

In the Matter of KENTUCKY UTILITIES COMPANY and LOCAL 224,
UNITED CONSTRUCTION WORKERS, AFFILIATED WITH U. M. W. A.

Case No. 9-R-1215.—Decided December 10, 1943

Messrs. William H. Townsend, Gayle A. Mahoney, and E. W. Brown, of Lexington, Ky., and Mr. Logan Patterson, of Pineville, Ky., for the Company.

Mr. Harry Livingston, of Harlan, Ky., for the Union.

Miss Melvern R. Krelow, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by Local 224, United Construction Workers, affiliated with U. M. W. A., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Kentucky Utilities Company, Lexington, Kentucky, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William I. Shooer, Trial Examiner. Said hearing was held at Pineville, Kentucky, on November 10, 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. At the hearing the Company filed a motion to dismiss the petition on the ground that the unit sought herein by the Union is inappropriate. The Trial Examiner reserved ruling. For reasons hereinafter set forth, the motion is hereby denied. After the hearing was concluded, the Company filed a motion to correct the transcript in certain minor particulars. The Union objected on the ground that the motion was untimely filed. We find the objection to be without merit. The motion is hereby granted. All parties were afforded opportunity to file briefs with the Board.

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

53 N. L. R. B., No. 232.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Kentucky Utilities Company, a Kentucky corporation, is engaged in supplying electric, gas, water, ice, and bus service in the State of Kentucky. Old Dominion Power Company, Dixie Power & Light Company, and South Fulton Light & Power Company are subsidiaries of the Company. The Company's power lines extend into the State of Tennessee; Old Dominion Power Company's lines extend into the State of Virginia; Dixie Light and Power Company services the eastern portion of the State of Tennessee, and South Fulton Light and Power Company services the western portion of the State of Tennessee. During 1942, the total sales of electric energy was 588,540,000 kilowatt hours, of which 73,415,000 kilowatt hours were delivered to points outside the State of Kentucky.

II. THE ORGANIZATION INVOLVED

Local 224, United Construction Workers, is a labor organization affiliated with the United Mine Workers of America, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 21, 1943, the Union notified the Company that it represented a majority of the Company's employees in the unit it claimed to be appropriate and requested a conference for the purpose of negotiating a contract. The Company refused to recognize the Union until certified by the Board.

A statement of a Field Examiner of the Board introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit it claims to be appropriate.¹

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 National Labor Relations Act.

IV. THE APPROPRIATE UNIT

The Union contends that all production and maintenance employees in the Mountain Division of the Company,² including all working

¹ The Field Examiner reported that the Union presented 94 cards, 93 of which bear apparently genuine signatures. Of the 94 cards submitted, 92 bear the names of persons whose names appear on the Company's pay roll of October 21, 1943, which contained the names of 166 persons in the unit hereinafter found to be appropriate. The 92 cards were dated as follows: 88 between July and October 1943; 4 undated.

² Employees of Old Dominion Power Company which, as heretofore stated, is a subsidiary of the Company, and employees of Old Dominion Ice Corporation, which is owned by Old Dominion Power Company, are considered part of the Mountain Division, and are under the jurisdiction of the Division manager.

foremen, but excluding superintendents, office and clerical employees, military guards, and any person having the authority to hire and discharge, constitute an appropriate unit.³ The Company generally takes no position with respect to the specific composition of the unit, but maintains that only a system-wide unit is appropriate.

In 1938, the Board found appropriate a unit consisting of all employees in the gas, water, electric, and ice departments, of the Middle West Corporation, Kentucky Utilities Company, Kentucky Power & Light Company, and Old Dominion Power Company, with specified exclusions, and directed an election therein.⁴ This unit was the one sought by the Union, which, as here, was the only labor organization involved. The Union lost the election. The Union's contention herein is that the Mountain Division is an appropriate collective bargaining unit because it is substantially independent of the other divisions and because the Union, which is the only organization involved, has disclosed evidence of substantial membership only in the Mountain Division.

