

In the Matter of CONSUMERS POWER COMPANY and INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS, A. F. L., LOCAL UNION B-876

Case No. 7-R-1599.—Decided May 5, 1944

*Mr. Harold A. Crane*field, for the Board.

Mr. Wm. R. Roberts, of Jackson, Mich., for the Company.

Mr. M. Thomas Ward, of Grand Rapids, Mich., for the AFL.

Maurice Sugar and *Ernest Goodman*, by *Mr. Ernest Goodman*, of Detroit, Mich., for the CIO.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Electrical Workers, A. F. L., Local Union B-876, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Consumers Power Company, Jackson, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles W. Schneider, Trial Examiner. Said hearing was held at Detroit, Michigan, on March 7, 1944. The Company, the AFL, and Utility Workers Organizing Committee, CIO, herein called the CIO, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner reserved ruling on the motion of the CIO to dismiss the petition on the ground that (1) the *prima facie* showing of representation made by the AFL is insufficient, and (2) a contract between the CIO and the Company constitutes a bar to this proceeding. For reasons set forth below, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

The Company stipulated that the findings of the Board in *Matter of Consumers Power Company*, 9 N. L. R. B. 701, affirmed, 113 F. (2d) 38 (C. C. A. 6), respecting the operations of the Company, be, and they hereby are, incorporated by reference in the present record. It was further stipulated that, except for a substantial diminution in the production of gas, the Company is now conducting its business substantially as described in the aforesaid decision.

Accordingly, we find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Electrical Workers, Local Union B-876, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

On September 29, 1943, the AFL notified the Company that it represented a majority of the employees in the alleged appropriate unit, and requested recognition as their exclusive representative. The Company refused the request on the ground that it was under contract with the CIO and was under a continuing obligation to deal with the CIO as the representative of the aforesaid employees.

On December 5, 1942, the Company and the CIO executed a contract, providing for a term expiring November 1, 1943, with automatic renewal from year to year thereafter in the absence of a written notice served by either party upon the other stating a desire to amend or terminate the agreement, at least 30 days prior to any expiration date. This contract also provided that employees who were then or thereafter became members of the CIO, should be required to maintain such membership; and further provided that employees thereafter hired should become union members within 30 days after hiring. On September 14, 1943, the CIO notified the Company that it desired to discuss amendments to the contract. Thereafter, the parties met in bargaining conferences, and on October 28, 1943, they signed a new contract, effective November 1, 1943, terminable November 1, 1944, and

containing substantially the same automatic renewal and union membership requirements as the 1942 contract.

The CIO contends that this new agreement constitutes a bar to a present determination of representatives. The contention is without merit, for the AFL asserted its claim prior to the automatic renewal date of the 1942 agreement, and prior to the effective date of the 1943 agreement.

A statement of a Field Examiner of the Board, introduced in evidence at the hearing, shows that the AFL submitted 641 authorization cards, of which 602 bore names of employees on the Company's pay roll of October 1, 1943, which contained the names of 2,019 employees in the alleged appropriate unit. Of these 602 cards, 307 were submitted and bore dates prior to November 1, 1943, the effective date of the CIO's contract; and 295 were submitted after November 1. The CIO contends that the 295 cards submitted after November 1, 1943 should not be considered, since they were not submitted within a reasonable time after the filing of the petition; and that therefore the AFL has not made a sufficient *prima facie* showing of representation. However, even if it be assumed that the 295 cards were submitted too late for consideration, we find that the 307 cards submitted prior to November 1, constitute a sufficient showing, in view of the fact that the Company and the CIO are and have been parties to modified closed-shop contracts, as described above.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 parties stipulated that the following unit is appropriate: all the employees of the Company except general and assistant general foremen, plant supervisors, and other supervisory employees (except as expressly included below), office employees, office building janitors and watchmen, plant watchmen, collectors, connected load inspectors, electrical, mechanical, and civil engineers, efficiency men, and junior engineers, draftsmen, surveyors, chemists, architects, temporary employees hired for specific jobs and for not more than 6 months, part-time local servicemen, and local servicemen who do not perform mechanical work in the regular course of employment, and storekeepers with supervisory power who do not ordinarily do mechanical work; but including outside crew foremen, watchmen other than those excluded above, load dispatchers, meter readers and bill distributors, plant janitors, and storekeepers other than those excluded above.

¹ See *Matter of The Champion Machine and Forging Company*, 53 N. L. R. B. 934.

This unit is the same as that provided for in the 1942 and 1943 agreements. Except as discussed below, we are of the opinion, and find, that the stipulated unit is appropriate for the purposes of collective bargaining.

The parties agreed to include outside crew foremen in the unit. The record shows that the Company employs approximately 60 of these foremen and that they are in charge of crews comprising 4 to 10 men. They are responsible for the work performed by the men in their crew and their recommendations with respect to the disciplining of these men are given weight. In two previous decisions the Board found these employees of the Company to be supervisors and excluded them from the appropriate unit.² The record shows that the duties of the outside crew foremen have not changed in any manner since our decisions in the aforesaid cases, and we shall therefore exclude these employees from the unit.

We find that all the employees of the Company, except general and assistant general foremen, plant supervisors, and other supervisory employees, office employees, office building janitors and watchmen, plant watchmen, collectors, connected load inspectors, electrical, mechanical, and civil engineers, efficiency men, and junior engineers, draftsmen, surveyors, chemists, architects, temporary employees hired for specific jobs and for not more than 6 months, part-time local servicemen, and local servicemen who do not perform mechanical work in the regular course of employment, and storekeepers with supervisory power who do not ordinarily do mechanical work, and outside crew foremen, but including watchmen other than those excluded above, load dispatchers, meter readers, and bill distributors, plant janitors, and storekeepers other than those excluded above, and excluding all or any 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.

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-

² *Matter of Consumer's Power Company*, 10 N L R. B. 780 (November 1938) and 25 N L R B 280 (July 1940). The fact that in 1942, upon a Stipulation for Certification upon Consent Election, the Board certified the CIO in the stipulated unit which included outside crew foremen, does not preclude our finding herein that these employees should be excluded from the unit, since we made no finding with respect to appropriate unit in the aforesaid certification.

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 Consumers Power Company, Jackson, Michigan, 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 Seventh 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 they desire to be represented by International Brotherhood of Electrical Workers, A. F. L., Local Union B-876, or by Utility Workers Organizing Committee, CIO, for the purposes of collective bargaining, or by neither.