

Duquesne Light Company and its wholly owned subsidiary, Allegheny County Steam Heating Company and System Council U-10 of the Local Unions 140, 142, 144, 147, 148 and 149 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC, Petitioner. Case 6-AC-44

April 18, 1980

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND TRUESDALE

In 1948, 1949, and 1956, the International Brotherhood of Electrical Workers, AFL-CIO (the International), was certified as the collective-bargaining representative for nine separate appropriate units of the Employer's employees. The particulars of those nine certifications are set out in the appendix to this Decision.¹

On February 13, 1979, the Petitioner filed the instant petition to amend each of the nine certifications referred to in the appendix to substitute "International Brotherhood of Electrical Workers (IBEW) Local Unions 140, 142, 144, 147, 148, and 149 of System Council U-10" for the International as the sole certified collective-bargaining representative of all the employees covered in the aforementioned certifications. The Employer opposes the proposed amendments.²

A hearing on the petition was held on April 11, 1979, at Pittsburgh, Pennsylvania, before Hearing Officer Charles H. Saul. All parties appeared at the hearing and were given full opportunity to participate therein. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Regional Director for Region 6 transferred this case to the National Labor Relations Board for decision. Thereafter, both the Petitioner and the Employer filed briefs.

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.

¹ Several of the unit descriptions contained in the appendix make reference to employers other than the Employer named in this proceeding. In this regard, the parties stipulated that the Philadelphia Company, referred to in Case 6-RC-64, was originally a holding company for the various other employers referred to in the certification but that, as a result of antitrust proceedings in about 1953, the Philadelphia Company was dissolved and Duquesne Light Company and its wholly owned subsidiary, Allegheny County Steam Heating Company, remained, among others, as two serving companies. The parties further stipulated that all the employees covered by the certifications specified in the appendix are now employed by either Duquesne Light Company or its wholly owned subsidiary, Allegheny County Steam Heating Company (hereafter collectively referred to as the Employer).

² The International did not appear as a party in this proceeding. However, its International representative, Dunleavy, testified as a witness for the Petitioner and stated that the International supports the petition.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds as follows:

Following the issuance in 1948 of the first six certifications involved herein, the International immediately chartered the Locals involved in this proceeding and assigned the employees covered by those certifications to those Locals. The employees covered by the subsequent certifications in 1949 and 1956 were also assigned by the International to the Locals.³

Since 1948, the Locals have bargained jointly with the Employer through the Council or the Council's predecessor, the Joint Board. Membership of the Council consists of 12 delegates; namely, the president and vice president of each of the 6 Locals. Each of these delegates has one vote. The Council itself also has a president, vice president, secretary-treasurer, and business manager. While they have a voice in Council affairs, they have no vote, except for the Council president, who votes only in the event of a tie vote among the Locals' delegates. The Council has, among other committees, a negotiating committee consisting of the Council's business manager, who serves as chairman of the negotiating committee, the Council's president, and the presidents and vice presidents of each Local.

Prior to 1975, separate collective-bargaining agreements were jointly and simultaneously negotiated between the Employer and the Council for separate Locals and/or separate certified units. Thus, while any given collective-bargaining agreement prior to 1975 might pertain to only one or a few of the six Locals, or to the employees covered by only one or a few of the nine certifications involved in this proceeding, each such contract was nevertheless jointly and simultaneously negotiated by *all* the Locals through their equal representation on the Council. However, in 1975, the parties consolidated this procedure somewhat by negotiating only two fundamentally similar collective-bargaining agreements, for the period of October 1, 1975, through September 30, 1977. One such contract pertained to Locals 140, 142, 144, 147, and 148 and covered, in general, all *hourly* employees encompassed within certifications 6-RC-88, 157, 158, 415,

³ The jurisdiction of these six Locals does not strictly correspond to the scope of the nine certifications. Thus, the employee units covered by six of the nine certifications are composed of members of several Locals. Inversely, the membership of each of the six Locals is composed of employees covered by several certifications. Each employee encompassed within the nine certifications is a member of one of the Locals, but no such employee is a member of more than one Local.

and 416. The other such contract pertained to Locals 140, 147, and 149 and covered, in general, all *salaried* employees encompassed within certifications 6-RC-64, 89, 159, 415, 416, and 1815. Subsequently, the parties negotiated and entered into essentially uniform "Modifications of Agreement" to each of the two 1975-77 collective-bargaining agreements, such "Modifications" to be effective from October 1, 1977, through September 30, 1979; these "Modifications" effected changes to only a relatively few provisions in the 1975-77 collective-bargaining agreements. These contracts stated that they were between the Locals and the Employer and that the Employer recognized the Unions "as the exclusive bargaining representatives" of the employees here involved.⁴

