

In the Matter of MOUNTAIN STATES POWER COMPANY, KALISPELL DIVISION and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No 768, A. F. OF L.

Case No. 19-R-1419.—Decided June 5, 1945

Walchli & Korn, by Mr. Hans Walchli, and Mr. M. M. Rawlings, of Kalispell, Mont., and Mr. J. Ford, of Albany, Oreg., for the Company.

Mr. H. W. Bell, of Denver, Colo., and Messrs. Roy Kohler and James J. Duffy, of Kalispell, Mont., for the I. B. E. W.

Mr. Cecil Thorvulson, of Kalispell, Mont., for the L. O. E.

Mr. Julius Kirle, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Brotherhood of Electrical Workers, Local Union No. 768, A. F. of L., herein called the I B E W, alleging that a question affecting commerce had arisen concerning the representation of employees of Mountain States Power Company, Kalispell Division, Kalispell, Montana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Kalispell, Montana, on February 24, 1945. The Company, I. B. E. W., and Locally Organized Employees of Mountain States Power Company, Kalispell Division, herein called the L. O. E., 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:

62 N. L. R. B., No 16.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Mountain States Power Company, a Delaware corporation having its principal and executive offices at Albany, Oregon, is a public utility engaged in furnishing water, electricity, and telephone service to its customers in the States of Montana, Wyoming, Idaho, Washington, and Oregon. For operational purposes, the territory served by the Company is divided into several divisions. We are concerned herein solely with the Company's Kalispell Division, which embraces Kalispell, Columbia Falls, White Fish, Big Fork, Libby, Somers, and Polson, Montana. The Kalispell Division produces and furnishes annually to its customers about 24,000,000 k.w. hours of electricity, maintains approximately 2,900 telephone stations, and provides the domestic water supply to the towns of Big Fork and Libby, Montana. Its telephone system is connected with the major telephone systems of the country, and by means thereof, telephone calls may be made to any part of the United States.

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

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Electrical Workers, Local Union No. 768, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Locally Organized Employees of the Mountain States Power Company, Kalispell Division, unaffiliated, is a labor organization admitting to membership employees of the Company.¹

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the I. B. E. W. as the exclusive bargaining representative of certain of the Company's employees until the I. B. E. W. has been certified by the Board.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the I. B. E. W. represents a substantial number of employees in the unit hereinafter found appropriate.²

¹ The I. B. E. W. objected to the L. O. E.'s motion to intervene on the ground that it was not a labor organization within the meaning of the Act. Although the L. O. E. does not have some of the attributes generally found in labor organizations, the record nevertheless indicates that the L. O. E. was organized for collective bargaining purposes and that it has so functioned. We, therefore, find no merit in the I. B. E. W.'s contention. See *Matter of Gielow, Incorporated*, 60 N. L. R. B. 1477; *Matter of Air Reduction Sales Company*, 58 N. L. R. B. 522; *Matter of Flugdarc Division, General Motors Corporation*, 39 N. L. R. B. 1108.

² The Field Examiner reported that the I. B. E. W. submitted 30 cards, that the names of 26 persons appearing on the cards were listed on the Company's pay roll of September 30, 1944, as telephone operators; and that the names of 4 persons appearing thereon were listed on such pay roll as clerical, accounting, and office employees, and that all of the cards were dated October 1944. The L. O. E. submitted a petition bearing the signatures of 15 persons, 11 of which were names of persons appearing on the Company's aforesaid pay roll as office, clerical, and accounting employees. The record reveals that there are approximately 41 telephone operators and 15 clerical, accounting, and office employees in the Company's employ.

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 I. B. E. W. seeks a unit of telephone operators and office, clerical, and accounting employees employed in the Company's Kalispell Division. The L. O. E. opposes the inclusion of office, clerical, and accounting employees in the same unit with telephone operators, and inasmuch as it does not admit the latter to membership, seeks a unit confined to the office, clerical, and accounting employees. The Company, likewise, opposes the inclusion of office, clerical, and accounting employees in the same unit with telephone operators, and maintains that each group should be embraced in a separate bargaining unit.

The office, clerical, and accounting employees comprise the Division's accounting, commercial, and stores departments, and perform duties generally associated with their particular job classifications. The telephone operators comprise a separate department, and perform duties generally associated with telephone operators. Both groups work in the main office and branch offices in close proximity to each other and are under the same over-all supervision of the division manager. The close relationship between the services of the office, clerical, and accounting employees and the telephone operators is further evidenced by the fact that the accounting, clerical, and cashiering work performed by the former are interrelated with the telephone calls put through by the latter. On the other hand, a divergence exists between the two groups in terms of the skills required in the performance of their duties. The office, clerical, and accounting employees are under the immediate supervision of the divisional auditor who is in charge of the accounting, commercial, and stores departments, whereas the telephone operators are under the immediate supervision of the telephone plant chief who is in charge of the telephone department. Furthermore, the office, clerical, and accounting employees have acted as a distinct group apart from the telephone operators in proceedings before the War Labor Board.³ Under these circumstances, we are of the opinion that the office, clerical, and accounting employees and the telephone operators may properly be included in a single bargaining unit embracing both groups,⁴ or may properly function as separate bargaining units.⁵ Accordingly, our determination of the appropriate unit or units will depend, in part, upon the desires of the em-

³ The L. O. E. was recognized in the proceedings before the War Labor Board as their bargaining representative.

