In the Matter of PENNSYLVANIA ELECTRIC COMPANY *and* UTILITY WORKERS ORGANIZING COMMITTEE, LOCAL 297 (C. I. O.)

In the Matter of PENNSYLVANIA ELECTRIC COMPANY *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (A. F. L.)

Cases Nos. 6-R-897 and 6-R-910, respectively.—Decided May 18, 1944

Mr. George M. Spence, of Johnstown, Pa., for the Company.

Mr. Oliver J. Harper, of New York City, and *Mr. Eugene Brown*, of Erie, Pa., for the Utility Workers Organizing Committee, Local 297 (C. I. O.).

Mr. George H. Poulson, of Erie, Pa., and *Mr. Eugene Sayers*, of Clearfield, Pa., for the International Brotherhood of Electrical Workers (A. F. L.).

Mrs. Margaret L. Fassig, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon amended petitions duly filed by the Utility Workers Organizing Committee, Local 297 (C. I. O.), herein called the U. W. O. C., and the International Brotherhood of Electrical Workers (A. F. L.), herein called the I. B. E. W., alleging that a question affecting commerce had arisen concerning the representation of employees of the Pennsylvania Electric Company, Erie, Pennsylvania, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John A. Hull, Jr., Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on March 23 and 24, 1944. The Company, the U. W. O. C., and the I. B. E. W. 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. The Trial Examiner's rulings made at the hearing are free from prej-

udicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Pennsylvania Electric Company was incorporated under the laws of the Commonwealth of Pennsylvania on June 11, 1919. Its main office and principal place of business is in Johnstown, Pennsylvania. The Company is engaged in the production, sale and distribution of electricity, gas, and steam, and comprises an integrated system which extends into the State of Maryland as it operates a hydro-generating plant at Deep Creek, Maryland.

During the year 1943 the Company purchased raw materials, machinery, and equipment of a value in excess of $3,000,000, of which amount approximately 25 percent was received from points outside Pennsylvania. During the year 1943 the Company produced and sold electrical energy in excess of $19,200,000 in value, gas in excess of $98,600 in value, and steam in excess of $385,500 in value. In excess of 50 percent of the electricity produced during 1943 was transmitted and sold to industrial consumers, including many concerns,[1] which are admittedly engaged in interstate commerce within the meaning of the National Labor Relations Act. The Company also supplies gas, electricity and steam to the United States Post Office Department, telephone and telegraph offices, and other consumers and residential consumers. In excess of 15 percent of the electricity produced by the Company in the year 1943 was sold and transmitted to points outside the Commonwealth of Pennsylvania. The Company supplies electricity to an area covering 7,676 square miles and supplies gas to an area covering 481 square miles. These areas include the following important industrial centers in Pennsylvania: Johnstown, Clearfield, DuBois, Meadville, Erie, Corry, Union City, and Warren.

For purposes of administration, the territory served by the Company is at present divided into the following four divisions: Johnstown Division, Erie Division, Oil City Division, and Bradford Division. The Company's employees total 1,908, in all categories, distributed by divisions as follows: 1,151 in the Johnstown Division, 532 in the Erie Division, 107 in the Oil City Division, and 118 in the Bradford Division.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

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[1] Among its customers are Carnegie-Illinois Steel Corporation, Bethlehem Steel Company, General Electric Company, Borden Milk Co., Pennsylvania Railroad Company, Baltimore & Ohio Railroad, Erie Railroad Company, and New York Central Railroad Company.

II. THE ORGANIZATIONS INVOLVED

Utility Workers Organizing Committee, Local 297, affiliated with the Congress of Industrial Organizations is a labor organization admitting to membership employees of the Company.

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

The parties stipulated at the hearing that on December 30, 1943, the U. W. O. C. requested the Company to recognize it for collective bargaining purposes as the representative of the production and maintenance employees in the Company's Erie Division, and was advised by the Company that it would not recognize the U. W. O. C. for such purposes unless it were certified by the National Labor Relations Board; and that on January 27, 1944, the Company advised Mr. George H. Poulson, International Representative of the I. B. E. W., of the claim of representation made by the U. W. O. C. and advised the I. B. E. W. that in view of the claim of the U. W. O. C., the Company could not proceed to bargain with it on a company-wide basis until the I. B. E. W. was certified by the National Labor Relations Board. Thereafter the U. W. O. C. and the I. B. E. W. filed their several respective petitions in this consolidated proceeding.

Statements of a Board agent, introduced into evidence at the hearing, indicate that the I. B. E. W. represents a substantial number of employees in the unit hereinafter found appropriate.[2]

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.

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[2] The Board agent reported that in support of its claim of representation in a system-wide unit, the I B E W. submitted 4 collective bargaining contracts, 1 covering each division of the Company, as follows.