In the negotiations in 1975 and again in 1977, the Council unsuccessfully attempted to have the International removed from the recognition clause of the parties' bargaining agreement, with the Locals remaining as the only recognized union. Then, in 1978, it was decided by the Council's business manager and the International to petition the Board for amendment of the certifications in order to remove the International as the certified bargaining agent. Notices were posted on various bulletin boards announcing that special local meetings would be held "to seek NLRB approval to amend certification." The meetings were held, explanations for the proposed change were given to the employees, and the proposal was voted on. Of approximately 2,700 employees in the units, 138 attended the special meetings. Of these, 123 voted, by ballot, to petition the Board to amend the certifications to designate the Locals as the certified representative. The consequent petition—that now before us—was filed on February 13, 1979.

⁴ The preamble and the representation and recognition clauses in these contracts state in pertinent part, as follows:

PREAMBLE: This agreement is made by and between the [Employer], and [applicable locals] of the International Brotherhood of Electrical Workers, *hereinafter called the Union*. . . . [Emphasis supplied.]

Article I, Representation and Recognition

Section A.1. *The Unions having been certified*. . . by the National Labor Relations Board, as the bargaining agencies for certain employees [i.e., those in the nine certifications involved] are hereby recognized as the exclusive bargaining representatives for said employees. . . . [Emphasis supplied.]

Section C. For the purposes of this Agreement, the [Employer] recognizes representatives of the International Brotherhood of Electrical Workers and the System Council U-10 of the Union as *the representatives of the Union*. . . . [Emphasis supplied.]

To the extent that the phraseology in art. I indicates, in conjunction with the wording of the preamble, that the *Locals* have been certified, it is, of course, factually incorrect; as seen above, the *International*, and not the *Locals*, was certified as the collective-bargaining representative for the employees encompassed in each of the nine certifications involved in this proceeding. Indeed, the purpose of the petition in this proceeding is to *substitute* the *Locals* of the Council in place of the *International* as the certified bargaining representative.

The Council, as indicated above, seeks in its petition to amend the certifications to reflect what it claims is the actual status of the *Locals*, that is, the *de facto* exclusive bargaining representatives of the employees covered by the certifications, and to reflect accurately the manner in which collective bargaining is actually conducted by the Employer, the *Locals*, and the Council. As noted, the *International*, according to *International Representative Dunleavy*, supports the petition. The Employer, however, opposes the petition on essentially two grounds: First, that eliminating the *International* will have a deleterious effect on the stable bargaining relationship that has developed over the years, and, second, that the proposed amendment was not properly approved by the employees affected.⁵

The record establishes that, from the time of the initial certification over 30 years ago, the *Locals* through the Council (or its predecessor, the Joint Board) have been effectively delegated the authority by the *International* to act as the actual bargaining representative of the employees in question in the important areas of contract formulation, negotiation, and administration. The *International* has during this period provided advice and counsel to the *Locals* and Council in the formulation of contract proposals, retained the authority to give necessary final approval to employee-ratified agreements, and has participated at its discretion in step 4 of the contractual grievance procedure. Also, the *International's* approval must be secured in advance for any strike or other work stoppage on the local level. The record also shows that such local participation by the *International* will remain unchanged and undiminished in the event the certification is awarded as requested.

The *International's* representative, *Dunleavy*, testified that the role or function of the *International* or its representative in the area of collective-bargaining agreement formulation, negotiation, ratification, and approval is the same with respect to all its locals (not just those involved herein). Thus, this role or function is not affected by whether the *International* itself or one of its locals is actually certified as the bargaining representative; the requirement in the *International's* constitution that all ratified collective-bargaining agreements between employers and all its locals must be submitted to the *International* president for final approval is ap-

⁵ The Employer also opposes the amendment of the certification on the grounds that "the real basis for the Petitioner's desire for amendment of the certification is an effort to attempt to shift the burden of potential liability in various matters of litigation, particularly those arising under various civil rights statutes." However, there is no substantial evidence that the Petitioner's purpose in seeking amendment is to shift potential liability or that the proposed amendment would have such effect. Consequently, for those reasons alone, we find the Employer's contention in this regard to be without merit.

plicable regardless of which entity—the International or the local—is actually certified as the bargaining representative. Nor do the services which the International provides to its locals in the area of grievance processing depend on which entity is actually certified as the bargaining representative.

