

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

EXXON MOBIL CORPORATION,

Employer

and

Case No. 31-RC-8373

PAPER, ALLIED-INDUSTRIAL, CHEMICAL
AND ENERGY WORKERS INTERNATIONAL
UNION, AND ITS LOCAL 8-675

Petitioner

DECISION AND DIRECTION OF ELECTION

Paper, Allied-Industrial, Chemical and Energy Workers International Union, and its Local 8-675 (herein the Petitioner), filed a petition under Section 9(c) of the National Labor Relations Act, as amended (herein the Act), seeking to represent the eighteen Laboratory Technicians of Exxon Mobil Corporation (herein the Employer) at its refinery located in Torrance, California.¹ Since the 1940's, the Petitioner has been the Section 9(a) representative of the Employer's employees at several California facilities. Currently, the Petitioner represents all production and maintenance employees at the Torrance, California refinery and all warehouse employees at the Vernon, California lube oil plant.²

¹ / No collective bargaining agreement covers the petitioned-for Laboratory Technician employees.

² / When the Petitioner was first certified, it also represented employees at a facility in Fresno, California. On May 14, 1999, in Case 31-RC-7729, the Petitioner was

The Petitioner claims to represent the Laboratory Technicians as a part of this Unit, but the Employer refuses to recognize the Petitioner as the representative of these employees. Accordingly, the Petitioner seeks a self-determination election to allow the Laboratory Technicians to vote on whether they desire to be represented by the Union as a part of the existing Unit.³

The Employer argues that a self-determination election is inappropriate for several reasons:

- (1) The current collective bargaining agreement for the Unit is a contract bar to this proceeding.
- (2) The petitioned-for Laboratory Technicians are “technical employees” under the Act, and should be excluded.
- (3) The petitioned-for Laboratory Technicians (whether or not they are technical employees under the Act) do not share a community of interest with the Unit.⁴

As such, the Employer would find appropriate only an election among the Laboratory Technicians as a separate unit.

certified as the collective bargaining representative of the warehouse employees employed at the Vernon, California lube oil plant.

³ / While acknowledging the appropriateness of a separate unit for the Laboratory Technicians, the Petitioner declines to represent the Laboratory Technicians as a separate unit. There is no history of collective bargaining among the Laboratory Technicians, and no other labor organization seeks to represent them.

⁴ / The Employer’s and the Petitioner’s post-hearing briefs are consistent with their positions during the hearing, with the exception that the Employer does not address the contract bar issue in its brief.

For the reasons set forth below, I conclude that there is no contract bar to this proceeding, and that the Laboratory Technicians—even if they are technical employees—share a community of interest with the existing Unit.

I. FINDINGS

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

A. Hearing Officer Rulings: The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

B. Jurisdiction: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.⁵

C. Labor Organization: The labor organization involved claims to represent certain employees of the Employer.

D. Question Concerning Representation: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

^{5/} The Employer, Exxon Mobil Corporation, a New Jersey corporation, is engaged in the business of refining oil at its facility in Torrance, California, and is engaged in distributing and packaging lube oil at its facility in Vernon, California. Within the past 12 months, the Employer has purchased and received materials and supplies at its California facilities valued in excess of \$50,000 directly from sources located outside the State of California. The Employer, thus, satisfies the statutory jurisdictional direct inflow standards, as well as the Board’s discretionary standard for asserting jurisdiction.

E. Appropriate Voting Group: The following employees of the Employer constitute a voting group who may vote whether or not they wish to be represented by the Petitioner in the existing Unit:

All Laboratory Technicians employed by the Employer at its Torrance, California refinery; excluding all other employees, contract employees, guards and supervisors as defined in the Act.

II. PROCEDURAL HISTORY AND OVERVIEW

The Union was certified as the exclusive collective-bargaining representative of the Employer's employees in the 1940s. The Petitioner filed the Representation Petition in this matter on April 7, 2004; the hearing was held on April 15, 2004.

