The Cincinnati Gas and Electric Company, Employer-Petitioner and United Steelworkers of America, AFL–CIO–CLC *and* Local Union 1347 of the International Brotherhood of Electrical Workers, AFL–CIO–CLC. Case 9–UC–131

March 28, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on October 29 and 31 and November 1 and 3, 1977, before Hearing Officer Donald Hordes. On December 12, 1977, the Regional Director for Region 9 transferred this case to the Board for decision. Thereafter briefs were timely filed by the Employer and both Unions.

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.

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:

The Employer is an Ohio corporation engaged in providing gas and electric utility services for industrial and residential customers from its Cincinnati, Ohio, facility. The Employer is party to separate contracts with Local Union 1347, International Brotherhood of Electrical Workers, AFL–CIO–CLC, hereinafter called IBEW, and with the United Steelworkers of America, AFL–CIO–CLC, hereinafter called Steelworkers. The most recent agreement between the Employer and IBEW is effective from April 1, 1976, until April 1, 1979, and the current contract between the Employer and Steelworkers is effective from May 15, 1976, until May 15, 1979. Although there are specific job classifications covered by each contract, the IBEW represents essentially the Employer's electric department employees and the Steelworkers represents the gas department employees.

Historically, the Employer used the electric department employees, represented by IBEW, to disconnect and reconnect electric services and its gas department employees, represented by Steelworkers, to disconnect and reconnect gas services. The work has at all times been covered by the applicable collective-bargaining contracts between the Employer and the two Unions. As many customers use both gas and electric services, the Employer was often required to dispatch two employees to disconnect and reconnect such services when one employee could easily have performed both tasks.

The Employer, during the life of the current collective-bargaining contracts, sought the right to modify periodically the work assignments by assigning connects and disconnects of electric meters to gas department employees and by assigning connects and disconnects of gas meters to electrical department employees. However, no agreement was reached among the parties as to how this might be accomplished. Finally, in June 1977, the Employer advised the two Unions that it intended to create a new classification, *premise mechanic,* to perform the work of disconnecting and reconnecting both gas and electric services. The Employer offered to discuss the matter with the two Unions and indicated its willingness to assign a certain number of employees in the new classification to each bargaining unit.

The IBEW objected to the Employer's decision to create the new classification and refused to discuss the matter. The Employer contends, contrary to the Steelworkers, that the Steelworkers agreed to represent the employees in the new classification. The record is not clear on this point. In any case, the Employer proceeded to place the classification in the Steelworkers unit and filed the instant petition to clarify the Steelworkers unit to specifically include it.

Both Unions have filed grievances and are seeking arbitration under their respective contracts. The IBEW filed an action in Federal district court to compel arbitration. The court has declined to proceed because of the pendency of this unit clarification proceeding.

The Steelworkers contends that the petition must be dismissed on the grounds that its contract with the Employer does not include the premise mechanic classification, that it was denied the right to bargain concerning the terms and conditions of employment of the employees in that classification, and that the petitioned-for clarification would negate the terms and conditions of the current contract between the parties.

The IBEW contends that the petition should be dismissed on the ground that the work being performed by the premise mechanics is covered by the contracts the Employer has with the Unions and that there is no new work to be performed by a newly created classification. It asserts that the matter is really a jurisdictional dispute and that the Employer is attempting to use the instant clarification petition to assign work within its jurisdiction to the Steelworkers. In the alternative, the IBEW asserts that since grievances have been filed with regard to the Employer's action in creating the premise mechanic classification and assigning it to the unit represented

by the Steelworkers, the Board should defer the matter to arbitration pursuant to its deferral policy.[1]

The Employer contends that the matter is properly before the Board and that the Steelworkers unit should be clarified to include the premise mechanic classification. The Employer cites various cost, regulatory, and efficiency factors that necessitated creation of the "new" classification. It especially relies on the fact that there have been numerous customer complaints made to it and to the Public Utility Commission of Ohio concerning the necessity for customers to receive two separate servicemen often arriving at different times. It contends that the collective-bargaining agreements do not prohibit the creation of new job classifications. The Employer, citing *McDonnell Company,*[2] argues that the controversy in this case is a unit issue arising from creation of a new job classification in response to changes in its business and that the Board must exercise its responsibilities under Section 9 of the Act, take jurisdiction, and decide the matter. It further argues that the new classification more properly belongs in the gas department unit because (1) the gas portions of the job are more complex and demanding than the electrical protions; (2) certain classifications of employees in the gas unit have in the past performed both gas and electric work; and (3) the Steelworkers agreed to the inclusion of the classification in its bargaining unit.

We agree with the contentions of the Unions herein that the issue dividing the parties is that of work assignment and not an ambiguity with respect to the representation of employees. Under the guise of clarification the Employer is seeking to remove certain duties normally performed by electric department employees from their jurisdiction and place them under the jurisdiction of the gas department. As the Board held in *The Gas Service Company:*[3]

> [W]ork assignment disputes are not properly matters for consideration and resolution in a representation proceeding. As the Board has said, its sole function in representation proceedings is to ascertain and certify the name of the bargaining representative, if any, that has been designated by the employees in the appropriate unit. It is not the Board's responsibility in representation proceedings to decide whether employees in the bargaining unit are entitled to do any particular work or whether an employer has properly reassigned work from employees in the bargaining unit to other employees.

In our view, the instant case, unlike *McDonnell Company, supra,* does not present a unit issue resulting from an enlargement or extension of the Employer's operations. There are no new types of equipment, duties, or processes involved. The Employer has simply decided to rearrange the assignment of existing work.

Since we have concluded that the issues in this case are not properly before the Board in this proceeding, there is no basis on which to retain jurisdiction pending arbitration.

We conclude that we do not have the authority in this proceeding to determine the work assignment issues posed by this case.[4] Accordingly, we shall dismiss the petition.

ORDER

It is hereby ordered that the petition for clarification filed herein be, and it hereby is, dismissed.

[1] *Collyer Insulated Wire, A Gulf and Western Systems Co.,* 192 NLRB 837 (1971).

[2] 173 NLRB 225 (1968).

[3] 140 NLRB 445, 447 (1963).

[4] *T.I.M.E.-DC, Inc.,* 225 NLRB 1175 (1976); *Commonwealth Gas Company,* 218 NLRB 857 (1975); *Pacific Northwest Bell Telephone Company,* 211 NLRB 1021 (1974).