

In the Matter of IROQUOIS GAS CORPORATION and DISTRICT 50, UNITED
MINE WORKERS OF AMERICA

Case No. 3-R-1155.—Decided March 7, 1946

Mr. D. J. Kenefick and D. J. Kenefick, Jr., of Buffalo, N. Y., for the Company.

Messrs. Frank J. O'Brien and Frank McGarry, of Buffalo, N. Y., for the Union.

Mr. Donald B. Brady, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Iroquois Gas Corporation, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas S. Wilson, Trial Examiner. The hearing was held at Buffalo, New York, on January 29, 1946. The Company and the Union appeared and participated. 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 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

Iroquois Gas Corporation is a New York corporation, having its principal place of business at Buffalo, New York, where it is engaged in the production, transmission, and distribution of natural and

artificial gas. During the year 1945 the Company sold a total of approximately 18,772,000 MCF to industrial and domestic users of which amount approximately 9,900,000 MCF were imported from the State of Pennsylvania and approximately 347,000 MCF were exported to Canada. During the same period the Company purchased equipment and supplies, consisting principally of steel pipe, tractors, oxide, mixing and handling equipment, and tin cast steel meters, valued at approximately \$100,000 of which approximately 75 percent was shipped from outside the State of New York.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

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.¹

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 parties generally agree that the appropriate unit should consist of all dispatchers and dispatcher maintenance employees employed by the Company at its plants and facilities in Erie County, New York, excluding clerical and supervisory employees. The parties disagree, however, as to four employees who work in the Chief Dispatcher's office;² the Union would include them, whereas the Company would exclude them as supervisory employees.

The four employees in dispute are employed in the Chief Dispatcher's office at Buffalo, New York. Their duties include mainte-

¹ The Field Examiner reported that the Union submitted 12 cards, bearing the names of 9 employees, listed on the Company's pay roll of December 27, 1945.

There are approximately 14 employees in the appropriate unit.

² M. Dickson, J. Blackall, N. Skidmore, E. Laverty.

nance of proper gas flow to all points in the Company's system, issuance of instructions by telegraph and telephone to dispatchers at outlying stations relating to the maintenance of an adequate gas flow, and a periodic check of outlying stations to insure that the dispatchers at these stations are properly following directions. The Chief Dispatcher, however, has sole supervision over the operations of the Buffalo office and is available for consultation at all times. Although these four employees issue instructions to dispatchers and direct the work of others or order changes in the amounts of gas to be used in the system, it is clear from the record that these employees do not possess the indicia of supervisory authority within our customary definition thereof. Accordingly, we shall include them.

We find that all dispatchers and dispatcher maintenance employees of the Company at its plant and facilities located in Erie County, New York,³ but excluding clerical 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 among 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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Iroquois Gas Corporation, 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

³ Including the four employees listed in footnote 2, *supra*

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 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 or not they desire to be represented by District 50, United Mine Workers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining.