

Order

IT IS HEREBY ORDERED that the petition filed in Case No. 39-RC-368 by the International Brotherhood of Electrical Workers, Local Union No. 716, AFL, be, and it hereby is, dismissed.

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

WESTERN KENTUCKY GAS COMPANY *and* CONSTRUCTION AND GENERAL LABORERS' LOCAL NO. 1392, INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABORERS' UNION OF AMERICA, AFL, PETITIONER

WESTERN KENTUCKY GAS COMPANY *and* LOCAL NO. 633, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND THE PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL, PETITIONER. *Cases Nos. 9-RC-1298 and 9-RC-1299. December 29, 1951*

Decision, Order, and Direction of Election

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Robert Cohn, 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 [Chairman Herzog and Members Reynolds and Murdock].

Upon the entire record in these cases, the Board finds:

1. The Employer is a Delaware corporation engaged in the sale and distribution of natural gas to domestic, commercial, and industrial consumers in western Kentucky. It purchases practically all its gas from two suppliers, Texas Gas Transmission Corporation and Tennessee Gas Transmission Corporation, amounting in excess of one million dollars annually. Both suppliers operate pipeline systems in interstate commerce, obtaining their gas outside the State of Kentucky and commingling such gas with small amounts obtained from gas wells in Kentucky. The sales for the Owensboro Division, which alone is involved in this proceeding, amounted to some \$856,700 for the year ending June 1951. We find on the basis of the evidence, and contrary to the contentions of the Employer, that it is engaged in commerce within the meaning of the Act.¹

¹ *Western Kentucky Gas Company, Inc.*, 74 NLRB 1388, 97 NLRB No. 130.

2. The labor organization in Case No. 9-RC-1298, hereinafter referred to as the Laborers' Union, and the labor organization in Case No. 9-RC-1299, hereinafter referred to as the Plumbers Union, claim to represent certain employees of the Employer.

3. 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 in Case No. 9-RC-1299.²

4. The Petitioner in Case No. 9-RC-1298 seeks a unit of laborers employed in the Owensboro Division of the Employer, excluding all other employees. However, as an alternative position, the Petitioner stated at the hearing that, if the Board should find that a laborers unit is inappropriate, it is willing to withdraw its petition in favor of the Plumbers in the companion case (9-RC-1299). The Plumbers in the latter case seeks a unit of all employees in the Owensboro Division, excluding the laborers, office and clerical employees, and the other usual exclusions. The Employer contends that: (1) Neither unit sought is appropriate on the ground that the Petitioners are seeking craft units which the Board does not sanction in a public utility; and (2) a unit limited to only one division of the business is not appropriate. There is no history of collective bargaining.³

The Employer, a public utility serving some 44 cities and towns in western Kentucky with general offices at Owensboro, employs some 200 workers in its system, the operations of which are divided into 6 divisions.⁴ Each division is under the supervision of a division superintendent and has one or more districts,⁵ headed by a district manager or superintendent. The general manager who establishes the policies for all operations, maintenance, and construction work for the whole system, transmits such policies to the division superintendents, who in turn are responsible for seeing that they are carried out by the district supervisors.

The Owensboro Division, herein involved, contains 2 districts, 1 of which covers the city of Owensboro and the other the surrounding towns of Hawesville, Whitesville, Cloversport, and Utica, Kentucky.⁶ In this division there are 40 employees, of whom 10 are clerical, office, and supervisory personnel. All the employees sought herein work

² As will hereinafter appear, no question affecting commerce exists in Case No. 9-RC-1298.

³ In a previous petition, *Western Kentucky Gas Company, Inc.*, *supra*, the Board found a system-wide unit of production and maintenance employees appropriate. However, because of the failure of the union, the United Construction Workers, affiliated with the United Mine Workers of America, to comply with the Act, an election was never held. The Board subsequently dismissed that petition. The employees of the Company have never been represented by a labor organization.

⁴ These divisions are the eastern, western, northern, southern, southwestern, and central divisions. The northern division is the Owensboro division involved herein.

⁵ Two divisions have no districts; one division, Owensboro, has two districts; another division has three districts; and two divisions have four districts.

⁶ These towns are from 8 to 37 miles from Owensboro.

outside the offices and move from district to district⁷ as the work requires. Although time slips and records of installations and services are kept on the district level, the district and division offices are housed together and are not physically separate.⁸ The policy of the Company is to hire most of its employees as laborers and to upgrade them after a short period to the higher classifications, as merited by their abilities and acquired skills. Except in emergencies there is little interchange between divisions. As new divisions are acquired, the Employer's policy is to hire local labor whenever possible for the reason that permanent employees do not generally wish to move from their established homes.

The Laborers Union in this case seeks a unit of common laborers⁹ in the Owensboro Division, excluding all other employees. As indicated above, the Laborers Union stated at the hearing that if the Board should find such a unit inappropriate, it is willing to withdraw its petition in favor of the Plumbers in the companion case. The Employer, which takes the position that the unit is inappropriate, urges in support of its contention that the laborers work side by side with the other employees, that they are constantly integrated with the latter, and that they remain laborers only for a few months before they are usually upgraded into the higher job classifications.

We find merit in the Employer's contention. The common laborers, who perform unskilled tasks, work side by side with the other maintenance employees, are under the same immediate supervision and subject to the same general working conditions.¹⁰ They are regularly interchanged with and promoted to the other maintenance classifications. Accordingly, in view of the interchangeable duties of these unskilled employees and their integration with the maintenance employees sought by the Plumbers, we agree with the Employer that a separate unit of common laborers is too limited in scope to be appropriate.¹¹ Because such a unit is inappropriate, we shall dismiss the petition filed by the Laborers in this proceeding. However, in accordance with the position taken by the Laborers' Union at the hearing, we shall consider the laborers as part of the broader maintenance unit sought by the Plumbers in the companion case.¹²

⁷ Only one man is permanently stationed at one of the surrounding towns.

