

In the Matter of SEATTLE GAS COMPANY and INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, AFL

Case No. 19-R-1566.—Decided September 21, 1945

Messrs. Lee Orwell, M. L. Cullison, Dick Smith, and Leland Jones, of Seattle, Wash., for the Company.

Messrs. Lee Orwell, M. L. Cullison, Dick Smith, and Leland Jones, the Firemen.

Mr. L. Presley Gill, of Seattle, Wash., for the Engineers.

Mrs. Catherine W. Goldman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Firemen and Oilers, AFL, herein called the Firemen, alleging that a question affecting commerce had arisen concerning the representation of employees of Seattle Gas Company, Seattle, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. The hearing was held at Seattle, Washington, on August 6, 1945. At the hearing, the Trial Examiner granted a motion to intervene made by International Union of Operating Engineers, Local 843, affiliated with the American Federation of Labor, herein called the Engineers. The Company, the Firemen, and the Engineers appeared and participated. The Engineers moved to dismiss the petition on the ground that a jurisdictional dispute existed between the Firemen and the Engineers. The Trial Examiner reserved ruling on the motion for the Board. The motion is hereby denied. 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

Seattle Gas Company, a Washington corporation, is a public utility producing manufactured gas for consumption in the city of Seattle, Washington. During the year 1944, the Company purchased oil at a value of approximately \$618,350, all of which came from outside the State of Washington. In the manufacture of gas, the Company produces several byproducts used in the war effort. During the year 1944, the Company produced benzol amounting in value to \$34,000, all of which was shipped outside the State of Washington, toluol amounting in value to \$47,600, all of which was shipped outside the State of Washington, and xylol amounting in value to \$3,500, all of which was shipped outside the State of Washington. The Company supplies gas service to war industries and commercial establishments serving war workers in Seattle.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Firemen and Oilers and International Union of Operating Engineers, Local 843, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On March 15, 1940, the Company and the Engineers entered into a collective bargaining contract, covering the Company's power plant employees. The contract was to be effective for a period of 3 years and automatically renewable from year to year thereafter, unless either party should give written notice sixty (60) days prior to the expiration date of any year, of a desire to change the contract. In November 1941, and June 1942, the parties modified the contract with respect to wages but did not alter either the term of the contract or the automatic renewal provision. On January 14, 1943, when the expiration date of the original term of the contract approached, the Engineers notified the Company that it might desire to discuss provisions concerning working conditions which should be incorporated in the agreement for the succeeding year. No negotiations took place as a result of the Engineers' request, however, because, about the same time, the Company received notice from its power plant employees that they

desired to negotiate directly with the Company. On February 8, 1943, the Company received a letter from the employees stating that they had conducted an election and selected the Firemen as their bargaining agent. On March 5, 1943, a majority of the power plant employees sent a letter to the Engineers¹ withdrawing their membership from that organization and informing the Engineers that they did not wish to be represented by it after the termination of the original term of the contract. The employees mailed a copy of the letter to the Company. The Engineers replied to the employees' letter on March 10, 1943, refusing to accept their withdrawal. On March 16, 1943, H. B. Eckert, an employee in the power plant, wrote the Engineers reasserting the determination of the power plant employees to change their bargaining representative. He sent a copy of this letter to counsel for the Company, who replied on March 18, 1943, and advised Eckert that the Company did not desire to enter into a dispute between the Firemen and Engineers.

Thereafter, the Company had a few discussions with Eckert and with the representative of the Firemen and of the Engineers, but did not negotiate with either labor organization. It did, however, negotiate with the Gas Workers Union, Local #20222, affiliated with the American Federation of Labor,² which represented all of the Company's employees except those in the power plant. The representative of the Engineers acted in an advisory capacity to the Gas Workers in these negotiations. On March 31, 1943, the power plant employees notified the Company by a letter signed by Eckert, that the representative of the Engineers did not represent them in any capacity and did not have authority to act for them. Some time during the negotiations, however, about May or June 1943, the representative of the Engineers presented the Company with a petition signed by nine power plant employees³ designating the Engineers as their bargaining agent. The Company thereafter considered the negotiations with the Gas Workers as applying to the Engineers, also, and the Engineers became a party to a pending dispute which was later referred to the National War Labor Board. The National War Labor Board issued a directive order in the case on September 29, 1943. The provisions of this order were carried out by the Company but were not incorporated in a contract. Meanwhile, on June 29, 1943, the Firemen filed a petition for investigation and certification of representatives with the Board. The petition was dismissed by the Regional Office of the Board on December 10, 1943.