⁴ See *Matter of Michigan Bell Telephone Company*, 58 N. L. R. B. 622, *Matter of Lorain Telephone Company*, 58 N. L. R. B. 478; *Matter of Middle States Utilities Company of Iowa*, 58 N. L. R. B. 482.

⁵ See *Matter of Spicer Manufacturing Company*, 55 N. L. R. B. 1491; *Matter of Westinghouse Electric Manufacturing Company*, 54 N. L. R. B. 272

ployees themselves to be expressed at the elections hereinafter directed.⁶ If at such elections the employees of both groups select the I. B. E. W., they will thereby have indicated their desire to constitute a single bargaining unit, otherwise, they will have indicated their desire to constitute separate bargaining units.

There remains for consideration the status of the following employees.

Telephone plant chief and the chief operators. The Company and I. B. E. W. agree that the telephone plant chief and the chief operators at Kalispell and at Polson should be excluded as supervisory employees. The L. O. E. takes no position concerning these three employees. Inasmuch as they possess supervisory authority under the Board's customary definition thereof, we shall exclude them from the voting groups hereinafter found appropriate.

Secretary to division manager. The Company and I. B. E. W. would exclude the secretary to the division manager as a confidential employee, the L. O. E. would include her. Although the record does not expressly indicate that her duties relate directly to matters concerning the Company's labor relations, it is apparent that, as secretary to the division manager, she would have access to confidential information concerning the Company's labor relations. Accordingly, we shall exclude her from the voting groups hereinafter found appropriate.⁷

Divisional accountant. The I. B. E. W. and Company would exclude the divisional accountant as a supervisory employee; the L. O. E. would include him. The divisional accountant takes care of the accounts generally and cosigns checks in behalf of the accounting department. Although he relieves the divisional auditor in the latter's absence, there is no showing that it occurs frequently or with any degree of regularity. Nor does the record establish that he otherwise has authority to hire, discharge, or effectively recommend changes in the status of any employee. Since he does not fall within the Board's customary definition of a supervisory employee, we shall include him in the voting group hereinafter found appropriate for the office, clerical, and accounting employees.

Supervisor. The I. B. E. W. would include the supervisor under the chief operator at the Kalispell office, the Company would exclude her as a supervisory employee. The L. O. E. takes no position. The supervisor has direct supervision of the actual board operation, sees that the calls go through smoothly, corrects mistakes, relieves and assists the operators when there is a peak load, receives a higher rate of pay, and is required to have more training and experience than the ordinary operators. She has authority comparable to that of the chief operator at Kalispell for whom she substi-

⁶ See *Matter of General Electric Company*, 57 N. L. R. B. 81.

⁷ See *Matter of Middle States Utilities Company of Iowa*, 58 N. L. R. B. 482.

tutes in the latter's absence and who the parties agree should be excluded as a supervisory employee. We are of the opinion that she falls within the Board's customary definition of a supervisory employee and we shall exclude her from the voting groups hereinafter found appropriate.⁸

Operators in charge. The I B E W would include the operators in charge at Somers and Columbia Falls; the Company would exclude them as supervisory employees, while the L. O. E. takes no position. The operator in charge of each of the above offices is in complete charge of her exchange, operates the switchboard, checks messages for proper rates, is responsible for toll tickets, takes care of applications for service and customers who come in to pay bills, and receives more pay than the ordinary relief operator on the other shifts. She has authority to hire relief operators for the other shift and for extra work. Her authority in her own exchange is comparable to that of the chief operators at Kalispell and Polson who the parties agree should be excluded as supervisory employees. We are of the opinion that the operators in charge at Somers and Columbia Falls possess supervisory authority under the Board's customary definition thereof and we shall exclude them from the voting groups hereinafter found appropriate.⁹

We shall direct that separate elections by secret ballot be held among the employees in the voting groups listed below, 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 Elections herein, subject to the limitations and additions set forth in the Direction;

1. All office, clerical, and accounting employees employed in the Kalispell Division, including the divisional accountant, but excluding the divisional auditor, chief clerk,¹⁰ and secretary to the divisional manager,

2. All telephone operators employed in the Company's Kalispell Division, excluding the telephone plant chief, chief operators, operators-in-charge, and supervisor at the Kalispell office

DIRECTION OF ELECTIONS

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 Mountain States Power Company, Kalispell Division, Kalispell, Montana, elections by secret ballot shall

⁸ See *Matter of Lorain Telephone Company*, 58 N L R B 478

⁹ *Matter of Middle States Utilities Company of Iowa*, 58 N L R B 482

¹⁰ The parties agree, and we find, that the divisional auditor and the chief clerk are supervisory employees within the Board's customary definition thereof

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 Nineteenth 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 voting groups 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 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; (1) to determine whether the employees described in group 1 in Section IV, above, desire to be represented by the Locally Organized Employees of the Mountain States Power Company, Kalispell Division, or by International Brotherhood of Electrical Workers, Local Union No. 768, A. F. of L., for the purposes of collective bargaining, or by neither; (2) to determine whether or not the employees described in group 2 of Section IV, above, desire to be represented by International Brotherhood of Electrical Workers, Local Union No. 768, A. F. of L., for the purposes of collective bargaining.