

Duke Power Company, Lee Steam Station and Sam H. Moody, Petitioner, and International Brotherhood of Electrical Workers, Local No. 957, AFL-CIO

Duke Power Company, Dan River Steam Station and V. A. White, Petitioner, and Local Union No. 407, International Brotherhood of Electrical Workers, AFL-CIO, CLC

Duke Power Company, Allen Steam Station and John T. Gaston, Petitioner, and International Brotherhood of Electrical Workers Local 962, System Council U-20, AFL-CIO

Duke Power Company and System Council U-20, International Brotherhood of Electrical Workers, AFL-CIO, Union Petitioner, Cases 11-RD-168, 11-RD-169, 11-RD-171, and 11-UC-10

June 21, 1971

DECISION, ORDER CLARIFYING UNIT, AND DIRECTION OF ELECTIONS

BY MEMBERS BROWN, JENKINS, AND KENNEDY

Upon petitions duly filed under Section 9(b) and 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Martin L. Ball, Jr., on November 12, 1970. Following the hearing, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, these cases were transferred to the National Labor Relations Board for decision. Thereafter, the Employer and Union filed briefs. The Union has also filed a motion to dismiss the petitions in Cases 11-RD-168, 11-RD-169, and 11-RD-171 for insufficient and invalid showing of interest, or, in the alternative, for administrative investigation of sufficiency and validity of showing of interest.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioners in Cases 11-RD-168, 11-RD-169, and 11-RD-171, all employees of the Employer, assert that the Unions therein named, all labor organizations, are no longer the representatives, as defined in Section 9(a) of the Act, of the employees designated in

the respective petitions. Further, the Union-Petitioner asserts that it represents certain of the Employer's employees.

Petitioners in each of the above-stated RD cases seek an election to decertify the incumbent Union. Incumbent Locals 957, 407, and 962 and System Council U-20 of the International Brotherhood of Electrical Workers, hereinafter referred to as the I.B.E.W. or the Union, urge that these petitions be dismissed because they fail to state an appropriate unit coextensive with the present collective-bargaining unit. The Unions, herein collectively referred to as System Council, argue that the only appropriate unit comprises all of Duke Power's employees the Union represents. In accord with System Council's assertion, it has also filed a unit clarification petition requesting that the Board find that the present collective-bargaining unit is composed of all the Employer's employees it represents. The Employer, on the other hand, asserts that the collective-bargaining history does not establish that there has been a merger of all the groups of employees represented by the Union into an overall systemwide bargaining unit. The System Council also claims that the petition in Case 11-RD-171 was filed within the 60-day insulated period prior to contract termination and therefore the Board's contract-bar rule prevents an election.¹

Duke Power Company is a public utility engaged in the generation and distribution of electrical power throughout the States of North and South Carolina. It is organized into two major operating groups. Its retail operations are handled through the Retail or Distribution Department. The generation of power is handled through the Power Operations group which engages in the construction and maintenance of transmission lines and the operation of power plants (both hydro and steam), substations, and sundry other facilities that relate to the production and delivery of electric power to the Distribution Department at points throughout the serviced area.

In 1938, the Employer negotiated its first contract with a Local of I.B.E.W. Subsequently, as more employees authorized I.B.E.W. to represent them and the Employer recognized the Union as its employees' representative, either by Board certification or by agreement of the parties, additional locals were chartered. Bargaining at this time assumed the form of group negotiation of a single contract covering all employees represented by the I.B.E.W. In 1948, an informal "system council" was organized among the locals in order to structure its group bargaining. This informal "sys-

¹ The System Council has also sought to have the RD petitions dismissed on the ground that the decertification authorizations were procured with the assistance of supervisory employees and through misrepresentation as to the nature of the authorizations. This is a separate matter for administrative determination and investigation and will not be considered in the present proceeding.

tem council” was officially chartered by the I.B.E.W. in 1959 as “System Council U-20” pursuant to its International constitution.² This System Council forms the basis for I.B.E.W.’s present collective-bargaining structure with this Employer.