¹ There are approximately 19 employees in the power plant, 14 of whom signed the letter of March 5, 1943.

² This organization is herein referred to as the Gas Workers.

³ Counsel for the Company testified that he believed there were 14 employees in the power plant in June 1943.

For approximately a year after these events of 1943, the Company had little contact with either the Firemen or the Engineers, and no negotiations took place. On September 11, 1944, a majority of the power plant employees wrote the Company⁴ declaring void all previous bargaining authorizations they had given and designating H. B. Eckert as their sole representative. The Company advised Eckert that it would not negotiate with him or any labor organization until the dispute concerning the representation of the power plant employees was settled by the proper authority. Eckert, in behalf of the power plant employees, on January 8, 1945, again wrote the Company expressing the employees' desire for an adjustment of the controversy concerning their representation. The Company replied to Eckert's letter on January 11, 1945, informing him that although it was inclined to believe that the contract with the Engineers had not been automatically renewed on March 15, 1943, it did not feel certain as to whether there was an existing contract with the Engineers and therefore could not negotiate with any one until the representation question was determined by the National War Labor Board or this Board. On April 3, 1945, the Firemen notified the Company that it was the authorized bargaining representative of the power plant employees and requested the Company not to negotiate a contract concerning these employees until the dispute as to their representation was settled. The Company wrote the Firemen on April 6, 1945, repeating its doubt as to the bargaining agent of the power plant employees. On May 9, 1945, the Firemen filed a petition in this proceeding. On August 3, 1945, Eckert advised the Company that he no longer represented the power plant employees and notified the Board that he did not desire to intervene in the pending proceeding.

The Engineers contends that its contract with the Company constitutes a bar to a present determination of representatives, because the Firemen did not give the Company formal notification of its representation claims until after the operative date of the automatic renewal provision of the contract. The facts discussed above, however, cast doubt upon the existence of the contract since March 15, 1943. The Company itself has expressed its lack of certainty as to the status of the contract. In any event, it is clear that since February 1943, by reason of letters from the power plant employees, Eckert, and the Firemen, and the Firemen's formal petition before the Board in 1943, the Company has been cognizant of a dispute concerning the representation of its power plant employees. Immediately prior to the 1945 effective date of the automatic renewal clause of the contract with the Engineers, the Company was made aware of the continuing existence of the question concerning the bargaining agent

⁴ Eighteen of the power plant employees signed the letter of September 11, 1944.

of its power plant employees by Eckert's letter of January 8, 1945. Under these circumstances, we are of the opinion that the contract between the Company and the Engineers cannot operate as a bar to a present investigation and certification of representatives.⁵

A statement of a Board agent introduced into evidence at the hearing indicates that the Firemen and the Engineers each represents a substantial number of employees in the unit hereinafter found appropriate.⁶

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

We find that all power plant employees, excluding the chief engineer and 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.⁷

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 herein, subject to the limitations and additions set forth in the Direction.

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

⁵ See *Matter of El Paso Electric Company*, 50 N. L. R. B. 56

⁶ The Field Examiner reported that the Firemen submitted 14 application cards, 13 of which bore the names of persons appearing on the Company's pay roll of April 30, 1945, and that the cards were dated as follows: 1 in May 1945; 9 in December 1944; 3 in November 1944; and 1 in May 1944. There are approximately 19 employees in the unit alleged to be appropriate by the Firemen.

The Engineers submitted a list of membership under oath of its business agent. The list contained the names of 9 persons who appeared on the Company's pay roll of April 30, 1945. Of these persons, 6 were members in good standing, 2 were 3 months in arrears, and 1 was in the armed forces.

⁷ This unit, concerning which the parties are in agreement, is substantially the same as that covered by the contract between the Company and the Engineers.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Seattle Gas Company, Seattle, Washington, 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 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 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 any 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 International Brotherhood of Firemen and Oilers, or International Union of Operating Engineers, Local 843, both affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.