

In the Matter of WESTERN KENTUCKY GAS COMPANY, INC., EMPLOYER  
and UNITED CONSTRUCTION WORKERS, AFFILIATED WITH THE UNITED  
MINE WORKERS OF AMERICA, PETITIONER

*Case No. 9-R-2585.—Decided August 21, 1947*

*Byron, Sandidge & Holbrook, by Mr. R. W. Sandidge, of Owensboro, Ky., for the Employer.*

*Mr. Frank Barnhart, of Terre Haute, Ind., for the Petitioner.*

*Mr. Irving D. Rosenman, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Owensboro, Kentucky, on June 11, 1947, before Clifford L. Hardy, hearing officer. The hearing officer reserved ruling for the Board on a motion by the Employer to dismiss the petition on the ground that it was not engaged in commerce within the meaning of the Act. For reasons stated in Section I, *infra*, the motion is hereby denied. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Western Kentucky Gas Company, Inc., a Delaware corporation, with its principal place of business in Owensboro, Kentucky, is engaged in the distribution of natural gas to domestic, commercial, and industrial users in 33 communities in Western Kentucky. The Employer obtains all its natural gas for 32 of these communities by drawing from the interstate pipeline system of Kentucky Natural Gas Corporation, hereinafter referred to as KNGC. It receives this gas at the outskirts of these communities, but within the Commonwealth of Kentucky. It obtains the natural gas for its customers in the

remaining community, Greenville, Kentucky, from local wells in that area.

During the first 4 months of 1947, the Employer drew approximately 990,000,000 cubic feet of gas from the pipelines of KNGC. During the same period KNGC purchased approximately 1,000,000,000 cubic feet of gas from individual wells in Kentucky, which was intermingled with gas obtained outside the Commonwealth from the interstate pipelines of Panhandle Eastern Pipeline Company in Indiana, and of Tennessee Gas and Transmission Corporation in Tennessee and Kentucky, and from individual wells in Indiana and Illinois.<sup>1</sup> During 1946, the Employer sold approximately 1,400,000,000 cubic feet of gas, of which 14.4 percent went to consumers classified by it as industrial users,<sup>2</sup> some of whom are admittedly engaged in interstate commerce.

We find, contrary to the contention of the Employer, that its operations affect commerce within the meaning of the National Labor Relations Act.<sup>3</sup>

## II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

## III. THE QUESTION CONCERNING REPRESENTATION

On January 18, 1947, the Petitioner by letter requested recognition of the Employer as the exclusive bargaining representative of "the employees of the Western Kentucky Gas Company." On January 27, 1947, the Employer replied that it would not recognize the Petitioner in the absence of a Board certification, whereupon the Petitioner filed its petition on February 5, 1947.

The record discloses that the Petitioner's original intention was merely to claim recognition as the exclusive bargaining representa-

<sup>1</sup> The amount of gas purchased by KNGC from points outside Kentucky is not disclosed in the record

<sup>2</sup> The Employer contends, however, that approximately 40 percent of these users have been improperly classified and that only 8 percent of the volume of gas sold by it during 1946 went to industrial users

<sup>3</sup> At the hearing and in its brief, the Employer moved to dismiss the petition on the grounds in effect, that (1) it is not engaged in interstate commerce, and that (2) a stoppage of work by all the employees concerned herein would neither materially affect the distribution of gas to its customers nor substantially affect interstate commerce. The motion to dismiss on these grounds is hereby denied. See *N. L. R. B. v. T. W. Phillips Gas & Oil Company*, 141 F. (2d) 304 (C. C. A. 3), en'g 51 N. L. R. B. 376, *Matter of Hamilton Gas Corporation*, 72 N. L. R. B. 269; *Matter of James C. Ellis (Oil Production)*, 72 N. L. R. B. 474; *N. L. R. B. v. Faunblatt, et al.*, 306 U. S. 601, *Matter of Gladewater Refining Company*, 64 N. L. R. B. 696, *Matter of A. S. Campbell Company, Inc.*, 71 N. L. R. B. 753, *Matter of The Northern Trust Company*, 69 N. L. R. B. 652

tive of the employees at Madisonville, Kentucky.<sup>4</sup> However, neither the Petitioner's letter of January 18, nor its petition, so limits its claim, and at the hearing the Petitioner requested recognition as the exclusive bargaining representative of all production and maintenance employees of the Employer. In view of the variance between the unit as originally intended and the unit as subsequently claimed in the petition and at the hearing, the Employer contends that the question concerning representation was never properly initiated and that the petition should be dismissed.<sup>5</sup> We do not agree. We are proceeding herein on the basis of the petition which, in and of itself, raises a question concerning representation in the unit hereinafter found appropriate.<sup>6</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

We find, in substantial accord with the agreement of the parties, that all production and maintenance employees of the Employer, excluding office and clerical employees, managers, foremen, and all other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Western Kentucky Gas Company, Inc., Owensboro, Kentucky, 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 Ninth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the 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 em-

<sup>4</sup> One of the nine district offices maintained by the Employer

<sup>5</sup> Sec 202 15 of the Code of Federal Regulations, as amended, is cited by the Employer in support of this contention. This section is wholly inapplicable to representation proceedings

<sup>6</sup> *Matter of East Texas Electric Steel Company*, 72 N L R B 1144; *Matter of The Colson Corporation*, 70 N. L. R. B. 1235.

ployees 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 United Construction Workers, affiliated with The United Mine Workers of America, for the purposes of collective bargaining.