

In the Matter of WISCONSIN GAS & ELECTRIC COMPANY and PUBLIC SERVICE EMPLOYEES LOCAL INDUSTRIAL UNION, C. I. O.

Case No. 13-R-2364.—Decided July 14, 1944

Shaw, Muskat and Paulsen, by Mr. F. H. Prosser, of Milwaukee, Wis., for the Company.

Messrs. F. J. Michel and Walter Debussy, of Milwaukee, Wis., and Mr. Theodore R. Reitz, of Racine, Wis., for the CIO.

Mr. Arthel Shelton, of Chicago, Ill., for District 50.

Messrs. Alfred H. Handrich and B. M. Feinberg, of Milwaukee, Wis., for the Association.

Padway & Goldberg, by Mr. A. G. Goldberg, of Milwaukee, Wis., for the IBEW.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by Public Service Employees Local Industrial Union, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Wisconsin Gas & Electric Company, Racine, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gustaf B. Erickson, Trial Examiner. Said hearing was held at Racine, Wisconsin, on May 4, 1944. The Company, the CIO, District 50, United Mine Workers of America, herein called District 50, United Association of Office, Sales and Technical Employees, herein called the Association, and International Brotherhood of Electrical Workers, Local Union No. 4948 (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, and to introduce evidence bearing on the issues. The Company moved that the petition be dismissed on the

ground that by order of a Wisconsin state court, the CIO and the president of the CIO are incapable of lawfully representing the employees of the Company,¹ and, therefore, if the CIO is certified by the Board, the Company cannot negotiate with that union without committing an unlawful act. The motion is hereby denied. Whatever effect the court order may have had upon the CIO has been cured by a time limitation therein. Whatever liability it may have imposed upon Reitz cannot affect the right of the employees to select a representative of their choice to bargain for them.² The order placed on the Company only the duty to inform its employees of the contents thereof. It did not inhibit the Company in any way. The fear expressed by the Company is, therefore, unfounded.

The Association and District 50 moved that the petition be dismissed on the ground that the unit requested is inappropriate for bargaining. For reasons hereinafter stated, the motion is in part granted and is part 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

Wisconsin Gas & Electric Company is a subsidiary of Wisconsin Electric Power Company of Milwaukee, Wisconsin. Its principal offices are in Racine, Wisconsin. The Company is engaged in the manufacture and distribution of gas and electricity in about seven counties in the southern part of Wisconsin. In this area it has in excess of 100,000 customers, a large number of which are companies engaged in vital defense work. It annually purchases approximately \$400,000 worth of coal for the production of gas, which is shipped to Racine from West Virginia. It also purchases a substantial amount of appliances and equipment which are shipped to Racine from points outside the State of Wisconsin. We find that the business of the Company affects commerce within the meaning of the National Labor Relations Act.

¹ A court Order dated January 14, 1944, suspended Public Service Employees Union, herein called the PSEU, from acting as bargaining representative for the employees of the Company for a period not to exceed 6 months, and suspended Theodore R. Reitz, president of the PSEU from acting, in any capacity, as a representative of the employees of the Company for a period of 1 year. Reitz is now president of the CIO Local and the Company contends that the CIO is a successor to the PSEU and that the suspension applies to it.

² See *Matter of Eppinger & Russell*, 56 N. L. R. B. 1259.

II. THE ORGANIZATIONS INVOLVED

Public Service Employees Local Industrial Union, affiliated with the Congress of Industrial Organizations; District 50, United Mine Workers of America; United Association of Office, Sales and Technical Employees; and International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, are all labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In January 1944, the CIO requested recognition as exclusive bargaining representative of certain of the Company's employees. The Company refused to recognize the CIO, for the asserted reason that it was under contractual obligation to Public Service Employees Union, herein called the PSEU. Although the PSEU at one time represented the employees whom the CIO now seeks to represent, the contract between the Company and the PSEU terminated in November 1943 and negotiations for a new contract between these parties ceased in January 1944. The PSEU is now in process of dissolution. No existing contract is, therefore, a bar to a present determination of representatives.

A statement of a Board agent introduced into evidence at the hearing, supplemented by a statement of the Trial Examiner made at the hearing, indicates that each of the participating unions herein represents a substantial number of employees in the unit, or voting group, which it contends is appropriate.³

We find that a question affecting commerce had 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 Company operates in four divisions: Racine, Kenosha, Northern and Western. With one exception, all collective bargaining has been

³The CIO submitted to the Field Examiner 171 application-for-membership cards, all of which bore names of persons listed on the Company's pay roll for April 17, 1944, which contained the names of 270 persons in the unit requested by the CIO.