The Employer operates a refinery in Torrance, California, and a lube oil plant in Vernon, California, which is about 15 miles from the Torrance refinery. The bargaining unit is comprised of employees at both the Torrance refinery and the Vernon plant. At the Torrance refinery the Employer is engaged in the business of refining crude oil into products such as gasoline, jet fuel, diesel fuel, butane, and propane, while at the Vernon plant the Employer is engaged in the business of packaging and distributing lube oil. In Torrance, the Unit employees are comprised of the Process Department employees who operate the equipment, and the Mechanical Department employees who maintain the equipment. The petitioned-for Laboratory Technicians are employed at the Torrance refinery; there was no evidence presented at the hearing suggesting that the Laboratory Technicians perform any function or interact with any employees at the Vernon plant. Of the approximately 750 individuals employed at the Torrance refinery, there are approximately 350 employees in the Unit, which is comprised of 220 Process Department employees and 130 Mechanical

Department employees. In 2003, approximately eight Shift Safety Advisors from the Safety, Health, and Environment Department were added to the Unit.

The Torrance refinery, which is located on approximately 700 acres, includes numerous buildings. The Laboratory Technicians share a building with another department, which was unnamed at the hearing. The building that houses the Laboratory Technicians is located across the street from the Process Department and the Mechanical Department, which are housed in separate buildings.

The parties stipulated that certain benefits provided to the Unit employees are also provided to the Laboratory Technicians, including: (1) the savings plan; (2) the pension plan; (3) the dental plan; (4) the disability plan; (5) the pretax spending plan; (6) life insurance; and (7) medical insurance. Laboratory Technicians are not eligible to participate in the medical and dental plans administered by the Union. Further, certain of the Employer's policies apply to the Laboratory Technicians but not to the Unit employees. These policies are Personal Time Off,⁶ the Attendance Control Program, and the Performance Improvement Plans.⁷ All employees park in the same parking lot, and enter the refinery through the same turnstiles. Both Operators and Laboratory Technicians wear the same safety uniform called "Nomex," which is flame retardant. There are different break areas for the various departments.

Although there is only one example of interchange between the Laboratory Technicians and the Operators, Laboratory Technicians are trained to

⁶/ The time-off allowed for under the Personal Time Off policy is offered to Unit employees in a different form.

⁷/ The Unit employees are subject to a Goals and Objectives Plan, which is similar to the Performance Improvement Plan.

work as Operators under the Strike Contingency Plan.⁸ The parties present no examples of interchange between Laboratory Technicians and Mechanics.

Both Unit employees and Laboratory Technicians are hourly employees who are paid bi-weekly. Laboratory Technicians are paid between \$20 and \$35 an hour, and are given a \$15 night-shift differential pay. Unlike employees in the Unit, Laboratory Technicians are subject to performance appraisals, and are given merit increases.

Employees in the Unit are paid according to the collective bargaining agreement. In the Process Department, Operator Trainees start at \$19.38 an hour. In the Mechanical Department, Boilermakers and Carpenters start at \$16.19 an hour, and Machinists and Field Mechanics start at \$22.56 an hour. All of these wages are subject to shift-differential pay, and each of these employees is eligible to make up to \$31.91 an hour as a lead person.

The Laboratory Technicians are in the Technical Department, and are supervised by two “Firstline Supervisors.”⁹ These supervisors report to the Laboratory Group Leader, who reports to the Operations Support Department Head, who reports to the Technical Manager, who reports to the Refinery Manager. The Operators and Mechanics are supervised by a similarly detailed chain of command, and also ultimately report to this same Refinery Manager.

⁸/ Before being included in the Unit, Shift Safety Advisors were also trained to cover positions in the event of a strike.

⁹/ The parties stipulated that the two Firstline Supervisors should be excluded from the Unit because they perform the duties and have the authority of a supervisor as defined by the Act. The parties also stipulated that the four Chemists who work in the laboratory are professional employees and should be excluded. Inasmuch as the record supports these stipulations, I accept them and exclude the Firstline Supervisors and the Chemists from the Unit.

