

In the Matter of MISSOURI UTILITIES COMPANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, LOCAL UNION B-702

Case No. 14-R-766.—Decided December 24, 1943

Mr. R. B. Oliver, Jr., of Cape Girardeau, Mo., for the Company.

Messrs. J. O. Jones and H. E. Nunn, of West Frankfort, Ill., for the Union.

Misses Muriel J. Levor and Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Brotherhood of Electrical Workers, AFL, Local Union B-702, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Missouri Utilities Company, Cape Girardeau, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Keith W. Blinn, Trial Examiner. Said hearing was held at Cape Girardeau, Missouri, on October 14, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Company made a motion to dismiss the petition alleging the Union's failure to show substantial interest up to the time of the hearing. Ruling was reserved to the Board. The motion is hereby denied for reasons hereinafter set forth.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Missouri Utilities Company, a Missouri corporation with its principal office at Cape Girardeau, Missouri, is engaged in the manufacture

and distribution of electrical energy, gas, light, and water. The Company, formerly a subsidiary of Community Power & Light Company, was reorganized in accordance with an order of the Securities and Exchange Commission, and is now an independent utility with its stock held in substantially all the States of the United States. During the year 1942 the Company purchased 41,332 tons of coal and 16 carloads of oil, which were shipped from points outside the State of Missouri; household appliances valued at \$46,427 and service equipment valued at approximately \$86,644, of which the major portion was shipped from points outside the State of Missouri; and natural gas valued at \$121,209, which originated in the State of Texas. The Company's total revenue during the year 1942 amounted to \$1,818,639, of which \$1,316,000 was received from the sale of electrical energy. Among the Company's customers are such instrumentalities of interstate commerce as the "Frisco," Missouri Pacific and the Cotton Belt Railroads, Ozark Trails Bridge Company, Western Union Telegraph Company, Southeastern Missouri Telephone Company, and Radio Station KFBS. The Company also numbers among its customers United States Government Post Offices and aircraft landing fields, and numerous firms engaged in interstate commerce.

The Company admits, and we find, that it engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local Union B-702, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated August 13, 1943, the Union asserted a claim to represent a majority of the Company's production, construction, and maintenance employees, and requested a conference for collective bargaining purposes. The Company refused to recognize the Union as the bargaining agent of its employees on the ground that it does not represent a majority of them.

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.¹

¹The Regional Director reported that the Union submitted 56 designations, of which 50 bore apparently genuine original signatures corresponding with names on the Company's pay roll of September 15, 1943, which contains 124 names. The Company argues that since the Union did not produce cards for a majority of its employees, it has not shown a substantial interest. There is no merit in this contention. See *Matter of James Doak, Jr., Co.*, 52 N. L. R. B. 378.

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 claims as appropriate for collective bargaining purposes a unit composed of the production, construction, and maintenance employees of the Company's Cape Girardeau Group, with certain inclusions and exclusions noted below. The Company contends that the Senath-Paragould Group should be included in the unit, or, in the alternative, that the employees at Senath should be included, excluding the Paragould employees in accordance with the Union's claim that they do not come within its jurisdiction. The Union has limited its organizational efforts to the employees in the Cape Girardeau Group.

The Company operates four small systems of power stations and transmission lines called, respectively, the Western, the Central, the Cape Girardeau, and the Senath-Paragould Groups. The Company claims that the last two groups together constitute a single division known as the Southeastern Missouri Division. Both groups are under the general supervision of T. A. Martin, assistant general manager and division engineer, stationed at Sikeston, and L. A. Byron, chief production engineer, stationed at Cape Girardeau. However, employees with diverse titles, having authority which varies with the number of employees involved, exercise supervision over the employees at the sundry locations and plants which comprise the groups. Bills are issued from various localities for the surrounding area; Senath and Paragould are among these places. The Cape Girardeau Group is not physically connected by electric transmission lines to the Senath-Paragould Group; the closest point between the transmission lines of these two groups is 39 miles; the closest point between locations where employees are regularly stationed is 53 miles. Although the electric energy in the Cape Girardeau Group is produced by the Company at various electric generating plants located within that group, the electric power for the Senath-Paragould Group is purchased from an outside source, the electric plant at Paragould being a reserve source used only during peaks. Cape Girardeau is in constant communication with other localities in that group; hourly signals are exchanged between the Cape Girardeau and Poplar Bluff plants by frequency control. There is no such connection system between the Senath-Paragould Group and the Cape Girardeau Group. There is little interchange of employees between the Cape Girardeau and Senath-Paragould groups. It appears that on only one occasion since 1927 did employees from Senath work at Cape Girardeau, and reverse

transfers are limited to the annual working of two meter testers from the Cape Girardeau Group at Senath for 2 weeks during the cotton season, and to rare emergencies amounting to four occasions during the 2-year period prior to the hearing. Employees in similar job classifications throughout the entire system have similar duties, and the same rules, policies, and benefits likewise are extended to all employees. From this record it is clear that the employees of the Cape Girardeau Group constitute an integrated and identifiable group, which can effectively function as a unit for the purposes of collective bargaining² pending organization of employees in other divisions. Under these circumstances, we find that a unit limited to the employees in the Cape Girardeau Group 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.³

The Union desires the exclusion from the unit of ice plant employees since they are within the jurisdiction of a different labor organization. The Company requests their inclusion on the ground that the distribution of electric energy is dependent on these employees. Gas and water department employees who have no connection with either the generation or distribution of electric power, are included in the proposed unit.

