

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

EXXONMOBIL CORPORATION¹

Employer

And

TRUCK DRIVERS, OIL DRIVERS, FILLING STATION AND PLATFORM WORKERS'
UNION, LOCAL NO. 705, AN AFFILIATE OF THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

Case 13-UC-366

DECISION AND CLARIFICATION OF BARGAINING UNIT

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Petitioner, hereinafter the "Employer," is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The Employer seeks to clarify the existing bargaining unit represented by the Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local No. 705, an affiliate of the International Brotherhood of Teamsters, AFL-CIO, hereinafter the "Union" by excluding all product distribution technicians, hereinafter "PDTs." The current unit description includes all full time and regular part time truck drivers and product distribution technicians employed by the Employer at its facilities currently located at 2312 Terminal Drive, Arlington Heights, IL (Des Plaines Terminal) and 1527 141st Street, Hammond, IN (Hammond Terminal) and 12915 South High Road, Lemont, IL (Lockport Terminal); but excluding mechanics, managerial employees, office clerical employees, all other employees, guards and supervisors as defined in the Act. The Employer argues that due to changes in both organizational structure and the job duties of PDTs, they no longer share a community of interest with the remaining employees in the unit. Contrary to the Employer, the Union contends that the changes to the Employer's organizational structure

¹ The names of the parties appear as amended at the hearing.

² The positions of the parties as stated at the hearing and in their briefs have been carefully considered.

³ The Employer is a corporation engaged petroleum distribution.

and the PDT's job duties are insufficient to alter the appropriateness of including PDTs in the unit.

4. Based upon the following, the job classification of PDT is excluded from the bargaining unit.

I. FACTS

A. MERGER OF MOBIL WITH EXXON

The Employer operates a petroleum distribution facility. When the above unit was certified, the Employer did business as Mobil Oil Corporation, herein "Mobil." Jeff Ferguson, Midwest Operations Manager, testified that Mobil was structured as an integrated business unit, in which all business functions were centralized regionally. The Midwest Region, which encompassed the Chicago Complex, the Wisconsin Complex and the Michigan Complex constituted one integrated business unit. The Employer's Chicago Complex includes facilities in Des Plaines, Illinois; Hammond, Indiana and Lockport, Illinois. The Chicago Complex received and stored petroleum within its terminal and then transported it to customers.

In December of 1999, the Securities Exchange Commission, hereinafter "SEC," approved a merger of Exxon and Mobil. Within four to five months after approval, the two corporations began to functionally merge into what is now ExxonMobil Corporation. ExxonMobil replaced the integrated business unit formula with a functional business model. Practically, this resulted in a shift from a regional organizational structure to a function based organizational structure.

At some point thereafter, the unit in question became part of ExxonMobil's Downstream Operations, which are organized into four companies, Refining and Supply, Fuels Marketing, Lubes and Product Specialties, and Research and Engineering. Jeff Ferguson, Midwest Area Operations Manager, Refining and Supply, testified that the unit drivers are now employed by ExxonMobil Fuels Marketing Company, hereinafter "FM," whereas the PDTs are employed by ExxonMobil Refining and Supply Company, hereinafter "RS." RS handles all in-terminal operations, whereas FM handles all transportation from the terminal to the customer.

B. THE DISPUTED CLASSIFICATION: PRODUCTION DISTRIBUTION TECHNICIANS

Prior to 1995, operators were responsible for terminal operations, such as petroleum intake, petroleum storage, and the maintenance of the loading equipment. In addition, the operators dispatched tanker trucks. This entailed receiving customer orders, compiling paperwork and dispatching drivers to the customer. Drivers were responsible for loading the product and transporting it to the customer. The operators worked within the terminal grounds only, but the drivers were only on terminal grounds when loading the trucks. In 1995, Jeff Harrington, then Complex Manager, created the product distribution technician, hereinafter "PDT," position. The PDTs would be trained to perform the duties of both the operators and the drivers, but work only out of the Des Plaines terminal. By contrast, drivers and operators work out of all three terminals.

