

In the Matter of MICHIGAN GAS AND ELECTRIC COMPANY and UNITED
STEELWORKERS OF AMERICA, CIO

Case No. 18-R-1244.—Decided July 20, 1945

Mr. William F. Pellow, of Bessemer, Mich., and *Mr. G. A. Donald*, of Ashland, Wis., for the Company.

Messrs. Joseph F. Pascoe and *Jack Powell*, of Negaunee, Mich., for the Union.

Mr. Philip Licari, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning representation of employees of Michigan Gas and Electric Company, Ashland, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Marquette, Michigan, on May 11, 1945. 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

Michigan Gas and Electric Company, a Michigan public utility corporation with its principal office at Ashland, Wisconsin, is engaged in the State of Michigan in the production, purchase, transmission, distribution, and

sale of electric energy and fuel gas for domestic, commercial, and industrial purposes. The Company operates in two separate geographical areas in the State of Michigan. The northern area is operated by the Company's Northern Division and the southern area is operated by the Company's Southern Division. The instant proceeding involves only the operations of the Company's Northern Division.

During the year 1944 the Company purchased for its Northern Division a total of 12,200,000 kilowatt hours of electrical energy, all of which was generated within the State of Michigan by the Cliff Power and Light Company of Ishpeming, Michigan. The electrical energy thus purchased was in turn sold and distributed by the Company to consumers located within the northern area,¹ the total revenue therefrom having amounted to approximately \$386,000. Approximately 40 percent of the electric energy distributed in 1944 by the Company's Northern Division was sold to industrial concerns which are admittedly engaged in interstate commerce, the amounts received from these concerns having been about 21 percent of the total revenue derived from all electric energy sold. During the same period, the Company's Northern Division produced fuel gas valued at approximately \$175,000, all of which was sold and distributed to consumers within the State of Michigan.

Also in 1944, the Company purchased for the operation of its Northern Division coal and fuel oil valued at approximately \$87,509.78, all of which was shipped originally from points outside the State of Michigan, in addition, it bought operating supplies valued at \$13,000, of which 50 percent was shipped from points outside that State.

We find, contrary to the Company's contention, that it is engaged in commerce and its operations affect commerce within the meaning of the Act.²

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

At the hearing the Company 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 Field Examiner for the Board, introduced into evidence

¹ The northern area comprises the towns of Hancock, Marquette, Ishpeming, Negaunee, and Munising, all located within the State of Michigan.

² See *Consolidated Edison Company of New York v N L R B*, 305 U. S. 197. In two previous representation proceedings involving operations in the Southern Division, the Board asserted jurisdiction over the Company. See *Matter of Michigan Gas and Electric Company*, 46 N. L. R. B. 443; 49 N. L. R. B. 956.

at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

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 seeks a unit of all production and maintenance employees of the Company's Northern Division, including the line foreman and the meter and service foreman at the Ishpeming plant, the line foreman at the Munising plant, the gas plant foreman at the Hancock plant, meter readers at the Hancock and Marquette plants, and the janitor at the Ishpeming plant, but excluding salesmen and storekeepers at the Ishpeming plant, office and clerical employees, and supervisory employees. The Company, on the other hand, contends that the employees in each of its four plants in the Northern Division constitute four separate units, or, in the alternative, the employees in each of the three areas in the same Division comprise three independent units. Moreover, the Company would exclude the various foremen, meter readers, and janitor, whose inclusion the Union specifically seeks.

The Company is divided into two Divisions for the purposes of administration and operation, each of which is physically separated from the other, there being no connecting transmission lines. The Company's operations in its Northern Division are carried on in four plants located in three widely separated geographical areas, namely, the Ishpeming-Negaunee-Marquette area, in which there are two plants, one in Ishpeming and the other in Marquette, and the Hancock and Munising areas, each having one plant. While each plant is under the direct supervision of a superintendent, the over-all operations of the Northern Division are controlled and directed by a vice president and assistant general manager who, in turn, is responsible for his activities to the Company's main office at Ashland, Wisconsin.⁴ Furthermore, all policies concerning wages, hours, and conditions of employment are determined at the Company's main office. Although there is no interchange of employees among the four plants, all such employees apparently belong to one local of the Union and it seems that they desire to bargain collectively as a single group.⁵ Moreover, the unit sought by the Union is coterminous with one of the Company's two major administrative and operating divisions. We consequently perceive no reason to establish units smaller than the division-wide unit sought by the Union.

