

In the Matter of **EQUITABLE GAS COMPANY** and **DISTRICT 50, UNITED MINE WORKERS OF AMERICA**

Case No. 6-R-817.—Decided December 29, 1943

Reed, Smith, Shaw & McClay by *Mr. Virgil W. Thomas*, and *Mr. Chauncey Pruger*, of Pittsburgh, Pa., for the Company.

Mr. Yelverton Cowherd, of Washington, D. C., and *Messrs. Abe Vales* and *John W. Miller*, of Pittsburgh, Pa., 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 District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Equitable Gas Company, Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on November 9, 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

I. THE BUSINESS OF THE COMPANY

Equitable Gas Company, a Pennsylvania corporation with its principal office in Pittsburgh, Pennsylvania, is a subsidiary corporation whose stock is wholly owned by the Pittsburgh and West Virginia Gas Company, herein called the P. & W., which is a wholly owned subsidiary of The Philadelphia Company. The Company is engaged

in the production, transmission, and distribution of natural gas in southwestern Pennsylvania. During the 12-month period ending July 31, 1943, the Company produced or purchased 34,456,709,000 cubic feet of natural gas, approximately 80 percent of which was purchased from the P. & W. and was obtained from sources outside the Commonwealth of Pennsylvania. The P. & W. obtains about two-thirds of its supply of gas from the Kentucky and West Virginia Gas Company, another subsidiary of The Philadelphia Company. All of the Company's sales are made, and its product is distributed, within the Commonwealth of Pennsylvania. The Company and the P. & W. supply a substantial amount of their natural gas to companies and industries engaged in interstate commerce.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

District 50 United Mine Workers of America 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 its employees because it questions the appropriateness of the unit requested.

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

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

IV. THE APPROPRIATE UNIT

The Union requests a unit composed of all production and maintenance employees in Divisions G and H of the Company, which are both in Pennsylvania, and all employees at the Company's compressing stations in western Pennsylvania, excluding all clerical workers and supervisors.² The Company contends that all of the employees of the P. & W. exclusive of clerical and supervisory employees should be in-

¹ The Regional Director reported that the Union submitted 95 application for membership cards, all of which bore apparently genuine original signatures; that the names of 70 persons appearing on the cards were listed on the Company's pay roll of September 24, 1943, which contained the names of 148 employees in the appropriate unit; that the cards were dated in May, June, July, and August 1943.

² The employees of the Distribution Division (Divisions A, C, and E) of the Company are represented by the Union in a separate unit. The unit requested comprises all other employees of the Company employed in Pennsylvania except the telephone workers and the persons employed on behalf of the Company by The Philadelphia Company.

cluded with those above mentioned in an appropriate unit, and that temporary employees of both companies should be excluded.

The Company is licensed to operate only in Pennsylvania and operates to the West Virginia line; the P. & W. is licensed to operate only in West Virginia and operates to the Pennsylvania line. The companies are closely integrated in certain respects. They have the same president, vice president, and general manager. A man stationed in West Virginia supervises all compressor stations in both States; a man stationed in Pennsylvania controls all pressure by telephoning orders to pressure stations in both States. The same rules and regulations, hours and benefits, govern both companies. All hiring and discharging is initiated by supervisors in the respective companies but must be ratified by the central personnel department maintained by The Philadelphia Company for all of its subsidiaries. The companies work together toward the goal of supplying gas to the metropolitan area of Pittsburgh. This fact, together with the facts above stated, are elements tending to establish the appropriateness of the Company's proposed unit. The Company, however, is largely a distribution Company, servicing a large metropolitan area; the P. & W. is for the most part a transmission Company and operates in a rural area. For this reason there is a difference in both social and industrial problems to be met by the employees of the respective companies. There is very little interchange of employees between the two. Most of the transfers from one State to the other are between compressor stations or for construction work. The Union has organized only the employees of the Company. As the Company is an integrated unit separable from the P. & W. in respect to corporate structure, geographic division and nature of activity, we find that the employees of the Company may properly be segregated, for the purposes of collective bargaining from the employees of P. & W.³ This finding, however, does not preclude a later determination that a larger unit is appropriate when organization shall have extended to the employees of the P. & W.

The temporary employees whom the Company would exclude (and the Union would include) are for the most part construction workers. All persons performing jobs which the Company classifies as temporary are placed in this category irrespective of tenure. They are paid by the day; permanent employees are paid by the month. The Company has on its pay roll a number of temporary employees who have been continuously employed by it for more than a year. When vacancies occur among the permanent employees they are not necessarily filled by promotion of temporary employees to permanent status although the Company has made a point of giving these employees preference. Inasmuch as the temporary employees have a substantial

³ See *Matter of Missouri Utilities Co.*, Case No. 14-R-766, 54 N. L. R. B. 37.

expectation of obtaining permanent positions with the Company and since their periods of tenure, even as temporary employees, are of indefinite duration, sometimes more than a year, they have a definite interest in the wages, hours, and working conditions of the Company. Accordingly, we shall include them in the unit.⁴

We find that all production and maintenance employees of Divisions G and H of the Company, and all employees of the Company's compressor stations in western Pennsylvania,⁵ including temporary employees but excluding all clerical employees and all 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.

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 Equitable Gas Company, Pittsburgh, Pennsylvania, 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 Sixth 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 will 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

⁴ See *Matter of Smith-Wood Products Co*, 45 N. L. R. B. 787; *Matter of John Yasek*, 37 N. L. R. B. 156.

⁵ Waynesburg, Pa., and Bentleyville, Pa., Divisions; Kelly Dennison, Wise and Rogersville stations.

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 District 50, United Mine Workers of America, for the purposes of collective bargaining.

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