At Sikeston and Charleston the ice plant and the electric plant are housed in the same building. It appears that the ice plant employees are required to be qualified electricians. They operate electric circuits, and must be familiar with the plant switchboard, which they operate during emergencies. It would be necessary for the Company to maintain electricians for the purpose of doing the switching at the Sikeston plant irrespective of whether part of their time was employed in ice manufacturing. Certain of the ice plant employees work with the local line gangs during the winter months, or when their presence is not necessary at the ice plant. In connection with the ice plant itself, these employees must operate electric motors and other facilities. In view of these circumstances, we find that the work of the ice plant employees is integrated with the work of the regular electrical employees, and we shall accordingly include them in the unit.

The Company lists on its pay roll the following classifications which are customarily held to be supervisory. The Company contends, however, that the titles are given for long and meritorious service and do not carry with them supervisory authority. Both parties seek to include the employees so classified.

² In a former proceeding, *Matter of Missouri Utilities Company*, 43 N. L. R. B. 908, the Company urged the appropriateness of a unit coinciding with the Cape Girardeau Group.

³ *Matter of Central Maine Power Company*, 45 N. L. R. B. 328.

Boiler foremen electric. There is one employee classified as "boiler foreman electric," at Cape Girardeau, whose job consists largely of checking the boiler operations, the quantity of water, and the functioning of the automatic devices. He does not have authority over the firemen, although he may call the lowness of the water to a fireman's attention. He has no authority to change, or to recommend effectively changes in the status of fellow employees. We shall include the boiler foreman electric in the unit.

Foremen, line foremen, and "local managers." Foremen and line foremen work in company with and direct the activities of from three to six employees. They spend 75 to 80 percent of their time doing the work of linemen. The "local managers" at Lilbourn, Chaffee, and Fornfelt, do substantially the same work as foremen and line foremen. None of these employees has authority to change or to recommend effectively changes in the status of employees. However, each is the highest in authority in his own sphere of action. To the public and to the men working with him, he is the representative of management. We shall, therefore, exclude foremen, line foremen and all local managers from the unit.⁴

There are certain other employees of the Company classified as *chief operators, chief engineers, and chief plant engineers*, whom the Union seeks to exclude from the unit and the Company to include. Since they have authority to recommend effectively changes in the status of their fellow employees, we find that they are supervisory employees and we shall exclude them as such.

The Union seeks to exclude and the Company to include an employee classified as yardman and helper. Approximately 50 percent of this employee's time is spent in yard work and the remainder as janitor and general handy man. Since the unit sought by the Union is an industrial one, and since a substantial portion of the time of the yardman and helper is spent on work similiar to that of a general utility man, we shall include him within the unit.

We find that all production, construction, and maintenance employees of the Company's Cape Girardeau Group,⁵ including ice plant employees, the yardman and helper, and the boiler foreman electric, but excluding foremen and line foremen, all local managers including those stationed at Lilbourn, Chaffee, and Fornfelt, chief operators, chief engineers, chief plant engineers, and all supervisory employees having authority to hire, promote, discharge, discipline,

⁴ See *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733; *Matter of Virginia Electric & Power Co.*, 49 N. L. R. B. 1095; *Matter of Milwaukee Gas Light Co.*, 49 N. L. R. B. 1398; *Matter of Rockland Light & Power Co., Inc.*, 53 N. L. R. B. 798.

⁵ Cape Girardeau, Poplar Bluffs, Charleston, Sikeston, Fornfelt, Chaffee, Gordonville, Dutchtown, Ansell, Illmo, Delta, Kelso, Commerce, Benton, Oran, Morley, Blodgett, Vanduser, Bertrand, Anniston, East Prairie, Matthews, Canalou, Morehouse, Essex, Dexter, Bloomfield, Bernie, Townley, Parma, Catron, Lilbourn, Risco, Dudley, Fisk, and Crowder.

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.

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.

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 Missouri Utilities Company, Cape Girardeau, Missouri, 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 Fourteenth 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 International Brotherhood of Electrical Workers, AFL, Local Union B-702, for the purposes of collective bargaining.

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