

In the Matter of DUQUESNE LIGHT COMPANY and UTILITY WORKERS
ORGANIZING COMMITTEE AFFILIATED WITH THE C. I. O.

Cases Nos. 6-R-911 and 6-R-912.—Decided July 29, 1944

Messrs. Allen Sinsheimer, Jr., and Paul F. Shupp, for the Board.
Mr. V. W. Thomas, of Pittsburgh, Pa., for the Company.
Mr. Oliver J. Harper, of New York City, and Mr. Reginald Brown,
of Pittsburgh, Pa., for the UWOC.
Mr. Herman Lipsitz, of Pittsburgh, Pa., for the Independent.
Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon two petitions duly filed by Utility Workers Organizing Committee, affiliated with the C. I. O., herein called the UWOC, alleging that questions affecting commerce had arisen concerning the representation of employees of Duquesne Light Company, Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter F. Ward, Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on May 26, 27, 29, 30, and 31, 1944. The Company, the UWOC, and Independent Association of Employees of Duquesne Light Company and Associated Companies, 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 Company moved that the petitions be dismissed on the ground that the units requested therein are inappropriate. For reasons hereinafter set forth, 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. The Company has requested oral argument before the Board. Inasmuch as the issues herein are fully covered in the briefs filed by the parties, the request is denied.

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

57 N. L. R. B., No. 129.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Duquesne Light Company is a Pennsylvania corporation with its principal offices located in the city of Pittsburgh, Pennsylvania. The corporation is a subsidiary of the Philadelphia Company, a holding company, which is in turn a subsidiary of the Standard Gas and Electric Company. The Company is engaged in the business of generating and distributing electrical power to consumers situated in Allegheny and Beaver Counties, Pennsylvania, and through its connections with transmission lines of other companies, it occasionally distributes to, and receives power from, points in Ohio and West Virginia. During the period from January 1, 1943, to September 30, 1943, the Company purchased material, supplies, and equipment, including coal, which amounted to \$1,577,702, in value, of which \$279,380 represented the cost of coal purchased. The coal was all mined and purchased within the Commonwealth of Pennsylvania. Twenty-four percent of the purchases, including coal, was made at points outside the Commonwealth of Pennsylvania. The Company generated and purchased during 1943 a total of approximately 350,000,000 k. w. h. of electricity of which approximately all was sold within the Commonwealth of Pennsylvania. The Company, from September 1943 to date, has continued to purchase materials and supplies and to generate and distribute electricity in approximately the same amounts as during the period described.

During the 12 months ending October 31, 1943, the Company received 232,860 k. w. h. of electricity generated in States other than Pennsylvania. The Company supplies electricity to interstate railroads, United States Post Offices, telegraph companies, telephone companies, an airport, and to many large industries which are engaged in the manufacture of goods which flow 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

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

Independent Association of Employees of Duquesne Light Company and Associated Companies is a labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

For the purposes of collective bargaining the Company's employees are presently represented in four separate units designated herein as

Unit #1, Unit #2, Colfax, and Mines. The UWOC, in its petition in Case No. 6-R-911, requests an election in Unit #1, and in its petition in Case No. 6-R-912, requests an election among the militarized plant-protection employees presently included in Unit #2. The Independent, in its petition to intervene, avers that the appropriate unit for the representation of the employees of the Company is a combination of Unit #1, Unit #2, and Colfax.

The Independent's latest contract covering Unit #1, was executed March 26, 1943, and contained a 60-day automatic renewal clause operative annually. Since the UWOC's request for recognition was made on January 17, 1944, prior to the automatic renewal date of the contract, the contract is no bar to a present determination of representatives for the employees in Unit #1.

