

In the Matter of WISCONSIN PUBLIC SERVICE CORPORATION and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 310, AFL; AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, LOCAL 1168 AND LOCAL 857, AFL; AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL

Case No. 13-RE-34.—Decided October 10, 1945

Miller, Mack & Fairchild, by *Mr. James I. Poole*, of Milwaukee, Wis., and *Mr. C. B. Boulet*, of Milwaukee, Wis., for the Company.

Mr. Albert Weisbord, of Washington, D. C., *Mr. Phil J. Kingsland*, of Milwaukee, Wis., and *Mr. Clayton F. DeWolfe*, of Green Bay, Wis., for the OE.

Zimring & Rabe, by *Mr. Hans J. Lehman*, of Chicago, Ill.; *Mr. A. A. Deering*, of Green Bay, Wis., and *Mr. Anton Nowak*, of Wausau, Wis., for the Amalgamated.

Mr. Russell Packard, of Chicago, Ill., and *Mr. Rex Fransway*, of Milwaukee, Wis., for the IBEW.

Miss Katharine Loomis, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by Wisconsin Public Service Corporation, of Milwaukee, Wisconsin, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leon Rosell, Trial Examiner. Said hearing was held at Green Bay, Wisconsin, on May 24 and June 5 and 6, 1945. The Company, International Union of Operating Engineers, Local 310, AFL, herein called the OE, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local 1168 and Local 857, AFL, herein called the Amalgamated, and International Brotherhood of Electrical Workers, AFL, herein called the IBEW, appeared and participated. At the beginning of the hearing the OE moved to dismiss the Com-

pany's petition on the grounds that the contract of the OE and the Company constitutes a bar to the present proceeding; that the filing of the Company's petition did not comply with the Rules and Regulations of the Board; and that the unit sought by the IBEW is inappropriate. At the close of the hearing the IBEW also moved to dismiss the petition on the grounds that no question concerning representation had been raised and that the unit proposed by the Company is inappropriate. For reasons set forth in Sections III and IV, *infra*, the motions are 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

Wisconsin Public Service Corporation is a Wisconsin corporation having its principal office in Milwaukee, Wisconsin. It is engaged in the manufacture and sale of electricity and gas in various communities in Wisconsin and in the furnishing of public transportation at Green Bay and Wausau, Wisconsin, where it operates buses and maintains garages for servicing its buses and other automotive equipment. Menominee and Marinette Light and Traction Company, a wholly owned subsidiary of the Company, sells and distributes electricity and gas in both Wisconsin and Michigan and is incorporated under the laws of both those States. This subsidiary is known as the Menominee-Marinette division of the Company and is operated as an integrated part of the Company's gas and electricity utility system. The Company's sales of gas and electricity in 1944 amounted in value to \$10,973,000. During the same year the Company's total purchases exceeded \$3,000,000 in value, a substantial portion of which represents purchases made outside Wisconsin. Prior to the war, the Company's sales of gas and electric appliances purchased from manufacturers located outside Wisconsin and Michigan exceeded \$100,000 a year. In its operations the Company manufactures gas in the State of Wisconsin which is transported to and distributed in Michigan by its Menominee-Marinette division. Thirty-seven percent of the Company's sales of electric energy and approximately 8 percent of its gas sales are to industrial concerns.¹

The Company does not deny, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

¹ In computing the quantities and values mentioned in the above paragraph, the operations of the Menominee-Marinette division have been taken into account.

II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, Local 310; Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local 1168 and Local 857; and International Brotherhood of Electrical Workers, are all labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The OE, under its contract with the Company dated March 29, 1944, was recognized as "the sole representative for collective bargaining for employees of operating departments of the Company, including meter readers and male employees in storerooms and exclusive of employees of the transportation departments who are covered by other agreements." The contract provides that "it shall be in full force and effect until March 29, 1945 and thereafter from year to year unless mutually changed by the parties hereto, or terminated at the end of any such period by either party on thirty days' prior written notice to the other."