Since its inception, System Council U-20’s bylaws have provided that it “shall have authority to deal with the Duke Power Company of Charlotte, North Carolina as the authorized agent of such local unions in all matters pertaining to collective bargaining,” and that the Council was formed by the local Unions with the object to establish a central representative body.³ The System Council’s bylaws can be amended by a two-thirds vote of all the composite members of the affiliated local Unions.⁴ The officers of the System Council include a business manager, president, and an executive board made up of one delegate from each affiliated local union.⁵ Officers of the Council, as well as additional delegates from the affiliated local Unions, along with the International representative, compose the Union’s negotiating committee.⁶ When the committee finally completes negotiation of the agreement, it is submitted to the membership for ratification. Ratification is based on a majority of all the votes cast by the composite members of the affiliated locals.

Similarly, the Employer’s bargaining structure is highly centralized. All contract negotiation is done by its central personnel department. No supplemental agreements are negotiated, and, with the exception of handling the initial steps in the grievance procedure, local managers and other supervisory personnel are not otherwise involved in the negotiation and grievance procedures.

In 1968, the Union filed a petition for an election in a unit composed of the entire Distribution Department. Although contracts previously negotiated included groups of employees in the Power Department (referred to by the parties as “fragments”) no mention was made of these employees in the petition and in the subsequent Board proceedings. The Board issued a decision⁷ directing an election be held among the employees in the Distribution Department. The Union won the election.

When the parties began negotiation of the 1969 contract, the Employer requested that certain of the Power Department “fragments” be excluded from the coverage of the agreement. The Employer did not seek the exclusion of the power stations involved in the present decertification petitions. It is clear, though, that the disputed “fragments” were included within the coverage of the 1969 collective-bargaining agreement even though the Employer and the Union disagree as to the understanding which led to the inclusion.

At the next contract negotiation sessions for the 1970 contract the exclusion of the nonsteam plant “fragments” was a prime negotiation topic. According to the Union’s “Minutes of Negotiation,” at almost every meeting the Employer discussed the proposed exclusion. Further, it appears that it was this topic which primarily prevented the Union’s acceptance of the 1970 agreement. At the time of the hearing the Union still had not accepted the proposed 1970 agreement because of the Employer’s insistence on the exclusion of these “fragments.”

On October 5, 1970, a decertification petition was filed for the Employer’s Lee steam power plant in Pelzer, South Carolina. Shortly thereafter, employees at two other steam power plants, Dan River and Allen, also filed RD petitions on October 22, 1970, and November 2, 1970, respectively. The Union then, on November 2, 1970, filed a unit clarification petition embracing all the “fragment” employees. Because of the similarity of issues involved in these cases the petitions have been consolidated.

As stated, the Employer’s operations are divided into two major divisions: namely, Retail or Distribution and Operations. At issue in this case is the status of groups of employees represented by the Union in the Operations Department. These groups are described by the parties as “fragments.” For our purposes here, the “fragments” may be further subdivided into the steam stations and various groups of other employees. The Union represents the employees at three of the Employer’s eight steam stations and the decertification petitions filed involve these three steam stations.⁸

The Dan River Steam Station came under the coverage of the 1967 collective-bargaining agreement after the Union was certified as the result of a Board-conducted election in 1966. There are approximately 70 employees in this group. The Lee Steam Station employees were first covered by the 1968 collective-bargaining agreement following a voluntary recognition by the Employer in 1967. There are 69 employees in this group. Finally, the Allen Steam Station employees were brought under the coverage of the 1969 collective-bargaining agreement after a Board election and certifica-

² Article XVII, section 22 of the constitution of the I.B.E.W. From 1959 to July 1969, it was officially chartered as the “System Council U-20 of Local Unions 356, 407, 745, 913, 957 and 962 of the International Brotherhood of Electrical Workers.” However, as the result of the merger of three locals, the System Council is presently known as “System Council U-20 of Local Unions 407, 957, and 962.”

³ By-Laws of System Council of IBEW Local Unions on the Property of Duke Power Company (Union Exh. 798, art. 1, secs. 1 and 2).

⁴ *Id.*, art. X, sec. 2.

⁵ *Id.*, art. IV, sec. 1.

⁶ *Id.*, art. IX, sec. 1.

⁷ *Duke Power Company*, 173 NLRB 240.

⁸ Not clear from the record is the total number of unrepresented employees in the Employer’s Operations Department.

tion in 1969. There are approximately 101 employees in this group.

