the Petitioner would exclude all other employees, office clerical employees, guards, and supervisors as defined in the National Labor Relations Act (the Act), and would total approximately 30 employees. The Employer maintains that the unit sought by the Petitioner is not appropriate. The Employer contends that its Albuquerque facility is an integrated, single, operational, and administrative grouping of the Employer together with its Gallup and Bloomfield, New Mexico facilities and that the smallest appropriate unit must include drivers and warehouse employees employed by the Employer at all three facilities. The unit proposed by the Employer would include approximately 60 employees.

Based on the record as a whole and for the reasons more fully described below, I find that the petitioned-for unit is an appropriate unit and that the record fails to establish that the Employer's Albuquerque, Gallup, and Bloomfield facilities constitute a single administrative grouping or, in the alternative, that they share an overwhelming community of interest such that the drivers and warehouse employees at Gallup and Bloomfield facilities must be included in the petitioned-for unit.

DECISION

1. Hearing and Procedures. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. Jurisdiction. At the hearing, the parties stipulated, and I find, that the Employer, Western Refining Wholesale, Inc., is an Arizona corporation with its principal offices in Tempe, Arizona, and does business in the States of New Mexico, Texas, Colorado, Arizona, Utah, Nevada, and California, where it is engaged in the business of buying,

¹ The name of the Employer appears as stated at the hearing.

transporting, and selling petroleum products. During the 12-month period preceding the hearing, the Employer, in conducting its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its Albuquerque, New Mexico facility goods valued in excess of \$50,000 directly from points outside the State of New Mexico. I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Board's exercise of jurisdiction in this matter will accomplish the purposes of the Act.

3. Labor Organization Status and Claim of Representation. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. Statutory Question. As more fully set forth below, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Unit Finding. This case presents the issue of whether the Albuquerque employees petitioned for by the Petitioner constitute an appropriate unit, or whether the Employer's drivers and warehouse employees at its Albuquerque, Gallup, and Bloomfield facilities together constitute a single administrative grouping or, in the alternative, share an overwhelming community of interest such that the drivers and warehouse employees at the Gallup and Bloomfield facilities must be included in the petitioned-for unit. To provide context for my discussion of these issues, I will first describe the Employer's operations, including interaction between its Albuquerque, Gallup, and Bloomfield facilities; the Employer's management structure; and the job duties and functions of the Employer's job classifications, including those at issue. I will then discuss the case law and analysis that support my conclusions that the petitioned-for employees constitute an appropriate unit; that the Employer's Albuquerque, Gallup, and Bloomfield facilities do not constitute a single administrative grouping; and that the Employer's drivers and warehousemen at the Gallup and Bloomfield facilities do not share an overwhelming community of interest with the Albuquerque drivers and warehousemen.

A. The Employer's Operations

1. Organizational Structure

The Employer is an Arizona corporation engaged in the purchase, transportation, sale, and distribution of petroleum products to retail facilities in the Western States of New Mexico, Texas, Colorado, Arizona, Utah, Nevada, and California, through nine facilities located between 150 to 700 miles apart. These include facilities in Albuquerque, Gallup, and Bloomfield, New Mexico; El Paso, Texas; Phoenix, Safford, and Tucson, Arizona; Las Vegas, Nevada; and Bloomington, California. The Employer effectuates its distribution of petroleum products through different types of drivers, primarily finished product drivers² and lube product drivers. Finished products consist of unleaded and diesel fuel, including ethanol, delivered to service stations and construction sites by transport trucks or tank wagons in a

² Finished product drivers are also referred to as transportation drivers, transport drivers, or lite drivers.

geographical area usually no farther than 200 miles from any terminal or facility. Lube products, on the other hand, are lubricated petroleum products, including oils, greases, and antifreeze, generally delivered locally to smaller customers such as car dealerships and Jiffy Lubes on flat-bed trucks.

The Employer organizes its distribution of petroleum products through a central distribution center located at its headquarters in Tempe, Arizona, at which the Employer divides distribution of its products into groups depending on the locality and type of product. For example, with regard to distribution of finished products, the Employer's Albuquerque facility is grouped with its Bloomfield and Gallup facilities (commonly referred to as "BAG").³ On the other hand, with regard to distribution of lube products, the Employer's Albuquerque facility is grouped with its Las Vegas and El Paso facilities (commonly referred to as "ALE"). Distribution within the BAG group is dependent less on which facility a particular driver is assigned to than the proximity of that driver to the loading and delivery points at any given time. The calculus for distribution is formulated through a computer system which requires drivers to log in their deliveries and through an electronic system present in drivers' trucks by which drivers' locations can be identified through the Global Positioning System (GPS). The information obtained by these systems is fed through the Employer's distribution center, which uses the information to determine the appropriate dispatch, which is then communicated to drivers by dispatchers located in Tempe.

