

Wisconsin Electric Power Company, Employer-Petitioner and Local 2, United Association of Office, Sales and Technical Employees and Local 3, Independent Utility Workers Union

Wisconsin Electric Power Company and Local 2, United Association of Office, Sales and Technical Employees, Union-Petitioner and Local 3, Independent Utility Workers Union. Cases 30-RM-226, 30-UC-67, and 30-RC-1458

September 23, 1971

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Larry R. Brennan. Following the hearing and 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 by direction of the Regional Director for Region 30. Briefs have been filed by both of the Unions and the Employer. The Intervenor, Local 2150, International Brotherhood of Electrical Workers, also filed a letter brief.

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 this proceeding 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. They are hereby affirmed.

Upon the entire record in this proceeding the Board finds:

1. 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 labor organizations involved claim to represent certain employees of the Employer.

3. No questions affecting commerce exist concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act for the following reasons:

The Employer is a Wisconsin public utility corporation which has as its principal business the generation, transmission, and distribution of electric energy to in excess of 600,000 customers in 15 counties in southeastern Wisconsin and the operation of a steam

heating utility serving customers in downtown Milwaukee. The Petitioner-Union, Local 2, United Association of Office, Sales and Technical Employees Union¹ represents approximately 1,300 employees in a unit consisting of clerical, technical, and sales employees. Local 3, Independent Utilities Workers' Union,² represents approximately 250 employees in a unit also consisting of clerical, technical, and sales employees. The Intervenor represents similar types of employees in units not directly involved in this proceeding.

Employer has recently undergone a partial reorganization of its administrative divisions with the result that Local 2- and Local 3-represented employees with identical or virtually identical job functions have been placed together in the same administrative division and under the same immediate supervision. As more fully set forth below Employer in its UC petition seeks to have the Board clarify the units to determine whether these employees should be represented by Local 2 or by Local 3. Employer has also filed an RM petition and Local 2 has filed an RC petition so that in the event the Board is unable to clarify the units the Board can direct an election. All the parties have indicated that they would prefer that the Board clarify the unit.

Prior to 1968, the Company was organized into two major systems; the metropolitan system and the extension system. The metropolitan system was organized on the basis of centralized control from the operating headquarters at the Company's principal office located in downtown Milwaukee. The extension system was organized on the basis of three divisions; a lakeshore division, a western division, and a northern division, each under the direction of a division manager with total responsibility for the activities within his division. Local 2 represents a unit of employees which is historically coextensive with the metropolitan system. Local 3 represents a unit of employees which is historically coextensive with the extension system. In 1968, the Company determined that it would reorganize so as to incorporate the best features of the centralized control which was exercised in the metropolitan system and the decentralized control which was exercised in the extension system. In 1969, the Waukesha division was formed from the old western division and part of the old metropolitan system. Also in 1969 a southern metropolitan division was formed. In 1970 a new division known as the northern metropolitan division was formed. This division was created by combining the Menomonee Falls district of the northern division and a part of the metropolitan system known as the north urban area. All of the other division reorganiza-

¹ Hereafter referred to as Local 2

² Hereafter referred to as Local 3

tions were completed without any special difficulty as to union representation as the reorganization was within the geographic limits of the collective-bargaining units. However, here Employer has combined two areas with differing union representation—the employees in the north urban area having been represented as part of the unit represented by Local 2 and the employees in the Menomonee Falls district having been represented as part of the unit represented by Local 3. As a result employees with identical or related occupations with different union representation have been commingled under the same supervision.³ Almost exactly half of the employees in the new division come from each of the older divisions.⁴

As previously noted, all of the parties take the position that the Board, if possible, should clarify the unit without directing an election. Employer takes the position that all employees should be represented in the unit represented by Local 2 or in the unit represented by Local 3, but does not take a position as to which of these units the employees belong. Local 2 and Local 3 each claim that all of the employees should be included in the unit it represents on the basis that the employees previously represented by the other union constitute an accretion to the unit it represents. Moreover, each claims that its contract with the Employer constitutes a bar to an election.⁵ Intervenor supports Local 3's contention that the employees in the northern metropolitan division previously represented by Local 2 constitute an accretion to the unit represented by Local 3. As an alternative to its contention that it represents all of the employees on the basis of accretion, Local 3 urges that there is a functionally related rational basis for a division of the employees between the unit represented by Local 2 and Local 3 with the employees performing the technical and sales functions being included in the unit represented by Local 2 and the dispatchers, stores personnel, analysts, and accounting and office employees being included in the unit Local 3 represents.⁶ Employer, while preferring that all the employees be represented in one or the other of the units, supports Local 3's alternative if its first position is rejected, stating that the most important factor is to have employees performing the same or similar functions included in the same unit. Local 2, as an alternative to its claim, asks that an election be directed to allow the employees to choose to be represented by either Local 2 or Local 3.⁷ Local 2

opposes Local 3's position as to splitting the unit on the ground that this would be a complete frustration of the consolidation.

