

In the Matter of IROQUOIS GAS CORPORATION and DISTRICT 50, UNITED
MINE WORKERS OF AMERICA, LOCAL 12013

Case No. 3-R-925.—Decided April 4, 1945

Kenefick, Cooke, Mitchell, Bass & Letchworth, by *Messrs. Daniel J. Kenefick and Daniel J. Kenefick, Jr.*, of Buffalo, N. Y., for the Company.

Messrs. William J. McGann and Frank McGarry, of Buffalo, N. Y., for District 50.

Messrs. Wilmer E. Danat and Charles R. Miller, of Buffalo, N. Y., for Local 907.

Mr. Herbert C. Kane, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, Local 12013, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Iroquois Gas Corporation, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Buffalo, New York, on February 13, 1945. The Company, District 50, and Local Union 907, International Union of Operating Engineers, AFL, herein called Local 907, 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

Iroquois Gas Corporation, a New York corporation, having its principal place of business at Buffalo, New York, is engaged in the
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production and distribution of natural and artificial gas. During 1944 the Company sold a total of 17,902,257 MCF to industrial and domestic users; 8,454,508 MCF were imported from Pennsylvania and 266,030 MCF were exported to Canada. During the same period the Company purchased equipment and supplies, principally steel pipe, tractors, oxide mixing and handling equipment, and tin case steel meters, valued at approximately \$100,000, of which approximately 75 percent was purchased from outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, Local 12013, is a labor organization admitting to membership employees of the Company.

Local Union 907, International Union of Operating Engineers, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company and Local 907 have had a contract since February 12, 1942, following Local 907's certification by the New York State Labor Board as the exclusive bargaining representative of the employees here involved. The contract, by its terms, became effective March 1, 1942, and terminated January 31, 1943. It also provided that the contract would continue in effect from year to year thereafter in the absence of written notice 60 days prior to the termination date or "prior to June 30, 1942." No notice has been given. The contract further provided:

In the event the Employer proposes to put in effect any general change affecting all other employees of the Employer, it is mutually agreed that such changes will be discussed with representatives of the employees covered by this contract. (Article III, paragraph 11.)

On December 1, 1944, 62 days prior to the termination date, Local 907, by telephone, requested a conference with the Company. The conference at which the parties discussed the insertion of a maintenance of membership clause in the existing contract, was held on December 4, 1944, 58 days prior to the termination of the contract. It was agreed that the Company would prepare a proposed clause and submit it to Local 907 for approval. On December 22, 1944, 40 days

prior to the termination date of the contract, District 50 gave notice of its majority representation claim.¹ The Company thereafter refused to submit the proposed maintenance of membership clause to Local 907 because of District 50's claim.

The Company and Local 907 contend that since no written notice had been given by either party of a desire to terminate the contract prior to the automatic renewal date, the contract was automatically renewed on December 2, 1944. They further contend that the conference of December 4, 1944, did not constitute an intent to terminate, since allegedly it was held under and pursuant to Article III, paragraph 11, of the contract, set forth above. Both contend, therefore, that District 50's notice was untimely.

Although the Board has adhered to the principle that where an automatic renewal date is specified in a contract, a rival claim to representation must be made prior to such date in order to remove the contract as a bar to a representation proceeding,² such principle applies only where the automatic renewal clause remains operative. Where, as here, the Company and the contracting union voluntarily enter into negotiations for a substantial modification of the contract subsequent to the automatic renewal date, the Board has held that the parties thereby evince an intent to terminate such contract, thus rendering inoperative the renewal clause and relieving a rival claimant of the duty it otherwise would have had to present its representation claim prior to the automatic renewal date.³ We find no merit in the further contention of the Company and Local 907 that the negotiations on December 4, 1944, were entered into pursuant to the terms of Article III of the contract, set forth above. The Company was contemplating no proposed "general change affecting all other employees of the Employer" which would necessitate discussion with Local 907 as provided for in the contract.⁴ Accordingly, we find that the representation claim of District 50 was timely made.

¹ District 50 has had a contract with the Company covering all the other operating employees since September 3, 1942. (This contract was for 1 year with the usual 60-day automatic renewal clause. On January 25, 1943, a new contract for 1 year containing the same 60-day provision was entered into and is still in effect.) Both contracts between District 50 and the Company contain maintenance of membership clauses

² *Matter of Mill B, Inc.*, 40 N. L. R. B. 346

³ *Matter of Port Costa Packing Co.*, 46 N. L. R. B. 931; *Matter of C. H. Dutton Company*, 48 N. L. R. B. 27; *Matter of Swift & Company*, 58 N. L. R. B. 1251; *Matter of Pressed Metals of America*, 59 N. L. R. B. 360. Cf. *Matter of Marvin Schebler, Division of Borg-Warner Corporation*, 56 N. L. R. B. 105: where the attempt was made by the contracting union to modify the contract subsequent to its automatic renewal, the Company refused to accede thereto, and the Board held that such a unilateral effort to amend did not operate to remove the renewed contract as a bar to a determination of representatives.

⁴ *Matter of Green Bay Drop Forge Co.*, 57 N. L. R. B. 1417; *Matter of Story and Clark Piano Co.*, 59 N. L. R. B. 185.

A statement of a Board agent, introduced into evidence at the hearing, indicates that District 50 represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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 DETERMINATION OF REPRESENTATIVES

The parties agree generally that a unit of assistant chief operator-compressor station, operator-compressor station, operator-boiler, and oiler employees of the Company at its plants in the city of Buffalo and the town of West Seneca, New York, excluding all supervisory employees would be appropriate. District 50, however, requests that should the majority of the employees in this group select District 50 as their bargaining representative, the group then be made part of the unit which District 50 now represents.

It is evident that for the purposes of collective bargaining these employees can function either as a separate unit or as part of the unit represented by District 50. Accordingly, we shall direct that an election be held among the employees in this group and our finding of the appropriate unit will depend, in part, upon the desires of those employees as expressed in such election. If the employees in this voting group select District 50, they will thereby have indicated their desire to be included in a unit together with the other operating employees and District 50 may accordingly bargain for them as part of such unit. If, however, they choose Local 907, they will thereby have expressed their desire to be represented in a separate unit.

We shall accordingly direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees designated as assistant chief operator-compressor station, operator-compressor station, operator-boiler, and oiler employees of the Company at its plants in the city of Buffalo and the town of West Seneca, New York, 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, 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.

⁵ The Field Examiner reported that District 50 submitted 21 application cards; that the names of 19 persons appearing on the cards were listed on the Company's pay roll of December 30, 1944, which contained the names of 30 employees in the appropriate unit; and that the cards were dated 2 in April 1944, 14 between August and December 1944, 1 in January 1945 and 2 were undated.

Local 907 relies upon its contract as evidence of its interest in this proceeding.

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 Iroquois Gas Corporation, Buffalo, New York, an election 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 Third 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, in the group of employees described 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 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 District 50, United Mine Workers of America, Local 12013, or by Operating Engineers, Local Union 907, A. F. L.,⁶ for the purposes of collective bargaining, or by neither.

⁶ At the hearing the parties requested that they be designated on the ballot in the manner set forth above. The request is hereby granted.