

3. At all times since May 19, 1949, the Union has been and now is the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By failing and refusing at all times since May 19, 1949, to bargain collectively with Retail Clerks International Association, Local Union 368, AFL, as the exclusive representative of the employees in the aforesaid unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended order omitted from publication in this volume.]

PHILADELPHIA ELECTRIC COMPANY, PETITIONER *and* LOCAL No. 1184,
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L.
Case No. 4-RM-84. July 10, 1951

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Ramey Donovan, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. The question concerning representation:

The Employer and the Union have had contractual relations for 8 years. The last contract between the parties, which expired on April 2, 1951, contained an authorized union-security clause. When the Union, on January 26, 1951, requested that the Employer negotiate a new contract, the Employer refused and filed the petition herein.

The Union contends that as all employees of the Employer had to be members of the Union under the union-security contract when the petition was filed, the Board does not have reasonable grounds to believe that a question concerning representation exists as required by Section 9 (c) of the Act, and, therefore, the petition should be dis-

missed. We do not agree. As we have previously held, the Union's request on January 26, 1951, for a new contract was equivalent to a new demand for recognition which, when denied by the Employer, raised a question concerning representation, which the Employer is entitled to have resolved by an election.¹ The good faith of the Employer in refusing to grant continued recognition, or the legality of his refusal under the terms of Section 8 (a) (5) of the Act, are not properly before the Board in a representation proceeding. Accordingly, we find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Employer operates an electric power system with seven generating stations in Pennsylvania. The Union claims to represent the employees at the station located in Chester, Pennsylvania,² and the Employer's petition sets forth the Chester station as the appropriate unit. At the hearing, the Employer contended that only a system-wide unit is appropriate but indicated a willingness to proceed on the basis of a one-station unit should the Board find the latter appropriate. The Union urges the Board to dismiss on the ground that the Employer, in effect, amended its petition at the hearing to change the unit for which an election was requested from a station unit to a system-wide unit, and the Union had made no claim for recognition in the system-wide unit. We find, however, that the Employer has presented alternate unit contentions, which it is entitled to have considered. The Union's motion to dismiss is therefore denied.

The Employer has recognized the Union as the representative of its employees at the Chester station since the Union in 1943 won an election conducted by the Pennsylvania Labor Relations Board. In 1948 the Employer consented to, and the Union won, a union-authorization election conducted by this Board in a unit limited to the Chester station.

While the Chester station is an integral part of the Employer's generating system, and personnel matters are centralized in the main office in Philadelphia, all matters pertaining to the Chester station are channelized through the Chester station superintendent. The Board has previously held that while a system-wide unit is the most desirable unit in the public utility field, a smaller unit may be warranted under certain circumstances. Here the employees whom the Union seeks to represent in a unit limited to the Chester plant have

¹ *Whitney's*, 81 NLRB 75; *Continental Southern Corporation*, 83 NLRB 668; *J. P. O'Neil Lumber Co.*, 94 NLRB 1299. Although Board Member Murdock dissented in the latter case, he considers himself bound by the majority's decision in that case.

² The Union has requested recognition as the representative of the employees at the Employer's Richmond station, which was refused. No petition has been filed concerning these employees.

been bargained for in that unit for 8 years. No union is seeking to represent the employees of the Employer in a system-wide unit. Under all the circumstances, the Board finds the scope of the unit may appropriately be limited to the employees at the Chester station.³

The Employer seeks to exclude from the unit as supervisors the chief boiler operator, the chief assistant running engineer, the chief electrical mechanic, the head janitor, the chief hoisting engineer, the steamfitter subforeman, and the storekeeper B. All these individuals had, with the consent of the Employer, been included in the voting unit set up by the Pennsylvania Labor Relations Board in 1943 and in the one set up by this Board in 1948, and they had been covered by the bargaining contracts. The Union claims that these individuals are not supervisors, and wants to continue to include them in the unit.

The chief boiler operator, the chief assistant running engineer, the chief electrical mechanic, and the chief hoisting engineer.—The Employer's claim that these individuals are supervisors is based on the fact that they take the place of their respective immediate supervisors, the assistant boiler engineer B, the running engineer A, the chief electrician, and the yardmaster,⁴ at least 1 day a week, and, in the case of the chief hoisting engineer, at least 2 days a week.⁵ It is not clear from the record whether or not, while substituting for their immediate supervisors, the chief boiler operator, the chief assistant running engineer, the chief electrical mechanic, and the chief hoisting engineer have the power effectively to recommend discharge, discipline, transfer, or promotion,⁶ nor is it clear whether or not they responsibly direct the work of employees. Because of this state of the record, we shall not now make a determination as to the supervisory status of these individuals but shall permit them to vote subject to challenge. We shall pass upon the challenges as to their right to vote if it develops that the results of the election would be affected thereby.