The Independent's latest contract covering Unit #2 was executed November 10, 1943, for a term of 1 year, renewable annually by failure of either party to act 60 days prior to the anniversary date. The Company and the Independent assert that this contract is a bar to a present determination of representatives pursuant to the petition filed herein in Case No. 6-R-912. Since we hereinafter find that the militarized plant-protection employees, whom the petitioner in that case seeks to represent, are inappropriately included in Unit #2, we find that the contract dated November 10, 1943, is no bar to a present determination of representatives among the militarized plant-protection employees of the Company.¹

The UWOC's contract covering Colfax was executed February 13, 1943. It contained the following Articles:

This Agreement shall remain in effect for one year from the date hereof and thereafter from year to year until canceled or otherwise terminated, as herein provided.² Either party may cancel the Agreement at the expiration of one year from the date hereof, or at the end of any subsequent yearly period, by giving to the other written notice thereof at least 30 days in advance of such anniversary date. Without canceling the Agreement, either may, 30 days prior to each anniversary date, serve written notice on the other party of changes desired in wage rates for job classification, or classifications, hours of work, working conditions, or other conditions of employment.

On January 10, 1944, the UWOC informed the Company in writing that it wished to negotiate changes in the contract, but that, considering certain factors, it would agree to an extension of the present agreement until May 13, 1944. The Company replied accepting the extension "with all of the terms and conditions therein including a 30-day noti-

¹ See *Matter of Delese & Shepard Company, et al*, 56 N L R B 532.

² The contract contains no other clause concerning termination.

fication of any desire to negotiate the changes." The Company and the UWOC stipulated that the effect of this exchange of letters was to renew the contract from May 13, 1944, to May 13, 1945, and they both assert that the said contract renewal is a bar to a present determination of representatives among the employees in the Colfax unit. We cannot accept the stipulation. Neither the Company nor the UWOC, in their exchange of letters, suggested that the contract be extended for any term beyond May 13, 1944. The 30-day clause requested by the Company was apparently to protect the Company with regard to the negotiation of certain changes already requested. We find that the contract executed February 13, 1943, and the renewal thereof expired May 13, 1944. For this reason, and for the further reason that we hereinafter find that Colfax is not a unit appropriate for collective bargaining, the contract is no bar to a present determination of representatives by the employees in the Colfax unit.

The Mines unit, which is covered by a contract between the Company and the United Mine Workers of America, is not involved in this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the UWOC represents a substantial number of employees in each of the units hereinafter found appropriate.³

We find that questions affecting commerce have 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 UNITS

The Company operates in five main operating departments and six geographical divisions. The Power Plants Department controls the Company's five power plants which are designated Phillip's, Reed, Brunot's Island, Stanwix, and Colfax. Colfax Power Station was the first division of the Company to be organized by any labor organization. At first the Company recognized both an unaffiliated union and the predecessor to the UWOC⁴ as representative of their respective members at the Colfax station. This arrangement began in April 1937 and lasted for about a year. From that time until October 1939, the issue of representation of the Company's employees was in litiga-

³ The Field Examiner reported that the UWOC submitted 484 application-for-membership cards, 389 of which bore signatures of persons whose names were listed on the Company's pay roll of January 31, 1944, which contained the names of 1,508 production and maintenance employees in the appropriate unit; and that the cards were dated July 1943 through April 1944.

The UWOC submitted 71 additional application-for-membership cards. The names of 52 persons appearing on these cards were contained in a pay roll of the same date which contained the names of 123 militarized plant-protection employees. The cards were dated July 1943 through January 1944.

The Independent relies upon its contracts to show its interest in the proceedings.

⁴ United Electrical, Radio and Machine Workers of America, CIO

tion. In that month the Pennsylvania Labor Relations Board, herein called the PLRB, issued a Decision ordering elections in two units, system-wide in scope, one consisting of the manual workers in the employ of the Company, most of whom were hourly paid, herein called Unit #1,⁵ and one consisting of the clerical and technical employees of the Company, all of whom were monthly paid, herein called Unit #2. Supervisory employees were excluded from both units. The Independent won both elections. On August 14, 1940, the Company and the Independent executed an agreement covering the employees in Unit #1, which at that time included the hourly paid employees at Colfax. On May 31, 1941, the UWOC asserted the right to represent the employees at the Colfax Power Station in a separate unit, and threatened a strike in that station. As a result of an election held thereafter by the PLRB,⁶ the UWOC was certified as bargaining representative of the Colfax-hourly paid employees, and on February 13, 1943, executed its first and only contract with the Company covering those employees.

