

In the Matter of COLUMBUS & SOUTHERN OHIO ELECTRIC Co. and
TRANSPORT WORKERS UNION, C. I. O. LOCAL 208.

Case No. 9-R-1464.—Decided August 23, 1944

Messrs. John H. Titus and Ralph E. Weaver, both of Columbus, Ohio, for the Company.

Mr. John Ryan, of Columbus, Ohio, for the Transport Workers.

Mr. Daniel E. Bevis, of Columbus, Ohio, for the Brotherhood.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE,

Upon a petition duly filed by Transport Workers Union, C. I. O., Local 208, herein called the Transport Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Columbus & Southern Ohio Electric Company, Columbus, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James A. Shaw, Trial Examiner. Said hearing was held at Columbus, Ohio, on June 29, 1944. The Company, the Transport Workers, and Southern Ohio Electric Employees Brotherhood, herein called the Brotherhood, 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

Columbus & Southern Ohio Electric Company, an Ohio corporation, has its principal office and place of business in Columbus, Ohio, where

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it is engaged in the generation and distribution of electrical energy, together with the maintenance and operation of street railway transportation facilities. The Company's business is functionally divided into two separate divisions comprising the transportation and electrical divisions, respectively. The electrical division is in turn divided into two districts, of which only one, known as the Columbus District, is involved in the present proceeding. Through its Columbus District, the Company supplies electrical energy to the Columbus, Ohio, and adjacent territory. During the year 1943, the Company purchased for use in its Columbus District, raw materials valued in excess of \$1,000,000, of which approximately 10 percent was obtained from points outside the State of Ohio. During the same period, the Company's sales of electrical energy amounted in value to more than \$5,000,000.

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

II. THE ORGANIZATIONS INVOLVED

Transport Workers Union, Local 208, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Southern Ohio Electric Employees Brotherhood is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about April 28, 1944, the Transport Workers, claiming majority representation among certain employees of the Company, requested in writing that the Company arrange a meeting for the purposes of collective bargaining. The Company failed to reply to the request made by the Transport Workers. Both the Company and the Brotherhood contend that the present proceeding is barred by reason of an existing collective bargaining agreement between the Company and the Brotherhood. In addition thereto, the Company asserts that the restriction upon the expenditure of funds imposed upon the Board by the current Appropriation Act, constitutes an effective bar to this proceeding.

The contract is an exclusive recognition agreement dated July 16, 1943, with a duration period of 1 year subject to automatic renewal in the absence of notice by either party to the other of a desire to terminate the agreement 30 days prior to the expiration date thereof. While it does not appear that any notice of termination was given in accordance with the aforesaid provision, it is clear that the claim of

the Transport Workers to majority representation and the filing of its petition in the present proceeding, occurred within a reasonable time prior to the expiration date of the contract and before the effective date for the automatic renewal of such contract. We find, accordingly, that the contract is not a bar to an investigation and certification of representatives.¹ We also find no merit in the Company's second contention, since the restriction contained in the current Appropriation Act has no application to a representation proceeding.²

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Transport Workers 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 parties are generally agreed that a bargaining unit composed of the electrical division employees of the Company in its Columbus District, excluding supervisory employees, general office employees, and those employed as company police, is appropriate for the purposes of collective bargaining. The only dispute relates to the question of including therein meter readers, working foremen, and departmental clerks. The Transport Workers would exclude, while the Company and the Brotherhood would include, the employees in the three categories hereinabove referred to.

In the case of meter readers, the record discloses that meter readers, although formerly attached to the meter department,⁴ have for the past few years been under the jurisdiction of the general accounting department,⁵ due to the close association resulting from the fact that meter readers provide the information from which the accounting department makes up its bills. The evidence further reveals that meter readers report each morning to the Company's general offices

¹ See *Matter of Sayles Finishing Plants, Inc.*, 49 N. L. R. B. 532; *Matter of Crown Zellerbach Corporation, Seattle Division*, 54 N. L. R. B. 25; *Matter of Detroit Michigan Stove Company*, 54 N. L. R. B. 459.

