

In the Matter of CENTRAL NEW YORK POWER CORPORATION and UTILITIES DIVISION, DISTRICT 50, UNITED MINE WORKERS OF AMERICA

In the Matter of CENTRAL NEW YORK POWER CORPORATION, NIAGARA, LOCKPORT & ONTARIO POWER COMPANY (EASTERN DIVISION) AND NEW YORK POWER AND LIGHT CORPORATION (ONEIDA DISTRICT) and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL

Cases Nos. 3-R-1019 and 3-R-1037, respectively.—Decided October 25, 1945

Messrs. *LeBoeuf & Lamb*, by *Mr. Lauman Martin*, of New York City, and *Mr. Frederick P. Smith*, of Syracuse, N. Y., for the Companies.

Mr. Samuel E. Angoff, of Boston, Mass., for the UMW.

Messrs. *McMahon & Crotty*, by *Mr. Peter J. Crotty*, of Buffalo, N. Y., for the IBEW.

Messrs. *Costello, Cooney & Fearon*, by *Mr. M. Harold Dwyer*, of Syracuse, N. Y., for the League.

Mr. Thomas R. Traverse, of Watertown, N. Y., for the Association.

Mr. Jack Mantel, of counsel to the Board.

DECISION
DIRECTION OF ELECTION
AND
ORDER

STATEMENT OF THE CASE

Upon separate petitions duly filed by Utilities Division, District 50, United Mine Workers of America and International Brotherhood of Electrical Workers, AFL, herein respectively called the UMW and IBEW, alleging that questions affecting commerce had arisen concerning the representation of employees of Central New York Power Corporation, herein called CNY, Niagara, Lockport & Ontario Power Company (Eastern Division), herein called NLO, and New York Power and Light Corporation (Oneida District), herein called NYP, and collectively referred to as the Companies, the National Labor Relations Board provided for an appropriate consolidated hearing

upon due notice before Francis X. Helgesen, Trial Examiner. The hearing was held at Syracuse, New York, on July 13, 1945. The Company, the UMW, the IBEW, Utility Workers League, herein called the League, and Gas & Electric Workers Association, herein called the Association, appeared and participated.¹ 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 COMPANIES

Central New York Power Corporation, Niagara, Lockport & Ontario Power Company, and New York Power and Light Corporation are public utility companies engaged in the production, transmission, and distribution of gas and electric energy in the State of New York. Niagara Hudson Power Corporation, a New York corporation, owns all of the interests of the afore-mentioned companies. The employees involved in this proceeding are employed in the Central Division of the Niagara Hudson System, the main offices of which are located at Syracuse, New York. The Companies purchase annually coal, copper, cables, and other materials valued at several millions of dollars, approximately 25 percent of which is received from points outside the State of New York. In the course of its business, the Companies supply substantial amounts of energy to industries engaged in the production of material for national defense, to railroad companies, and to United States Post Offices.

The Companies admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Utilities Division, District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Companies.

International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Companies.

Utility Workers League is a labor organization admitting to membership employees of the Companies.

¹ Public Utility Employees Organization of Central New York, herein called the PUEO, and unaffiliated labor organization which had a contract with the Companies, was served with notice of the hearing. The record indicates that this organization has been dissolved.

Gas & Electric Workers Association is a labor organization admitting to membership employees of the Companies.

III. THE QUESTION CONCERNING REPRESENTATION

The Companies had collective bargaining contracts with the League and the Association at the time the petitions herein were filed.² As conflicting claims with respect to the appropriate unit were made by the two petitioners, the Companies refused to grant recognition to either union as the exclusive bargaining representative of their employees until the matter was resolved by the Board.

Statements of a Board agent, introduced into evidence at the hearing, indicate that the UMW and the IBEW each represents a substantial number of employees in the unit each seeks to establish.³

We find that questions affecting commerce have arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

All the parties substantially agree that all technical, office, and clerical employees⁴ of the Companies, including meter readers and working foremen, but excluding all production and maintenance employees, part-time employees, monthly paid employees, confidential clerical employees, and all supervisory employees above the rank of working foreman, constitute an appropriate unit. The parties are in dispute, however, concerning the geographical limitation of the unit, and whether PBX operators should be excluded as confidential employees, as contended by the Company.

