

In the Matter of: ROCHESTER GAS & ELECTRIC CORPORATION *and*
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL

Case No. 3-R-692.—Decided February 28, 1944

Goodwin, Nixon, Hargrave, Middleton, & Devans, by *Messrs. T. Carl Nixon and Arthur L. Stern*, of Rochester, N. Y., for the Company.

Mr. John P. Daly, of West Hempstead, Long Island, N. Y., and *Mr. Jerome Winterhalt*, for the Union.

Mr. Robert E. Tillman, 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, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Rochester Gas & Electric Corporation,¹ Rochester, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Rochester, New York, on January 12, 1944. 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

The Company moved at the hearing to dismiss the petition of the Union on the ground that the unit proposed therein was not appropriate. For the reasons stated in Section IV, *infra*, the motion to dismiss is hereby denied.

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

¹ In the formal papers of this proceeding, the Company is designated as "Rochester Gas & Electric Company." Its name appears in the caption and body of this decision as it was amended at the hearing.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Rochester Gas & Electric Corporation, a New York corporation, maintains its general offices and principal plants in Rochester, New York, where it is engaged in the production and distribution of electricity, gas, and steam. The area served by the Company includes the city of Rochester and its environs. Many of the consumers of its services are engaged in interstate commerce. The Company admits that it is subject to the jurisdiction of the Board.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

After filing its petition, representatives of the Union conferred with officials of the Company and representatives of the Board's Regional Office in an effort to obtain a consent election agreement. However, the Union and the Company were unable to agree on the appropriate unit.

A statement of a Field Examiner of the Board introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be 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

In its petition, the Union seeks a unit of all production and maintenance employees in the line maintenance, line operation, underground, and electric meter departments of the Company. At the hearing the Union clarified its position on the unit by stating that it desired to include all production and maintenance employees in the Electric Department of the Company who were engaged in the transmission or distribution of electric current after generation. The Company contends that all its production and maintenance employees below the rank of supervisor who are paid at an hourly rate constitute an appropriate unit.

² The Field Examiner stated that the Union submitted 87 application-for-membership cards to him, all bearing apparently genuine original signatures; and that 53 of the cards bore names of persons whose names appeared on the Company's pay roll of November 9, 1943, which listed 158 persons in the alleged appropriate unit.

The Company is divided into six departments, namely, Electric, Gas, Suburban, Transportation, General Maintenance, and Stores. The Electric Department, in turn, is subdivided into a generation division and a distribution and transmission division, each under the control of a separate superintendent. The unit, as requested by the Union, would include only employees of the latter division. The latter division comprises the following seven subdivisions: electric meter and testing, line operation, line maintenance, subway, mapping-records, station maintenance, and office. At the hearing the Union specifically indicated that the unit it sought included the employees of the first three of the above subdivisions and excluded the employees of the last four subdivisions.

The record is clear that the six departments of the Company function together as integral parts in the production and distribution of gas, steam and electricity, so that a company-wide unit of production and maintenance employees would be particularly appropriate for the purposes of collective bargaining. Moreover, the Union not only does not deny that such a unit is ultimately to be desired, but admits that in its organization of the Company's employees, its efforts were not confined to the employees in the distribution and transmission division of the Electric Department. On the other hand, the Company has no history of collective bargaining, and the divisions of its Electric Department, both administratively and from an operational standpoint, are clearly separable from other departments so that collective bargaining confined to the employees of one division would appear to be feasible. The Union has been successful only in organizing the employees of the distribution and transmission division. Under all the circumstances we are of the opinion that these employees should not be deprived at this time of their rights to bargain collectively under the Act, and we find, therefore, that they may comprise a unit appropriate for the purposes of collective bargaining. Our present determination does not preclude a later finding that a larger unit is appropriate when organization has extended more fully to other employees of the Company.

The precise scope of the appropriate unit within the distribution and transmission division of the Electric Department remains to be determined. As stated above, the Union seeks to include only the production and maintenance employees in the electric meter and testing, the line operation, and the line maintenance subdivisions. There is no question that the employees in those three subdivisions are engaged in production and maintenance work. Of the four subdivisions whose employees are not sought to be included in the unit by the Union, one is the office which consists of office and clerical employees and is, therefore, properly excluded from a production and mainte-

nance unit. Another is the mapping-records subdivision where records are maintained of the underground electric, gas, and steam lines constructed by the Company. The employees therein perform only work of a clerical nature and are, therefore, likewise properly excluded from a unit of production and maintenance employees. The remaining two subdivisions, i. e., the station maintenance and the subway subdivisions, pose a problem. The subway subdivision handles the construction, maintenance, and cleaning of underground subways in which cables are carried, and the installation of underground ducts. The station maintenance subdivision has as its function the examination and maintenance of electric apparatus in the gas and electric plants and stations. The record is not any more explicit on the work performed by the above two subdivisions. We find that, if there are employees in the two subdivisions performing work of the general nature described, they are maintenance employees and they should be included in the unit.

We find that all production and maintenance employees in the distribution and transmission division of the Electric Department of the Company, excluding employees of the office and the mapping-records subdivisions, and all supervisory employees having 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 payroll period immediately preceding the date of our Direction of Election herein, 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 Rochester Gas & Electric Corporation, Rochester, New York, 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 Third 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 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, for the purposes of collective bargaining.