

In the Matter of PUBLIC SERVICE COMPANY OF INDIANA, INC. and DISTRICT 50, UNITED MINE WORKERS OF AMERICA (UTILITY DIVISION)

Case No. 9-R-1380.—Decided May 18, 1944

Mr. Edmund W. Hebel, of Indianapolis, Ind., for the Company.
Mr. Stanley E. Stohr, of Terre Haute, Ind., and Mr. Joe E. Board, of Indianapolis, Ind., for District 50.

Mr. Frank S. Pryor, of Frankfort, Ind., and Messrs. Robert Barry, Edwin E. Seger, and Elmer Johnson, of Indianapolis, Ind., for the IBEW.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by District 50, United Mine Workers of America (Utility Division), herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Public Service Company of Indiana, Inc., Indianapolis, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Indianapolis, Indiana, on April 19, 1944. The Company, District 50, and International Brotherhood of Electrical Workers, B-9, A. F. of L., herein called the IBEW, appeared and participated. All parties 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Public Service Company of Indiana, Inc., is an Indiana corporation engaged as a public utility in rendering electric, gas, and water

utility service in the north central, central, and southern portions of the State of Indiana. In some communities, the Company also supplies ice and heat services. In 1943, 14.23 percent of the electric energy used by the Company in carrying on its activities was purchased by it at the Indiana State line through interconnections between its electric transmission lines and those of other public utilities in adjacent States. During the same period, the Company sold to public utilities operating in States other than the State of Indiana approximately one-third of 1 percent of the total electric energy sold by it during that period. Also, approximately 86 percent of all the Company's gas requirements for the year 1943 was purchased by the Company in interstate commerce. The Company services various concerns in the State of Indiana which are engaged in interstate commerce.

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

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America (Utility Division), is a labor organization; admitting to membership employees of the Company.

International Brotherhood of Electrical Workers, B-9, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The I. B. E. W. has been the recognized bargaining representative of the Company's production and maintenance employees since 1934. Subsequent to 1938, this relationship has existed by virtue of successive written collective bargaining agreements, the last of which became effective May 1, 1942, and was to remain in force until April 30, 1943, and from year to year thereafter unless either party notified the other in writing of its desire to amend or cancel the contract at least 60 days prior to any anniversary date of the agreement. Inasmuch as neither of the contracting parties gave such notice prior to March 1, 1943, the contract automatically renewed for an additional year.

On or about February 25, 1944, District 50 advised the Company by letter of its claim of representation of a majority of the employees covered by the I. B. E. W.'s contract and requested recognition as their exclusive bargaining representative. The Company refused to recognize District 50 unless and until it is certified by the Board. Neither

the Company nor the I. B. E. W. urges that the contract is a bar to this proceeding.¹

A statement prepared by a Field Examiner of the Board, introduced into evidence at the hearing, as supplemented by a statement prepared by the Trial Examiner and read into the record at the hearing, indicates that District 50 and the I. B. E. W. each represents a substantial number of employees within 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

All parties agree that the employees covered by the contract between the I. B. E. W. and the Company comprise the appropriate bargaining unit. The contract unit embraces all employees of the Company in the production, generating, construction, transmission, distribution, operating, maintenance, repair, service, and meter reading departments, excluding watchmen, office, clerical, and sales employees, executives, administrative, professional, and technical employees, employees of the Company's Edwardsport Mine, truckers who haul coal from the mine, storeroom employees, and supervisory employees.

Although all parties are in agreement with respect to the composition of the unit, we are of the opinion that certain specific classifications of employees warrant special mention herein.³

The Company's operations consist of seven geographical divisions, each of which is headed by a division manager and his assistants. Each division consists of a number of operating departments which service the various municipalities or communities within the division. The Company also operates a coal mine known as the Edwardsport Mine. The parties agree that the employees of this mine, all of whom are bargained for by a labor organization not a party to this proceed-

¹ The contract is obviously no bar to a determination of representatives since District 50 notified the Company of its representation claim prior to the automatic renewal date of the contract. See *Matter of Craddock-Terry Shoe Corp.*, 55 N. L. R. B. 1406, and cases cited therein.