Under this and former contracts with the Company, the OE has represented the Company's employees in virtually a company-wide unit.² Historically, the Amalgamated has represented the Company's bus drivers both at Green Bay and Wausau, and the Amalgamated and the OE have each represented their respective members among the Wausau garage mechanics.³

On March 27, 1944, the IBEW filed a petition with the Wisconsin Employment Relations Board for a unit of electricians employed by

² The OE entered into its first contract with the Company in 1934. In the earlier years of bargaining history its contracts covered only union members. In 1938 the contract was changed to its present wording.

³ Since 1919 Local 857 of the Amalgamated has bargained with the Company under contracts covering certain transportation employees at Green Bay. During the early stages of bargaining the Company operated a streetcar system, and streetcar operators and car barn mechanics were represented under the contracts. Since 1938, however, when the Company completely converted to bus operations, Local 857 has represented only bus drivers under its contracts and the OE has represented the garage mechanics at Green Bay under its contracts. The latest contract between Local 857 and the Company, dated March 1, 1945, covers "all [the Company's] operators in the transportation department in the Green Bay area."

Local 1168 of the Amalgamated entered into its first collective bargaining contract with the Company in 1937. At that time it represented both streetcar operators and car barn mechanics at Wausau. However, since 1940, when the Company converted to bus operations at Wausau, although all the bus drivers have continued to be represented by Local 1168, the garage mechanics have divided their allegiance between the OE and the Amalgamated. The latest contract between Local 1168 and the Company, dated March 1, 1945, covers "all [the Company's] employees in the transportation department in the Wausau area."

On December 7, 1944, Local 1168 filed a petition with the Wisconsin Employment Relations Board requesting an election among the garage mechanics at Wausau. A hearing was subsequently held, but no further action has been taken.

the Company in its Wisconsin Valley division. On June 27, 1944, that agency issued a direction of election in a unit of: "All of the employees of the Company in the Wisconsin Valley division, excluding executives, supervisors, gas distribution employees, transportation employees, and clerical employees." It certified the IBEW as bargaining representative for employees in this unit on August 4, 1944. Subsequent to the certification the Company and the IBEW agreed that the latter would bargain for these employees under an oral agreement containing provisions similar to those embodied in the OE's contract with the Company, with the understanding that, upon the termination of the OE's contract, they would draw up a written contract. Pursuant to this oral agreement the IBEW has presented grievances for electrical employees in the Wisconsin Valley division and has consulted with the Company on matters pertaining to working conditions. The OE, however, has bargained for changes under its contract which would affect the employees of the Wisconsin Valley division, including two modifications of its contract which were approved by the War Labor Board.

The Company, on January 18, 1945, filed its petition with the Board in which it averred that it was confronted with conflicting claims of labor organizations and in which it requested an investigation and certification of representatives.

The OE claims that the filing of the Company's petition prior to the automatic renewal date of the contract did not stay the operation of the automatic renewal clause; that its contract covers the employees of the Wisconsin Valley division for which the IBEW was certified by the Wisconsin Employment Relations Board and the garage mechanics at Wausau in addition to other employees of the Company; and that, since the Company has never given written notice of termination, the contract constitutes a bar to a present determination of representatives among any of the employees covered by it. The Company takes the position that, regardless of whether the filing of the petition terminated the contract, it did prevent it from constituting a bar.

We are of the opinion that the filing of the Company's petition was an act entirely inconsistent with an intent to permit the operation of the automatic renewal clause. Moreover, it is clear that the IBEW has claimed to represent employees covered by the OE's contract since the filing of its petition with the Wisconsin Employment Relations Board on March 27, 1944, and that there has been rivalry between the OE and the Amalgamated in regard to the garage mechanics at Wausau since 1940.⁴ We find, therefore, that the OE's contract does not constitute a bar to the present proceeding.

⁴ See *Matter of Groveton Papers Co.*, 52 N. L. R. B. 1256; *Matter of James Doak, Jr., Company*, 52 N. L. R. B. 378.