2. Supervisory and Management Structure

Chris Proctor is the Employer's General Manager of Distribution and is responsible for overseeing the Employer's nine facilities. Proctor reports to Kevin Goode, Vice President. Steve Curtright, the Employer's Distribution and Operations Manager, reports directly to Proctor and is responsible for the Employer's Albuquerque, Gallup, and Bloomfield facilities. Each terminal, or facility, has a terminal manager, who is responsible for the supervision of all employees located at the terminal. Drivers are hired through a process by which the terminal manager and an assigned Human Resources (HR) generalist, upon notification of authority to hire, jointly review applications and eliminate candidates who fail to meet the required qualifications. Qualified candidates are interviewed by the terminal manager and the assigned HR generalist for that terminal,⁴ and a road test is conducted, often in conjunction with a safety employee. Thereafter, a group of best qualified candidates is evaluated by a hiring committee which consists of the terminal manager, the assigned HR generalist for that terminal, and members of higher management, but never managers from another terminal or facility. The committee maintains the authority to hire, and upon hire, drivers are assigned to specific terminals or facilities, to which they report.

In addition to hiring authority, terminal managers also possess the authority to issue discipline to employees with respect to infractions short of the most serious, i.e. those involving discharge or which would expose the Employer to legal liability. Terminal

³ The distribution area for the BAG dispatch team is within a 200-mile radius of the Gallup facility, which area includes the Albuquerque and Bloomfield terminals.

⁴ Susan Lally is the assigned HR generalist for the Albuquerque and Gallup facilities; Cathy Valdez is the assigned HR generalist for the Bloomfield facility. Both Lally and Valdez report to Pam Scott, Director of Human Resources, who is located in Tempe, Arizona.

managers also assign work to drivers, who, upon arrival at the terminal, pick up their trucks, which are housed at drivers' respective terminals (and only at other terminals in rare circumstances, such as mechanical breakdowns or drivers exceeding hours), receive their initial dispatch tickets from the terminal manager and log in to the Employer's communications system in order to communicate with dispatch in Tempe. At the facilities, terminal managers also conduct monthly employee training meetings, which are standardized by the Employer's headquarters, but supplemented on a local level by terminal managers with regard to localized issues, such as safety and operational issues. The terminal managers (Jonas Armentas, Albuquerque; Lynn Milton, Bloomfield; and Darryl Hampton, Gallup) report directly to Curtright. The record reflects, and I find, that Goode, Proctor, Curtright, Armentas, Milton, and Hampton are supervisors within the meaning of the Act.

B. The Employer's Job Classifications

1. Excluded Classifications

The parties have stipulated to the exclusion of clerical employees, which include the Employer's administrative assistants and transportation analysts. The Employer employs at its Albuquerque and Bloomfield facilities an administrative assistant. The parties have stipulated, the record reflects, and I find that the Employer's administrative assistants are properly excluded from the petitioned-for unit as office clericals. In addition, the Employer employs at its Albuquerque, Gallup, and Bloomfield facilities transportation analysts who are responsible for auditing sales orders and bills of lading. There is no evidence that transportation analysts are required to, or generally do, possess a commercial driver's license (CDL), nor is there any evidence that they are responsible for loading product or maintaining product or equipment. The evidence shows that the sole job duties of the transportation analysts are clerical in nature, in that they receive bills of lading for driver deliveries, check their accuracy against sales orders, and enter data into the Employer's computer system. Furthermore, the Employer has taken no position as to the transportation analysts' inclusion in or exclusion from the petitioned-for unit, and based on the record, I find that exclusion of the transportation analysts is appropriate because of a lack of evidence that the transportation analysts share a community of interest with the petitioned-for drivers and warehouse employees.

2. Included Classifications

a. Finished Product Drivers

Finished product drivers are responsible for transporting finished petroleum products, including unleaded and diesel fuel and ethanol, to service stations and construction sites by transport trucks or tank wagons in a geographical area usually no farther than 200 miles from any terminal or facility. Finished product drivers are assigned to specific terminals, and are generally dispatched from and return to their assigned terminals, except in rare circumstances, such as a driver exceeding the permissible number of driving hours under federal law or experiencing mechanical problems with a vehicle. Finished product drivers report directly to the terminal manager for their assigned terminal.

