

In the Matter of GARDNER ELECTRIC LIGHT COMPANY *and* BROTHERHOOD  
OF UTILITY WORKERS OF NEW ENGLAND, INC.

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OF UTILITY WORKERS OF NEW ENGLAND, INC.

*Cases Nos. 1-R-2232 and 1-R-2242, respectively.—Decided March 17,  
1945*

*Mr. W. R. McKeough*, of Gardner, Mass., *Mr. H. S. Holcombe*, of  
Leominster, Mass., *Mr. E. G. Twoney*, of Worcester, Mass., and *Mr.*  
*John E. Teagan*, of Boston, Mass., for the Company.

*Mr. William E. Gallagher*, of Providence, R. I., and *Mr. William J. F.*  
*Davis*, of Fall River, Mass., for the Utility Workers.

*Mr. John E. Regan*, of Boston, Mass., for the IBEW.

*Mr. Thomas A. Ricci*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon separate petitions duly filed by Brotherhood of Utility Workers of New England, Inc., herein called the Utility Workers, each alleging that a question affecting commerce had arisen concerning the representation of employees of Gardner Electric Light Company, Gardner, Massachusetts, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John W. Coddair, Trial Examiner. Said hearing was held at Boston, Massachusetts, on February 1, 1944. The Company, the Utility Workers, and International Brotherhood of Electrical Workers, AFL, 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

Gardner Electric Light Company, a Massachusetts corporation with its office and principal place of business at Gardner, Massachusetts, is a subsidiary of the New England Power Company. It is engaged in the distribution and sale of light and power to consumers in Gardner, Massachusetts, and surrounding communities. The Company buys substantially all of its electrical energy from the New England Power Company, which generates electrical power at its hydroelectric plants on the Deerfield River in Massachusetts and Vermont, and on the Connecticut River in Vermont and New Hampshire. During the year 1943, the Company purchased 29,643,369 kilowatt hours of electrical power, and of this amount 29,515,000 kilowatt hours was purchased from the New England Power Company. The Company's total sales of electrical power during the year 1943 amounted in value to \$840,241.58.

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

#### II. THE ORGANIZATIONS INVOLVED

Brotherhood of Utility Workers of New England, Inc., 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 QUESTIONS CONCERNING REPRESENTATION

On December 20, 1944, the Utility Workers requested recognition from the Company as the exclusive bargaining representative of all its employees, excluding supervisory personnel. The Company stated that it was of the opinion that an existing contract with the IBEW, covering employees in four of its departments, prevented it from recognizing the Utility Workers as the bargaining representative of all its employees until the Utility Workers should be certified by the Board in an appropriate unit.

Bargaining relations between the Company and the IBEW started in 1937, and the number of employees covered by their annual contracts since that year has increased from time to time as the IBEW obtained representation among employees in various departments and presented proof thereof to the Company. Their last contract, covering all employees in the Company's distribution, substation, meter and meter reading departments, was dated May 1, 1944, and provided that it was to commence as of the first day of February 1944, and to "continue until February 1, 1945, at the expiration whereof the term should auto-

matically continue for a period of 1 year and so on for like 1-year periods unless terminated in accordance with the provisions of any of the following sections: . . . Section D. On the last day of January 1945 or on the last day of January of any year thereafter, by a written notice from either party to the other at least 75 days prior to such date of termination." It also provided that written notice of "proposed amendments" could be given by either party prior to November 1, 1944, or November 1 of any year thereafter. Prior to November 1, 1944, the IBEW gave notice to the Company of "proposed amendments" to the contract. Neither the Company nor the IBEW raises the contract as a bar to the instant proceeding.

