

In the Matter of GIBSON COUNTY ELECTRIC MEMBERSHIP CORPORATION
and LOCAL UNION B-835, INTERNATIONAL BROTHERHOOD OF ELECTRIC
TRICAL WORKERS, AFFILIATED WITH THE AMERICAN FEDERATION OF
LABOR

Case No. 15-R-1205.—Decided February 1, 1946

Mr. LeRoy Marceau, for the Board.

Mr. J. Frank Warmath, of Humboldt, Tenn., and *Mr. Floyd Jones*,
of Trenton, Tenn., for the Company.

Mr. Gordon Freeman, of Chattanooga, Tenn., *Mr. Joe Barham*, of
Jackson, Tenn., and *Mr. C. McMillian*, of Knoxville, Tenn., for the
IBEW.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local Union B-835, International Brotherhood of Electrical Workers, affiliated with American Federation of Labor, herein called the IBEW, alleging that a question affecting commerce had arisen concerning the representation of employees of Gibson County Electric Membership Corporation, Trenton, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Horace A. Ruckel, Trial Examiner. Said hearing was held at Jackson, Tennessee, on May 15 and 16, 1945. The Company and the IBEW 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. At the hearing, the Trial Examiner reserved ruling upon the Company's objections to the introduction into evidence of Board Exhibits 16 to 33, inclusive, and Board Exhibit 72.¹ The Company's objections to the introduction of these exhibits are overruled. Board Exhibits 16 to 33, inclusive, and 72 are hereby

¹ Board Exhibits 16-33, inclusive, consist of Board correspondence addressed to certain consumers of the Company and to the Hickman-Fulton Counties Rural Electric Cooperative Corporation, a TVA distributor, for the purpose of securing information relating to commerce, the responses thereto, and two tabulations recapitulating the data received

65 N. L. R. B., No. 126.

received in evidence. 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. On October 11, 1945, oral argument was heard before the Board at Washington, D. C. All parties appeared by counsel and participated in the argument.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Gibson County Electric Membership Corporation, a Tennessee corporation, is a retail distributor of electric energy purchased at wholesale rates from the Tennessee Valley Authority, herein called the TVA. It is a non-profit corporation organized as a result of the National effort to extend electrification to areas heretofore undeveloped in this field. It receives financial assistance in the form of substantial loans from the Rural Electrification Administration, an instrumentality created by Congress to facilitate the distribution of power through cooperative agencies and other enterprises, as well as from the TVA.² It services parts of seven counties within western Tennessee.³ As of January 1945, the Company had 4,039 rural and 2,469 urban consumers;⁴ almost all of its consumers are members of the corporation.

TVA generates electric current by means of numerous hydroelectric generating plants geographically spaced along the Tennessee River and its tributaries which flow through parts of 7 States in the Tennessee Valley area. It also generates power through various steam plants, of which 5 are located in Tennessee and 1 in Alabama. Of its hydroelectric plants, 13 are in Tennessee, 3 in Alabama, 2 in North Carolina, and 1 each in Georgia and Kentucky. These plants are interconnected through a system of transmission lines and are integrated in their operations with the interstate functioning of TVA's multiple purpose waterway system designed primarily to facilitate navigation and control floods. Although TVA's generation of electric energy in western Tennessee through its Pickwick hydroelectric plant and its Memphis steam plant generally exceeds the quantity dis-

² The Tennessee Valley Authority Act, 48 Stat. 58, and the Rural Electrification Act, 49 Stat. 1363, authorize preferences to cooperatives.

³ Other distributors who secure electric energy from the TVA also serve the Counties in which the Company operates; in some instances, they distribute power within part of the Company's service area.

⁴ Although the area served by the Company is predominately agricultural, a substantial portion of its power is used by 27 agricultural processing consumers and 3 industrial consumers

tributed in this area by its distributors, including the Company, and electric energy delivered to the Company is metered within the Company's service area for billing purposes, the record discloses that all of TVA's transmission lines serve the Company and that the Company is directly serviced through a line extending from the Kentucky hydroelectric plant in Kentucky to Martin, Tennessee, in addition to lines extending from the Pickwick and Memphis plants. The record also reveals that 16 miles of the Company's distribution lines are used by TVA for the purpose of delivering power to the Hickman-Fulton Counties Rural Electric Cooperative Corporation for distribution predominately in Kentucky.⁵

During the fiscal year ending June 30, 1944, the Company purchased materials amounting to approximately \$48,574 in value, of which approximately 12 percent was secured from sources outside the State of Tennessee. During the same period, its purchases of electric energy from TVA amounted to approximately \$118,088 in value.⁶ For the 6-month period ending June 30, 1944, the Company's distribution of electric energy to agricultural processing consumers and to industrial consumers amounted to 25 percent and 3.2 percent, respectively, of its total distribution of power.⁷ During this period, products transported to points outside the State of Tennessee by seven agricultural processing plants which collectively use approximately 96 percent of the power purchased of the Company by such plants, constituted from approximately 41 percent to 100 percent of the total dollar value of their shipments; materials secured from sources outside the State of Tennessee by agricultural processing plants which consume about 49 percent of the power received of the Company by such plants, aggregated approximately 19 percent to 60 percent of the total dollar value of their purchases. Similarly, two industrial consumers, which use approximately 89 percent of company power purchased by such concerns, shipped approximately 90 percent of the total dollar value of their shipments to points outside the State of Tennessee, and purchased almost all of their materials from sources outside the State. The Company also sells a small amount of power for lighting and other purposes to two railroads engaged in interstate transportation, and to federal agencies within its service area.⁸

⁵ The power is delivered by TVA in western Tennessee just inside the Kentucky-Tennessee border. During the year 1944, Hickman-Fulton's power purchases amounted to 1,425,587 kwh.

