

In the Matter of FLORIDA POWER CORPORATION *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNIONS B-433, B-626, B-682, AND B-1412, A. F. L.

*Case No. 10-R-1337.—Decided January 5, 1945*

*Messrs. K. E. Fenderson and A. W. Higgins, of St. Petersburg, Fla., for the Company.*

*Messrs. L. L. Dick and E. O. Peters, of St. Petersburg, Fla., Mr. W. A. Coggins, of Yankeetown, Fla., Mr. W. J. Wightman, of Avon Park, Fla., and Mr. William Coate, of Orlando, Fla., for the Union. Mr. Thomas A. Ricci, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Electrical Workers, Local Unions B-433, B-626, B-682, and B-1412, A. F. L., herein collectively called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Florida Power Corporation, St. Petersburg, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harry F. Jones, Trial Examiner. Said hearing was held at St. Petersburg, Florida, on November 10, 1944. The Company and the Union 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

Florida Power Corporation, a public utility corporation organized and existing under the laws of the State of Florida, is a wholly owned

subsidiary of the General Gas and Electric Corporation, which in turn is a subsidiary of the Associated Gas and Electric Corporation. The Company is engaged in the production, distribution, and sale of electrical energy, gas and ice. It serves a number of communities in the State of Florida and some of its power lines connect with those of the Georgia Power and Light Company and the Alabama Power Company, located in the States of Georgia and Alabama, respectively. Among the Company's consumer customers are federal air fields, airports, governmental projects, and the Atlanta Coast Line and Seaboard railroads. During the fiscal year immediately preceding the date of the hearing, the Company purchased supplies and replacement equipment valued in excess of \$1,000,000 from points outside the State of Florida. During the same period approximately 20 percent of its electric current output, or over 100,000 kilowatts, flowed from Florida into the State of Georgia. The Company is subject to the jurisdiction of the Federal Power Commission.

The Company does not deny, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Electrical Workers, and its Local Unions B-433, B-626, B-682, and B-1412, all affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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 Union requests a unit comprised of employees of 5 of the Company's departments, namely: (1) Production, (2) Distribution, (3) Substations, (4) Meter, and (5) Appliance Service. The Company

<sup>1</sup>The Field Examiner reported that the Union submitted 124 designation cards; that there are 242 employees in the unit it alleges to be appropriate; and that of 15 names on the said designation cards spot-checked against the Company's pay roll for the period ending November 6, 1944, all were found on the said pay roll.

contends that the unit should embrace employees of those of its 9 departments in which the Union may obtain a majority in separate departmental elections. The parties are agreed to the inclusion of the employees in the classifications listed in "Appendix A," attached hereto, and to the exclusion of the employees in the classifications listed in "Appendix B," also attached hereto. However, they are in disagreement with respect to (1) marine and building maintenance employees in the Production Department, (2) meter readers in the Distribution Department, and (3) dispatchers in the Substations Department. In addition there is a controversy concerning 52 employees in the Distribution Department, whom the Company would include in the unit requested by the Union herein, but who the Union contends now constitute a separate bargaining unit that should not be affected by the instant proceeding.

The Company is primarily engaged in the production and distribution for sale of electrical current. Of the 423 employees in its 9 departments, 158 are employed in its Production Department and 164 in its Distribution Department.

The employees in the Production Department operate and maintain the Company's steam, hydro and diesel plants which generate electrical energy. Among these employees are included operators, electricians, mechanics, carpenters, chemists and laborers. The function of this department is limited to the general purpose of production.

The Distribution Department is charged with the responsibility of construction and maintenance of all transmission lines, overhead and underground distribution lines, and substation and transformer equipment. It includes among its numerous categories of employees, linemen, groundmen, mechanics, electricians and truck drivers. All these employees function as a unit directly concerned with the process of taking the electrical current from the plants to the Company's consumers.

The Substation Department is charged with the duty of directing the use of power generated at the production plants, arranging interchange of power with other utility companies, and energizing and deenergizing sections of the Company's transmission and distribution lines. In this department are dispatchers, who determine varying requirements for different localities, and operators, who handle switches at substations. It has 15 employees.

The Meter Department consists of eight meter testers and apprentices, who are engaged in the testing, care and maintenance of electrical metering equipment. They work on the Company's premises and sometimes go to consumers' premises to install and repair meters.