C. EFFECT OF RESTRUCTURING UPON UNIT EMPLOYEES

Midwest Area Operations Manager Ferguson testified that although the restructuring plan was implemented in early 2000, the changes did not directly affect the working conditions of the unit employees until the end of 2000. In addition, there is evidence that the restructuring plan is yet to be complete. However, Ferguson testified that the changes contemplated by RS will have no effect on FM.

1. Bargaining History

On May 17, 1996, the Union was certified as the exclusive collective-bargaining representative of the above unit. There are currently approximately 37 employees in the unit, three of whom are PDTs. The Union and the Employer have negotiated two collective-bargaining agreements covering the above employees, the most recent of which, hereinafter referred to as "CBA," was effective by its terms from May 17, 2000, through April 30, 2002. There is no evidence that the parties discussed the possibility of excluding or separating the PDTs from the existing bargaining unit during negotiations for the most recent contract. There is no evidence that the parties have negotiated a successor collective bargaining agreement.

Rather the CBA specifies the duties of the unit as follows, "[t]he duties of the drivers and PDTs shall consist of driving the Employer's truck and delivering the contents to and from the terminal locations and associated terminal activities" (Article 2, Section 1). In addition, the CBA specifies that the Employer is prohibited from changing the above duties of the unit employees without providing written notice to the Union 30 days in advance (Article 2, Section 2). On December 13, 2001, the Employer sent a letter to the Union, under Article 2, informing them that effective January 16, 2002, the PDTs will no longer be required to perform driving duties.

2. Duties of Drivers, PDTs and Operators

As stated above, prior to the restructuring, the drivers were responsible for loading petroleum into their tanker trucks and delivering the product to Mobil stations. The operators were responsible for all other terminal operations. And finally, the PDTs performed the duties of both the operators and the drivers.

Sometime in 2001, the PDTs and operators ceased handling dispatch duties. Jim Heisen, Fleet foreman under FM, now handles these duties. In addition, in 2001, the PDTs ceased driving tanker trucks, except in emergency circumstances, such as driver shortage. On December 13, 2001, the Employer notified the Union that effective January 16, 2002, PDTs would no longer be required to perform driving duties or maintain a driver's license certification. Ferguson and Moles testified that PDTs and operators now perform the same duties. Heisen testified that when the loading system is performing properly, the drivers have no professional interaction with the PDTs or operators. The driver will card into the loading system, load the product, obtain a bill of lading and exit the terminal. If on the other hand, a problem occurs, the driver must notify a PDT or operator to remedy it. There is no evidence on the record as to how often loading problems occur.

3. Supervision

Prior to the restructuring, the unit employees in dispute worked exclusively for the Mobil Chicago Complex. Des Plaines Terminal Superintendent, David Moles, directly supervised the Des Plaines drivers and all PDTs. The record is unclear as to who directly supervised the remaining drivers. The entire unit in question reported indirectly to Complex Manager, Russ Newcomb. Nine operators, three mechanics, and three coordinators, who were and are unrepresented, also reported to Newcomb. Newcomb reported to the Midwest Supply & Logistics Manager, S.A. Chernow. The record is silent as to whom Chernow reported.

After the restructuring, Moles continued to directly supervise the PDTs and Des Plaines operators. In February 2000, Ferguson took over supervision of all Midwest RS employees. Accordingly, Ferguson began to directly supervise Moles and indirectly supervise all operators and unit PDTs. Ferguson in turn reported to the Manager of Global Distribution, who in turn, reported to L.J. Cavanaugh, RS Vice President of Supply and Distribution. This reporting structure eventually leads to J.S. Simon, President of RS. Russ Newcomb continued to supervise the unit drivers and non-unit drivers as Central Zone Fleet Operations Manager. This reporting structure eventually leads to H.R. Cramer, President of FM. Ferguson testified that since the restructuring, the RS division and the FM division have no control or supervisory authority over each other's employees. Each company independently makes decisions as to hiring, firing, disciplining and directing their own employees.