Statements of a Board agent, introduced into evidence at the hearing, indicate that the Utility Workers represents a substantial number of employees in the units hereinafter found appropriate.<sup>1</sup>

We find that questions affecting commerce have 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 UNITS

The Utility Workers requests two separate units for collective bargaining purposes, one consisting of all the Company's treasury department (office and clerical) employees,<sup>2</sup> except supervisory personnel, and another comprising all the Company's distribution and maintenance employees, except office, clerical, and supervisory personnel. The Company agrees generally regarding the scope of the proposed units. The IBEW takes no position concerning the proposed office and clerical unit, as it does not seek to represent those employees. However, with respect to the second unit sought by the Utility Workers, the IBEW would exclude the service department employees because they have not been included in the contracts between the IBEW and the Company. There is further disagreement among the parties with respect to certain specific employees whom we shall discuss below.

##### A. *The office and clerical unit*

The Company employs a storekeeper who is part of the treasury department. The Company and the IBEW contend that he is a

<sup>1</sup> The Field Examiner reported that the Utility Workers submitted 11 authorization cards bearing the names of persons listed on the Company's pay roll for the period ending December 23, 1944, which contained the names of 29 employees in the unit alleged to be appropriate by the Utility Workers in Case No. 1-R-2232 (treasury department employees).

The Field Examiner also reported that the Utility Workers submitted 12 authorization cards bearing the names of persons listed on the Company's pay roll of December 23, 1944, which contained the names of 17 employees in the unit alleged to be appropriate by the Utility Workers in Case No. 1-R-2242 (distribution and maintenance employees).

The IBEW relies upon its contract dated February 1, 1944, to establish its interest in Case No. 1-R-2242

<sup>2</sup> The treasury department is comprised of office and clerical employees.

clerical employee and should be included in the office and clerical unit, while the Utility Workers would place him in the distribution and maintenance unit. In normal times the storekeeper supervises three or four clerks in the storeroom. At present, due to wartime shortages of materials, he is alone in the storeroom. He requisitions supplies, ships and receives stock, makes ledger entries of new and returned stock, and prepares inventories for the storeroom. He also has a number of other occasional duties. He has not been included in the Company's contracts with the IBEW. We are of the opinion that the storekeeper is more readily identified with office and clerical employees, who are also in the treasury department, than with the distribution and maintenance employees. We shall, therefore, include him in the office and clerical unit.

We find that all the Company's treasury department (office and clerical) employees, including the storekeeper, but excluding 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.

#### B. *The distribution and maintenance unit*

##### *Service department employees:*

The Company maintains a service department of four employees: a refrigerator service man, an appliance service man, a service and utility man, and a janitor. The IBEW urges that these employees be excluded because they have never been included in its contract with the Company. The Utility Workers would include them and the Company takes a neutral position regarding their inclusion.

We are of the opinion that the IBEW's position is well taken. While the record does not disclose that such employees have interests or duties which would of necessity prevent their inclusion, in the absence of any compelling circumstances warranting a departure therefrom, we shall adhere to our usual practice and not disturb the contract unit established as a result of collective bargaining between the Company and the IBEW.<sup>3</sup> Accordingly, we shall exclude the refrigerator service man, the appliance service man, the service and utility man, and the janitor from the distribution and maintenance unit. Our finding in this respect, however, shall not preclude a later determination, based upon a new petition and a sufficient showing of representation, that these employees may be offered an opportunity to vote as to their inclusion in the distribution and maintenance unit herein found appropriate.

<sup>3</sup> *Matter of C J Petersen and C F. Lytle, d/b/a Petersen and Lytle*, 60 N L R. B. 1070.

