

In the Matter of SIERRA PACIFIC POWER COMPANY and INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-1245, A. F. L.

Case No. 20-R-1034.—Decided May 12, 1944

Thatcher & Woodburn, by Mr. William J. Forman, and Messrs. F. A. Tracy and H. P. Dayton, of Reno, Nev., for the Company.

Mr. C. P. Hughes, of Las Vegas, Nev., Mr. Charles W. Mason, of San Francisco, Calif., Mr. Oscar A. Holstrom, of Verdi, Nev., for the IBEW.

Mr. J. B. Harker, of North Verdi, Nev., and Mr. Harold O. Taber, of Reno, Nev., for the Independent.

Miss Frances Lopinsky, 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, Local B-1245, A. F. L., herein called the IBEW, alleging that a question affecting commerce had arisen concerning the representation of employees of Sierra Pacific Power Company, Reno, Nevada, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner. Said hearing was held at Reno, Nevada, on March 21, 1944. The Company, the IBEW, and Sierra Utility Workers' Union, herein called the Independent, 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'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

Sierra Pacific Power Company, a Maine corporation engaged in the manufacture, sale, and distribution of electrical energy in northwestern

Nevada and eastern California and of gas and water in the State of Nevada, has its general office at Reno, Nevada. It serves an area of approximately 15,000 square miles and owns franchises and distributes electrical energy in numerous towns located in both Nevada and California. The Company owns and operates five hydroelectric stations, four located in the State of Nevada and one in the State of California. During the year 1943, the Company generated, purchased, and distributed throughout its system in both Nevada and California approximately 124,000,000 kilowatt hours of electrical energy, approximately 26 percent of which was purchased from Pacific Gas & Electric Company and was generated in California and delivered to the Company in that State.

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

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Electrical Workers, Local B-1245, affiliated with the American Federation of Labor, and Sierra Utility Workers' Union, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Independent was incorporated in 1938 for the purpose of representing employees of the Company in collective bargaining with the Company, and was in that year recognized by the Company as the exclusive bargaining representative of its employees. The Company and the Independent thereupon entered into a written agreement providing for the creation of a Conference Board made up of an equal number of employer and employee members, to discuss and handle labor relations problems. The agreement set out rules governing the operation of the Conference Board and provided for arbitration machinery should the members become deadlocked on a matter of policy. The agreement is terminable at any time by either party upon prior written notice to the other party. In March 1944, the Company and the Independent executed a memorandum which purports to reduce to writing all of the agreements reached through the machinery of the Conference Board.

In February 1944, the IBEW requested recognition as the exclusive bargaining representative of employees in the Company's physical force. The Company refused recognition on the grounds that it doubted the IBEW's majority and the appropriateness of its proposed unit, and that it was bound by an existing contract recognizing the Independent. The IBEW contends that the agreement of 1938 is not a

bar to a present determination of representatives because it is not a collective bargaining contract. Since the agreement, whatever its status, has been in effect for 6 years, and since it is of indefinite duration, we find it no bar to this proceeding.¹ The memorandum of March 1944, having been executed after the parties had been informed of the interest of the IBEW, has no greater effect.²

A statement of a Board agent, introduced into evidence at the hearing, indicated that the IBEW represents a substantial number of employees in the unit hereinafter found appropriate.³

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 IBEW claims that a unit comprised of the employees in the Company's physical force, excluding clerical and supervisory employees, is appropriate for the purposes of collective bargaining. The Company and the Independent contend that the appropriate unit should include both the physical force and the clerical force of the Company, the unit covered by their existing contract entered into in April 1938. The parties further disagree upon the classification of certain employees into the categories "physical force," "clerical force," and "supervisory employees."

The Company services a wide area, but since a part of it is habitable only in summer, and construction and repair work can be done during the winter months in only a small portion of the area, its employees are relatively few in number and are widely scattered. The majority of its clerical employees are employed in its Reno, Nevada, office. In the small towns and districts which the Company serves, clerical work is performed by agents doing both physical and clerical work, sometimes with the aid of a part-time clerical employee. A few full-time clerical employees are employed outside the Reno office.

The Company and the Independent base their contention that a unit including both clerical and physical force employees is appropriate on the close integration of the Company's operations and the fact that the Independent has for 6 years bargained for employees in such a unit. Since 1938, grievances and working conditions of clerical employees as well as of other employees have been considered by the

¹ See *Matter of Toyad Corporation*, 52 N. L. R. B. 1241.

² See *Matter of Ecor*, 46 N. L. R. B. 1035.

³ The Field Examiner reported that the IBEW submitted 58 application-for-membership cards, 53 of which were undated. Three were dated November 1943, 2 December 1943. At the time of the hearing there were 97 persons employed in the unit.

A witness for the Independent testified that at the time of the hearing the Independent had 115 paid-up members, 26 who were delinquent, and 6 who had been suspended.

Conference Board, "and clerical employees have from time to time served as Independent representatives on that Board. The IBEW contends that clerical and manual workers have such widely divergent interests, and that their working conditions are so dissimilar, that they cannot effectively be represented in a single unit for the purposes of collective bargaining. We have generally found this to be true. The issue raised by the contentions of the parties herein has been thoroughly examined and determined by this Board in several recent cases in which we have found that a bargaining history based upon representation of clerical and manual workers in a single unit is not determinative of the appropriateness of such a unit, and that the physical or production and maintenance employees of a utility company can best be represented for the purposes of collective bargaining in a separate unit, apart from clerical and other employees.⁴ We take the same view here, and we find, accordingly, that the appropriate bargaining unit for employees affected by this proceeding is restricted to the Company's physical force.