The UWOC now requests two separate units, one composed of all of the employees in Unit #1, excluding, however, the employees at the Colfax Power Station; the other composed of the militarized guards employed by the Company, presently included in Unit #2. The Independent contends that the only proper unit for bargaining for the employees of the Company is one composed of all of the employees of the Company, and of Allegheny Steam Company, herein called Allegheny, a wholly owned subsidiary of the Company.⁷ The Company takes the position that its employees should be represented in two units coextensive with Unit #1 and Unit #2, each including appropriate categories of the employees of Colfax Power Station, and militarized guards, but excluding employees of Allegheny.

The Board, after examining the facts in many situations similar to those herein presented, has reached certain conclusions which are applicable hereto:

(1) As to the Independent's contention that the clerical and technical employees of the Company should be combined with the production and maintenance employees into a single unit for the purposes of collective bargaining, the Board has found that the interests of clerical and technical employees, on one hand, and production and mainte-

⁵ Unit #1 as set up by the PLRB included Colfax.

⁶ The decision of the PLRB setting up the Colfax unit was affirmed by a Pennsylvania State Court November 12, 1941. This decision was appealed to the Pennsylvania Supreme Court and sustained by that Court on November 23, 1942.

⁷ Allegheny had no notice of the proceedings except through its relationship to the Company. The Company had no notice of this contention of the Independent prior to the filing of the Independent's petition to intervene, May 22, 1944. The record does not establish the necessity of combining the employees of Allegheny in a single unit with those of the Company for the purposes of collective bargaining. We shall, therefore, not consider this contention of the Independent determining the appropriate unit herein.

nance employees, on the other hand, are so divergent that, generally, they cannot be represented in a single unit to the best advantage of both types of employees.⁸ The bargaining units as set up by the PLRB, although described in terms of "hourly-paid" and "monthly-paid" employees, conform to this view. We shall, therefore, adhere to the line of demarcation established by the PLRB and adopt as basic the unit described by the PLRB in terms of hourly paid employees. Since, however, the distinctive characteristic of the employees in the two units is not the method of payment but the type of work performed, we shall depart from the PLRB's terminology and shall describe such unit in terms of the functions performed by its constituents.

(2) As to the UWOC's contention that the employees of the Colfax Power Station should not be included in the appropriate unit, the Board has found that a system-wide unit of a public utility is the optimum unit and is the only appropriate unit whenever there is a labor organization in a position to represent employees throughout the system.⁹ Both labor organizations involved herein are apparently in a position to represent the employees in the optimum unit. The Colfax Power Station is an integral part of the Company's system. It cannot function to any useful purpose without coordination with other departments of the Company. The Company cannot furnish the public complete and proper service without it. Its employees are interchangeable with employees in other power station of the system. The close integration of the Colfax Power Station in the system as a whole is proof of the efficacy of the principle above stated. The history of collective bargaining concerning these employees reveals no uniform pattern. It establishes, at most, the fact that a majority of them favor the UWOC. In the light of the strong factors favoring the appropriateness of the larger unit, this fact is not persuasive of the appropriateness of the smaller unit which the UWOC would leave undisturbed.¹⁰ Nor does the existence of a separate unit covering the mines of the Company have any bearing on the issue. The Company's mines are not integrated into the system. Accordingly, we shall include the maintenance and production employees at the Colfax Power Station in the system-wide unit hereinafter found appropriate.