The Appliance Service Department has 15 servicemen and apprentices, who repair and maintain electrical appliances, both in Company shops and on consumers' premises.

In addition to the foregoing 5 departments, all doing different phases of work related to electricity, and the employees of all of which the Union would include in a single unit, the Company maintains 4 other departments, the employees of which it would add to the unit. The Transportation Department has 14 employees who are mechanics and helpers, working in Company garages maintaining and repairing cars and trucks. There are 7 storekeepers and helpers who comprise the Stores Department. This group has 3 separate offices set apart in Company buildings for receiving and distributing materials and supplies. The Gas Department, with 38 employees, operates the Company's 2 gas generating plants, distributes gas to consumers, maintains all equipment used in connection with this portion of the Company's business, and services gas appliances of the Company and its consumers. The Company is seeking to dispose of its Gas Department, under a Securities and Exchange Commission directive. Lastly, there is the Ice Plant Department, with 5 employees who operate the Company's single ice plant.

The Union has limited its organizing activities to the employees of the 5 departments it requests. Except for 1 employee now in the Transportation Department, who joined the Union while employed in the Production Department, the Union has no members in any of the latter 4 departments. The Company's only collective bargaining experience has been a contract with the Union, executed annually from 1936 to 1943, covering 52 employees in the Distribution Department. The Union contends that the employees it seeks to represent constitute an integrated group, as electrical workers, apart from the remaining departments, that their departments are functionally interrelated in directly carrying on the primary business of the Company, and that the employees in the other departments have indicated their divergent interests by their failure voluntarily to seek membership in the Union.

There appears no valid reason to join the Transportation, Stores, Gas and Ice Plant Departments with the five electrical departments for collective bargaining purposes at the present time. The departments sought by the Union do in fact perform one continuous integrated operation in the production and sale of electrical current. All of them are in direct contact with electrical operations, and, together, are clearly distinguishable from the remaining departments. The duties of the Stores Department are for the most part clerical in nature and the Transportation Department is limited to car and truck garage work. The Gas and Ice Plant Department employees have entirely different skills and function completely apart from electrical workers. Consequently, in view of the separability and functional interrelation of the departments sought by the Union, the

limited organizational activities of the Union, and the absence of any significant history of collective bargaining, we are of the opinion that the appropriate unit should encompass the Production, Distribution, Substations, Meter and Appliance Service Departments, and that there is no merit in the request for a separate election in each department as a condition precedent to the inclusion of its employees.

We turn now to a consideration of the disputed categories of employees.

*Marine employees in the Production Department:* These employees operate tugboats and barges transporting fuel oil to the Company's power plants. The Company urges that they be included because it groups them with the remainder of its Production Department employees. The Union would exclude them because their work is entirely different from that of the employees it seeks to represent. None of these employees is a member of the Union and the Union has not sought to organize them. Since their work is not similar to that of electrical employees, we shall exclude the marine employees.

*Building maintenance employees in the Production Department:* These are six men who "prepare, maintain and make small additions to Company property, principally in the Production Department." The Union would exclude them and the Company urges their inclusion. They work under the Production superintendent, are permanently stationed at the Company's principal power plant and are sent to any plant where building maintenance is required. The Union has included other maintenance employees in the Production Department who are permanently stationed at various other plants. It is clear that the six employees in question are an integral part of the Production Department and have the same interests as the other employees of that department. We shall, therefore, include them in the unit.

*Dispatchers in the Substation Department:* Five load dispatchers direct substation operators to energize and deenergize transmission and distribution lines. The Union would include them and the Company urges their exclusion as administrative employees. They are highly trained and are thoroughly familiar with the entire electrical system and its equipment. Their pay is considerably higher than substation operators. While the Company desires their opinion concerning the efficiency of substation operators, it appears that their authority in this respect is similar to that of the Company's working foremen, whom the parties agree to include. Under these circumstances, we are of the opinion that load dispatchers' duties are more closely related to production than to administration, and we shall, accordingly, include them in the unit.<sup>2</sup>

<sup>2</sup> See *Matter of West Penn Power Company*, 55 N. L. R. B. 1356.