Finally, Dunleavy testified that the International's constitutional requirement that any local strike or work stoppage be approved in advance by the International itself is binding on all locals regardless of whether the International or the local is certified as the bargaining representative. Consequently, we find little substance in the Employer's contention that the requested amendment will result in a lessening of the International's influence on, and control of, bargaining and other representational matters. In that regard there will be no change, and the amendment's effect will be no more than recognizing the Locals' *de facto* status as the exclusive bargaining representative, a status resulting from the parties' own past practice, contractually sanctioned by the Employer. Furthermore, the unit employees also have sanctioned the established status of the Locals as their bargaining representative not only by acquiescing in the Locals' principal role in negotiations and administration of bargaining agreements, but also by ratifying contracts recognizing the Locals as their bargaining representative.

Accordingly, we conclude that a substitution of the Locals for the International as the certified bargaining representative is proper as it will not constitute a change in the actual bargaining representative⁶ nor in any manner break the continuity of the bargaining relationship between the Employer and unions created over the past 30 years.⁷

In reaching this conclusion, we have considered the Employer's contention that the union meetings held on the proposed amendment were procedural-

⁶ See *Newark Stove Company*, 143 NLRB 583 (1962). In *Newark Stove*, the employer had entered into successive contracts with a local union affiliated with the international which was certified as the exclusive representative of the unit employees. Because of this history of employer bargaining with the local as the employees' bargaining representative, and since neither the employees nor the employer had objected to the local's representative role during this period of bargaining, the Board approved the substitution of the local for the international on the certification. Similarly, in the instant case the parties, including the employees, have through an extensive course of conduct—accorded *de facto* representative status to the Locals. Therefore, under *Newark Stove*, the instant amendment should be granted.

In so concluding, we distinguish *M. A. Norden Company, Inc.*, 159 NLRB 1730 (1966), cited by the Employer. In *Norden*, the attempted substitution of the local for the certified international occurred less than 4 months after the issuance of the original certification. Accordingly, there was no extensive course of conduct indicating employee sentiments concerning the substitution of the local for the international as the certified bargaining representative. Because there was no other evidence reflecting employee opinion on this matter, the Board denied the motion to amend the certification.

⁷ *Quemetco, Inc., a Subsidiary of RSR Corporation*, 226 NLRB 1398 (1976).

ly flawed. We need not resolve this issue, however, since the instant case concerns the substitution of local unions for an international with which they are affiliated, rather than a merger or affiliation. Accordingly, the cases cited by the Employer, which concern those latter situations, are inapposite. Further, the employees here by their past conduct have passed on the substance of the substitution question in a way which we believe accurately reflects their sentiments. Our belief in this respect is reinforced by the overwhelming vote recorded at the meetings in favor of the substitution.

In view of all the foregoing, we shall grant the petition to amend certification. This amendment is not, however, to be considered a new certification or a recertification.

ORDER

It is hereby ordered that the petition to amend the certifications filed by System Council U-10 of the Local Unions 140, 142, 144, 147, 148, and 149 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC, be, and it hereby is, granted, and that the Certifications of Representative in Cases 6-RC-64, 88, 89, 157, 158, 159, 415, 416, and 1815 be amended by substituting "International Brotherhood of Electrical Workers, Local Unions 140, 142, 144, 147, 148, and 149 of System Council U-10" for "International Brotherhood of Electrical Workers, AFL-CIO."

APPENDIX

Case: 6-RC-64

Date: July 13, 1948

Unit: All employees of the General Departments of the following Employers: Philadelphia Company, Equitable Real Estate Company, Equitable Sales Company, Duquesne Light Company, Allegheny County Steam Heating Co., Cheswick Harmar Railroad Co., Equitable Auto Company, Equitable Gas Company, Finleyville Oil and Gas Company, Philadelphia Oil Company, Pittsburgh and West Virginia Gas Co., W.D. George and Thomas Fitzgerald, Trustees for Pittsburgh Railways Company, W.D. George and Thomas Fitzgerald, Trustees for Pittsburgh Motor Coach Company, Kentucky West Virginia Gas Company, all of Pittsburgh, Pennsylvania, *excluding* executives; the following classifications in the Accounting Department—Chief Inventory Inspector, Chief Invoice Clerk, Stenographer to the Head of the Payroll Division, Head Cash Receipts Clerk, Head Payroll Clerk, Tax Accountants, Billing Group Instructor, Head of Stenographic Section, Elimination Accountant, Financial Forecast Accountant, Consolidating Accountants, Statistical Record Accountant, Stenographer to the General Auditor, General Accountant (Statistical Division), S.K.C. Reports Accountant, General Clerk (Controller's Office), Head Distribution Clerk, Chiefs of Property Records, Special Report Analysts, Stenographer to Manager (Valuation and Property Records), Property Cost