At two of the above-mentioned steam stations, Dan River Steam Station and Allen Steam Station, the Union sought, and the Board has certified, the Union as the employees' bargaining representative in each of these steam stations. The factors which led to the Board determinations are readily evident. Steam stations are at widely diverse geographical locations. Each plant is a virtually autonomous self-contained entity. Each station's superintendent reports directly to the manager of power production. The superintendents are in charge of the day-to-day administration of the collective-bargaining agreement at the steam station. They purchase minor items. Records pertaining to payroll, work history, and plant activities are kept at the steam stations. Hiring, promotion, discharge, layoff, and recall are done locally at each steam station. There is no formal transfer of employees from one steam station to another. Seniority is by classification at each steam station. Finally, supervisors of one steam station have no authority over any other station.

The other "fragments" involved in the Union's unit clarification petition comprise groups of employees scattered throughout the Employer's system. The size of these employee groups varies from as many as 22 employees to 1 or 2 employees. At some locations the employee group perhaps would constitute an independent appropriate unit for the purpose of collective bargaining whereas at other locations the group or "fragment" of employees would not so qualify under Board standards. The record however does not reveal an instance where the Board has ever certified the Union as the bargaining representative for one of these groups of employees. It may be assumed that the Employer has in all instances voluntarily recognized the Union as the representative of these employees. Groups of these employees have been included in the coverage of the parties' collective-bargaining agreement prior to 1959, and others as recently as the 1969 agreement.⁹

⁹ More specifically these "fragments" comprise the following:

(1) Hydraulic maintenance employees located at Great Falls, South Carolina. These employees perform all the maintenance, repair, and upkeep on the hydro plants throughout the Duke Power System. The superintendent in charge of this operation reports directly to the assistant vice president in charge of operations at the Employer's main offices in Charlotte, North Carolina. Hiring, promotion, discharge, layoff, and recall are administered by this superintendent. There is no interchange with employees elsewhere in Duke Power, and their seniority is based on their job classifications in the hydraulic maintenance department. There are approximately 22 employees in this group. This group was most recently covered by the 1967 collective-bargaining agreement.

(2) Great Falls labor crew at Great Falls: These employees are supervised by the hydraulic maintenance superintendent and were first covered by the collective-bargaining agreement in 1967.

(3) Substation operators and servicemen: These employees are located in various areas of the Employer's Operation Department, particularly at some of the Employer's several substations, and compose the bulk of the remaining employees represented by the I.B.E.W. Approximately 33 employees are in this category.

Prior to the 1968 Board decision and election which created the Distribution Department as a single bargaining unit, the collective-bargaining agreement, article I entitled Recognition, listed each of the groups of employees covered by the agreement according to the local union representing the group, the Company's operating department, and geographic location. After the establishment of the Distribution Department unit, the groups of employees covered were described in the 1969 agreement, article I, as consisting of all the employees in the Retail Operations (Distribution) Department, the several steam stations in the Power Operations Department represented by the Union, and other named groups of employees in the Power Operations Department.

All agreements since 1962 have been signed by both System Council U-20 and each of the local Unions. The cover sheet of the agreement states that the agreement was negotiated by the System Council U-20. The most recent 1969 agreement specifically states that it is an agreement "Between Duke Power Co. and System Council U-20 (Local Unions 355, 407, 745, 913, 957, and 962)." The agreements set forth the wage scales for all job classifications covered by the agreement. There are no supplemental agreements. Seniority is computed on a plant-by-plant basis and there is no companywide seniority.

There has been a continuous practice between the System Council and Duke Power of adding groups of employees to the overall contract coverage. This occurred with respect to both the Distribution Department employees prior to the Board's certification of the departmentwide unit and to the employees involved in these cases. The Union admits that prior to 1967 there was also a practice whereby union recognition was withdrawn with respect to certain groups of employees. According to the testimony of the former business manager for the System Council this practice stopped in 1967 when he discovered that it was "illegal" and refused to further acquiesce in this practice of withdrawal. It has not been done since that time.

The I.B.E.W. contends that the RD petitions filed for each of the three steam power plants state an inappropriate unit and should therefore be dismissed. The steam power plants, the I.B.E.W. contends, have been incorporated into a larger collective-bargaining unit composed of all employees represented by the Union. It is argued that through the years there has developed a practice of immediately incorporating groups of employees who have expressed their wish to be represented by the Union, either by Board election and certification or by agreement of the parties, into a collective-bargaining unit covering all employees represented by the I.B.E.W. In other words, the Union contends that System Council U-20 has engaged in joint bargaining for the several locals representing Duke Po-

wer's employees. It supports the above contentions with evidence showing the long period of negotiating a single contract covering all Employer's employees; the highly centralized negotiation method used by both the Union and the Employer; and the System Council's method of ratification-majority vote of all employees. For similar reasons the I.B.E.W. contends in its UC petition that the Board should now include all the "fragment" employees in the bargaining unit heretofore found appropriate by the Board in *Duke Power Company*, 173 NLRB 240.

