

In the Matter of SOUTHWESTERN PUBLIC SERVICE COMPANY, PANHANDLE  
DIVISION, and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL  
351, A. F. L.

*Case No. 16-R-959.—Decided October 11, 1944*

*Mr. Charles H. Keffer*, of Amarillo, Tex., and *Mr. C. R. Stahl*, of  
Borger, Tex., for the Company.

*Mr. Arvil Inge*, of Fort Worth, Tex., for the Engineers.

*Mr. Lawson Wimberly*, of Washington, D. C., for the IBEW.

*Mr. Bernard Goldberg*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, Local 351, A. F. L., herein called the Engineers, alleging that a question affecting commerce had arisen concerning the representation of employees of Southwestern Public Service Company, Panhandle Division, Borger, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John H. Garver, Trial Examiner. Said hearing was held at Amarillo, Texas, on August 28, 1944. The Company, the Engineers, and International Brotherhood of Electrical Workers, 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 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

In the State of Texas, Southwestern Public Service Company, Panhandle Division, operates three electric generating plants in Wheeler, 58 N. L. R. B., No. 175.

Hutchinson, and Moore Counties, respectively, and a gas and water department in the city of Borger. About 5 percent of the electric energy generated by the plants is sent over connecting high voltage transmission lines to consumers in the States of Oklahoma and Kansas. The Company also furnishes electricity to interstate railways and to local industries. In connection with its operations, the Company annually receives electrical equipment valued in excess of \$100,000 from points outside the State of Texas.

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

## II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, Local 351, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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

## III. THE QUESTION CONCERNING REPRESENTATION

On September 24, 1942, the Company and IBEW Local Union No. B-935 entered into a contract for a term to expire on July 1, 1943, renewable automatically from year to year thereafter unless either party gave notice of termination prior to May 1 of any year. The contract provided: "This agreement shall extend to all regular employees of the Panhandle Division of the Southwestern Public Service Company, who are now or may hereafter become members of the Local Union." On April 25, 1944, the president of the contracting local notified the Company of its desire to terminate the agreement as of July 1, 1944. The Company replied that since an international representative of the IBEW had approved the contract, termination also required the approval of a similar representative. On May 26, 1944, a representative of the Engineers called on the general manager of the Company to notify the latter of the former's claim that it represented a majority of the employees in a unit alleged to be appropriate and that a petition for certification of representatives was being prepared for submission to the Board.

The IBEW contends that the contract is a bar to this proceeding: that the purported notice of termination by the president of the contracting local was invalid since it has not been approved by the international president as provided in IBEW's constitution. It is unnecessary to consider the question of the validity of the notice served by the

local union. In no event can the contract itself operate as a bar to this proceeding, since, as noted above, it is limited in its coverage to union members only.<sup>1</sup> The IBEW further contends that the petition should be dismissed because the proceeding involves a jurisdictional dispute between two unions with the same affiliation, and the Engineers has not attempted to resolve it by submission to the procedures of the American Federation of Labor. However, the Board has accepted jurisdiction in disputes between the Engineers and the IBEW, finding, as here, that the conflict between the two unions was of long standing and universal in scope and apparently insoluble without resort to the administrative processes of the Act.<sup>2</sup>

A statement of a Board agent and other evidence introduced at the hearing indicate that the Engineers represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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 Engineers seeks a unit limited to production and maintenance employees in the production department, excluding office and clerical employees, employees outside of the generating plants, and supervisory personnel. The IBEW contends that a division-wide unit is appropriate.

The Panhandle Division of the Company is a single administrative division under the supervision of a general manager and consists of the production department, the overhead department, and the gas and water department. The three electric generating plants comprising the production department are situated within a 75-mile radius of the city of Borger, Texas, where the overhead, and gas and water departments as well as the divisional offices, warehouses and shops are located. The production department is responsible for the generation of electricity, the overhead department operates and maintains the power lines delivering electricity to customers, and the gas and water department distributes gas and water in the city of Borger. The operations of all three departments are integrated under the supervision of the general manager, e. g., an employee of the gas and water department

<sup>1</sup> See *Matter of Elgin National Watch Company*, 53 N. L. R. B. 855, *Matter of Continental Can Company*, 52 N. L. R. B. 710; *Matter of Electric Auto-Lite Company*, 40 N. L. R. B. 1345.

<sup>2</sup> See *Matter of Mountain States Power Company*, 58 N. L. R. B. 109, *Matter of Iowa Electric Light and Power Company*, 46 N. L. R. B. 230.

<sup>3</sup> The Field Examiner reported that the Engineers submitted 38 application-for-membership cards, all bearing names listed on the Company's May 31, 1944 pay roll, and that 15 were dated in May 1944, while the remainder were undated. The IBEW relies on its contract. In addition, at the hearing it submitted designations signed by 25 persons, 19 of the signatures correspond to names appearing on the aforesaid pay roll. According to testimony at the hearing there are between 80 and 90 employees in the appropriate unit.

reads electric as well as gas and water meters in the city of Borger; electric meters are repaired in a shop supervised by the head of the gas and water department; overhead employees are quite frequently assigned to perform work in the generating plants under the supervision of the power plant supervisor, although remaining on the overhead department pay roll; the general warehouse is used to store materials for all departments; all personnel records are kept in and payment of all employees is made from the general offices; and vacation rights, sick benefits, and working rules and regulations are the same for all employees in the Division. It is thus apparent that because of the functional integration of the Division's activities, the appropriate unit should comprise all production and maintenance employees in the Panhandle Division.<sup>4</sup> It should also be emphasized that the unit sought by the Engineers is not a true craft unit; it comprises a number of different crafts, in addition to semi-skilled and unskilled laborers.<sup>5</sup> The Board has on occasion found appropriate a non-craft or mixed unit limited to employees in a single department such as the foregoing, on the basis of the extent of organization, in order to make collective bargaining an immediate possibility where no other union has effected substantial organization of employees beyond such unit. However, such is not the case here.

We find that all production and maintenance employees of the company, including the warehouse clerk in the gas and water department, but excluding all office and clerical employees, employees in the outlying distribution points, 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,<sup>6</sup> 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 em-

<sup>4</sup> As previously stated, the IBEW has been recognized as bargaining representative of all of its members within the division. As a general rule bargaining history is of decisive importance in determining the appropriateness of any unit. However, a contract for members only is not the kind of collective bargaining contract envisioned by or protected by the Act. Consequently, while the Board does not, therefore, accord a record of bargaining history for members only the same weight ascribed to exclusive representation bargaining history, the former kind of history does nevertheless furnish some evidence of the appropriateness of any unit. See *Matter of Elgin National Watch Company*, 53 N L R B 855.

<sup>5</sup> Some of the job classifications within the production department are: operating engineers, firemen, master mechanics, chemists, electricians, welders, laborers, and janitors.

<sup>6</sup> The parties are agreed that employees in the production department having the job titles of master mechanic, machine shop foreman, chief electrician, maintenance and labor foreman, and chief chemist perform minor supervisory functions and do not come within the definition of supervisory employees set forth above; they were also included in the contract between the Company and the IBEW.

ployees 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.<sup>7</sup>

### 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 Southwestern Public Service Division, Panhandle Division, Borger, Texas, 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 Sixteenth 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 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 International Union of Operating Engineers, Local 351, A. F. L., or by International Brotherhood of Electrical Workers, A. F. L., for the purposes of collective bargaining, or by neither.

<sup>7</sup> The IBEW's request to appear on the ballot as I. B. E. W. is hereby granted.