The Company and the Independent would include in the appropriate unit and the IBEW would exclude from the unit, the following categories of employees:

Foremen: Persons classified variously as line foremen, flume foremen, junior and senior foremen, and reservoir foremen supervise directly the work of most employees. Such foremen have crews of from 2 to 10 and in all instances work with their crews. The amount of physical labor they perform varies inversely with the size of the crew. They work under the supervision of the superintendents in charge of their respective divisions who normally handle hiring, discharging, and promotion. Because of the great distances involved, however, foremen are seldom subject to direct supervision. They have authority to hire in emergencies and during normal times their recommendations are given weight in matters of hiring, discharging, and promoting. One employee in the Electric Line Crew is classified as a "supervisory foreman." He was formerly head line foreman but because of his age has been given a job which is primarily to lay out and inspect the work of the linemen. He has no men under him but his recommendations are accepted regarding the qualifications of men in the line crew. We find that the foremen, including the "supervisory foreman," are supervisory employees and shall exclude them from the unit.

Agents: Agents are in charge of the Company's business within particular towns or localities. The areas over which they have juris-

⁴ See *Matter of Boston Edison Company*, 51 N. L. R. B. 118; *Matter of Indianapolis Power & Light Company*, 51 N. L. R. B. 670; *Matter of Westinghouse Electric & Manufacturing Company, Lighting Division*, 53 N. L. R. B. 1073; *Matter of Commonwealth Edison Company*, 55 N. L. R. B. 431.

diction are small and they generally work alone, personally keeping lines in repair, making installations, making collections, and adjusting customers' complaints. The agent's wife, who answers the telephone and takes messages or accepts payment of bills for him while he is out, is generally carried on the Company's pay roll as part of his staff. In emergencies an agent may hire workmen to help him. Since they represent the Company to the public in the vicinity of their operations, and since they do at times exercise supervisory authority, we shall exclude agents from the unit.⁵

The district manager Portola District: The Portola District differs from other districts in the Company's system in that it has no district superintendent but is under the direct supervision of the Reno office. The Company's representative at Portola is classified as a district manager. His functions and duties are comparable to those of the agents above described. We shall, therefore, exclude him from the unit.

The *storekeeper* works with the *assistant storekeeper* in the Reno warehouse, receiving and handing out supplies. These employees keep records of supplies received and disbursed but most of their work is manual. The storekeeper has the same authority as foremen and agents to make recommendations concerning his subordinate. He is, therefore, a supervisory employee whom we shall exclude from the unit. Since the work of the assistant storekeeper is predominantly manual, and since all of his contacts are with physical force employees and not with clerical employees, we shall include him in the unit.

Switchboard operators and cashiers: There are two persons outside the Reno office classified as "switchboard operators" and two as cashiers. All are wives of Company representatives in the outlying districts and perform whatever work they do for the Company in their homes. The former do not operate switchboards but merely answer the telephone and note complaints and messages. The latter perform substantially the same duties, and in addition, accept payment of the Company's bills and issue receipts. These employees have no contact with the employees in the physical force, and since their duties are clerical in nature we shall exclude them from the unit.

Janitors and janitresses: The Company employs a full-time janitor at the Reno office and a part-time janitress at its Lovelock District office. The work of these employees is neither clerical nor similar to that of the employees within the unit. Since, however, the contacts of the janitor and janitress are only with clerical employees, we shall exclude them from the unit herein found appropriate.

Engineers and estimators work in the office and in the field. They are graduate engineers performing intricate technical work. Their

⁵ *Matter of Missouri Utilities Company*, 54 N. L. R. B. 37

background and training and the technical character of their work make their interests divergent from those of physical force employees.⁶ We shall, therefore, exclude them from the unit.

Clerk, Electric Meter Department: This clerk is primarily a messenger who carries messages to and from all departments in the Reno vicinity. He does not associate exclusively with any one group of employees. Since, in our opinion, the nature of his work is more nearly clerical than manual, we shall exclude him from the unit.

We find that all employees of the Company's physical force, including linemen and apprentice linemen, watchmen, guards,⁷ operators, substation operators, ditch tenders, repairmen, laborers, groundmen, servicemen, electricians, metermen, gas plant operators and apprentices, fitters and fitters' helpers, mechanics and mechanics' apprentices, blacksmiths, meter readers, and assistant storekeeper, but excluding Company officials, district superintendents, district managers, agents, foremen, radio trouble-shooter,⁸ storekeeper, janitors and janitresses, collectors, engineers and estimators, clerical employees, switchboard operators and cashiers, the clerk in the Electric Meter Department, 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.⁹

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 the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

During the summer months, the Company hires a number of persons to perform certain jobs that can be performed only in summer. The parties advanced no contentions as to the eligibility to vote of such employees who might be on the payroll of the Company when the election hereinafter directed is held. The record does not disclose what percentage of the Company's total complement of employees these employees constitute, nor whether or not the same workmen are hired by the Company year after year to perform the construction and repair

⁶ See *Matter of Indianapolis Power & Light Company, supra*

⁷ The guards and watchmen are not members of the auxiliary military police

⁸ This person is not a regular employee of the Company. He is called upon to work whenever it is reported that the Company's lines are interfering with radio reception.

⁹ The parties are in agreement as to all the categories included and excluded above except those specifically discussed herein.

work which of necessity must be done during the summer months. We hold that these employees, if hired for a special project to work only until the completion of that project, are ineligible to vote in the election. However, those who are hired for an indefinite period, or who have a substantial expectancy of regular summer employment with the Company, are eligible to vote in the election.

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 Sierra Pacific Power Company, Reno, Nevada, 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 Twentieth 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, and the findings in Section V, above, 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, Local B-1245, affiliated with the American Federation of Labor, or by Sierra Utility Workers' Union for the purposes of collective bargaining, or by neither.