As stated above, the Companies are all subsidiaries of the Niagara Hudson Power Corporation, the entire network of its operations being known as the Niagara Hudson System, which is composed of three major divisions, Eastern, Western, and Central.⁵ The UMW has separate division-wide contracts covering the production and maintenance employees and the technical, office, and clerical employees, respectively, in the Eastern Division.⁶ The IBEW has separate di-

² Neither the Companies, the League, nor the Association contends that the contracts are a bar to this proceeding.

³ The Board agent reported that the UMW submitted 63 authorization cards and that there were 106 employees in the unit sought by the UMW.

The Board agent also reported that the IBEW submitted 171 application cards and that there were 570 employees in the unit sought by the IBEW.

The League and the Association claim an interest in the proceeding by virtue of their past contracts with the Companies.

⁴ The job classifications of these employees are listed in Appendix A.

⁵ The following companies operate in each division: *Eastern*—NYP; *Western*—NLO, Buffalo Niagara Electric Corporation, and Lockport and Newfane Power and Water Supply Company; and *Central*—CNY, the eastern division of NLO, and the Oneida District of NYP.

⁶ These contracts do not cover the employees of NYP (Oneida District) because they are employed in the Central Division.

vision-wide contracts covering the same groups of employees in the Western Division.⁷

About 1 year before the hearing, the geographical area now known as the Central Division was comprised of 3 subareas which were referred to as the Syracuse, Watertown, and Utica subregions. The technical, office, and clerical employees in this area were covered by 3 separate bargaining contracts. The League represented the Syracuse group; the Association represented the Watertown group; and the now defunct PUEO represented the Utica group. After the above contracts were negotiated, the Companies consolidated the various subregional operations into what is now known as the Central Division, comprised of 23 local districts with headquarters at Syracuse, New York.

The Companies and the IBEW⁸ seek a division-wide unit of all technical, office, and clerical employees in the Central Division, comparable to the units presently existing in the other 2 divisions of the Niagara Hudson System. The UMW contends that the same group of employees in the former Utica subregion should constitute a separate unit, and the League urges that a separate unit of such employees in the former Syracuse subregion is appropriate. In effect, the UMW seeks to represent the employees in 7 of the 23 districts of the Central Division;⁹ and the League likewise requests only a portion of the 23 districts. The Association takes no position with respect to the appropriate unit.

Although the UMW concedes that ordinarily a division-wide unit is the most desirable, it contends in this instance that the Board should take cognizance of the past bargaining history of the technical, office, and clerical employees in the Central Division, which had been conducted on a smaller than division-wide basis. However, in view of the elimination of the subregional plan of operation, it appears that the basis on which this pattern of collective bargaining was established no longer exists.¹⁰ At the present time, all the employees in the Central Division, which includes those on the pay rolls of CNY, NLO (eastern division), and NYP (Oneida District), are under the supervision and direction of the vice president of the Niagara Hudson System, who is the chief executive officer of the Central Division.¹¹ The record indicates that there is a substantial transfer of employees

⁷ These contracts do not cover the employees of NLO (eastern division) because they are also employed in the Central Division.

⁸ The IBEW is the current bargaining representative for all production and maintenance employees in the Central Division.

⁹ The UMW is attempting to represent the employees who formerly belonged to the PUEO. The latter's contract for the Utica group included employees of CNY and a portion of NLO.

¹⁰ See *Matter of Atlas Powder Company*, 62 N. L. R. B. 1179.

¹¹ This person is also a director or the authorized representative for the subsidiaries which operate within the Central Division, and was a signatory to virtually all of the prior bargaining contracts involving the Companies operating in the Central Division.

among the 23 districts in the division. In view of the integration in the operations of the Central Division, the existence of a division-wide bargaining unit of production and maintenance employees in the Central Division, and the collective bargaining history of the Eastern and Western Divisions, we are of the opinion that the separate units sought by the UMW and the League are inappropriate; and we shall therefore dismiss the petition of the UMW. Accordingly, we find that the Companies constitute a single employer within the meaning of Section 2 (2) of the Act, and that the technical, office, and clerical employees of the Central Division constitute an appropriate bargaining unit.