The current collective-bargaining agreement specifies a two-step grievance procedure, which leads to a third-step arbitration procedure. The procedure mandates that the employee's immediate supervisor handles step-one and the employees second line supervisor handles step-two. By virtue of the above supervisory restructuring, grievances filed by drivers and PDTs are no longer handled by the same Employer representative. There is no evidence on the record as to whom the Employer has authorized to handle unit employee grievances during arbitration proceedings.

4. Human Resources, Labor Relations and Benefits

The record indicates that all ExxonMobil employees receive the same pension, health insurance, disability insurance, life insurance, and vacation benefits. These are maintained and administered by ExxonMobil's Human Resource Division. Ferguson testified that if a PDT, operator or driver had questions regarding their benefits, they would contact Debra Ellis in Human Resources. However, Ferguson testified that as Human Resources is a separate division of ExxonMobil, RS pays for the Human Resources service from the RS budget. And although Ferguson testified that, since the restructuring, he usually consults with Human Resources and seeks their approval, he has ultimate control over all RS day-to-day labor issues. There is no evidence as to whether Newcomb maintains the same control over FM day-to-day labor issues.

Prior to the restructuring, the PDTs, operators and drivers participated in the same training, were held accountable to the same safety policy and procedure and were eligible for the same safety health and environment bonus program. In addition, they received identical training on all topics. All training meetings occurred once a month in the

terminal and were attended by PDTs, operators and drivers. Since the restructuring, FM and RS have instituted a number of new business systems, and although the systems share the same title, they are not the same. FM and RS each developed their own training, safety, and incentive programs and implemented them independently. For instance, FM and RS each have their own Operations Integrity System, which serves to document and maintain proper operational functions. Both RS and FM instituted a separate and different Loss Prevention System to ensure safe operations. Because PDTs and drivers no longer receive the same training, they no longer attend the same meetings.

The PDTs' wage is approximately three dollars higher than that of the drivers. However, drivers are eligible to receive bonus pay each pay period based upon productivity. Since the restructuring, RS has instituted a Safety Incentive and Attendance bonus program, which applies only to PDTs and operators. There is no evidence on the record as to whether a similar bonus program was instituted in FM for the drivers.

5. Interchange

The first two Mobil employees to fill the PDT position, David Moles and John Massa were originally hired as drivers. In 1996, prior to certification of the Union, Mike Szot was transferred from a driving position to a PDT position. In 1997 and 1998, Pat Carroll and Dennis Kroll, respectively, were hired to fill available PDT positions. Both were outside hires. Neither had the requisite license requirement to drive a tanker truck at the time of their hire. In 1998, Chuck Herre, formerly a Mobil driver, was promoted to the PDT position. Moles, who now hold the position of Terminal Superintendent, Des Plaines Terminal under ExxonMobil RS, testified that the above were the only PDTs hired prior to the restructuring. The record indicates that Mobil obtained the above employees by posting a notice of the available position in the Chicago Complex Terminals. In addition, in 1998, Massa resigned as PDT and returned to a driving position with Mobil.

Manuel Nava, hired in 2001, is the only PDT hired since the merger of ExxonMobil. Prior to that time, he was employed as a driver with ExxonMobil FM. Moles testified that the available PDT position was posted both in the terminal and with Illinois Job Services. Moles testified that Nava was not given preference for his association with Mobil. Finally, since the restructuring occurred, Mike Szot, formerly a PDT, was promoted to Des Plaines Fleet Supervisor.

6. Common or Shared Services

The PDTs work only out of the Des Plaines terminal, but the drivers, although stationed at the Des Plaines terminal, may work at any of the Chicago Complex terminals. However, prior to the restructuring, the Des Plaines terminal was owned and operated by Mobil. Since the restructuring, the two divisions have divided the ownership of property and services. Each division maintains a separate budget. RS and FM have entered into an agreement to lease services, equipment, space, utilities and the like, as needed. FM owns the tanker trucks, and RS owns the Des Plaines terminal. RS and FM equally share the time of six administrators who perform such services as payroll inventory, accounting, and procurement. However, FM leases these employee services

from RS. Ferguson testified that as the restructuring progresses, the administrative services will no longer be shared between RS and FM.