The Association submitted to the Trial Examiner 29 application-for-membership cards 28 of which bore names of persons listed on the Company's pay roll for June 15, 1944, which contained the names of approximately 240 persons in the unit requested by the Association.

The IBEW submitted 14 application-for-membership cards to the Field Examiner and an additional 6 cards to the Trial Examiner, all of which bore names of persons listed on the Company's pay rolls of April 17 and June 15, 1944, which contained the names of 28 persons in the unit requested by the IBEW.

District 50 submitted to the Field Examiner 29 application-for-membership cards, all of which bore names of persons listed on the Company's pay roll for April 17, 1944, which contained the names of 36 persons in the voting group requested by District 50.

carried on between the Company and labor organizations on the basis of system-wide, occupational units. For purposes of bargaining, the Company's employees have been placed in three occupational categories: electrical workers, gas utility employees, and clerical, technical and sales employees. The PSEU came into existence in 1934 as representative of the clerical, technical and sales employees. The IBEW organized the electrical workers in 1935, and a predecessor of District 50 organized the gas utility employees in 1936. The IBEW presently has a contract covering all electrical workers of the Company on a system-wide basis. District 50 presently has a contract covering all gas utility employees of the Company except those employed in the Western Division,⁴ and claims to represent the gas utility employees in the Western Division as well. No party expressly questions the appropriateness of the three separate units so established.

The PSEU's expired contract covered all clerical, technical and sales employees. The PSEU was also informally recognized by the Company as the bargaining representative of the gas workers and steam plant operators in the Western Division. The Association would represent only employees covered by the PSEU's contract, namely, clerical, technical and sales employees. All parties are in agreement, and we find, that the clerical, technical and sales employees of the Company constitute an appropriate unit for bargaining. The Company and the CIO would extend this unit to include the gas utility employees in the Western Division.⁵ The other parties contend that the inclusion of production and maintenance employees in the proposed "white-collar" unit would be inappropriate. In accordance with our usual practice, we so find.⁶

Although the CIO may, in the light of the above finding, wish to represent the gas utility employees in the Western Division in a separate unit, we shall not at this time direct an election among them. The history of bargaining on behalf of the employees of the Company has been on a system-wide basis varied only in the gas utility employees' unit. We have repeatedly held that a system-wide unit of a public utility is appropriate whenever there is a labor organization in a position to represent employees throughout the system.⁷

⁴ Both of the above-mentioned contracts will expire December 1944.

⁵ The Company is in agreement with the CIO as to the appropriate unit but it would amend the CIO's description thereof for the purpose of reconciling it with the units represented by other labor organizations with which it bargains. The unit requested by the CIO is phrased in terms of "all" meter readers, storeroom employees, station operators and telephone operators. Gas meter readers and storeroom employees who handle gas equipment and appliances are covered by District 50's contract; station operators in the Racine and Kenosha Divisions and night telephone operators are covered by the IBEW's contract.

⁶ See *Matter of Boston Edison Company*, 51 N. L. R. B. 118, *Matter of Indianapolis Power and Light Company*, 51 N. L. R. B. 670, and *Matter of Sierra Pacific Power Company*, 56 N. L. R. B. 458.

⁷ See *Matter of Pennsylvania Electric Company*, 56 N. L. R. B. 625, and cases cited therein.

District 50 is now apparently in a position to complete the pattern of system-wide representation, and upon the expiration of District 50's contract in less than 6 months, there will be no obstacle to an investigation of representatives for all the gas utility employees on a system-wide basis. A division-wide unit for the representation of gas utility employees of the Western Division is, therefore, inappropriate. Since no party presently requests an election in the appropriate unit, we shall dismiss the petition insofar as it concerns the gas utility employees in the Western Division.

There are certain categories of employees who the CIO, the Association, and the Company contend should be included in the appropriate unit but whom the IBEW would represent in a separate unit. These are storeroom employees handling electrical equipment and appliances, junior engineers, telephone operators, and electric meter readers.⁸ All of these employees were represented by the PSEU and covered by its contracts. Storeroom employees keep records of materials on hand and materials disbursed as well as assist in taking and keeping inventories. The work of meter readers consists mainly of reading and copying figures on meters and making certain calculations. Although junior engineers perform some work with a transit in the field taking measurements and distances, most of their work is done on a plotting board in the offices of the Company. The day telephone operators merely route calls.⁹ The fact that the duties of these employees are incidentally connected with some phase of electricity does not alter the fact that they are in nature predominantly clerical or technical. We shall deny the IBEW's request for a separate unit composed of storeroom employees handling electrical equipment, junior engineers, telephone operators, and electric meter readers, and shall include those employees in the unit hereinafter found appropriate.