The Company would exclude from the unit PBX operators contending that they are confidential employees. These employees handle incoming and outgoing long distance telephone calls, some of which are for executives of the Companies. The record does not indicate that the PBX employees, in the normal course of their duties, acquire confidential information in regard to the Companies' labor relations. Accordingly we shall include them in the unit.¹²

We find that all technical, office, and clerical employees of the Central Division of the Niagara Hudson System, including meter readers, working foremen, and PBX operators,¹³ but excluding all production and maintenance employees, part-time employees, monthly paid employees, confidential clerical employees, all employees above the rank of working foremen, 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 payroll 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

¹² See *Matter of Union Switch and Signal Company*, 63 N L R B 974

¹³ Included within the unit are the employees whose job classifications are listed in Appendix A.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Central New York Power Corporation, Niagara, Lockport & Ontario Power Company (Eastern Division), and New York Power and Light Corporation (Oneida District), all of Syracuse, New York, 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 Third 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 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 International Brotherhood of Electrical Workers, AFL, by Utilities Division, District 50, United Mine Workers of America, by Utility Workers League, by Gas & Electric Workers Association, for the purposes of collective bargaining, or by none.¹⁴

ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in the consolidated proceeding, the National Labor Relations Board hereby orders that the petition for certification of representatives of employees of Central New York Power Corporation, Syracuse, New York, filed by Utilities Division, District 50, United Mine Workers of America, in Case No. 3-R-1019, be, and it hereby is, dismissed.

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

APPENDIX A

Assistant Results Foreman A
Assistant Supvr.—Credit & Collection

¹⁴ At the time of the hearing, the UMW, the League, and the Association were undecided whether or not they desired to appear on the ballot of a division-wide unit, as found herein. If any of these organizations decides to withdraw from the election, it must notify the Regional Director of such determination, in writing, within five (5) days from the date of this Decision and Direction of Election.

Assistant Supvr.—Stenographic Dept.
Assistant Supvr.—Tabulating Section
Balance & Control Clerk
Bill Information Clerk
Bill Printer Operator
Blueprint & Photostat Operator A and B
Cadet
Cash Poster
Chief Operator—Cust. Serv. Tel.
Clerk A, B, C, D, and E (except Personnel Dept. Employees)
Coke Sales Dispatcher
Coke Sales Inspector
Coke Salesman
Collector
Commercial Representative A and B
Commercial & Indust'l Representative
Construction Inspector A, B, and C
Cust'r Service Representative A-PC and B-PC
Customer Service—Telephone Opr.
Designer A, B, and C
Display Man A and B
Display Helper
Distribution Cost Analysis Clerk
Distribution Inspector A, B, C, and D
Distribution Planner A, B, and C
Draftsman A, B, C, and D
Engineer A
Floor Attendant A, B, and C
Floor Supervisor
Gas Distribution Inspector and Planner
Gas Operations Clerk
Head Clerk—Addressograph
Head Receiving Teller
Home Lighting Supervisor
Home Service Supervisor
Home Service & Lighting Rep. A, B, and C
Instrument Man A and B
Key Punch Operator A and B
Load Supervisor A
Matching & Checking Clerk
Matron
Meter Book Clerk
Office Appliance Operator
Office Messenger
Outside Investigator

Photographer A and B
Plant Cost Analysis Clerk
Plant Inventory Recorder A, B, C, and D
Receiving Teller
Receptionist—Customers' Service
Receptionist—General
Right of Way Man A
Rodman A and B
Service Dispatcher A and B
Service Inspector
Shift Technician
Stenographer A and B (Except Personnel Dept. Employees)
Surveyor A and B
Tabulating Machine Operator A, B, and C
Technician A, B, C, and D
Teller Clerk
Transfer & Adjustment Clerk
Transportation Dispatcher
Typist A and B (Except Personnel Dept. Employees)