

In the Matter of ROCKLAND LIGHT & POWER Co., INC., and UTILITY
WORKERS ORGANIZING COMMITTEE, LOCAL 251, CIO

Case No. 2-R-4195.—Decided November 22, 1943

Mr. Arthur E. Goddard, of Brooklyn, N. Y., and Mr. F. L. Lovett,
of Nyack, N. Y., for the Company.

Mr. Eugene J. Teeter, of New York City, for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Utility Workers Organizing Committee, Local 251, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Rockland Light & Power Co., Inc.,¹ Nyack, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John J. Cuneo, Trial Examiner. Said hearing was held at Nyack, New York, on October 13, 1943. The Company and the Union appeared, participated, and 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 opportunity to file briefs with the Board.

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

FINDINGS OF FACT

THE BUSINESS OF THE COMPANY

Rockland Light & Power Co., Inc., is a New York public utility corporation, having its principal office and place of business at Nyack, New York. The Company is engaged in the generation, purchase,

¹ At the hearing the Trial Examiner amended all pleadings to conform with this, the correct corporate name.

sale, and distribution of electricity and natural gas. It operates a steam plant at Hillburn, New York, and four hydro-generating stations, two of which are located at Lumberland and two at Forestburg, New York: These are known as the Cuddebackville, Monogaup, Rio, and Swinging Bridge Plants. It also owns and operates three plants for the manufacture of gas located at Nyack, Middletown, and Port Jervis, New York. The Company operates a system of electric lines and gas mains for the transmission and delivery of electricity and gas in the States of New York, New Jersey, and Pennsylvania. Branch offices are maintained at West Nyack, Pearl River, Suffern, Spring Valley, Haverstraw, Port Jervis, and Wurtsboro, New York. Stores and service buildings are maintained at West Nyack, Hillburn, Middletown, and Port Jervis, New York.

The principal raw materials purchased by the Company for use in its business are coal, coke, gas oil, lubricating oil, and natural gas. It also purchases for use in its operations, wire, poles, cross arms, and other electrical transmission and distribution supplies and equipment, and gas pipe and fittings for its gas transmission and distribution system. During the yearly period ending August 31, 1943, the Company purchased raw materials valued in excess of \$285,000, all of which were shipped to it from places outside the State of New York. During the same period, approximately 31,000,000 kilowatt hours of electricity, valued in excess of \$123,000, or 25.4 percent of the total electric energy generated and purchased by the Company, was sold, transmitted, and delivered to consumers outside the State of New York. During the period aforesaid, the Company purchased and received from outside the State of New York 18,000,000 kilowatt hours of electricity, valued in excess of \$97,000 or 14.5 percent of the total electric energy generated and purchased by the Company.

For the purposes of this proceeding, the Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Utility Workers Organizing Committee, Local 251, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the employees in the physical force of its Western Division until the Union has been certified by the Board in an appropriate unit.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of 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 parties are in agreement that the employees of the physical force of the Company's Western Division constitute a unit appropriate for the purposes of collective bargaining. The Union would include subforemen in that unit. The Company contends that subforemen are supervisory employees and should be excluded.

There are four subforemen employed by the Company in its Western Division. One of these is really an acting foreman in charge of the "hot line crew" which performs work in connection with transmission lines. He spends more than 95 percent of his time in supervision. Except for the fact that he is classified as and receives the wages of a subforeman, he has all of the rights and privileges of a foreman. Another subforeman is the Company's "troubleman." Upon information that the Company's equipment is not functioning properly, he investigates the cause of the trouble and remedies it, either alone or with a crew under his supervision, depending upon the requirements of the job. The other two subforemen work as first-class linemen in crews supervised by foremen. They spend on an average of 2 to 4 hours a week in supervisory duties consisting of acting as foreman of any group they may be working in in the absence of the foreman. This situation is generally brought about by the splitting of a crew into sections, one supervised by the foreman and each of the others by a subforeman. When the foreman is ill or on vacation, the subforeman supervises an entire crew. When they are acting as foremen, they have all the privileges and authority of foremen including the right summarily to discharge employees who, in a place of danger, refuse to respond to supervision. All of the subforemen, including the acting foremen of the "hot line crew," are paid an hourly wage which is more than that paid a first-class lineman but less than that paid a foreman. Although they are included in the bargaining unit

² The Regional Director reported that the Union submitted 33 application-for-membership cards all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's payroll of September 7, 1943, which contained the names of 50 employees in the appropriate unit; that the cards were dated between May and August 1943.

in the Company's Eastern Division,³ we find that the subforemen are supervisory employees and shall exclude them from the unit.⁴

We find, in substantial accord with the stipulation of the parties, that all employees of the Company's Western Division in the following departments: setters and testers in the meter department; linemen, groundmen, chauffeurs, laborers in the line department; gas fitters and service men in the gas department; service men in the electrical appliance, installation, and repair department; collectors in the collection department, and floorman in the garage, but excluding all guards, all electrical maintenance men at the hydroelectric plants, all hydroelectric operators and hydroelectric maintenance men at the hydroelectric plants, subforemen 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.⁵

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot 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.

The Company employs two classes of employees whom it classifies as temporary. One is composed of persons who are hired to do a specific job and leave the employ of the Company when the job has been completed. Both parties agree that these employees should not be eligible to vote in the election. The other type of temporary employee is hired to fill a permanent position but serves a probationary period of 3 months before he is eligible to participate in the Mutual Employees Benefit Association. They have all other privileges of employees except vacation and sick leave with pay. The Union would allow these employees to participate in the election but the Company is of the opinion that they should not be eligible. Inasmuch as their problems and interests, their hours, working conditions, and super-

³ Inclusion of subforemen in the Company's Eastern Division bargaining unit was by agreement of the parties and not by Board direction. The question of the status of these employees has not heretofore come before the Board. See *Matter of Rockland Light and Power Company*, 49 N. L. R. B. 1398.

⁴ See *Matter of Milwaukee Gas Light Company*, 52 N. L. R. B. 1213.

⁵ In our decisions concerning other units of employees of this Company, namely, *Matter of Rockland Light and Power Company*, 35 N. L. R. B. 542, and *Matter of Rockland Light and Power Company*, 49 N. L. R. B. 1398, we stated that our determination that small units within the system were appropriate for collective bargaining did not prejudice a later finding of the appropriateness of a system-wide unit at a time when all of the employees of the Company shall have been organized. We here reiterate that statement.

vision are akin to those of the employees in the appropriate unit, we find that the probationary employees are eligible to participate in the election.⁶

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 Rockland Light & Power Co., Inc., Nyack, New York, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the the date of this Direction, under the direction and supervision of the Regional Director for the Second 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 any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Utility Workers Organizing Committee, Local 251, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

⁶ See *Matter of Nineteen Hundred Corporation*, 32 N. L. R. B. 327