Finished product drivers are required to possess a Class A CDL and a hazardous material (Hazmat) certification. Finished product drivers wear a uniform consisting of a gray shirt and pants displaying the driver's name and the Employer's logo. Finished product drivers are paid through a combination of mileage, trip, and hourly rates. For example, if they are dispatched to a location in excess of 100 miles, they are paid by the mile; if they are dispatched to a location less than 100 miles away, they are paid a flat rate depending on the zone (zones are broken down by number of miles). For any type of mechanical breakdown or for wait time in excess of two hours, finished product drivers are paid an hourly rate.

Finished product drivers pick up product at "racks," which can be located at the terminal or at another location. For example, the Albuquerque rack is located at the Albuquerque Products Terminal, which is approximately 1.5 miles from the Albuquerque terminal. There, drivers from the Employer's facilities may interact with one another as well as with drivers employed by other companies. The finished product rack in Bloomfield is located approximately eight miles from the Bloomfield terminal. The finished product rack in Gallup is housed at the Gallup terminal (which also houses a refinery). Finished product drivers working for the Employer at its Albuquerque, Gallup, and Bloomfield facilities interact with one another at various loading points, including the racks and the waiting room (or driver's lounge) located at the Gallup facility.

The Employer employs approximately 21 finished product drivers at its Albuquerque facility, 24 at its Bloomfield facility, and 43 at its Gallup facility.

b. Lube Drivers

Lube drivers are responsible for transporting lubricated petroleum products, including oils, greases, and antifreeze, to smaller, local customers, such as car dealerships and Jiffy Lubes, on flat-bed trucks. Lube drivers load their vehicles onsite, at the Employer's terminals, by forklift or through a pumping system, for bulk lubricants, often with the assistance of warehouse employees. Lube drivers, like finished product drivers, are assigned to specific terminals and report directly to the terminal manager. Lube drivers are required to possess a Class A or Class B CDL and be certified to operate a forklift, but they are not required to have a Hazmat certification. Lube drivers wear the same uniform as finished product drivers, but lube drivers, unlike finished product drivers, are paid an hourly rate.

The Employer employs approximately six lube drivers at its Albuquerque facility and eight at its Bloomfield facility. The Employer does not employ any lube drivers at its Gallup facility.

c. Warehouse Employees

The Employer employs approximately three warehouse employees/operators at each of its Albuquerque and Bloomfield facilities. Warehouse employees are responsible for keeping inventory of products, including petroleum, diesel, and equipment, and assisting in the loading and unloading of product. They must be certified to operate a forklift, but they are not required to possess a CDL. Some warehouse employees do, however, possess CDLs, and

the ones that do occasionally drive lube trucks, although they do not perform deliveries. Warehouse employees are paid an hourly rate and report directly to the terminal manager.

B. Legal Analysis and Determination

1. The Petitioned-For Unit is an Appropriate Unit

Pursuant to Section 9(b) of the Act, it is necessary for me to determine whether the bargaining unit described in the Petitioner's petition is appropriate. As the Board has often stated, "[t]here is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be 'appropriate.'" *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996) (emphasis in original), reaffirmed in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011). "[T]he Board looks first to the unit sought by the petitioner, and if it is an appropriate unit, the Board's inquiry ends." *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127 (2010).

"The cornerstone of the Board's policies on appropriateness of bargaining units is the community-of-interest doctrine which operates to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment." *In re Met Elec. Testing Co., Inc.*, 331 NLRB 872, 876 (2000). In determining whether the requisite community of interest among employees exists, the Board looks to factors including a common interest in wages, hours, and other working conditions; common supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. See *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981).

In applying the relevant case law to the facts, the record establishes that the petitioned-for unit is an appropriate bargaining unit. The weight of the evidence indicates that the finished product drivers, lube drivers, and warehouse employees at the Employer's Albuquerque facility share a significant community of interest, including similar skills and functions; similar wages, hours, and other working conditions; common grouping within the Employer's operation; occasional, and often significant, interaction; and common supervision. Although they transport different types of product, finished product and lube drivers generally perform the same job duties in that they are both responsible for loading product on their trucks and delivering that product to the Employer's customers. All drivers wear the same uniform, work the same shifts, and report directly to the terminal manager. Warehouse employees perform their job duties at the Employer's facility, but they are largely responsible for assisting drivers – primarily lube drivers but in some cases finished product drivers as well – with loading and unloading product, and they are responsible for maintaining product and supplies used by the drivers to effectuate their duties. Warehouse employees also report directly to the terminal manager.

