

In the Matter of PENNSYLVANIA POWER & LIGHT COMPANY *and* UTILITY
WORKERS UNION OF AMERICA, CIO

Case No. 4-R-1793.—Decided November 20, 1945

Mr. Harvey H. Steckel, of Allentown, Pa., for the Company.

Messrs. O. J. Harper and J. A. Straub, of New York City; *Mr. Joseph M. Walsh*, of Wilkes-Barre, Pa.; and *Mr. Reginald Brown*, of Pittsburgh, Pa., for the CIO.

Messrs. Henry Mayer and Irwin Panken, of New York City; and *Mr. John Thomas*, of Catasauqua, Pa., for the Independent.

Mr. Yelverton Cowherd, of Washington, D. C.; and *Messrs. Angelo Cefalo, August Rouse, and Robert R. Fahl*, of Philadelphia, Pa., for District 50.

Mr. George B. Acker, of Philadelphia, Pa., for the IBEW.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Utility Workers Organizing Committee, now known as Utility Workers Union of America, a labor organization affiliated with the Congress of Industrial Organizations, herein called the CIO,¹ alleging that a question affecting commerce had arisen concerning the representation of employees of Pennsylvania Power & Light Company, Allentown, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William P. Webb, Trial Examiner. The hearing was held at Allentown, Pennsylvania, on September 24 and 25, 1945. The Company; the CIO; Employees Independent Association, herein called the Independent; District 50, United Mine Workers of

¹ The petition was filed on June 15, 1945, by Utility Workers Organizing Committee, an organizing committee, which was succeeded by Utility Workers Union of America, a union chartered by the same parent body. The change in status from committee to chartered union with a corresponding change in name does not impair the identity of the petitioner. The petition and other formal papers are hereby amended to show the present name of the CIO.

America, herein called District 50; and International Brotherhood of Electrical Workers, herein called the IBEW, appeared and participated.² 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.

The Company and District 50 request permission to present oral argument before the Board. The requests are denied. All parties were afforded 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

Pennsylvania Power & Light Company, a Pennsylvania corporation, has its general offices at Allentown, Pennsylvania. The Company supplies electrical energy to approximately 432,600 customers in all or parts of 28 counties in the eastern portion of Pennsylvania. It also supplies manufactured gas to approximately 67,000 customers in the same area, and steam-heat service to approximately 1,500 customers in Harrisburg and Wilkes-Barre, Pennsylvania. The Company's system includes 16 steam electric power plants, 20 hydroelectric generating stations, all connected by a network of power lines, and a number of attended and unattended substations, which are fed from these lines, and 15 manufactured gas plants. All of these power plants, substations, and power lines are operated as a unified whole. This integrated system is in turn connected with the power lines of public utilities situated in other States, and thus constitutes a link in the chain of power companies serving other States.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Utility Workers Union of America is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Employees Independent Association is an unaffiliated labor organization, admitting to membership employees of the Company.

² Although the IBEW moved to intervene in this proceeding and a representative of the IBEW appeared on the first day of the hearing, the IBEW submitted no showing of interest among employees of the Company in its proposed bargaining unit. Its representative did not appear during the second day of the hearing. Under these circumstances, we will not consider the IBEW as a party in interest in this proceeding.

District 50, United Mine Workers of America, is an unaffiliated labor organization, admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

On June 11, 1945, the CIO informed the Company that the CIO represented the Company's employees and requested a bargaining conference. On June 18, the Company refused to recognize the CIO, alleging that a contract between the Company and the Independent constituted a bar.

Since August 1937, the Company has recognized the Independent as exclusive bargaining representative of its employees and has entered into contracts with the Independent covering employees in the several work categories usually employed in gas and electric utility companies. The latest agreement, executed on March 7, 1942, provides that it shall remain in full force and effect until December 31, 1942, and from year to year thereafter unless notice of 90 days be given by either party to terminate or change the agreement. The parties further agreed not to exercise their right to terminate the contract during the period of national emergency. Numerous supplementary agreements covering changes in particular working conditions for employees of the Company have subsequently been executed between the parties. Since the original agreement of March 7, 1942, is one of indefinite duration and has already been in effect for more than 3 years, we find that it constitutes no bar to a determination of representatives at this time.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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.

³ The agreement between the parties to the contract not to terminate their contract until the emergency due to war has officially closed does not constitute a bar to a determination of representatives upon a petition of a rival union claiming to represent the same employees. To hold otherwise would, in effect, permit the parties by contract to defeat the purposes of the Act.