The duties of the Laboratory Technicians include testing product to determine if the product is within specification.¹⁰ If a lab result shows that the product is not within specification, a Laboratory Technician may decide to re-run the test before reporting the results. Results are reported when a Laboratory Technician enters them into the computer. The Consult, a supervisor in the Process Department, reviews the lab results, and then informs the Operators if there is a problem with the product. Although the Laboratory Technicians' job is to make sure the product matches the specifications, they do not have the authority to certify a product—only supervisors have this authority. The essential function of the laboratory is quality control, and, in fact, the full title of the laboratory department is the Quality Assurance Laboratory.

The Head Operator, a Unit employee, typically interacts with Laboratory Technicians about ten times a day by delivering samples of product to the lab per the schedule, checking to see if lab results are ready, and sometimes waiting for the lab results. When delivering the samples, the Head Operator will have a short conversation about the sample with the Laboratory Technician. If the sample does not look right, the Laboratory Technician may request that the Head Operator “re-pull” the sample.

The Laboratory Technicians do not decide which tests they are going to run, but instead, the tests to be run are pre-determined by a schedule set by the Technical Department and by the Engineers in the Process Department. The Laboratory Technicians run tests that are standardized by the American Society of Testing and Materials (“ASTM”), and no deviation from these standardized procedures is allowed. Laboratory Technicians participate in Test Method

¹⁰/ Operators perform some limited field testing on product.

Assessments, which is a way of making sure that the ASTM methods are being followed exactly. They also run tests on the “Round Robin.” The Round Robin is an outside control that verifies that the Laboratory Technicians’ instruments are running correctly.

The Laboratory Technicians also provide engine maintenance on the octane engines in the laboratory and in the Tank Farm. The octane engine in the Tank Farm is run by a Unit Operator and is located in the same building as the Process Department. When servicing the octane engine in the Tank Farm, Laboratory Technicians will necessarily interact with the Operator running the machine.

Recently, the Employer has required that newly hired Laboratory Technicians have a 4-year degree. Because this is a new requirement, most Laboratory Technicians only have about two years of college science classes.

There are eight labs operated by the Laboratory Technicians. Each lab requires between two weeks and six months of training before a Laboratory Technician is proficient and can work alone. Senior Laboratory Technicians train the new Laboratory Technicians.

An Operator in the Unit is initially hired as an Operator Trainee. After several months of training, the Trainee becomes an Operator I. After becoming an Operator I, the employee must learn at least three positions during which time he or she will become an Operator II, and then will become an Operator III. Each of these positions learned by the Operator requires about six months of training. By comparison, a Shift Safety Advisor must go through 18 months to two years of training, and Riggers, who work under the Maintenance Department, are subject to three-year apprenticeships, and must get a license to operate a crane.

III. ANALYSIS AND CONCLUSIONS

A. Self-Determination Election Appropriate

The Board has found self-determination elections appropriate in several situations, including where an incumbent union seeks to add a previously unrepresented group of employees to its existing unit and where no other labor organization seeks to represent the unrepresented employees. In this situation, if a majority of petitioned-for employees votes for representation, this result is taken to indicate their desire to be made part of the existing unit. *Warner-Lambert Co.*, 298 NLRB 993, 996 (1990).

A self-determination election in which the voting group is asked to choose only between representation in the current unit or for no representation is appropriate. *Carr-Gottstein Food Co.*, 307 NLRB 1318, 1319 (1992). Here, the employees in the voting group will not be asked whether they prefer representation in a separate laboratory unit inasmuch as the Petitioner has declined to participate in such an election and the Board will not force a labor organization to assume the representation of employees in a unit when the labor organization has declined to do so. *Carr-Gottstein*, 307 NLRB at 1319.

