

In the Matter of MOUNTAIN STATES POWER COMPANY and LOCAL INDUSTRIAL UNION 1361, CIO

Case No. 19-R-1528.—Decided October 11, 1945

Messrs. R. C. Sipe and John Ford, of Albany, Oreg., for the Company.

Mr. A. F. Hartung, of Portland, Oreg., for the CIO.

Mr. C. R. Owen, of Portland, Oreg., for the AFL.

Miss Helen Hart, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Local Industrial Union 1361, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Mountain States Power Company, Tillamook, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Erwin A. Peterson, Trial Examiner. The hearing was held at Tillamook, Oregon, on June 28, 1945. At the commencement of the hearing, the Trial Examiner granted a motion to intervene made by International Union of Operating Engineers, Local 87, AFL, herein called the AFL. The Company, the CIO, and the AFL appeared, participated, and 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 are 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

Mountain States Power Company, a Delaware corporation, furnishes electrical, gas, steam heat, telephone, and water service in the States of

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Oregon, Washington, Idaho, Montana, and Wyoming. It operates a steam electric plant at Tillamook, Oregon, which is the only plant involved in this proceeding. The Tillamook plant is part of the Willamette Division of the Company. During 1944, the Tillamook plant produced approximately 5 per cent of the Company's total output in electrical energy. The Company's power lines cross the Washington-Idaho boundary line and the Company's telephone lines, connecting with the Bell system, project calls to all parts 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

Local Industrial Union 1361, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Union of Operating Engineers, Local 87, 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 has been bargaining with the AFL as the representative of its employees at the steam power plants at Tillamook and Springfield, Oregon, since 1940. Several collective bargaining agreements were entered into between these parties. On November 1, 1943, the Company and the AFL signed a written contract, covering the two plants, effective until October 31, 1944, and to continue thereafter until terminated by 30 days' written notice by either party to the other. Prior to February 21, 1945, the Company and the AFL began negotiations with respect to a new contract or an agreement extending the term of the 1943 contract with amendments thereto. Unable to reach an agreement on certain provisions under negotiation, the AFL and the Company submitted their differences to the War Labor Board which issued a directive order on February 27, 1945.

On February 21, 1945, the CIO notified the Company that it represented a majority of the Company's employees at its Tillamook plant. The Company, in reply, informed the CIO that its employees were represented by the AFL and that the Company and the AFL had petitioned the War Labor Board "for approval of a contract involving wage increases and more favorable working conditions."

On March 7, 1945, the Company and the AFL entered into an agreement amending the 1943 contract in several respects;¹ the 1945 agreement covered only the Tillamook plant, extended the life of the 1943

¹ This 1945 agreement states that the 1943 contract "is still in full force and effect"

contract until October 31, 1945, and provided for automatic renewal for yearly periods thereafter in the absence of appropriate notice.

It is clear that the 1943 contract alone does not constitute a bar to this proceeding since after October 31, 1944, it became a contract terminable at will.² Furthermore, the contract or amendment of March 7, 1945, became effective subsequent to the CIO's claim to representation and, therefore, does not preclude the instant proceeding.³ Accordingly, we find that no bar exists to a present determination of representatives.⁴

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union 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 CIO contends that a unit consisting of all employees of the Company's Tillamook plant, including the chief engineer, shift engineers, servicemen and their helpers, firemen, fuelmen, the Coates Lumber Company fuelman, and the truck driver, but excluding all clerical employees, is appropriate. The Company and the AFL are in agreement with the CIO as to the scope of the unit, but they would exclude the chief engineer because of his supervisory functions and the truck driver because of his present representation by another union. The AFL, in addition, objects to the inclusion of the Coates Lumber Company fuelman in the unit.

The chief engineer is responsible for the operation of the power plant. He directs the work of all its employees⁶ and he has the authority to hire or discharge all plant personnel. Although the chief engineer has been included in the past in the two-plant unit represented by the AFL, he is clearly a supervisory employee within the meaning of our customary definition and, in accordance with our well-established policy, we shall exclude him from the unit of non-supervisory employees sought herein.⁷

² See *Matter of Iona Desk Company*, 59 N L R B 1522

³ See *Matter of Kimberly-Clark Corporation*, 55 N L R B 521

⁴ Nor do the War Labor Board proceedings warrant a dismissal of the petition, inasmuch as the AFL was not a newly certified or newly recognized representative at the time they were initiated. See *Matter of MacClatchie Manufacturing Company*, 53 N L R B 1268.

⁵ The Field Examiner reported that the CIO submitted 14 authorization cards and that the names of 10 persons appearing on the cards were listed on the Company's pay roll of May 17, 1945, that the AFL submitted a membership list which contained the names of 11 persons which appear on the same pay roll, and that there are 17 employees in the alleged appropriate unit.

⁶ Four shift engineers, one serviceman, one serviceman's helper, three firemen, and seven fuelmen.

⁷ See *Matter of Toledo Edison Company*, 63 N L R B 217.

The truck driver hauls fuel from the Coates Lumber Company, a concern with which the Company has a contract for the purchase of fuel. Since May 1942, the truck driver has been part of a unit for which the International Brotherhood of Electrical Workers, Local Union No. 659, AFL, not involved in this proceeding, has bargained.⁸ Since the truck driver is represented by another union at the present time, we shall exclude him from the unit.

One of the seven fuelmen employed by the Company is stationed at the Coates Lumber Company which is located approximately 3 blocks from the power plant. This fuelman, on the pay roll of the Company and under the supervision of the chief engineer, aids in loading lumber on the Company's fuel truck and on rare occasions works at the power plant. His rate of pay is the same as that of fuelmen working at the power plant and his duties are comparable. But this fuelman, not at the power plant, has never been part of the bargaining unit represented by the AFL. Accordingly, we shall exclude him.⁹

We find that all employees of the Company's Tillamook plant, including the shift engineers, servicemen and their helpers, firemen, and plant fuelmen, but excluding the truck driver, the Coates Lumber Company fuelman, clerical employees, the chief engineer, 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 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

⁸ Following a consent election held under Board auspices, International Brotherhood of Electrical Workers was designated by the Regional Director as the representative of the employees in the following unit "all production and maintenance employees employed in the employer's Willamette Division, excluding clerical employees, all power plant employees employed by the employer in its Springfield and Tillamook power plants" (Case No 19-R-822)

⁹ See *Matter of C J Petersen, et al*, 60 N L R B 1070

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, Tillamook, Oregon, 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 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 Local Industrial Union 1361, CIO, or by International Union of Operating Engineers, Local 87, AFL, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.