(3) As to the UWOC's contention that the militarized plant-protection employees of the Company should be represented in a separate unit, apart from the employees of Unit #2 and all other non-militarized employees, the Board has found that militarized plant-

⁸ See *Matter of Boston Edison Company*, 51 N. L. R. B. 118; *Matter of Indianapolis Light & Power Co.*, 51 N. L. R. B. 670; *Matter of Sierra Pacific Power Co.*, 56 N. L. R. B., 458.

⁹ See *Matter of Pennsylvania Electric Company*, 56 N. L. R. B. 625, and cases cited therein.

¹⁰ See *Matter of Pittsburgh Plate Glass Co.*, 10 N. L. R. B. 1111.

protection employees must be represented in a unit separate from non-militarized employees.¹¹ The inclusion of the militarized guards and watchmen of the Company in Unit #2, is therefore inappropriate. We shall establish a separate unit composed of militarized watchmen and guards and afford them an opportunity to select a bargaining representative.

The parties are in agreement as to the constituency of the units hereinabove discussed with the exception of the following categories of employees whom the Company contends are supervisory employees.¹²

Shift foremen: Prior to the certification of the Independent by the PLRB on May 15, 1940, the Company employed certain operators classified as boiler operator A, switchboard operator A, and turbine operator A. Before entering into a contract with the Independent following the latter's certification, the Company changed the classification of such "A" operators to that of shift foremen and granted them an increase in pay. Although they voted in the 1940 election they were not covered by the 1940 contract. Their duties have not been materially altered, but the Company has gradually entrusted them with increased responsibility. They have no authority to hire but they may discipline, and their recommendations concerning promotion are given great weight. They attend foremen's meetings and foremen's classes. For the reasons above given, we find that shift foremen are supervisory employees, within the meaning of our usual definition and we shall exclude them from the appropriate units.

Chief operators in substations are in responsible charge of their stations. The substation operators who work on shift turns at these substations report to the chief operators, who have the responsibility to train these operators, and to see that a substation is manned and is in good working order. The chief operators coordinate the work of all persons in the substation and determine when work is to be started and stopped. They have all the authority which the shift foremen enjoy. Chief operators have never been included in any bargaining unit. We find that they are supervisory employees and shall exclude them from the unit.

Hourly rated foremen are employed only in the construction department. They supervise groups of men, performing the same work as the men under them only in emergencies. Their recommendations concerning the discharge, promotion, or transfer of the men in their charge are given great weight by the Company's officials. They have never been included in any bargaining unit. We find that hourly rated

¹¹ *Matter of Dravo Company*, 52 N. L. R. B. 322.

¹² The Independent would include these employees in the unit, the UWOC would include the shift foreman and Chief of Guards B and takes no position as to chief operator and hourly rated foremen.

foremen are supervisory employees and we shall exclude them from the unit.

Chiefs of Guards B: All parties agree that the Chiefs of Guards, who are in charge of all guards at the stations to which they are assigned, should be excluded. Next in authority under these persons are the Chiefs of Guards B.¹³ They are in charge of shifts and are responsible for the protection of their stations during their tour of duty. Their recommendations concerning the status of guards B are considered by the Company. We consider Chiefs of Guards B to be supervisory employees and we shall exclude them from the unit.

We find that all maintenance and production employees of the Company, including trouble men, utility men, service men, material men, cable testers, field clerks, and service crew leaders but excluding shift foremen, mine employees in the unit presently represented by United Mine Workers of America, clerical and technical employees, all militarized plant-protection employees, 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.

We further find that all militarized plant-protection employees of the Company, excluding 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 questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the payroll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Duquesne Light

¹³ This title arises from the fact that most guards are termed "guards B"

Company, Pittsburgh, Pennsylvania, elections 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 Sixth 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 units 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 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 Utility Workers Organizing Committee, affiliated with the Congress of Industrial Organizations, or by Independent Association of Employees of Duquesne Light Company and Associated Companies, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.