The steamfitter subforeman.—This individual works under the supervision of the maintenance foreman. He does not have the power to hire or discharge employees, or effectively to recommend such action. He may recommend discipline, but never has done so and, according to his testimony, never has been told that he could. He does not assign overtime. He is an hourly rated employee receiving 11 cents an hour more than the next highest paid employee in his group. The maintenance foreman receives a salary, which is \$96

³ *Southwestern Electric Service Company*, 89 NLRB 114.

⁴ The last named four categories were excluded from the collective bargaining contracts between the Union and the Employer. The Union would not state whether it considered them to be supervisors, but stated that it would be satisfied with the contractual unit.

⁵ As the Employer at present employs an extra chief electrician, the present chief electrical mechanic has acted as chief electrician only 23 times during the past year.

⁶ Admittedly none of these individuals can hire, discharge, discipline, promote, or transfer employees or effectively recommend their hire.

more than the monthly pay received by the steamfitter subforeman. Under these circumstances, we find that the steamfitter subforeman is not a supervisor within the meaning of the Act. Accordingly, we shall include him in the unit.

The storekeeper B.—The storekeeper B operates the storerooms at the Chester station. In this operation he is assisted by three stockmen. He does not have the power to hire, discharge, or transfer these men or effectively to recommend such action. He is consulted before promotions are made, but it is not shown that his opinion has decisive weight. He assigns the stockmen their duties, but it appears that such assignments are of a routine nature. All the storeroom employees are salaried, with the storekeeper B's salary exceeding that of the next highest paid individual by about \$39 a month. Under all the circumstances, we find that the storekeeper B is not a supervisor within the meaning of the Act. Accordingly, we shall include him in the unit.

The head janitor.—This individual is an hourly rated employee receiving 12 cents an hour more than the two assistant janitors. He has no power to hire, discharge, discipline, transfer, or promote employees, or effectively to recommend such actions. Orders to the janitors are issued by the shift superintendent or by the station superintendent. Under these circumstances, we find that the head janitor is not a supervisor within the meaning of the Act. Accordingly, we shall include him in the unit.

The gateman.—The Employer contends that these employees are guards within the meaning of the Act, and urges that they be excluded from the unit. The Union denies that they are guards and wishes to include them. These gatemen are stationed at the gates to the Chester station. They have to clear the admission of non-employees and, in doubtful cases, consult the shift superintendent. They admit employees not on duty only on company business. An employee removing tools and equipment from the plant must exhibit a pass signed by his supervisor to a gateman before the latter permits such removal. The gatemen are uniformed, but at present are unarmed.⁷ Under these circumstances, we find that the gatemen are guards within the meaning of the Act, and shall exclude them from the unit.⁸

The stenographer to the station superintendent.—The Employer wishes to exclude this employee from the unit as a confidential employee. The Union denies her confidential status and wishes to include her. This employee takes minutes on grievance meetings between the station superintendent and representatives of the Union,

⁷ During World War II the gatemen were armed, and their arming during the present emergency is being contemplated.

⁸ *Niagara Mohawk Power Corporation*, 91 NLRB 607.

takes dictation for correspondence between the station superintendent and his superiors dealing with the disposition of grievances, and has access to all files involving the station superintendent's relations with the Union. As it appears from these facts that this employee acts in a confidential capacity to the station superintendent in the exercise of his managerial functions in connection with labor relations, we shall exclude her from the unit.⁹

The timekeeper.—The Employer employs one timekeeper at its Chester station. She works in the office, and under the supervision of the station superintendent, keeping records of the time worked by other employees, the wages paid them, and similar information. The Employer wishes to exclude her from the unit on the ground that she has no community of interests with the production and maintenance employees. She has in the past been included in the unit, and the Union wishes to continue to include her. Upon the entire record, we find that the timekeeper may appropriately be included in the unit.¹⁰

Accordingly, we find that all the production and maintenance employees at the Employer's Chester, Pennsylvania, station, including the chief boiler operator, the chief assistant running engineer, the chief electrical mechanic, the chief hoisting engineer,¹¹ the storekeeper B, the head janitor, and the timekeeper, but excluding the gatemen, the stenographer to the station superintendent, professional employees,¹² and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

⁹ *Minneapolis-Moline Company*, 85 NLRB 597.

¹⁰ *Aluminum Company of America (Harvard Plant, Cleveland)*, 80 NLRB 1342.

¹¹ For the reasons set forth above, the inclusion of the individuals in the last four categories is not to be taken as a final determination of their status as supervisors, but is solely for the purpose of permitting them to vote subject to challenge.

¹² The parties do not contest, and the record establishes that the investigators of plant tests and the plant chemist are professional employees within the meaning of the Act.

DEL E. WEBB CONSTRUCTION COMPANY *and* JOHN WORDS

INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABORERS' UNION OF AMERICA, CONSTRUCTION AND GENERAL LABORERS UNION No. 264, A. F. OF L. *and* JOHN WORDS. *Cases Nos. 17-CA-249 and 17-CB-19. July 11, 1951*

Decision and Order

On December 26, 1950, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that