The Company's main office is located in Lexington, Kentucky, where its general policies are determined and the executive control to the Company is centered. For managerial and operating purposes, the Company's system is separated into 5 geographical divisions with the number of employees in the various divisions ranging from 152 to 270. Each division has a division manager as its administrative head. Within each division are districts, each district having an administrative head known as a district or local manager. The various operations within the division are in charge of certain supervisory officials. The division managers, before hiring or discharging employees within the divisions, must secure authorization from the main office in Lexington. In emergencies, the division managers may hire people to work in their divisions on a temporary basis without first obtaining such authorization. All employees are engaged in similar duties throughout the system. The wages and hours of work of all employees throughout the system are similar. While there are occasional transfers of employees from one division to another, the duties, responsibilities, and functions of employees within each division are principally confined to that division.

In our Decision issued January 6, 1943,⁵ affecting the Central Division of the Company, the facts of which are similar to those contained herein, we stated, "that although a system-wide unit, as urged by the Company, would not be inappropriate, the record shows that the

³ The Union desires the exclusion of persons who are employed by various coal companies and who engage in emergency work only for the Company. They are carried on a temporary pay roll of the Company. We conclude that these employees are temporary employees and accordingly are not eligible to vote in the election hereinafter directed.

⁴ See *Matter of The Middle West Corporation et al.*, 10 N. L. R. B. 618.

⁵ *Matter of Kentucky Utilities Company*, 46 N. L. R. B. 818.

employees in the Central Division are an integrated and identifiable group and can effectively function as a unit for the purposes of collective bargaining, pending more complete organization in the other divisions." No convincing argument has been presented in the instant proceeding which would impel us to depart from such finding. We find, accordingly, that a unit limited to employees in the Mountain Division is appropriate. Our finding in this respect, however, does not preclude a later determination that a larger unit is appropriate when effective organization has extended to employees in other parts of the Company's system.⁶

The Union contends that all working foremen should be included in the unit. The following classifications appear to fall within that category:

Electrical foreman, Pineville District: This employee is in charge of the maintenance of electrical equipment. He has from two to three helpers with whom he works. He does not have the authority to hire, discharge, promote, or discipline such helpers. We find that the electrical foreman is not a supervisory employee; we shall include him within the unit.

Service foremen: There are seven service foremen in the division, who are senior servicemen in the districts where they are employed. They perform service work, and direct the work of from one to four servicemen. Since it does not appear that they have authority to effect changes in the status of the servicemen under their direction, we shall include them within the unit.

Superintendent of ice plant—Middlesboro District: The ice plant employs five employees; the superintendent works to the same extent as do the other four employees. However, he is in charge of the plant and, so far as the record shows, his authority to effect changes in the status of the employees under his direction is no less than that exercised by other superintendents in the division who concededly are supervisory employees. We shall exclude him from the unit.

Line Foremen—London and Norton Districts: These employees have charge of crews of three and four employees, respectively, and perform duties which are substantially the same as those of the crew members. The record indicates that the only difference between these line foremen and other employees who have the same classification and who are concededly to be supervisory employees, is that because of the small size of their crews they work with the linemen under their supervision. We find that the two line foremen in question are supervisory employees, and we shall exclude them from the unit.

⁶ *Matter of Southern California Gas Company*, 31 N. L. R. B. 461; *Matter of Oklahoma Gas & Electric Company*, 42 N. L. R. B. 750. Cf. *Matter of Pacific Gas and Electric Company*, 44 N. L. R. B. 665.

At the hearing the Union moved to amend its petition to exclude the six guards employed by the Company. Since it appears that they are members of the auxiliary military police, we shall in accordance with our usual policy,⁷ exclude them from the unit.

We find that all employees of the Company, including employees of Old Dominion Power Company and Old Dominion Ice Corporation, in the Mountain Division, the electrical foreman—Pineville District, and the service foremen, but excluding all office and clerical employees, militarized guards, the superintendent of the ice plant—Middlesboro District, line foremen—London and Norton Districts, 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 an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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 our Direction of Election, subject to the limitations and additions set forth therein.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Kentucky Utilities Company, Lexington, Kentucky, at its Mountain Division, 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 Ninth 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

⁷ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

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 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 Local 224, United Construction Workers, affiliated with U. M. W. A., for the purposes of collective bargaining.

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