

In the Matter of ALABAMA ELECTRIC COOPERATIVE, INC., EMPLOYER *and*
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. L.,
PETITIONER

Case No. 15-R-1616.—Decided July 28, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

At the hearing, the Employer moved to strike the petition, to discontinue the investigation and proceedings, and to dismiss the petition. The motions are substantially the same, relying on these grounds: (1) that the petition, which was filed in 1946, fails to make certain allegations required under the amended Act and the Rules and Regulations of the Board; (2) that the Union has not established its compliance with Section 9 (f), (g), and (h) of the Act; and (3) that the Union has not shown that it represents a substantial number of employees who have chosen it as their representative for collective bargaining purposes.

As to "(1)," the petition was filed on a form prescribed by the Board and satisfied the requirements of the Act before the 1947 amendments. The information required by the two forms of petition are substantially the same, and no prejudicial error results from holding a representation hearing based on a petition filed before passage of the amendments to the Act. As to points "(2)" and "(3)," these are not matters requiring formal proof at a hearing. Compliance with Section 9 (f), (g), and (h), and a showing by the Petitioner that it represents a

*Chairman Herzog and Members Murdock and Gray.

substantial number of the employees of the Employer in an appropriate unit are both matters that the Board determines administratively before issuing its Decision and Direction of Election.¹

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.²

2. The labor organization named below claims to represent employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) (7) of the Act.

4. The parties agree that the unit should include linesmen, helpers, truck drivers, meter testers, relief operators, utility men, oilers, janitors, and non-supervisory hydro operators, and should exclude the manager and assistant manager, all office employees, the stores manager, engineers, the superintendent, the right-of-way man, draftsmen, the general work-order clerk, the stores clerk, and temporary employees working under the malaria control foreman. The parties disagree as to the inclusion (desired by the Union) of a warehouseman, the foreman of a stand-by Diesel plant, and three hydro operators whose status as supervisors is in question.

The warehouseman keeps inventory records and supplies materials requisitioned by the Employer's foremen. His work is mainly clerical, but is more closely related to the work of those engaged in generating and transmitting electric power than it is to the work of the Employer's office workers. We shall therefore include the warehouseman in the unit.

The Employer has five generating plants, all in Alabama. Those at Point A, Gantt, and Elba, are hydro operated; the two at Frisco City and Troy are Diesel operated, in stand-by condition. The hydro plants are continuously operated with one operator on each shift. The plant at Point A is the most important, and whoever is on duty there serves as load dispatcher for the entire system. The Employer contends that each hydro plant has one operator³ who is in general charge of the plant, although there is no one else working with him on the shift. The Employer's superintendent admitted at the hearing, however, that these operators have no specific responsibility for the

¹ *Matter of Lion Oil Company*, 76 N. L. R. B. 565; *Matter of Fort Howard Paper Company*, 77 N. L. R. B. 46.

² *Matter of French Broad Electric Membership Corporation*, 75 N. L. R. B. 86. The Employer moved to dismiss the petition on the ground that the Board has no jurisdiction over non-stock, non-profit cooperatives. This contention has been raised by a number of cooperatives, and has uniformly been overruled by the Board. See *Matter of Gibson County Electric Membership Corporation*, 65 N. L. R. B. 760 and cases cited therein.

³ Tisdale at Point A, Sutton at Gantt, and Morgan at Elba.

operation of their plants outside their shifts, although as experienced and trusted employees, they are consulted both by management and their fellow employees on personnel and operating matters. Those three operators apportion overtime, keep time records for the other operators at their plant, and receive a slightly larger hourly rate than their fellow operators. The Employer's operating force is small and supervision seems to be informal. Although Tisdale, Sutton, and Morgan are consulted in personnel matters affecting their respective plants, and Tisdale is also consulted on matters outside the plant at Point A, it appears that this is done less because these operators are expected to make effective recommendations on such actions, than because of a desire to give them advance notice of the Employer's contemplated action.

At the Diesel stand-by plant at Troy there is a foreman, Pittman, an operator and an oiler who do not all work the same shift. All three are engaged in maintaining and repairing the equipment at the plant, as there is no need for power generation there except in emergencies. The foreman directs the operator and oiler in their work, but, as the plant is operated only a very few hours per month, this direction would appear to occur only at irregular intervals. Under all the circumstances, we are of the opinion that whatever supervisory duties may be performed by Tisdale, Sutton, Morgan, and Pittman are of a merely routine nature, not requiring the use of independent judgment. We find, therefore, that they are not supervisors as defined by the Act, and we shall include them in the unit found to be appropriate herein.

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: linesmen, helpers, truck drivers, meter testers, operators and hydro operators, utility men, oilers, janitors, the warehouseman, and the plant foreman at Troy, excluding the right-of-way man, draftsmen, the general work-order clerk, all office employees, the stores manager and clerk, engineers, temporary employees working under the malaria control foreman, the superintendent, manager, assistant manager, and all other supervisors as defined in the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifteenth Region, and subject to Sections