⁸ Although the record is clear that the district and division offices are not separate in the Owensboro division, it is not clear whether this situation prevails in the other divisions. The general offices at Owensboro are separate from the division offices in this division.

⁹ Common laborers usually are hired to begin work at ditch digging, backfills, breaking concrete, moving materials and equipment, and loading and unloading trucks.

¹⁰ The evidence shows that laborers are upgraded to helpers after 6 months, and that after working as helpers for 1 year, they can be moved into the higher maintenance classifications.

¹¹ *Joseph T. Ryerson & Son, Inc.*, 91 NLRB 1; *M. W. Breman, etc. et als.*, 93 NLRB 720.

¹² It appears that the Petitioners' showing of interest in the Plumbers case is adequate for the direction of an election in the broader unit.

Case No. 9-RC-1299

The Plumbers seeks a unit of all employees in the Owensboro Division, consisting of some 30 employees who are classified as service men, pipefitters, meter repairmen, welders, ditching machine operators, excluding clerical employees and other statutory exclusions.¹³ The evidence indicates that the employees sought are constantly shifted from one district to the other. Moreover, although installations, services and time sheets are made under the direct supervision of the district supervisor, there is no actual separation of the district from the division offices and it is clear that the division superintendent is the responsible head of the division office. There is an occasional interchange between Owensboro and the other divisions but only in emergencies.

The Employer urges that the Plumbers is seeking a craft unit which, under the established policies of the Board, should not be permitted in a public utility. The Employer further contends that the unit is inappropriate on the ground that the Petitioner is seeking to have recognized as an appropriate unit only a segment of a business operated as an integrated operation. It therefore contends that the six divisions are purely administrative arrangements and that one of these divisions cannot constitute a separate appropriate unit.

We find no merit in these contentions. The Plumbers is not seeking an established craft group,¹⁴ but rather a group such as the Board, in the absence of a history of collective bargaining, has frequently found to be an appropriate unit, based upon the fact that it is a homogeneous, identifiable departmental grouping of employees with a community of interest separate and apart from other employees of the Employer.¹⁵ As to the Employer's second contention that one division of a utility is not appropriate for collective bargaining purposes, we agree that the Board has frequently stated that system-wide units in a public utility are the most appropriate.¹⁶ However, the Board has also held that although such a unit is ultimately the most desirable, it is not at all times and in all circumstances the *only* appropriate type of unit in a public utility, particularly in those cases where, as here, no other labor organization seeks to represent a group of employees on a company-wide basis.¹⁷ Furthermore, in the present case the evidence fails to show any physical integration or physical interdependence of the Owensboro Division with the rest of the sys-

¹³ As indicated above, the laborers will be considered as part of the unit sought by the Plumbers. No objection was made by the Plumbers at the hearing when the Laborers agreed to withdraw their petition in favor of the former.

¹⁴ It is clear from the record that there is involved herein no pure craft such as the Board has customarily recognized as being entitled to separate representation.

¹⁵ *Oklahoma Gas & Electric Company*, 86 NLRB 437; *The Wichita Water Company*, 93 NLRB 895.

¹⁶ *Pacific Telephone & Telegraph Company*, 85 NLRB 713.

¹⁷ *Southwestern Electric Service Company*, 89 NLRB 114.

tem. While it appears that general labor policies apply to all employees throughout the system, there is no evidence of integration and practically no interchange between the divisions. Accordingly, because the requested unit of employees in the Owensboro Division of the Employer's operations comprises a readily distinguishable and homogeneous group of employees, we believe that there exists under the circumstances sufficient basis for finding such unit appropriate.¹⁸

We find that all employees of the Employer in its Owensboro, Kentucky, Division, including laborers, helpers, service men, pipefitters, meter readers, meter repairmen, welders, and ditching machine operators, but excluding office and clerical employees,¹⁹ professional employees, seasonal employees²⁰ and all supervisors,²¹ as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

Order

IT IS HEREBY ORDERED that the petition filed in Case No. 9-RC-1298 be, and it hereby is, dismissed.

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

¹⁸ *Southwestern Electric Service Company, supra; The Wichita Water Company, supra; Standard Oil Company of Texas, 88 NLRB 224; Continental Pipe Line Company, et al., 78 NLRB 379.*

¹⁹ As the evidence indicates that the office clerical employees have no contacts with the field employees herein requested and are under separate immediate supervision, we have, in accordance with our usual practice, excluded them from the unit. *Appalachian Electric Cooperative, 93 NLRB 1348.*

²⁰ The Employer hires a number of college students who work during vacations but seldom remain as permanent employees after their graduation. We find that these are seasonal employees and in accordance with our usual practice they are ineligible to vote in the election hereinafter directed. *The Heckin Can Company, 88 NLRB 726.*

²¹ The Employer takes no position on the status of the service supervisor and the Union does not contend that he is a supervisor. As the evidence indicates that this service man does not exercise the powers and duties of a supervisor within the meaning of the Act, he is included in the unit.

INTERNATIONAL STAMPING CO., INC. and UNITED AUTOMOBILE WORKERS OF AMERICA, AFL, PETITIONER. *Case No. 13-RC-2063. December 29, 1951*

Supplemental Decision, Order, and Direction of Election

On October 26, 1951, the National Labor Relations Board issued a Decision and Direction¹ in the above-entitled proceeding, overruling the challenge to the ballot of Louis Brumm, and directing that the Regional Director open and count this ballot, and thereafter prepare

¹ 96 NLRB No. 167.

97 NLRB No. 101.