³ The Field Examiner reported that the Union submitted 40 application cards, all of which were dated between February and March 1945. He also reported that there were 40 employees in the alleged appropriate unit.

⁴ The Company's Southern Division is also under the over-all supervision of a vice president who, in turn, is responsible for his activities to the main office in Ashland, Wisconsin.

⁵ See footnote 3, *supra*.

Foremen: The Company employs two line foremen, one at the Ishpeming plant and the other at the Munising plant, whose main duties are to supervise linesmen engaged in the construction and repair of electrical transmission lines. The foreman at the Ishpeming plant supervises three employees and the foreman at the Munising plant supervises two employees. They are hourly paid and receive, respectively, 12 and 8 cents per hour more than the highest paid linesman under their respective supervision. Although the record shows that, at times, they are engaged in manual work, the uncontradicted testimony of the superintendents of the Ishpeming and Munising plants and the vice president in charge of the Northern Division shows that both foremen are engaged more than 85 percent of their working time in performing supervisory functions, and that they possess the authority to recommend effectively the hire and discharge of employees under their supervision. We shall exclude them.⁶

In the Ishpeming plant, the Company also employs a meter and service foreman who spends approximately 65 percent of his time in the supervision of four servicemen engaged in the repair of household electrical appliances. Although he is an hourly paid employee, he receives 17 cents an hour more than the highest paid man under his supervision and the uncontroverted testimony of the superintendent of the Ishpeming plant and the vice president in charge of the Northern Division shows that he possesses the authority to recommend effectively the hire and discharge of employees under his supervision. We shall exclude him.⁷

At the Hancock plant, the Company has one working foreman called the gas plant foreman. Although he occasionally performs manual labor, his main duties are to supervise the work of six employees. He is an hourly paid employee and receives 9 cents an hour more than the highest paid worker under his supervision. The Hancock plant's superintendent and the vice president in charge of the Northern Division testified, without contradiction, that this employee spends approximately 70 percent of his time in the performance of supervisory functions, and that he possesses the authority to recommend effectively the hire and discharge of employees under his supervision. We shall exclude him.⁸

Meter Readers: The Company, in all its plants, employs meter readers whose principal duties are to read consumption meters and collect bills from consumers using prepaid meters. On 2 days of each month they work in the office sorting bills. They are all paid on an hourly basis. Despite the fact that all meter readers employed by the Company in its Northern Division apparently perform similar duties, the Company would exclude

⁶ The position of line foreman at the Ishpeming plant is occupied by Frederick J. Garceau, and the position of line foreman at the Munising plant is occupied by Joe Troppman

⁷ The position of meter and service foreman at the Ishpeming plant is now occupied by Emil J. Kajala

⁸ The position of gas plant foreman at the Hancock plant is now occupied by Ricco Johnson

only one meter reader at the Hancock plant,⁹ and one employed at the Marquette plant.¹⁰ Since no adequate reasons have been advanced by the Company for the exclusion of these two meter readers, we shall include them together with all other meter readers in the Company's Northern Division.

Janitor: The Company employs a janitor at the Ishpeming plant who performs the usual duties associated with his classification. We shall include him.¹¹

We find that all production and maintenance employees of the Company's Northern Division, including all meter readers, and the janitor at the Ishpeming plant, but excluding office and clerical employees, storekeepers and salesmen at the Ishpeming plant, the line foreman at the Ishpeming plant, the line foreman at the Munising plant, the meter and service foreman at the Ishpeming plant, the gas plant foreman at the Hancock plant, the gas plant superintendent at Marquette, other superintendents, 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 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 herem, subject to the limitations and additions set forth in the Direction.¹²

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 Michigan Gas and Electric Company, Ashland, Wisconsin, 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 Eighteenth Region, acting in this matter as agent for the

⁹ The position of meter reader at the Hancock plant is now occupied by Timothy A. O'Neil

¹⁰ The position of meter reader at the Marquette plant is now occupied by William Rowe.

¹¹ See *Matter of Hamrick Mills*, 57 N. L. R. B. 163. The position of janitor at the Ishpeming plant is now occupied by George J. Moss

¹² In accordance with the agreement of the parties, all employees still on probation during the eligibility period shall not be permitted to vote

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 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 or not they desire to be represented by United Steelworkers of America, CIO, for the purposes of collective bargaining.