The Employer, on the other hand, contends that the decertification petitions are proper and that either the unit clarification petition should be dismissed or, in any event, the Board should now find that previous Board certifications did not include the "fragment" employees and that the Distribution Department unit cannot be clarified to add them. It takes the position that although collective-bargaining negotiations have over many years been centralized it was only for convenience of the parties and was not intended to constitute joint bargaining for a single unit of all represented employees. This, it says, is expressed in the collective-bargaining agreement's recognition clause and the agreement's subscriptions wherein each local, as well as the System Council, signs. It further argues that even if the Board has found that there has been joint bargaining the parties have developed a practice of dropping from the coverage of the agreement groups of employees when the Union no longer represents a majority. Therefore, the decertification petitions are proper since the parties have the understanding that the agreement will only cover groups of employees where the Union represents a majority. Further, the Union's efforts through the posture of the decertification petitions and the unit clarification petition to create a unit composed of all employees it represents is inappropriate since: (1) the collective-bargaining practice cannot be interpreted as joint bargaining; (2) there is no identifiable characteristic of either the Employer's operations or geography which would make this proposed unit appropriate; and (3) it is inequitable to allow groups of employees to be swallowed into a much larger collective-bargaining unit without their consent and with no possibility of withdrawal.¹⁰

¹⁰ The I.B.E.W. has further argued that the decertification petition filed at Allen Steam Station was not timely filed under the Board's contract-bar rule. The formal RD petition was filed on November 2, 1970. The termination date of the contract was December 31, 1970. Therefore the formal petition was filed within the insulated 60-day period prior to the contract's termination. The Employer, however, points out that prior to the filing of the formal RD petition several employees had sent to the Regional Office a letter dated October 27, 1970, requesting a "decertification election." The Regional Office then forwarded by mail a request that a formal RD petition be filed, which was promptly filed pursuant to the Regional Director's request on November 2. The Employer argues that the date of the request for a decertification election be considered the filing date rather than later filing of the formal petition pursuant to the Regional Director's request. We agree

It is uncontested that Duke Power and System Council U-20 have for years negotiated and entered into contracts covering all employees represented by the Union. The Union claims that this was joint bargaining. The Employer says it was done only for convenience. The facts appear to support the Union's position. The contract negotiated covered every facet of the employee's relationship with his employer except for seniority. The local Unions have given almost all their negotiating power to the System Council. Ratification of the agreement derived by the negotiating efforts of the System Council is accomplished by a majority vote of all union members in the Duke Power system.

Indeed, in the previous *Duke Power* decision dealing solely with the Distribution Department, the Board characterized the negotiation process in a similar manner:

The current contract, as with several preceding it, provides for uniform conditions of employment, including classifications and wages. All provisions, with the exception of seniority, span "unit" lines. Bargaining has been conducted jointly with the various locals that have been recognized in the many units. The parties have long bargained in an overall unit, which is composed of, and has subsumed, the many so-called smaller "units." We therefore find that the employees covered by the contract constitute a single unit.

Since this decision neither party has done anything which changes the character of the negotiating process. True, the Employer has proposed to exclude certain groups of employees previously covered by the agreement in the Operations Department. However, its planned exclusion is inconsistent with any rational proposal to create separate collective-bargaining units for the Distribution and Operations Department since according to the Employer's plan the steam plants¹¹ would be covered by the same agreement as the Distribution Department. In fact the Employer was unwilling to negotiate a separate contract for the proposed excluded employees in the Operations Department. Rather, the Employer offered to follow the terms of the collective-bargaining agreement negotiated for the distribution and steam plant employees even though not specifically included within the coverage of that agreement.

with the Employer that in the circumstances of the present case the filing date used for determining the applicability of the contract-bar rule should be the date of the original request. The employees in their original request for a decertification election effectively expressed their desires within the permissible period for filing such request. The mere fact that the request was not upon the Board's standard forms should not impinge on the validity of the request. Accordingly, we find the Allen Steam Station petition timely filed.