The contention of the OE that the Company's petition does not comply with the Board's Rules and Regulations concerns the unit contentions of the parties. The OE considers as appropriate a unit to be comprised of the employees who it claims are covered by its contract, including the employees of the Wisconsin Valley division and the garage mechanics at Wausau. Moreover, it would add to this unit the Company's bus drivers, all of whom are claimed by the Amalgamated. However, it is willing to exclude the bus drivers if its preference for a more comprehensive unit is not adopted by the Board.

The IBEW contends that an appropriate unit should be comprised of the employees of the Wisconsin Valley division for whom it was certified by the Wisconsin Employment Relations Board; this certification excluded gas distribution employees and bus drivers. It would, moreover, broaden this unit to include the employees of the power and engineering department in the Wisconsin Valley area, excluding garage mechanics. Alternatively, it would agree to two system-wide units for the Company's employees, one to be comprised of all employees engaged in the distribution of electric energy, and the other of all employees in the power and engineering department excluding garage mechanics.

The Amalgamated contends that the bus drivers at Green Bay constitute an appropriate unit and that the bus drivers and garage mechanics at Wausau constitute another appropriate unit. However, it is willing to permit the garage mechanics at Wausau to decide for themselves whether or not they should be included in a single unit with the Wausau bus drivers.

The Company takes the position that all its employees, excluding bus drivers, constitute an appropriate unit. However, it has no objection to the exclusion from this unit of the garage mechanics at Wausau.

The OE contends that the filing of the Company's petition did not comply with Article III, Section 2 (b) (3) and Section 3, of the National Labor Relations Board Rules and Regulations—Series 3, as amended,⁵ in that two or more labor organizations have not presented conflicting claims that each represents a majority of the employees in

⁵ The pertinent portions of Article III read as follows:

Sec. 2 (b). Such petition when filed by an employer shall contain the following:

(3) A brief statement setting forth that a question or controversy affecting commerce has arisen concerning the representation of employees in that two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the unit or units claimed to be appropriate.

Sec. 3 . . . the Regional Director shall not institute an investigation on a petition filed by an employer unless it appears to the Regional Director that two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the bargaining unit or units claimed to be appropriate.

the comprehensive unit claimed to be appropriate by the Company. However, we interpret the phrase "the unit or units claimed to be appropriate" to mean the unit or units claimed to be appropriate by the labor organizations, rather than by the Company.⁶ It is clear that the unit claimed as appropriate by the OE overlaps the units claimed by the IBEW and the Amalgamated, and that each of the unions claims to represent a majority of the employees in the unit it considers appropriate. Thus, the propriety of the filing of the petition is not open to question.

Both the OE and the IBEW also urge that it will not effectuate the purposes of the Act to hold elections at a time when these two organizations have asked to have the Company's petition dismissed. They allege that only a small number of the Company's employees are covered by conflicting claims⁷ and that an election in a comprehensive unit such as that suggested by the Company is not appropriate. But the alternate unit contentions of the IBEW conflict with the unit contentions of the OE so that the overlapping claims cover a large portion of the Company's employees.⁸ Moreover, both organizations are willing to participate in an election, if directed, in the comprehensive unit considered appropriate by the Company, which is substantially the same unit contended for by the OE. Although the OE and the IBEW ask for dismissal of the petition, the circumstances warrant a determination of the appropriate unit or units and a determination of representatives. Accordingly, we find no merit in the contentions of the OE and the IBEW.

We find, therefore, 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.

⁶ The wording "unit or units" suggests this interpretation. Also, although Article III, Section 3, Series 2, as amended, contained substantially the same provisions as the present revision, Section 2 (b), (3) and (5) made clear that the unit or units were those claimed to be appropriate by the labor organizations.

The pertinent portions read as follows:

SEC. 2 (b) Such petition, when filed by an employer shall contain the following:

(3) A description of the bargaining unit or units claimed by the competing labor organizations to be appropriate . . .

(5) A brief statement setting forth that a question or controversy affecting commerce has arisen concerning the representation of employees in that two or more such labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the unit or units set forth above in paragraph (b), (3).

⁷ Approximately 843 employees are covered by claims of the OE. The OE's claims conflict with those of the IBEW in regard to 88 employees in the Wisconsin Valley division and 65 employees in the power and engineering department in that area. The OE's claims also conflict with claims of the Amalgamated to 17 garage mechanics at Wausau and to the Company's 85 bus drivers.