*Assistant distribution engineer:*

The Utility Workers would include the assistant distribution engineer as a distribution employee, while the IBEW contends that he should be excluded from this unit as a clerical employee with supervisory authority. The Company takes no position regarding his inclusion and states that it knows of no reason why he should not be bargained for. The assistant distribution engineer is in the distribution department, works under the distribution engineer, and divides his working time as follows: 20 percent typing out work orders; 70 percent working on maps and records, light transformers and all other plant equipment; 5 percent doing actual field engineering; and 5 percent preparing pole inspection reports. On occasions he substitutes for the distribution engineer but he always receives the same or less pay than linemen and has no authority to hire or discharge any employee. The IBEW states that it has not bargained for him, but the Company considers him as covered by the existing contract, which includes the distribution department. In view of these facts, we are of the opinion that the assistant distribution engineer is not a supervisory employee within the meaning of our usual definition of the term and that his interests are more closely related to distribution than to clerical work. We shall, therefore, include him in the distribution and maintenance unit.

*Substation maintenance man:*

The IBEW and the Company urge that this employee be excluded as a supervisory employee, while the Utility Workers would include him. Although listed on a company chart of December 1944 as a substation maintenance man, the Company classifies him as a supervisor of switchboard operators and engineers. Admittedly he supervises four substation operators although he only devotes about one-third of his working time to such supervision. His additional duties include surveys of voltage and load in customer's plants, tests of lightning arresters, trouble shooting on company lines and meters, switch examinations at unattended substations, and maintenance of street lights. These additional functions are sometimes performed with a crew of men whom the substation maintenance man supervises. The evidence indicates that the Company would give great weight to recommendations of the substation maintenance man regarding the status of other employees. We find that this employee possesses sufficient indicia of supervisory status to warrant his exclusion.

*Truck foremen:*

The Utility Workers and the Company urge the exclusion of two truck foremen as supervisory employees, while the IBEW would include them. Although the contract between the IBEW and the Company specifically sets forth the agreed wage rate for truck fore-

men, the Company insists that it has continuously refused to bargain with respect to them in dealings with the IBEW. One of the truck foremen devotes about 75 percent of his time to supervising a line truck crew of from two to five employees, and the other devotes almost all of his time to similar supervision. Truck foremen earn approximately 25 percent more than their crew workers; in addition, they receive a weekly wage, while crew members are hourly paid. It appears from the record that the Company would give considerable weight to their recommendations regarding the status of other employees. We find that truck foremen are supervisory employees within the meaning of our customary definition, and we shall exclude them from the unit.<sup>4</sup>

We find that all the Company's distribution and maintenance employees, including the assistant distribution engineer, but excluding the refrigerator service man, the appliance service man, the service and utility man, the janitor, the substation maintenance man, truck foremen, 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 questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the payroll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

In each of the towns of Warwick, Shutesbury and Royalston, situated in the vicinity of Gardner, Massachusetts, the Company employs a part-time business representative. The Company and the IBEW urge that these employees be declared ineligible to participate in an election among the distribution and maintenance employees because they do not have a sufficient interest in the choice of a bargaining representative. The Utility Workers contends that they should be eligible to vote. These employees read customers' meters, collect accounts, patrol and replace street lights and handle trouble calls in their respective towns. They are bonded and subject to night call. During the year 1944 the Warwick representative worked 1,122 hours, the Shutesbury representative 753 hours, and the Royalston representative 268 hours. We are of the opinion that these employees have

<sup>4</sup> See *Matter of Boston Edison Company*, 51 N. L. R. B. 118.

a sufficient interest in the selection of a collective bargaining representative to be eligible to vote in the election among distribution and maintenance employees.

### 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 Gardner Electric Light Company, Gardner, Massachusetts, separate elections by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the First 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 following employees 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 elections:

(1) All treasury department (office and clerical) employees, including the storekeeper, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether or not they desire to be represented by Brotherhood of Utility Workers of New England, Inc., for the purposes of collective bargaining;

(2) All distribution and maintenance employees, including the assistant distribution engineer, but excluding the refrigerator service man, the appliance service man, the service and utility man, the janitor, the substation maintenance man, truck foremen, 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, to determine whether they desire to be represented by Brotherhood of Utility Workers of New England, Inc., or by International Brotherhood of Electrical Workers, A. F. L., for the purposes of collective bargaining, or by neither.