

Speedway Petroleum, Division of Emro Marketing Company and Local No. 35, United Food and Commercial Workers International Union, AFL-CIO, CLC, Petitioner. Case 14-RC-9740

10 April 1984

DECISION AND CERTIFICATION OF REPRESENTATIVE

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS**

The National Labor Relations Board, by a three-member panel, has considered objections to, and determinative challenges in, an election held 29 July 1983 and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows four for and two against the Petitioner, with two challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the Regional Director's findings and recommendations,¹ and

¹ The majority finds that the Regional Director correctly sustained the challenge to the ballot of James Smith (which challenge is no longer determinative because the challenge to the ballot of Kelly Corrigan is also sustained). According to the evidence the Employer provided the Employer interviewed Smith on 24 June 1983, hired him as a regular part-time employee, and told him to report 1 July 1983, the last day of the

finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Local No. 35, United Food and Commercial Workers International Union, AFL-CIO, CLC, and that it is the exclusive bargaining representative of the employees in the following appropriate unit:

All employees employed by the employer at its Bethalto, Illinois, facility, excluding station manager, office clerical and professional employees, guards, and supervisors as defined in the Act.

eligibility period. He was paid for approximately 2 hours of orientation and training on 1 July but did not perform any unit work until 5 July. Because Smith did not perform unit work until after the end of the eligibility period the Regional Director recommended that the Board sustain the challenge to his ballot. The Board has consistently held that in order to be "employed during the payroll period" and be eligible to vote, an employee must perform unit work during the payroll period, unless, of course, the employee is absent for certain specified reasons (e.g., illness, temporary layoff). *F & M Importing Co.*, 237 NLRB 628, 632-633 (1978).

Chairman Dotson dissents with respect to Smith. The Chairman finds that the evidence clearly establishes that Smith was employed as of 1 July, and he would not find Smith ineligible to vote merely because he received the type of instruction and training on that date that is commonly given to employees on their first day of work.