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NSTAR Electric & Gas Co. and Utility Workers Union of America, AFL-CIO, Local 369. Case 01-CA-122562

May 2, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND SCHIFFER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and a first amended charge filed by Utility Workers Union of America, AFL-CIO, Local 369, the Union, on February 13 and 18, 2014, respectively, the General Counsel issued the complaint on February 21, 2014, alleging that NSTAR Electric & Gas Company, the Respondent, has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 01-RC-112623. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On March 14, 2014, the General Counsel filed a Motion for Summary Judgment and a memorandum in support. On March 19, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but contests the validity of the certification on the basis of its contention in the underlying representation proceeding that the Regional Director erred in ordering a self-determination election in the petitioned-for voting group that included transmission system supervisors and senior transmission outage coordinators, as these individuals are supervisors under Section 2(11) of the Act and/or mana-

gerial within the meaning of Board case law and therefore ineligible to vote.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business located at 1165 Massachusetts Avenue, Dorchester, Massachusetts (the Dorchester facility), and has been engaged in the transmission and distribution of electricity and natural gas to customers in Eastern, Central, and Southeastern Massachusetts.

Annually, the Respondent, in conducting its operations described above, derives gross revenues in excess of \$500,000, and purchases and receives at its Dorchester facility goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following a January 29, 2014 self-determination election, on February 10, 2014, the Regional Director issued a certification of representative, certifying that the Union was the exclusive collective-bargaining representative of all full time and regular part-time transmission system supervisors (TSSs), senior transmission outage coordinators (STOCs), and transmission operations support spe-

¹ The parties stipulated that if the petitioned-for classifications were found to be properly included in the bargaining unit, then the unit would also include the transmission operations support specialist.

² Member Miscimarra would have granted review in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

cialist (TOSS) employed at the Respondent's facility and that it is appropriate for the Union to bargain for these employees as part of the group of employees that it represents.

Based on this certification, the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time production/maintenance and office/technical/professional employees in the classifications listed in Schedule A, as described in the parties' collective-bargaining agreement, effective June 2, 2012 to June 2, 2015, and including all full time and regular part-time transmission system supervisors (TSSs), senior transmission outage coordinators (STOCs), and transmission operations support specialist (TOSS) employed at Respondent's dispatch center located at 1165 Massachusetts Avenue, Dorchester, Massachusetts; but excluding all other employees, and guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated February 10, 2014, the Union requested that the Respondent bargain with it over terms and conditions of employment that would apply to the transmission system employees. Since about February 13, 2014, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the transmission system supervisors and senior transmission outage coordinators.³ We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about February 13, 2014, to bargain with the Union as the exclusive collective-

³ Although the complaint alleges that the Respondent refused the Union's request that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit, the Union's letter to the Respondent, which is attached to the motion as Exh. G, is captioned "Bargaining Demand for Transmission System Employees." The Respondent's letter in response, which is attached to the motion as Exh. H, specifically states that the Respondent is testing the certification with respect to the transmission system supervisors and senior transmission outage coordinators. Additionally, in its answer to the complaint and response to the Notice to Show Cause, the Respondent asserts that it has not refused to bargain with respect to the transmission operations support specialist.

bargaining representative of the transmission system supervisors and senior transmission outage coordinators as part of the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, NSTAR Electric & Gas Company, Dorchester, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Utility Workers Union of America, AFL-CIO, Local 369, as the exclusive collective-bargaining representative of the transmission system supervisors and senior transmission outage coordinators in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the transmission system supervisors and senior transmission outage coordinators as part of the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement. The unit is:

All full time and regular part-time production/maintenance and office/technical/professional employees in the classifications listed in Schedule A, as described in the parties' collective-bargaining agreement, effective June 2, 2012 to June 2, 2015, and including all full time and regular part-time transmission system supervisors (TSSs), senior transmission outage coordinators (STOCs), and transmission operations support specialist (TOSS) employed at Respondent's dispatch center located at 1165 Massachusetts Avenue, Dorchester, Massachusetts; but excluding all other employees, and guards and supervisors as defined in the Act.

NSTAR ELECTRIC & GAS CO.

(b) Within 14 days after service by the Region, post at its facility in Dorchester, Massachusetts, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 13, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 2, 2014

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Utility Workers Union of America, AFL-CIO, Local 369, as the exclusive collective-bargaining representative of the transmission system supervisors and senior transmission outage coordinators in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for the transmission system supervisors and senior transmission outage coordinators as part of the following bargaining unit:

All full time and regular part-time production/maintenance and office/technical/professional employees in the classifications listed in Schedule A, as described in the parties' collective-bargaining agreement, effective June 2, 2012 to June 2, 2015, and including all full time and regular part-time transmission system supervisors (TSSs), senior transmission outage coordinators (STOCs), and transmission operations support specialist (TOSS) employed at our dispatch center located at 1165 Massachusetts Avenue, Dorchester, Massachusetts; but excluding all other employees, and guards and supervisors as defined in the Act.

NSTAR ELECTRIC & GAS CO.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

The Board's decision can be found at www.nlr.gov/case/01-CA-122562 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