⁸ The record does not show the exact number of employees engaged in the distribution of electric energy. However, the nature of the Company's operations indicates that it is large. There are 264 employees in the power and engineering department.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The operations of the Company are carried on through its five geographical divisions, namely, the Green Bay, Sheboygan-Manitowoc, Oshkosh, Menominee-Marquette, and Wisconsin Valley, and its power and engineering department which operates separate and apart from the divisions. Each division is under the supervision of a division manager who is in charge of the distribution of electric energy and gas within his area. In the two cities where the Company's transportation systems are located, at Green Bay in the Green Bay area and at Wausau in the Wisconsin Valley area, division managers are in charge of bus operations. The power and engineering department is under the supervision of the Company's chief engineer and vice president, A. C. Carson. He is in charge of the manufacture and transmission of electric energy throughout all geographical areas and is also responsible for the maintenance of automotive equipment, including buses, throughout all areas. He has ultimate supervision of the garages at Green Bay and Wausau. At Wausau a superintendent of transportation is in immediate charge of both bus operations and of the garage. He reports to the Wisconsin Valley division manager in regard to bus operations and to Carson in regard to the maintenance of the garage. The Company's personnel department also operates throughout all areas. However, no hiring or discharges are made through this department. Hiring is done through local superintendents and all discharges are subject to thorough review by the president of the Company.

The unit of the Wisconsin Valley division area employees contended for by the IBEW is not coextensive with a well-defined division of the Company since it would exclude gas workers within the Wisconsin Valley division and include some power and engineering department employees. The alternate system-wide unit of employees engaged in the distribution of electric energy likewise does not correspond to any division of the Company. The alternate system-wide unit of power and engineering department employees does correspond, except for the exclusion of garage mechanics. However, even if the unit contentions of the IBEW corresponded strictly to the organizational structure of the Company, this factor would be overbalanced by the long history of collective bargaining between the OE and the Company on practically a company-wide basis. Moreover, the Board has stated that "a system-wide unit of a public utility is the optimum unit and is the only appropriate unit whenever there is a labor organization in a position to represent employees throughout the system."⁹

⁹ *Matter of Duquesne Light Company*, 57 N L R B 770 See also *Matter of Pennsylvania Electric Company*, 56 N L R B. 625, *Matter of Central Ohio Light and Power Co.*, 51 N L R B 522

Although the Company's bus drivers come under the supervision of the division managers who also supervise the work of employees engaged in electric and gas distribution, the record indicates that bus operations are directed with some degree of independence and that the Company's transportation system is not integrated to as great an extent as its gas and electric systems.¹⁰ The Board has indicated that transportation employees of a public utility may properly comprise a separate unit.¹¹ These facts and the past history of collective bargaining between the Amalgamated and the Company concerning bus drivers indicate that the present units of bus drivers at Green Bay and Wausau should remain undisturbed and should not, as requested by the OE in its primary contention, be included in a more comprehensive unit. We shall, therefore, exclude the Company's bus drivers from any unit finding.

In view of the integration of the Company's gas and electric operations a comprehensive unit substantially as proposed by the Company and agreed to by the OE appears to be appropriate for the remaining employees of the Company. However, the record indicates that the garage mechanics at Wausau might also properly function as part of the unit of bus drivers at Wausau currently represented by the Amalgamated.¹² These employees spend approximately two-thirds of their time maintaining and repairing the Company's buses. Although they form a part of the power and engineering department, they come under the more immediate supervision of the superintendent of transportation at Wausau who, also supervises the bus drivers. Under these circumstances, and since the history of collective bargaining among these employees is inconclusive, we find that the garage mechanics at Wausau may properly function for the purposes of collective bargaining either as part of the bus drivers' unit at Wausau or as part of a more comprehensive unit.¹³ Accordingly, we shall determine the desires of the employees themselves by directing separate elections among the Wausau garage mechanics and among the remaining employees of the Company, excluding bus drivers. Upon the results of the elections will depend, in part, our determination of the appropriate unit or units.