¹¹ The Employer's proposal to revise the collective-bargaining agreement's coverage was originated considerably prior to the filing of the decertification petitions.

As previously indicated, our prior *Duke Power* decision did not consider the status of the Operations Department "fragments" even though it is clearly evident from the foregoing that these employees were included in collective-bargaining agreements prior to this decision. This previous bargaining history, unchanged by events since our previous decision, shows that the Employer and the Union engaged in joint bargaining for all employees represented by the Union. Accordingly, we grant the Union's unit clarification petition and find, based on the long established collective-bargaining history, that the appropriate unit is a systemwide unit composed of employees both in the Distribution or Retail Department and the Operations Department who are represented by the Union.¹²

Although we have granted the Union's unit classification request so as to cover some of the union-represented employees in the Operations Department as well as in the Distribution Department, we do not find this conclusion dispositive of the status of the decertification petitions at the three steam plants. The Union contends that the unit stated in each decertification petition is inappropriate because these units also have been incorporated into the larger collective-bargaining unit. We do not agree with the Union's contention that the bargaining history has rendered inappropriate, for purposes of a decertification election, separate steam plant units. At two of the steam plants the Board has certified the Union as the bargaining agent in a unit composed solely of that particular steam plant. The employees were not given the option to choose at the time of the Board's election at these two steam plants whether they wished to be associated with the larger collective-bargaining unit. Moreover, all of these steam plants have only recently been included within the coverage of the system wide collective-bargaining agreement—the Allen steam plant being added as late as 1969. In light of the above, we conclude that, although these three steam plants have been included in the system-wide agreement and will continue to be included if the employees choose by election to be represented by the Union, an insufficient time has elapsed since certification or recognition as separate appropriate units for the purposes of collective bargaining to warrant the finding that these steam plants have been irrevocably amalgamated into the larger collective-bargaining unit. Accordingly, we find that the decertification petitions filed for Lee, Dan River, and Allen steam plants state the appropriate unit and we shall direct that decertification elections be held at each of the steam plants.

¹² Although several groups of employees have been added to the collective-bargaining agreement's coverage since our previous decision, these groups should also be covered by our present Decision in order to be consistent with the parties own collective-bargaining arrangements

We find that the following described units are appropriate units in this "decertification" proceeding for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All operation and maintenance employees at Lee Steam Station excluding all office clerical employees, guards, and supervisors as defined in the Act.

All operation and maintenance employees employed at the Employer's Eden, N.C. installation (Dan River Steam Station) but excluding office clerical employees, supervisors and guards as defined in the Act.

All operation and maintenance employees at Allen Steam Station, Belmont, North Carolina excluding all office clerical employees, guards, and supervisors as defined by the Act.

If a majority of the employees in any of the units described above vote for the Union-Petitioner, then the employees in that unit will be taken to have indicated their desire to be included in the existing systemwide company unit currently represented by Union-Petitioner and the Regional Director will issue a certification to that effect.

ORDER

It is hereby ordered that the certification heretofore issued to System Council U-20, International Brotherhood of Electrical Workers, AFL-CIO, be, and it thereby is, clarified by specifically including therein all employees in the Operations Department described as hydraulic maintenance employees, Great Falls labor crew, and other substation operators and servicemen represented by the I.B.E.W.

[Direction of Elections¹³ omitted from publication.]

MEMBER BROWN, dissenting in part:

I agree with my colleagues' finding in the UC case that the presently existing bargaining unit is the systemwide unit for which the Union is recognized comprising the Distribution or Retail Department and the Operations Department. Notwithstanding this finding, however, and in the face of longstanding Board policy

¹³ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 20 within 7 days of the date of this Decision and Direction of Elections. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed

which regards the existing bargaining unit as the appropriate one for decertification purposes,¹⁴ My colleagues are directing decertification elections in fragments of the existing bargaining unit.

Inasmuch as I cannot reconcile this direction of elections with the resolution of the UC case or with Board law respecting which the majority opinion is silent, I must dissent therefrom. And since, as appears from the unit finding made in the UC case, the decertification petitions seek elections in inappropriate units, I would dismiss them.

¹⁴ See *Clohecy Colliston, Inc.*, 176 NLRB No. 83, and cases cited therein