All of the parties contend that the situation herein requires that the Board clarify the units and agree that the RM and RC petitions were filed so that the Board could direct an election if it concluded that it was unable to clarify the units without an election. Although difficult issues are presented with both Unions asserting meritorious claims, we have determined that we are able to clarify the units and accordingly the RM and RC petitions shall be dismissed.

The question as to which unit these employees belong is difficult in that the claims of both Local 2 and Local 3 are quite substantial. The number of employees in the new division coming from each unit is virtually identical; 28 coming from the unit represented by Local 2 and 27 coming from the unit represented by Local 3. The employees coming from each of the units previously performed and are now performing essentially the same functions except that more employees performing technical and sales functions came from Local 2's unit and more employees performing other functions came from Local 3's unit. Local 2 relies on the fact that virtually all of the supervisors formerly supervised employees in the unit it represents. However, this factor is largely the result of the Employer's choosing in large part the metropolitan system type of administrative organization for this division and this is not a particularly significant factor as to this issue. Local 2 also points to the fact that more of the new division's customers come from the area formerly serviced by the employees it represented. Whatever weight, if any, this factor has is neutralized by the fact that more of the geographical territory covered by the division comes from the area formerly serviced by employees represented by Local 3. Local 2 points to the fact that only it represents employees in all of the classifications in the new division. However, this factor is largely neutralized by the fact that Local 3 represents employees in virtually all of the new classifications. If we were to clarify the unit on the basis of the factors suggested by Local 2, we would be attaching great significance to what are in the circumstances of this case relatively insignificant factors. This we decline to do.

Rather, we have determined that the alternative solution suggested by the Employer and Local 3 is the

³ At present, the reorganization has not resulted in the physical relocation of any employees. However, Employer has indicated that he expects to make some such changes, but has not done so pending the completion of this proceeding.

⁴ Of these employees, 28 come from the unit represented by Local 2 and 27 come from the unit represented by Local 3

⁵ Both contracts expire March 31, 1972

⁶ It is this alternative contention which Local 3 emphasizes in its brief to the Board

⁷ Local 2 contends that that should be the only choice, that the employees should not be given the choice of voting for another union or no union. Intervenor contends that if an election is directed it should be permitted on the ballot.

most satisfactory, if not a completely satisfactory, result in this situation. In our opinion, such a result will not seriously affect the administrative viability of the Employer's consolidation of these two areas. Although the record shows that Local 2 and Local 3 represent employees performing essentially the same functions, Local 2 tends to represent more sales and technical personnel than does Local 3 because of the headquarters nature of the old metropolitan system. On the other hand, because of the field nature of the old extension system, employees represented by Local 3 were for the most part employed in the day-to-day functions necessary to the distribution of electrical power. On that basis we have concluded that the technical and sales employees have a closer community of interest with the employees represented by Local 2 and that the Local 2 represented unit should be clarified to include these employees. Also on that basis, we have concluded that the dispatchers, stores personnel, analysts, and accounting and office employees have a closer community of interest with the employees represented by Local 3 and that the Local 3 represented unit should be clarified to include these employees.⁸

Accordingly, we shall order the units clarified as indicated above.

ORDER

It is hereby ordered that the unit represented by

⁸ The result of this clarification will be that Local 3 will represent 29 of the employees in the new division and Local 2 will represent 26 of these employees. Eight employees formerly represented by Local 3 will now be represented by Local 2 and ten employees formerly represented by Local 2

Local 2, United Association of Office, Sales and Technical Employees be, and it hereby is, clarified to include the technical and sales employees in the northern metropolitan division.

It is hereby ordered that the unit represented by Local 3, Independent Utility Workers Union be, and it hereby is, clarified to include the dispatchers, stores personnel, analysts, and accounting and office employees in the northern metropolitan division.

It is hereby ordered that the petitions filed herein in Cases 30-RC-1458 and 30-RM-226 be, and they hereby are, dismissed.

MEMBER KENNEDY, dissenting:

I would direct an election on the representation petitions. In the amalgam of employees resulting from the creation of the new division, neither group of employees represented by Local 2 and Local 3 were predominate. Both unions have sought recognition from the Employer as the bargaining representative of the new division. In my view, there is a question concerning representation, and employees of the new division should be afforded the opportunity to select their bargaining representative through our election procedures.⁹ I deem our UC procedures appropriate only where there is an absence of a question concerning representation.¹⁰

will be represented by Local 3.

⁹ *Westinghouse Electric Corporation*, 144 NLRB 455; *General Electric Company*, 170 NLRB 1272.

¹⁰ Sec 102.60(b) of the Board's Rules and Regulations.