

In the Matter of THE MARION RESERVE POWER COMPANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION B-638 (AFL)

Case No. 8-R-1463.—Decided July 14, 1944.

Mr. William Patrick Clype, of Cleveland, Ohio, *Mr. H. H. Hoppe*, of Marion, Ohio, and *Mr. J. M. Strelitz*, of Marion, Ohio, for the Company.

Mr. W. H. Wilson, of Akron, Ohio, for the I. B. E. W.

Mr. Wallace E. Royster, 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 Union B-638 (AFL), herein called the I. B. E. W., alleging that a question affecting commerce had arisen concerning the representation of employees of The Marion Reserve Power Company, Marion, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Marion, Ohio, on May 22 and 23, 1944. The Company and the I. B. E. W. 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 Trial Examiner's rulings 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 has requested a hearing before the Board for the purpose of oral argument. In view of the extensive record and briefs filed herein the request is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Marion Reserve Power Company, with headquarters and operating offices at Marion, Ohio, is engaged in the purchase, production,

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distribution, and sale of electrical energy in a territory in west central Ohio. The Company furnishes electrical energy to a number of municipalities, utility companies, and interstate carriers. During 1943 the Company purchased materials having a value of \$414,000, for use in its operations, of which approximately 80 percent was shipped to the Company from points outside the State of Ohio.

We find that the operations of the Company affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local Union B-638, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In February 1944, the I. B. E. W. requested recognition as exclusive bargaining representative of the employees in the Company's generating station and Marion substation. The Company refused to extend recognition without Board certification.

A statement of the Field Examiner, introduced in evidence at the hearing, indicates that the I. B. E. W. represents a substantial number of the Company's employees.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 Act.

IV. THE APPROPRIATE UNIT

Extending easterly for 100 miles from the Indiana line, the operating territory of the Company covers an area with an average width of 13 miles. The Western Division, under a superintendent at Sidney, Ohio, receives electrical energy from the wires of other utility companies and distributes it in that division only. The employees in the Western Division normally work only within that division. The Eastern Division is superintended from Marion, Ohio, where the principal offices of the Company are located. The Company's only generating station is located near Marion and all the electrical energy generated there is distributed in the Eastern Division. The employees in the Eastern Division normally work only in that division.

Although unsuccessful in its attempt to organize the employees in the Western Division, the I. B. E. W., in 1942, gained recognition

¹The Field Examiner reported that the I B E W submitted 24 authorization cards bearing dates in December 1943. There are approximately 49 employees in the unit which the I. B. E. W. seeks.

from the Company as the bargaining representative of its members in the Eastern Division. The recognition was so circumscribed, however, as to exclude employees in the generating station, the substation operators, and workers stationed at Elyria, Rittman, and Grafton, Ohio. In this proceeding, the I. B. E. W. is seeking a unit of the generating station employees and the Marion substation operators. If successful, the I. B. E. W. claims that it will then represent nearly all the employees in the Eastern Division.

The Company asserts that only a system-wide unit is appropriate. However, the organizational efforts of the I. B. E. W. have not extended successfully beyond the limits of the Eastern Division and no other labor organization is contending for the larger unit. In this situation, without prejudice to a different conclusion under changed circumstances, we are persuaded that a unit lesser in scope may be appropriate.²

Although we do not agree that the facts support the contention of the Company with respect to the unit, we are also unable to accede to the request of the I. B. E. W. The Company's operations in the Eastern Division are not extensive and the related functions of the departments therein argue convincingly that nothing smaller than a division-wide unit is appropriate. Substation electricians and operators frequently work together and presumably have similar interests and problems. We find no reason to separate them for bargaining purposes. Similar considerations lead us to the conclusion that generating station employees should be in the same bargaining unit with line, service, meter and merchandise service department employees, many of whom assertedly are now represented under the I. B. E. W.'s contract covering its members. These considerations and the admitted fact that the I. B. E. W. has organized a substantial number of employees in the Eastern Division outside the generating station and the Marion substation argue further for the division-wide unit.

Accordingly, we find that all production and maintenance employees of the Company in the Eastern Division, including generating station employees, Marion substation employees, line department employees, service department employees, meter department employees, merchandise service department employees, and including all such employees in Elyria, Rittman, and Grafton, Ohio, but excluding clerical employees, professional employees, guards, employees in the Western Division, 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.

² See *Matter of Oklahoma Gas & Electric Company*, 42 N. L. R. B. 750, and cases cited therein.

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 our Direction of Election herein, subject to the limitations and additions set forth in said 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 The Marion Reserve Power Company, Marion, Ohio, 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 Eighth 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 or not they desire to be represented by International Brotherhood of Electrical Workers, Local Union B-638 (AFL), for the purposes of collective bargaining.

[See *infra*, 57 N. L. R. B. 1292 for Supplemental Decision and Amendment to Direction of Election.]