The Employer contends that the only appropriate unit is a unit of all employees in its Bloomfield, Albuquerque, and Gallup (BAG) facilities. Its position is premised on the assertion that the BAG facilities constitute an integrated administrative and operational area. The Employer's position focuses heavily on the manner in which finished product drivers assigned to the BAG facilities are dispatched by the Employer's dispatch center in Tempe,

which is without regard to their respective assigned terminals. As support for its position, the Employer presented, as an example, evidence that in 2012, 56.1% of the loads delivered by Albuquerque finished product drivers were loaded and delivered in Gallup.

The Employer also points to evidence, in support of its argument that employees at its Albuquerque, Gallup, and Bloomfield facilities share a community of interest, that drivers at the various facilities interact with one another, such as at loading racks or the driver lounge (at the Gallup facility); drive the same types of trucks; wear the same uniforms; are subject to the same employment handbook and policies; and are paid on the same wage scales.

Although the record supports the Employer's contentions to a degree, the record nevertheless demonstrates that drivers and warehouse employees maintain a far stronger connection to their respective assigned terminals, through their shared supervision, than to their assigned dispatch teams. For example, the evidence establishes that drivers who experience mechanical issues or problems on the road, regardless of their location at the time, contact their respective terminal managers, not centralized dispatch. Personnel decisions, such as hiring and discipline, take place within a terminal and without regard to an employee's dispatch team. Although there was evidence presented that drivers have the ability to transfer between terminals, the record shows that such a transfer would be based solely on a driver's request and on the staffing needs of the terminals, and that no such transfers have occurred in at least two years. Ultimately, the record reflects that the terminal managers exercise a considerable amount of autonomy in handling the day-to-day operations of their respective terminals.

Even assuming the functional integration of the BAG team that the Employer suggests, such a connection exists only with regard to the Employer's finished product drivers. Lube drivers, on the other hand, are associated with an entirely different dispatch group, the ALE dispatch team, comprised of the Employer's Albuquerque, Las Vegas, and El Paso terminals. However, the Employer does not contend that the ALE group is an administrative grouping that would require the lube drivers in Las Vegas and El Paso to be included in an appropriate unit with the Albuquerque lube drivers, nor is there any evidence to support such a contention. Similarly, although the record is not clear as to which dispatch team the Bloomfield lube drivers belong, the record is clear that they belong neither to the ALE team nor the BAG team. My conclusion, therefore, is the Employer's dispatch teams do not establish centralization of the Employer's operations and do not constitute administrative groupings or subdivisions such that would require inclusion of all employees on a particular dispatch team as part of an appropriate unit for collective-bargaining purposes.

Based on these factors, I find that the Employer's Albuquerque facility, a single-terminal facility, is presumptively appropriate for the purposes of collective bargaining. See *Groendyke Transport, Inc.*, 171 NLRB 997, 998 (1968). Moreover, I find that the finished product drivers, lube drivers, and warehouse employees employed by the Employer at its Albuquerque facility share a sufficient community of interest to constitute an appropriate unit. I further find that the Employer has failed to establish that its Albuquerque, Gallup, and Bloomfield facilities together comprise a single, integrated, operational unit of the Employer such that the drivers and the warehouse employees at its Gallup and Bloomfield facilities must be included in the unit found appropriate. Finally, I find that the Gallup and Bloomfield

drivers and warehousemen do not share an overwhelming community of interest with the drivers and warehousemen at the Albuquerque facility as to mandate their inclusion in the unit I have found to be appropriate. See *Specialty Healthcare & Rehabilitation Center*, *infra*.

Accordingly, based upon the foregoing and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All finished product drivers, lube drivers, and warehouse employees employed by the Employer at its Albuquerque, New Mexico facility, but excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

There are approximately 30 employees in the unit found appropriate herein.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election that will issue soon, subject to the Board's Rules and Regulations.⁵ The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

⁵ Employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election. The notices shall remain posted until the end of the election. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays. A party shall be estopped from objecting to non-posting of notices if it is responsible for the non-posting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least five days prior to the commencement of the election that it has not received copies of the election notice. Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION 492

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within **seven (7) days** of the date of this Decision, the Employer file with the undersigned two (2) copies of election eligibility lists containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the National Labor Relations Board Regional Office, 2600 N. Central Avenue, Suite 1400, Phoenix, Arizona, 85004, on or before **June 11, 2012**. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by June 18, 2012. The request may be filed electronically through the Agency's website, www.nlr.gov⁶, but may not be filed by facsimile.

Dated at Phoenix, Arizona, this 4th day of June 2012.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director
National Labor Relations Board
Region 28
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⁶ To file the request for review electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. Guidance for electronic filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located on the Agency's website, www.nlr.gov.