² The Field Examiner's report, as supplemented by the Trial Examiner's statement, shows that District 50 submitted 600 authorization cards bearing the names of persons whose names appear on the Company's pay roll of March 1, 1944, which lists the names of 1,298 employees within the alleged appropriate unit, and that the I. B. E. W. submitted a certified list of its members in good standing as of March 13, 1944, which contains the names of 1,237 persons whose names appear on the aforesaid pay roll.

³ In a prior representation proceeding involving the employees of the Company, District 50, as petitioner, urged that certain employees should be excluded from the appropriate unit on the ground that they were clothed with supervisory authority. The prior proceeding, *Matter of Public Service Company of Indiana*, Case No. R-3945, is reported in Volume 42 N. L. R. B., at page 639. In the cited case the Board dismissed the petition since District 50 lacked a sufficient showing of interest to raise a question concerning representation.

ing, should be excluded from the appropriate unit. It is also agreed that truck drivers who haul coal from the mine to other operations of the Company should also be excluded. We shall exclude both of these groups of employees from the appropriate unit.

Foremen and supervisors whom the parties agree to include in the unit

The Company employs some 20 different classifications of foremen and supervisors which have been covered by the I. B. E. W.'s bargaining contracts. Each of these employees is in charge of a small group of from 1 to 15 hourly paid employees. In the small working units, the foreman or supervisor in charge usually works with the employees whom he directs, while in the larger groups he devotes all of his time to directing the work of the employees. These foremen and supervisors are variously classified as line foreman A and B, brush crew foreman, tree trimmer foreman, watch engineer, watch fireman, boiler maintenance foreman, boiler slagger foreman, maintenance mechanical general foreman, electrical foreman, substation electrical construction foreman A and B; substation electrical maintenance foreman, load dispatcher A and B, equipment testing foreman, meter shop foreman, supervisor of meter readers, service foreman, foreman—gas and water A and B, fitter foreman, and garage foreman. None of these employees has the authority to hire, promote, or discharge employees or effectively to recommend such action. Their authority to discipline employees is limited to ordering an employee who has violated certain company rules to report to the superintendent or manager who, alone, has the authority to discharge, lay off, or otherwise discipline the employee. All foremen and supervisors are hourly paid, receiving slightly higher wages than the employees whose work they direct. Since it appears that none of these foremen or supervisors possesses any of the *indicia* of authority customarily vested in supervisory employees, we shall, in accordance with the agreement of the parties, include them in the appropriate unit.

Local representatives

In very small communities the Company usually employs only one full-time employee designated as the local representative. This employee performs all the various duties necessary to maintaining the electric, gas, or water service in the community. Local representatives are covered by the I. B. E. W.'s contract. We shall include them in the unit.

Patrolmen

These employees are not armed guards or watchmen, but their functions are to patrol the Company's electric power lines, water, and

gas mains, and report any breaks or other defects. We shall include the patrolmen in the appropriate unit.

Storeroom employees

These employees perform clerical duties in connection with the supplies kept in the Company's various storerooms. They have been excluded from the contract unit as clerical employees. We shall exclude them.

In view of the foregoing findings of fact and upon the basis of the entire record in the case, we find, in accordance with the agreement of the parties, that all employees of the Company in the production, construction, generating, transmission, distribution, operating, maintenance, repair, service, and meter reading departments, including all non-supervisory foremen and supervisors, patrolmen, and local representatives, but excluding watchmen, office and clerical employees, sales employees, technical and professional employees, storeroom employees, administrative employees, executives, and 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, and further excluding employees of the Company's Edwardsport Mine and the truck drivers who haul coal from the mine to other operations of the Company, 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 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 Public Service Company of Indiana, Inc., Indianapolis, Indiana, 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 Ninth 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 they desire to be represented by District 50, United Mine Workers of America (Utility Division), or by International Brotherhood of Electrical Workers, B-9, A. F. of L., for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.

[See *infra*, 56 N. L. R. B. 1327 for Amendment to Direction of Election.]