Engineer, Chiefs of Construction Costs; also excluding the following classification in the Advertising Department—Copywriters; also excluding the following classifications in the Law Department—Surveyors, Legal Stenographers, Legal Records Clerk; also excluding the following classifications in the Personnel Department—Nurses, Dental Hygienist, Librarian, Personnel Report Clerk, Personnel Record Clerk, Group Insurance Clerk, Statistical Clerk Personnel, Safety Inspector, APR Clerk; also excluding the following classifications in the Sales and Service Department—District Service Representatives, Lead Stenographer to Manager of Rate Department, Stenographer to Manager of General Service Department; also excluding the following classifications in the Treasury Department—Chauffeur Guard and Relief Men, Head Teller, Collectors Traffic Receipts, Stenographer to Assistant Treasurers; also excluding all guards, professional employees and supervisors as defined in Section 2(11) of the Act, as amended.

Case: 6-RC-88

Date: June 4, 1948

Unit: All production, maintenance, transmission and distribution employees of the Duquesne Light Company, Pittsburgh, Pennsylvania, excluding executives, mines employees, construction employees, clerical and technical employees, and guards, professional employees and supervisors as defined in Section 2(11) of the Act, as amended.

Case: 6-RC-89

Date: July 14, 1948

Unit: All office, clerical and technical employees of the Duquesne Light Company, Pittsburgh, Pennsylvania, *excluding* executives, mine employees, student engineers, sales and service employees, wiring inspection representative, construction work dispatcher, general clerk of General Stores Department, senior general clerk of Substation and Shops Department, secretary and/or stenographer to general superintendent of power stations, general superintendent of distribution, chief engineer, structural engineer, general superintendent of system operations, special representative, technical assistant to vice-president in charge of operations; storekeepers, warehouse foremen, chief load dispatchers; senior engineers (Distribution Department); division line engineers, cable plant engineers, material engineers (Distribution Department); radio interference engineer, street lighting engineer, senior design engineer, junior design engineer (except substations and shops); project engineers, design engineers, development engineers, senior development engineers, junior development engineers, operating schedule engineer, efficiency engineers, technical analysis engineer, junior test engineers, senior test engineers, test

engineers, metallurgist, chemists, chemical engineers, field laboratory supervisor, metallurgical engineer, equipment engineer, senior design engineer, junior T.R. test engineer, senior T.R. test engineer, junior engineers, technical assistant (system operations), head janitor-watchman, watchmen, guards, professional employees and supervisors as defined in Section 2(11) of the Act, as amended.

Case: 6-RC-157

Date: July 13, 1948

Unit: All production, maintenance and distribution employees of Allegheny County Steam Heating Company, Pittsburgh, Pennsylvania, but excluding executive clerical, technical employees, guards, professional employees and supervisors as defined in Section 2(11) of the Act, as amended.

Case: 6-RC-158

Date: July 13, 1948

Unit: All employees of Equitable Auto Company, Pittsburgh, Pennsylvania, excluding executives, clerical employees, guards, professional employees and supervisors as defined in Section 2(11) of the Act, as amended.

Case: 6-RC-159

Date: July 13, 1948

Unit: All clerical employees of Equitable Auto Company, Pittsburgh, Pennsylvania, excluding executives, engineers, guards, professional employees and supervisors as defined in Section 2(11) of the Act, as amended.

Case: 6-RC-415

Date: September 29, 1949

Unit: All employees of the Equitable Real Estate Company, Pittsburgh, Pennsylvania, excluding executives, watchmen and guards, professional employees and supervisors as defined in Section 2(11) of the Act, as amended.

Case: 6-RC-416

Date: September 29, 1949

Unit: All construction, maintenance, operating and clerical employees of the Telephone Department of Equitable Gas Company, Pittsburgh, Pennsylvania, excluding executives, crew foremen and guards, professional employees and supervisors as defined in Section 2(11) of the Act, as amended.

Case: 6-RC-1815

Date: August 20, 1956

Unit: All stenographers and clerks in the Residential Sales Department, Commercial Sales Department, Industrial Sales Department and Municipal Sales Department, and in the Vice President's office, of the Sales Division [of the Duquesne Light Company, Pittsburgh, Pennsylvania].