II. ANALYSIS

The Board counsels that unit clarification is appropriate for resolving ambiguities within existing classifications, “which have undergone recent substantial changes in the duties and responsibilities of employees in it so as to create a real doubt as to whether the individuals within the classification continue to fall within the category- excluded or included- that they occupied in the past.” *Union Electric Co.*, 217 NLRB 666, 667 (1975). The Employer contends that by virtue of the merger of ExxonMobil and the resulting restructuring, the Employer’s operations have undergone recent substantial changes. Further, the duties and responsibilities of the unit PDTs have changed to the extent that there exists a question as to whether they continue to share a community of interest with the unit drivers. The Union contends that the restructuring of what is now ExxonMobil is insufficient to show a substantial change to the duties and responsibilities of the PDTs. For the reasons stated below, the undersigned finds that recent and substantial changes have negated any community of interest that the PDTs and the drivers once shared. Accordingly, the unit shall be clarified to exclude the PDTs.

With the merger of Exxon and Mobil, what was once an integrated operation became two separate companies within the ExxonMobil entity. In *Ameron*, 288 NLRB 747 (1998); the Board clarified the existing combined single unit into two separate units because it found that restructuring had resulted in the creation of two companies. The Board found that the two companies each had separate management and employees engaging in different operations requiring different skills. *Id.* 288 NLRB at 748. In addition, it was found that each company handled labor relations differently. *Id.* See also *Rock-Tenn Company*, 274 NLRB 772, 773 (1985); *Columbia Gas Transmission Corporation*, 213 NLRB 111, 112 (1974). Finally, the Board in *Ameron*, found that the restructuring resulted in the separate operations of the two companies despite the fact that they leased services and facilities from each other. 288 NLRB at 748. Likewise, in the instant case, RS and FM were created with completely separate employee and supervisory structures. PDT and driver grievances are handled separately. All day-to-day labor issues and policies are handled separately, without consultations between companies. And although FM and RS both function out of the Des Plaines terminal, the parties have entered into a lease and service agreement to account for any shared use of space, equipment and utilities.

Although PDTs and drivers share the same pension, health insurance, disability insurance, life insurance and vacation benefits as each other, all ExxonMobil employees share these benefits. In addition, although ExxonMobil Human Resources administers all of the above benefit programs, each ExxonMobil Company separately leases this service from their individual budget. RS and FM have no common control over the ExxonMobil benefit programs.

Further, unit PDTs no longer performs any of the same duties as unit drivers. PDTs and drivers have different skills, use different equipment and participate in different training. As a result, professional interaction is minimal. In addition, as the PDTs no longer dispatch drivers or drive themselves, interaction and interchange will decrease rather than increase or remain static. The record indicates that the only social

interaction between the two unit classifications at this time occurs in the locker room when changing or in the cafeteria during breaks. In addition, separate incentive programs have been implemented, which further increase the disparity between the PDTs wage scale and that of the drivers.

The union argues that the PDTs and the drivers have enjoyed a long-standing common bargaining history. However, although the Board places great weight on bargaining history, it is not determinative where, as here, the organizational structure has undergone recent significant changes that have resulted in a lack of community of interest. *Lennox Industries, Inc.*, 308 NLRB 1237 (1992); *Rock-Tenn Company*, 274 NLRB 772 (1985). And unlike *Batesville Casket Company*, 283 NLRB 795, 797 (1987), in which the Board found that the changes were not recent or substantial as they occurred from ten to thirty years prior to the filing of the UC petition, the restructuring in this case occurred during the life of the most recent contract. As in *Ameron, Inc.*, 228 NLRB 747 (1988), the intent of the companies to become separate is clear.

The undersigned finds that the historical unit no longer conforms reasonably well to the normal standards of appropriateness. As such, the undersigned shall clarify the unit to exclude all PDTs.

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, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by July 16, 2002.

DATED July 2, 2002 at Chicago, Illinois.

/s/Elizabeth Kinney
Regional Director, Region 13

316-3301-5000
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UC Petition-Other Issues