The parties are agreed that office and clerical employees, the chief engineers at the steam plants, and professional employees (including chemists, Class 1), be excluded. They also agree that all employees

¹⁰ The Company's personnel director testified that the Company planned to sell its transportation system at some future time and that this could be done without materially affecting its gas and electric systems.

¹¹ See *Matter of El Paso Electric Company*, 50 N. L. R. B. 56.

¹² Local 1168 thereof.

¹³ *Matter of El Paso Electric Company*, *supra*.

with job titles of foreman, working foreman, line foreman, watch engineer, and chemists (Class 2 and Class 3) be included.¹⁴

The Company takes the position that employees with the job title of general foreman should be excluded; the OE seeks to include two employees with this title who maintain membership in the OE; the IBEW would include all employees who do any production and maintenance work. It is clear from the record that general foremen possess sufficient authority to take independent disciplinary action in regard to employees who work under them and can also effectively recommend lay offs.¹⁵ It is also undisputed that they are engaged in purely supervisory duties and do no production or maintenance work. We shall, accordingly, exclude general foremen.

The Company takes the position that the chief operators at its High Falls and Bayside hydro-electric generating plants should be excluded, and the OE and the IBEW that these employees should be included. Since the record discloses that these employees possess authority comparable to that of a general foreman, we shall exclude them.

The record also discloses that Fred Smith, who is employed in the power department at Wausau and whose job title is assistant foreman, possesses the authority of a general foreman. We shall exclude Smith.

At the Wausau garage the Company has an employee with the title of general garage foreman who, despite his job title, actually possesses authority no greater than the Company's foremen. The Amalgamated would include him in the unit it seeks. We shall include him in any unit finding.

We shall direct that two separate elections be held among the Company's employees in each of the voting groups set forth below, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections, 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, subject to the limitations and additions set forth in the Direction;¹⁶

(1) All the garage mechanics at Wausau, including the general garage foreman; and

¹⁴ All these employees do manual work and are not supervisory within the meaning of the Board's customary definition.

¹⁵ As has already been indicated, all discharges for cause are subject to thorough review by the President of the Company.

¹⁶ The OE requests that it be designated on the ballot as "Local 310, Operating Engineers, AFL," the Amalgamated, if an election were held among Wausau transportation employees, as "Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, Division 1168," and the IBEW, as "International Brotherhood of Electrical Workers." The requests are granted.

(2) All remaining employees of the Company, including employees with the job titles of foreman, working foreman, line foreman, watch engineer, and chemists (Class 2 and Class 3), but excluding bus drivers, office and clerical employees, professional employees (including chemists, Class 1), the chief engineers at the steam plants; general foremen, the chief operators at the High Falls and Bayside hydro-electric generating plants, and the assistant foreman at Wassau.¹⁷

The OE and the Amalgamated shall participate in the election among the Wausau garage mechanics; since the IBEW is not interested in these employees we shall make no provision for its participation in this election. And the OE and the IBEW shall participate in the election among employees in the larger group.

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 Wisconsin Public Service Corporation, Milwaukee, Wisconsin, separate elections 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 Thirteenth 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 following groups of employees of the Company, 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 any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, as well as all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

(1) All the garage mechanics at Wausau, including the general garage foreman, to determine whether they desire to be represented by Local 310, Operating Engineers, AFL, or by Amalgamated Association of Street Electric Railway, and Motor Coach Employees of America, Division 1168, for the purposes of collective bargaining, or by neither; and

¹⁷ Fred Smith

(2) All remaining employees of the Company, including employees with the job titles of foreman, working foreman, line foreman, watch engineer, chemists (Class 2 and 3), but excluding bus drivers, office and clerical employees, professional employees (including chemists, Class 1), the chief engineers at the steam plants, general foremen, the chief operators at the High Falls and Bayside hydro-electric generating plants, and the assistant foreman at Wausau, to determine whether they desire to be represented by Local 310, Operating Engineers, AFL, or by International Brotherhood of Electrical Workers, for the purposes of collective bargaining, or by neither.