² See *Matter of Humble Oil & Refinery Company*, 53 N. L. R. B. 116; *Matter of Baco Magnesium Inc.*, 55 N. L. R. B. 380.

³ The Field Examiner reported that the Transport Workers submitted 175 designations dated between December 1943 and June 1944, and 74 undated designations. There are 350 employees in the claimed appropriate unit.

The Brotherhood relies upon its contract as evidence of its interest in the employees herein concerned.

⁴ The employees in the meter department are in a separate classification from the meter readers.

⁵ The foreman in charge of meter readers is directly responsible to the assistant auditor in the accounting department.

where they receive their assignments for the day and where they also report at the end of each day with the data taken from customers' meters, which data is turned over to the employees of the accounting department. The Brotherhood urges, in support of its contention that meter readers be included, the fact that meter readers have, for a period of approximately 1 year, been covered by the existing collective bargaining agreement between the Company and the Brotherhood.⁶ While the history of collective bargaining is entitled to weight in the determination of the appropriate unit, we do not agree that countervailing facts may not determine that a unit different from the one so established will better effectuate the purposes and policies of the Act.⁷ In view of the relation between meter readers and the accounting department and the fact that the work of meter readers is clerical in nature and not concerned directly with that of the employees of the electrical division, we find that meter readers have interests more closely related to those of the general office employees than to the interests of employees within the unit agreed upon by the parties as appropriate for collective bargaining. Accordingly, we shall exclude meter readers from the unit hereinafter found appropriate.⁸

As regards working foremen, it appears that employees in this category are line foremen who accompany and supervise street gangs with whom they do manual work in the installation and repair of various electrical lines. While working foremen relay instructions received from the general superintendent, there is no evidence that they have the right to hire or discharge or that they may effectively recommend such action. We find that they are not supervisory employees within our usual definition of the term; accordingly, we shall include them within the appropriate unit.⁹

There remains for consideration the question of including or excluding departmental clerks from the appropriate unit. At the present time the Company has but one departmental clerk, a salaried employee who works in the garage and whose duties consist of keeping time and making the necessary records for this department. The Transport Workers requests that he be excluded upon the ground that he is a part of the general office force. While it appears that this employee is under the immediate supervision of the garage superintendent, his work is essentially clerical in nature and of the same type as

⁶ The contract has, however, but limited application to meter readers who are unaffected by the wage provisions therein.

⁷ See *Matter of El Paso Electric Company*, 50 N. L. R. B. 56; *Matter of Boston Edison Company*, 51 N. L. R. B. 118; *Matter of Indianapolis Light & Power Company*, 51 N. L. R. B. 670

⁸ See *Matter of Indianapolis Power & Light Company*, footnote 7, *supra*.

⁹ See *Matter of Public Service Electric and Gas Company*, 54 N. L. R. B. 1532.

that performed by employees of the general office division. We shall, accordingly, exclude him from the appropriate unit.¹⁰

We find that all employees of the Company in the electrical division of the Columbus District, including the Walnut and Piqua generating plants and including working foremen, but excluding general office employees (including meter readers and departmental clerks), company police, 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 an appropriate unit 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.

The Company employs about 11 hourly paid temporary employees who are normally hired for specific jobs, and whose employment is usually limited to the vacation months of June, July, and August. These employees are high school students who are hired without expectation that they will be retained as permanent employees of the Company. The Transport Workers urges that temporary employees be declared ineligible to vote at the election. In view of the fact that temporary employees are hired for a special project to work only until the completion of that project and in the absence of evidence that such employees as a group have a substantial expectancy of regular summer employment, we find that their interest in the determination of a bargaining representative is insufficient to entitle them to participate in the election; accordingly, we shall exclude them from the group of employees eligible to vote at the election.¹¹

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Columbus & South-

¹⁰ See *Matter of Indianapolis Power & Light Company*, 51 N. L. R. B. 670.

¹¹ See *Matter of Sierra Pacific Power Company*, 56 N. L. R. B. 458.

ern Ohio Electric Company, Columbus, 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 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 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 temporary employees, and 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 Transport Workers Union, Local 208, affiliated with the Congress of Industrial Organizations, or by Southern Ohio Electric Employees Brotherhood, 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.