

In the Matter of WEST OHIO GAS COMPANY and CONGRESS OF INDUSTRIAL ORGANIZATIONS

*Case No. 8-R-1689.—Decided December 21, 1944*

*Messrs. C. H. Neville, J. S. Vail, and F. L. Pringle, of Lima, Ohio, for the Company.*

*Mr. W. L. Young, of Lima, Ohio, for the C. I. O.*

*Mr. Kenneth Scott, of Toledo, Ohio, for the A. F. of L.*

*Mr. Louis Cokin, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of West Ohio Gas Company, Lima, 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 Lima, Ohio, on November 16, 1944. At the commencement of the hearing the Trial Examiner granted a motion of American Federation of Labor, Federal Local No. 23292, herein called the A. F. of L., to intervene. The Company, the C. I. O., and the A. F. of L. appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the A. F. of L. moved to dismiss the petition. The Trial Examiner reserved ruling thereon. 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 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

West Ohio Gas Company is an Ohio corporation engaged in the sale and distribution of fuel gas in Lima, Ohio, and within a 35-mile  
59 N. L. R. B., No. 215.

radius of that city. The company's sales are in excess of \$1,000,000 annually and it numbers among its customers Lima Locomotive Works, Lima Tank Depot, Westinghouse Manufacturing Company, and numerous other war industries.

The Company admits, for the purpose of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

Congress of Industrial Organizations is a labor organization, admitting to membership employees of the Company.

American Federation of Labor, Federal Local No. 23292, is a labor organization, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The C. I. O. requested the Company to recognize it prior to December 2, 1944, as exclusive collective bargaining representative of the Company's employees. The Company refused this request on the ground that it was operating under a contract with the A. F. of L.

On January 2, 1943, the Company and the A. F. of L. entered into an exclusive collective bargaining contract. The contract provides that it shall remain in effect for a period of 1 year and from year to year thereafter unless either party thereto notifies the other of a desire to terminate not less than 30 days prior to any annual expiration date. Inasmuch as the C. I. O. made its claim upon the Company prior to December 2, 1944, the date upon which the contract might have renewed itself, we find that it does not constitute a bar to a determination of representatives at this time.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>1</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 C. I. O. contends that all employees of the Company, including janitors, watchmen, and collectors, but excluding clerks, superintend-

<sup>1</sup> The Field Examiner reported that the C. I. O. presented 31 authorization cards. There are approximately 39 employees in the appropriate unit. The A. F. of L. did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

ents, assistant superintendents, general foremen, assistant general foremen, and department heads, constitute an appropriate unit. The only controversy with respect to the unit concerns the bill deliverer. The Company and the A. F. of L. urge that he be excluded from the unit and the C. I. O. that he be included.

The bill deliverer delivers bills to the premises of customers of the Company and is under the same supervision as the meter readers, who are admittedly in the unit. The record indicates that the duties of this employ ee and his relationship to the employees in the unit are such that he should be included. Accordingly, we find that the bill deliverer should be included in the unit.

We find that all employees of the Company, including janitors, watchmen, collectors, and the bill deliverer, but excluding clerks, superintendents, assistant superintendents, general foremen, assistant foremen, department heads, and any 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 find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot.

The A. F. of L. contends that no election should be conducted in the immediate future because of certain actions of the Regional Director. In June 1944, the C. I. O. filed a petition, which was withdrawn at the request of the Regional Director because of its untimeliness. It appears that although the Company and the C. I. O. were notified of the withdrawal, the A. F. of L. was not so notified. The A. F. of L. contends that it has been deprived of its rights under its contract, alluded to above, because of this action, inasmuch as the Company thereafter repeatedly questioned the A. F. of L.'s rights under the contract because of the C. I. O.'s claim. It should be noted that the A. F. of L. enjoyed exclusive collective bargaining rights under its contract for a period of over 1 year prior to the petition filed in June 1944, and that, in any event, the Company was under a duty to continue to bargain with the A. F. of L. We find the position of the A. F. of L. to be untenable.

We shall direct that the employees eligible to vote shall be those 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.

## 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 West Ohio Gas Company, Lima, 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 they desire to be represented by Congress of Industrial Organizations, or by American Federation of Labor, Federal Local No. 23292, for the purposes of collective bargaining, or by neither.