⁴ The Field Examiner reported that the CIO had submitted 1,036 authorization cards and an affidavit of its secretary alleging that 399 employees of the Company were members of the CIO in good standing.

During the course of the hearing, the Trial Examiner read into the record a statement that District 50 had submitted to him 427 authorization cards purporting to bear signatures of employees of the Company in the appropriate unit.

The Independent relies upon its contract to indicate its interest among the Company's employees.

There are approximately 4,200 employees in the appropriate unit.

IV. THE APPROPRIATE UNIT

The Company's employees fall into two general classes, the so-called physical employees, who perform the manual work in constructing, maintaining, and operating the Company's lines and plants, and the office and clerical employees, who work in the Company's main offices and plants, and who perform work which, for the most part, is clerical in nature.

The CIO contends that the Company's physical forces constitute an appropriate unit apart from the office and clerical employees. The Company, the Independent, and District 50 agree that a system-wide unit of the Company's physical and clerical forces constitute a single appropriate unit.⁵

The Company's employees fall into the usual categories of employment found in gas and electric utility systems. The nature of the utility and the quality of the public service rendered admittedly require a very high degree of coordination and integration among employees in its several departments. Since 1937 the Independent has bargained for physical and clerical workers in a single unit, and the Company, the Independent, and District 50 urge the the unit so established should not be broken down. In some cases, we have felt that the dissimilarities in skills and functions inherent in physical and clerical work outweighed other considerations and, in spite of bargaining history upon a broader basis, we have established separate units for physical workers.⁶ In other cases, we have been impressed with the high degree of integration of work among all employees of a public utility and, despite functional differences, and even in the absence of any substantial bargaining history, we have found appropriate system-wide units of physical and clerical workers.⁷

The CIO, which presently contends that the unit appropriate for the Company's employees should be confined to physical workers, receives office and clerical employees of public utility companies into its membership and, on occasions, includes physical and clerical workers in a single bargaining unit.⁸ At the time of the hearing in this proceeding, the CIO contended that it had not yet exerted any special effort to organize the Company's clerical employees, although it desired to represent them. The parties disagreed as to whether certain categories of inside employees should be included in a unit largely

⁵ In its motion to intervene, the IBEW likewise urged the single unit as appropriate

⁶ *Matter of Boston Edison Company*, 51 N. L. R. B. 118; *Matter of Indianapolis Power and Light Company*, 51 N. L. R. B. 670.

⁷ *Matter of Southern Bell Telephone and Telegraph Company*, 55 N. L. R. B. 1058, *Matter of Pennsylvania Edison Company*, 36 N. L. R. B. 432.

⁸ E g, see *Matter of Pennsylvania Edison Company*, *supra*, wherein the CIO requested, and the Board granted, a single unit of physical and clerical employees

composed of physical employees. Proper placement of fringe groups within a restricted unit is uncertain. Under these circumstances, and in view of the long history of bargaining in the larger unit, we believe that a system-wide unit of clerical and physical forces is the appropriate unit for the Company's employees.

We shall exclude from the bargaining unit all confidential secretaries, executives, managerial employees, and all supervisory employees within our usual definition of that term.⁹

We find that all employees of the Company, excluding confidential secretaries, executives, managerial employees, 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.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot.

Between June 15, 1945, the date when the CIO filed its petition, and September 25, 1945, the date of the close of the hearing, the Company had hired from 200 to 300 employees, of whom approximately 50 percent were returned service men. Under these circumstances, the CIO urges that the date of the filing of its petition should determine eligibility to vote in the election. The Company, the Independent, and District 50 urge that the Board's usual custom should prevail. We see no reason to depart from our usual practice in determining eligibility.

The Regional Director requests that, in the event of an election among the Company's employees, permission be granted him to hold the election in whole or in part by mail. Since the Company's employees are widely distributed over 28 counties in the State, we will grant the request and authorize the Regional Director, at his discretion, to conduct the election in whole or in part by mail.

Those eligible to vote in the election which we now direct shall be all 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.

⁹ Although the parties disagreed as to the classification of system operators and local operators as physical or clerical employees, it seems clear that employees in these categories are not supervisory employees, and they are included in the larger unit found appropriate.

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 Pennsylvania Power & Light Company, Allentown, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth 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 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 Utility Workers Union of America, CIO, or by Employees Independent Association, or by District 50, United Mine Workers of America, for the purposes of collective bargaining, or by none.