If a majority of employees in the voting group casts ballots in favor of the Petitioner, the employees will be taken to have indicated their desire to be included in the Unit currently represented by the Petitioner, and the Petitioner may bargain for such employees as part of that Unit. If a majority of valid votes is not cast for representation, the votes will be taken to have indicated the employees' desire to remain unrepresented. Accordingly, I find that a self-determination election is appropriate.

B. Current Collective Bargaining Agreement Not a Contract Bar

In Board Exhibit 2, the Employer asserts that the current collective bargaining agreement covering the represented employees is a bar to this proceeding. I note that the Employer failed to present any evidence at the hearing on this issue, and that it also failed to address this issue in its post-hearing brief.

A contract bar issue may arise when employees are found to be an accretion to an existing unit. *Firestone Synthetic Fibers Co.*, 171 NLRB 1121, 1123 (1968). Here, it cannot be said that the Laboratory Technicians constitute an accretion to the existing unit, and no party urges that an accretion be found. At the hearing, the Employer argued that the Laboratory Technicians should be in a separate and distinct unit.¹¹ Because the petitioned-for Laboratory Technicians could be an appropriate separate unit, accretion is inapplicable. *Passavant Health Center*, 313 NLRB 1216, 1218 (1994). Accordingly, I find that no contract bar precludes a self-determination election for the unrepresented Laboratory Technicians.

C. Laboratory Technicians Are Not Technical Employees

The Employer asserts that the Laboratory Technicians are technical employees, and that they should be excluded from the existing Unit on that basis. Technical employees perform work of a technical nature involving the use of independent judgment and requiring the exercise of specialized training. *Southern Maryland Hospital Center, Inc.*, 274 NLRB 1470, 1471 (1985).

¹¹/ The Petitioner does not dispute that the Laboratory Technicians could constitute an appropriate stand-alone unit. As set forth above, however, it declines to represent the Laboratory Technicians as a separate unit. Moreover, the evidence supports a finding that the Laboratory Technicians could appropriately be considered a separate unit.

I find that the Laboratory Technicians are not technical employees in that they cannot deviate from the standardized procedures for lab tests; they do not set the schedule for the tests they are assigned to run; they do not exercise any independent judgment¹² in that they only report their results to supervisors who make the necessary adjustments in the Process Department; and although a 4-year degree is now a requirement, it is not a necessity in that most Laboratory Technicians do not possess a 4-year degree.

D. Laboratory Technicians Share a Community of Interest With the Existing Unit

In any event, the Board does not automatically exclude technical employees from a unit of nontechnical employees. *Global Marine, Inc.*, 214 NLRB 192, 198 (1974). Instead, in determining whether to group various employees in a bargaining unit, the Board looks to see if there is a community of interest among the categories of employees. *Id.*

The factors considered by the Board when determining whether there is a community of interest are: (1) desires of the parties; (2) history of bargaining; (3) similarity of skills and job functions; (4) common supervision; (5) contact or interchange with other employees; (6) similarity of working conditions; (7) type of industry; (8) organization of plant; (9) whether the employees work in separate areas; and (10) whether any union seeks to represent the employees separately. *Id.* at 198-99, citing *Sheffield Corp.*, 134 NLRB 1101, 1103-04 (1961).

^{12/} The only judgment made by a Laboratory Technician after lab tests are run is whether to re-run the tests before reporting the results into the computer.

The Board has commonly found that quality control employees have a community of interest with production and maintenance units. *See, e.g., Lundy Packing*, 314 NLRB 1042, 1043 (1994); *Libbey Glass Division*, 211 NLRB 939, 940-41 (1974). Because the petitioned-for Laboratory Technicians are essentially engaged in quality control, as is evidenced by the formal title of their department, the Quality Assurance Department, their work is functionally integrated with that of the production employees in the Process Department. Laboratory test results are routinely utilized by production employees to gage and adjust their own efforts and in this sense can be considered part of the production process. There is routine contact among the employees of these departments, in the delivery of samples and lab results, and also in the maintenance of the octane engine in the Tank Farm.