*Meter readers in the Distribution Department:* The 12 meter readers are exclusively engaged in reading customers' meters and reporting back to district managers. The Union would exclude them as clerical employees, while the Company urges their inclusion. Their duties require no mechanical knowledge or ability. They are also bonded and make collections. They are clearly clerical employees and we shall exclude them from the unit.<sup>3</sup>

*Fifty-two employees in the Distribution Department:* In 1939, after a pay-roll check, the Union was designated by a Board Regional Director as the exclusive bargaining representative of employees in the Company's Distribution Department. Thereafter, the Union and the Company entered into annual collective bargaining contracts covering these employees. The last such agreement was executed on December 1, 1943, and provides that it is to remain in effect until December 1, 1944, and from year to year thereafter until 30 days' written notice to renegotiate is given by either party prior to any anniversary date.<sup>4</sup> On January 14, 1944, the Florida Public Service Corporation was merged with the Company, and, as a result, the number of employees in the Distribution Department was more than doubled. The question of broadening the contract to embrace the new distribution employees was never raised. The Union now "feels that the present unit [52 employees] under contract at this time should not be disturbed," and it states that it would be willing to negotiate a single collective bargaining contract to cover these employees together with the others it now seeks to represent. The Company contends that the employees in the Distribution Department cannot properly be segregated into separate bargaining units.

All employees in the Distribution Department work under the superintendent of transmission and distribution. Among both old and new employees there are the same work classifications. Both groups require similar skills and experience, and have the same wage scales and conditions of employment. Apart from the fact that one group is covered by the contract, the two groups are in no way distinguishable. In view of these facts we are of the opinion that the employees of the Distribution Department cannot be divided into separate bargaining units, and we shall, accordingly, include those employees covered by the 1943 contract between the Company and the Union.

We find that all employees in the Company's Production, Distribution, Substations, Meter and Appliance Service Departments, including building maintenance employees in the Production Department, and all employees in the classifications listed in "Appendix A," attached hereto, but excluding marine employees in the Production

<sup>3</sup> See *Matter of Boston Edison Company*, 51 N. L. R. B. 118.

<sup>4</sup> The record does not disclose whether the contract is still in effect. It is not urged as a bar.

Department, meter readers in the Distribution Department, dispatchers in the Substation Department, all employees in the classifications listed in "Appendix B," attached hereto, 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.

#### 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 Regional Director is hereby authorized to conduct the election in whole or in part by mail.

#### 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 Florida Power Corporation, St. Petersburg, Florida, 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 Tenth 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 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 or not they desire to be represented by International Brotherhood of Electrical Workers, Local Unions B-433, B-626, B-682, and B-1412, A. F. L., for the purposes of collective bargaining.

## APPENDIX A

Working foremen, wherever found, in any of the departments listed below.<sup>5</sup>

*Production department*

Operators  
Assistant operators  
Auxiliary equipment operators  
Apprentices  
Chief electricians  
Electricians  
Electricians' helpers  
Helpers  
Master mechanics  
Mechanics  
Mechanics' helpers  
Carpenters  
Bricklayers  
Chemists  
Janitors  
Firemen  
Laborers

*Building maintenance section of*

*Production department*  
Maintenance man  
Laborer  
Carpenter

*Distribution department*

Local managers helpers<sup>6</sup>  
Linemen  
Apprentice linemen  
Firemen  
Groundmen  
Truck drivers  
Substations mechanics  
Mechanics' helpers  
Laborers  
Electric servicemen  
Foresters  
Division substation electrician  
Substation electricians  
Carpenters

*Substations department*

Operators

*Meter department*

Meter testers, 1st and 2nd class  
Meter testers' apprentices

*Appliance Service department*

Appliance servicemen  
Appliance servicemen apprentices

## APPENDIX B

*Production department*

Clerks  
Guards

*Distribution department*

Foremen  
Clerks

*Substations department*

Clerks

*Meter department*

Clerks

*Appliance Service department*

Assistant supervisor  
Clerks

<sup>5</sup> We are persuaded from the entire record that these working foremen possess no such authority as would bring them within our customary definition of supervisory employees.

<sup>6</sup> These employees "assist the local managers in all types of company work, . . . such as line work, trouble work, meter reading, collecting, clerical, et cetera." They must have a knowledge of electrical work and they devote 25 to 30 percent of their time doing mechanical operations. The record does not indicate that they perform any supervisory functions.