

IN the Matter of LEXINGTON WATER COMPANY and INTERNATIONAL
BROTHERHOOD OF FIREMEN & OILERS, LOCAL 352, A. F. OF L.

Case No. 9-R-1541.—Decided September 25, 1944

Mr. William E. Stoney, of New York City, for the Company.

Mr. Harold L. Colvin, of Louisville, Ky., for the Brotherhood.

Mr. V. L. Kelley, of Evansville, Ind., for the Operating Engineers.

Miss Melvern R. Krelow, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Brotherhood of Firemen & Oilers, Local 352, A. F. of L., herein called the Brotherhood, alleging that a question affecting commerce had arisen concerning the representation of employees of Lexington Water Company, Lexington, Kentucky, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner. Said hearing was held at Lexington, Kentucky, on August 25, 1944. The Company, the Brotherhood, and International Union of Operating Engineers, Local No. 181, herein called the Operating Engineers, 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

Lexington Water Company, a Kentucky corporation, with its principal office located in Lexington, Kentucky, is engaged in furnishing water for public, residential, commercial, and industrial uses in the city

of Lexington and vicinity. For this purpose it maintains a pumping station and water treatment plant near the city of Lexington. All sources of water are derived from four impounding reservoirs located near the city of Lexington, or from the Kentucky River. The Company serves an area with a population of approximately 68,000, and has a total of 16,000 customers. During 1943, the Company supplied to its customers approximately 2,193,900,000 gallons of water, of which approximately 538,000,000 gallons were supplied to residential users, 444,000,000 gallons to industrial users, 524,000,000 gallons to governmental agencies, 660,000,000 gallons to commercial users, and 27,500,000 gallons for public fire protection. Among its customers are companies who engage in business affecting interstate commerce, 3 interstate railroads, and an army signal depot. The Company purchases supplies valued at approximately \$50,000 annually, virtually all of which is shipped to the Company from points outside the State of Kentucky.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Firemen & Oilers, Local 352, and International Union of Operating Engineers, Local No. 181, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company and the Operating Engineers executed a collective bargaining contract in 1941, another in 1942, and the agreement presently in existence on August 22, 1943. All three covered the same employees as are here involved. The contract entered into on August 22, 1943, covers a period of 4 years, and contains a provision that if either party desired to change a section or sections of the contract, written notice shall be served on the other party at least 30 days prior to the end of each 12-month period after the effective date of the agreement. On or about July 21, 1944, the Brotherhood requested recognition from the Company as bargaining representative for its employees, but the Company has refused such request until the Brotherhood is certified by the Board in view of the existing agreement between the Company and the Operating Engineers.

We have frequently held that a contract covering an unreasonable length of time and which has been in effect for a year or more does not constitute a bar to an investigation and certification of representatives. At the date of the hearing, the contract of August 22, 1943, had been in effect for more than a year and had almost 3 years to run. We find

that this contract does not constitute a bar to a present investigation of representatives.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Brotherhood represents a substantial number of employees in the unit hereinafter found 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

We find, substantially in accordance with an agreement of the parties, that all employees of the Company, excluding office workers, clerical workers, the chief engineer, the general foreman, the chief chemist, company executives, and all other 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 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 the National Labor

¹ *Matter of Wichita Union Stockyards Company*, 40 N. L. R. B. 369, and cases cited therein.

² The Field Examiner reported that the Brotherhood submitted 25 authorization cards; that the names of 24 persons appearing on the cards were listed on the Company's payroll of August 3, 1944, which contained the names of 26 employees in the appropriate unit; and that the cards were dated in June 1944.

The Operating Engineers relies upon its contract as evidence of interest in this proceeding. On June 8, 1944, the employees signed a document in which they advised the Company of "the discontinuance of (their) affiliation" with the Operating Engineers, that they intended "choosing a different bargaining agency" and that they were withdrawing the authority "for (the Company) to deduct dues from (their) wages to be forwarded to Local #181." A copy of this document was also forwarded to the Operating Engineers. In accordance with this request the Company ceased deducting dues after the month of June 1944. At the hearing, a representative of the Operating Engineers conceded that none of the employees has paid dues since June, but maintained that in accordance with a 3-month period of grace existing under the Operating Engineers' constitution, none of the employees had been suspended, and that all were still members of the Operating Engineers.

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 Lexington Water Company, Lexington, Kentucky, 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 International Brotherhood of Firemen & Oilers, Local 352, A. F. of L., or by International Union of Operating Engineers, Local No. 181, for the purposes of collective bargaining, or by neither.