⁶ During the year 1944 power delivered by TVA for the account of the Company amounted to 21,846,609 kwh.

⁷ For the 6-month period ending June 30, 1944, the Company's total distribution of power amounted to 8,589,027 kwh; of this industrial consumers used 278,661 kwh and agricultural processing consumers used 2,162,075 kwh.

⁸ Federal agencies served by the Company consist of the Department of Interior, Fish and Wild Life Service, and various local offices of the Post Office Department.

In summary of the foregoing, it is thus clear (1) that a large area in Tennessee is dependent upon the Company for the distribution of electric energy and that within such area instrumentalities of interstate commerce, including railroads and federal agencies, as well as manufacturers and agricultural processors who sell a substantial portion of their products in interstate commerce and secure substantial quantities of their materials from sources other than Tennessee are dependent upon the Company as their source of electric energy, (2) that part of the Company's distributing lines are used by TVA for the transmission of electric energy for distribution in Kentucky, (3) that although the Company is directly served by the Memphis and Pickwick plants in western Tennessee, these plants are but part of the generating system of TVA which services the Company through all of its transmission lines and also furnishes the Company with direct line service from its Kentucky hydroelectric plant in Kentucky, (4) that the Company secures a portion of its materials from sources outside of Tennessee. Upon the entire record, we are of the opinion that a cessation or interruption of the Company's business, such as would tend to accompany labor disputes between the Company and its employees (1) would affect the flow of electric energy and other commodities received by the Company in interstate commerce; and (2) would burden and obstruct not only the operations of various instrumentalities engaged in interstate transportation and in the interstate distribution of power but also the operation of the business firms served by the Company which manufacture, process, and ship commodities in interstate commerce and receive substantial quantities of materials through interstate channels. Accordingly, we find, contrary to the Company's contention, that it is engaged in commerce within the meaning of the National Labor Relations Act.

In support of the Company's contention that it is not subject to the Board's jurisdiction, the Company maintains that a strike called by its employees in 1944 did not interfere with interstate commerce. In this connection, it also asserts that other sources of labor were available during the pendency of the strike and that those of its customers who are engaged in commerce have access to other sources for their power supply. Such factors, however, are not conclusive.⁹

The Company also disputes the jurisdiction of the Board for the reason that it is a non-profit cooperative. However, the non-profit and cooperative character of the Company does not withdraw it from the ambit of the Act.¹⁰

⁹ See *N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318; *N. L. R. B. v. Western Massachusetts Electric Co.*, 120 F. (2d) 455 (C. C. A. 1); *Pueblo Gas & Fuel Co. v. N. L. R. B.*, 118 F. (2d) 304 (C. C. A. 10); *N. L. R. B. v. Henry Levaux, Inc.*, 115 F. (2d) 105 (C. C. A. 1); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10).

¹⁰ See *Associated Press v. N. L. R. B.*, 301 U. S. 103; *Matter of Rutland Court Owners, Inc.*, 44 N. L. R. B. 587; *Matter of Utah Poultry Producers Cooperative Association*, 15 N. L. R. B. 534.

II. THE ORGANIZATION INVOLVED

Local Union B-835, International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In July 1944, the IBEW requested recognition as the exclusive bargaining representative of certain of the Company's employees. The Company refused to accord it recognition.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the IBEW represents a substantial number of employees in the unit hereinafter found appropriate.¹¹

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 IBEW requests a unit consisting of linemen-first class, linemen-second class, apprentice linemen, line helpers, groundmen, truck drivers, and foremen, at the Company's Trenton, Tennessee, plant, excluding supervisory employees. The Company takes no position with respect to the general composition of the unit, but would exclude the foremen.

The Company has in its employ four foremen who direct the work of from one to six employees. The IBEW would include them in the unit as non-supervisory employees. Although foremen perform some maintenance work and will not, in the event approval is secured from government stabilization agencies, earn a higher wage rate than linemen-first class, their duties are mainly concerned with supervising the work of other employees and assuming responsibility for the completion of the job. As part of their duties, they make reports regarding employee efficiency and may recommend the promotion and hiring of employees; recently the Company engaged two men recommended by foremen. Upon the evidence presented, we are of the opinion that the foremen possess the kind of authority denominated supervisory by the Board. Accordingly, we shall exclude them from the unit.

We find that linemen-first class, linemen-second class, apprentice linemen, line helpers, groundmen, and truck drivers, at the Company's Trenton, Tennessee, plant, excluding the manager, foremen, and all or any other supervisory employees with authority to hire, promote,

¹¹ The Field Examiner reported that the IBEW submitted 14 authorization cards, all of which bore dates in July 1944, in an alleged appropriate unit consisting of 14 employees.

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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Gibson County Electric Membership Corporation, Trenton, Tennessee, 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 Fifteenth 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 payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll 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 any 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 Local Union B-835, International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, for the purposes of collective bargaining.