The Employer has refused to recognize the Laboratory Technicians as a part of the Unit, and the Petitioner has declined to represent the Laboratory Technicians separately. Further, no other union seeks to represent the Laboratory Technicians. Thus, if the Laboratory Technicians desire representation by Petitioner, they must be included in the existing Unit. *See Sheffield Corp.*, 134 NLRB at 1105 (In light of the fact that no other union sought to represent a separate unit of technical employees, Board found that the technical employees had a sufficiently close community of interest with the production and maintenance employees.).

Although the Laboratory Technicians do not share immediate or first-level supervision with any of the employees in the existing Unit, this is not a dispositive factor because the employees in the Process Department do not share supervision with the employees in the Maintenance Department. While Laboratory Technicians are currently required to possess a 4-year degree, most Laboratory Technicians only have a few years of college science. The wages of the employees in the Unit are comparable to the wages of the Laboratory Technicians. Also, employees

in the Unit share many of the same benefits and working conditions as the Laboratory Technicians.

Accordingly, I find that the Laboratory Technicians share a sufficient community of interest with the employees in the existing Unit.

V. CONCLUSION

In light of the foregoing, I conclude that the current collective bargaining agreement is not a bar to this proceeding, that the Laboratory Technicians are not technical employees, and that even if they are, they share a substantial community of interest with the existing Unit. Accordingly, I shall order a self-determination election among the Laboratory Technicians. Those in the voting group include:

All Laboratory Technicians employed by the Employer at its Torrance, California refinery; excluding all other employees, contract employees, guards and supervisors as defined in the Act.

The question on the ballot will be whether they desire representation by the Petitioner as part of the production and maintenance unit or whether they desire no representation. Should a majority vote in favor of representation, I find the following to constitute an appropriate unit¹³ for purposes of collective bargaining:

Included: The following full-time and regular part-time employees whose specific classifications are set forth in Exhibit 1 to the parties' February 1, 2002 collective bargaining agreement, and the Shift Safety Advisor Classification Memorandum of Agreement dated October 17, 2003: All hourly paid production and maintenance employees and

¹³/ In a post-hearing stipulation, the parties agreed to this unit description.

laboratory technicians employed by the Employer at its Torrance, California refinery, and all operations, maintenance and warehouse employees employed by the Employer at its Vernon, California lube oil plant.

Excluded: All electrical employees, office and clerical employees, administrative and technical employees, casual and temporary employees, and all guards, professional employees and supervisors as defined in the Act.

There are approximately eighteen employees in the voting group and approximately 350 employees in the above-described appropriate unit.

DIRECTION OF ELECTION¹⁴

I shall conduct an election by secret ballot among the employees in the voting group found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations.

ELIGIBLE TO VOTE: Those in the voting group 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, are eligible to vote. 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

^{14/} In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that I will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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. Those in the military services of the United States Government may vote if they appear in person at the polls.

INELIGIBLE TO VOTE: Employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that commenced more than 12 months before the election date and who have been permanently replaced are ineligible to vote.

Those eligible shall vote whether they desire to be represented for collective bargaining purposes by PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION, AND ITS LOCAL 8-675, as part of the existing Unit or whether they desire no representation.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to 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 Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that the Employer must file an election eligibility list, containing the FULL names and addresses of all the eligible voters, with me within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list

available to all parties to the election only after I have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before, May 7, 2004. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

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RIGHT TO REQUEST REVIEW

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, under the provision of Section 102.67 of the Board's Rules and Regulations. The Board in Washington must receive this request by May 17, 2004.¹⁵

DATED at Los Angeles, California this 30th day of April, 2004.

Byron B. Kohn, Acting Regional Director
National Labor Relations Board
Region 31

^{15/} See <http://gpea.NLRB.gov> for e-filing requirements.