The CIO, the Association, and the Company would include in the unit composed of clerical, technical and sales employees, and the IBEW would exclude therefrom, the station operators in the Western Division.¹⁰ The duties of these employees are similar to those of station operators in the Racine and Kenosha Divisions who are represented by the IBEW. These employees work under the supervision of load dispatchers who are within the IBEW unit, and are in constant contact with electrical workers. Although they have been included in the unit represented by PSEU, we shall exclude all station operators from the unit hereinabove found appropriate.¹¹

⁸ Since storeroom employees who handle gas equipment and appliances, night telephone operators and gas meter readers are presently covered by existent contracts, we shall not consider them herein. See footnote 5.

⁹ Night telephone operators work in the capacity of dispatchers.

¹⁰ There appear to be no station operators in the Northern Division.

¹¹ This exclusion shall not apply to the station operator at Ft. Atkinson who spends 95 percent of his time performing the duties of a storeroom employee.

Steam plant operators are another category of employees presently unrepresented. The CIO would include them in their requested unit. The IBEW contends that they are electrical workers; District 50 contends that they are gas utility employees. These employees take readings of the electric switchboard, take care of telephone trouble calls covering both gas and electricity on Sundays, holidays, and daily from 5 p. m. to 8 a. m., take care of gas pressures and distribution mains, take care of steam pressures, fire the boilers and do necessary repair work on steam and gas equipment. It is evident that they are not clerical employees and we shall, therefore, exclude them from the appropriate unit. Their interests lie with the electrical or with the gas utility employees. Since no election is presently being directed with reference to these two groups of employees, it is unnecessary that we determine at this time in which of these two units they might most effectively be represented.

The Association and the Company would further exclude from the unit, stenographers who act as private secretaries to the heads of the four divisions. The CIO contends that no such category exists. Before its office employees were organized, the Company employed private secretaries. In 1936 the Wisconsin Employment Relations Board, in a decision rendered in a representation proceeding, refused to exclude them from the bargaining unit. The Company then reclassified secretaries as stenographers and ceased giving them any confidential dictation. Since, in our opinion, the Company is entitled to have a reasonable number of stenographers to whom dictation concerning labor relations may be given without fear that the information may be prematurely transmitted to a union, we shall provide for the exclusion of confidential employees to act in this capacity.

The parties agree to the exclusion of supervisory, administrative, and executive employees from the clerical unit. The Company contends that employees in charge of developing accounting procedures and the inventory control man aid in shaping the policy of the Company and that they come within the excluded categories. The Association protests the exclusion of these employees¹² from the unit. The CIO protests only the exclusion of the inventory control man. The inventory control man takes physical inventory of all materials in all divisions with the exception of fuel and residual stock, traces shortages disclosed by the physical count to determine cost and persons responsible, prepares written reports of serious shortages disclosed and makes recommendations for the prevention of such shortages. The other persons in dispute develop accounting procedures, follow the procedures to see that their purpose has been carried out in detail, design or lay out improved procedures involving both cus-

¹² A. Hughes, S. Hughes, and Verheilleg.

tomers' accounting and general accounting. We agree with the Company that these employees are executives and we shall exclude them as such.

We find that all clerical, sales and technical employees of the Company, including all employees of the accounting, sales, promotional, addressograph, collection and engineering departments, day telephone operators, janitors and janitresses and customer contact clerks in the Company's offices, junior engineers, and all meter readers, bill deliverers, storeroom employees and night loaders,¹³ except those meter readers, bill deliverers, storeroom employees and night loaders presently represented by District 50, but excluding confidential and executive employees, research engineers, 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 Wisconsin Gas & Electric Company, Racine, Wisconsin 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 Thirteenth 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 the said pay-roll period because they were ill or on vacation or tempo-

¹³ Night Loaders are storeroom employees on duty at night.

rarily 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 Public Service Employees Local Industrial Union, C. I. O., or by United Association of Office, Sales and Technical Employees, for the purposes of collective bargaining, or by neither.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives filed by Public Service Employees Local Industrial Union, C. I. O., insofar and insofar only as its concerns gas utility employees of the Western Division of Wisconsin Gas and Electric Company, be, and it hereby is, dismissed.