

In the Matter of BLACK HILLS POWER AND LIGHT COMPANY and
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCALS 560 & 560B,
AFL

Case No. 18-R-796.—Decided October 9, 1943

Messrs. Tom Eastman and J. B. French, of Rapid City, S. Dak., for the Company.

Mr. A. J. Alberg, of St. Paul, Minn., and Mr. James E. Taylor, of Rapid City, S. Dak., for the Union.

Miss Olive N. Barton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, Locals 560 and 560B, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Black Hills Power and Light Company, Rapid City, South Dakota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Rapid City, South Dakota, on August 31, 1943. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Black Hills Power and Light Company is a South Dakota corporation with its principal office and place of business at Rapid City, 52 N. L. R. B., No. 216.

South Dakota. It is engaged in the generation, distribution and sale of electrical energy, and the sale of electrical appliances. It has 7 plants which serve Pennington, Custer, Fall River, Meade, Butte, and Lawrence counties, South Dakota. Only the Diesel plant at Provo, South Dakota, which is connected by a 9-mile transmission line with the Edgemont plant at present used only for emergency power, is involved in this proceeding. The 5 other plants are connected with each other by means of transmission lines. The Company has a total of 118 employees, including 16 operators and 6 firemen, who are in training to be operators. The Provo plant is still under construction under a contract with the United States Government to supply energy to the Black Hills Ordnance Depot located near Provo. Of the 2,532,789 K. W. H. produced at Provo during the operation period of 8 months ending July 31, 1943, more than 90 percent, or 2,526,005 K. W. H., was sold to the United States Government, which by the terms of the contract has the first right to all the power generated at that plant. Of the excess energy which may by the terms of the contract be sold to other customers, 1,707 K. W. H. was sold to the Chicago, Burlington and Quincy Railroad Company and 5,077 K. W. H. to telephone companies during the period in question. All of these companies are engaged in interstate commerce. About 10 percent of the current generated at Provo was used to supply local residences and private consumers.

During the calendar year ending July 31, 1943, which included the 8 months of operation of the Provo plant, the Company purchased fuel oil for its Diesel plant from the Socony Vacuum Company at Aberdeen, South Dakota, amounting to \$12,390; the ultimate source of the oil was Casper, Wyoming. Other operating supplies purchased for the Provo plant during that period and used for generating and operating equipment, including the building and foundation of the plant amounted to approximately \$320,000. About 90 percent of this originated outside the State of South Dakota. Although the Company contends that its operations are exclusively intrastate in character because it runs no transmission lines across State lines, buys no electric energy from concerns operating outside the State, sells most of its product to the United States Government, and none of the Provo plant's power actually goes into interstate commerce, it is clear that industrial strife in the Provo plant would directly affect commerce since its power is supplied to a number of instrumentalities of interstate commerce. In addition to this, oil and other supplies are shipped in from points outside the State. We find that the Company is engaged in commerce within the meaning of the Act.¹

¹ See *Consolidated Edison v. National Labor Relations Board*, 305 U. S. 197; *Savannah Electric Power Company*, 38 N. L. R. B. 47.

II. THE ORGANIZATION INVOLVED

International Union of Operating Engineers, Locals 560 and 560B, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 22, 1943, the Union, claiming to represent a majority, requested recognition as the exclusive bargaining agent for all operating engineers of the Company at its Provo, South Dakota, plant. On June 25, 1943, the Company refused to recognize the petitioner until it had been certified by the Board.

A statement of the Regional Director introduced into evidence at the hearing, indicates that the Union represents a substantial number of the employees in the unit hereinafter found appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union contends that all operating engineers at the Provo plant of the Company, including swing operators, but excluding the superintendent and the chief engineer constitute a unit appropriate for collective bargaining. The Company contends that the single plant unit is not appropriate. If, however, the Board should reject this contention, the Company agrees with the Union's proposed unit. The Board has often found a single plant to be an appropriate unit where, as here, the different plants are almost completely separated, and the employees in the unit contended for are the only ones organized.³

We find, accordingly, that all operating engineers, including swing operators, employed by the Company at its Provo, South Dakota, plant, but excluding the superintendent and chief engineer, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

² The Regional Director reported that the Union submitted 5 cards all of which bore apparently genuine original signatures; that the names of 3 persons appearing on the cards were listed on the Company's pay roll of August 13, 1943, which contained the names of 4 employees in the appropriate unit; and that the cards were dated in February and July 1943.

³ See *Matter of Michigan Gas and Electric Company*, 46 N. L. R. B. 443; *Southern California Gas Company*, 31 N. L. R. B. 461; *Appalachian Electric Power Company*, 38 N. L. R. B. 630.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot. The parties agreed that eligibility to vote should be determined by reference to the pay roll for the period ending August 31, 1943. However, we perceive no reason for departing from our customary practice. Accordingly the election will be among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Black Hills Power and Light Company, Rapid City, South Dakota, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by International Union of Operating Engineers, Locals 560 and 560B, AFL, for the purposes of collective bargaining.