Local No	*Division of company*	*Expiration date*
Locals Nos 459 and 521	Johnstown Division	12/1/43
Local No 1124	Bradford Division	12/1/43
Local No. 1265	Oil City Division	5/26/44
Locals Nos 30 and 906	Erie Division	2/1/44

In addition to its contract covering the Erie Division, the I B E W submitted 112 application cards The names of 99 persons appearing on these cards were contained on the Company's pay roll of January 24, 1944, which listed the names of 253 production and maintenance employees in the Erie Division, in the unit sought by the U W O C. These I B E W cards were dated 8 in 1940, 3 in 1941, 94 in 1942, 6 in 1943, and 1 undated

The Board agent further reported that in support of its petition the U W O C submitted 125 application cards, that the names of 119 persons appearing on the cards were listed on the Company's aforesaid pay roll and that the cards were dated as follows 1 in November 1943, 59 in December 1943; 64 in January 1944, and 1 undated

IV. THE APPROPRIATE UNIT

A. *The scope of the unit*

The U. W. O. C. claims that the production and maintenance employees, subject to certain specified inclusions and exclusions, in the Erie Division only, constitute a separate unit appropriate for collective bargaining purposes. The I. B. E. W. contends that the appropriate collective bargaining unit at this time is composed of production and maintenance employees in all four of the Company's divisions, with the same exclusions as to job classifications of employees as sought by the U. W. O. C., and with the further exclusion from its proposed system-wide unit, of the employees at the Oil City power station in the Oil City Division who are represented by the International Brotherhood of Firemen & Oilers, an A. F. L. affiliate, and under a collective bargaining contract with the Company.

The Company has taken no formal position on the question of the scope of the unit, but from a statement of the Company, introduced as an exhibit at the hearing, it is apparent that the Company favors a system-wide unit for the purposes of collective bargaining.

Prior to August 1943 the Company appears to have been divided into two main divisions for administrative and operating purposes: The Southwestern Division which in substance constituted the present Johnstown Division, and the Erie or Northwestern Divison. In August 1943 the Company acquired by purchase the assets of the Erie County Electric Company at Erie, Pennsylvania, the Keystone Public Service Company at Oil City, Pennsylvania, and the Bradford Electric Company at Bradford, Pennsylvania, all of which were subsidiaries of the Associated Gas & Electric Company, as is the Company. Upon the completion of the mergers of these recently acquired companies, the Company divided its system into the present four divisions: The Johnstown Division; the Erie Division, which includes the former Erie Division and the Strong Station power plant which was previously operated by the Erie County Electric Company; the Oil City Division, which includes the property acquired from the Keystone Public Service Company at Oil City, Pennsylvania, and also includes Knox, Pennsylvania, which was formerly in the Erie Division; and the Bradford Division, which includes the property acquired from the Bradford Electric Company at Bradford, Pennsylvania.

The Company's collective bargaining history is material in considering the issue of the scope of the appropriate bargaining unit. The U. W. O. C. which is urging the appropriateness of the Erie Division as a separate bargaining unit, has had no previous bargaining contracts with the Company. The I. B. E. W., which is seeking a system-wide unit at this time, has had contractual relations with the Company for nearly 10 years, and in the past has bargained through its locals on

a divisional basis. The I. B. E. W. first represented the employees in the present Johnstown Division by a collective bargaining agreement entered into in August 1934, between what was then termed the Southwest Region of the Company, and I. B. E. W. Local No. 459, representing the employees in Johnstown and vicinity, and I. B. E. W. Local No. 521, representing the employees at Clearfield, Pennsylvania, and vicinity. The contract has been renewed from year to year.[3] In the Erie Division collective bargaining by the I. B. E. W. dates back to January or February 1941, when the I. B. E. W. Local No. 906 negotiated a contract covering the line department in the Northwest Region of the Company. In about March 1941, I. B. E. W. Local No. 30 secured a contract with the Erie Lighting Company covering the employees in its line department. The Erie Lighting Company was merged with the subject Company sometime in 1941 and the following year a contract was negotiated jointly by the I. B. E. W., Locals Nos. 30 and 906 covering the line department of the Erie Division as then constituted.[4] As noted above, the Company effected a merger with the Bradford Electric Company and the Keystone Public Service Company in August 1943. The I. B. E. W., through its Local No. 1124, had since April 1943 represented employees of the Bradford Electric Company. It also had represented employees of the Keystone Public Service Company at Oil City, Pennsylvania, through its Local No. 1265, since May 1941.

The I. B. E. W collective bargaining contract covering the Erie Division of the Company which expired February 1, 1944, contained a maintenance-of-membership clause. That contract did not cover the Strong Station power plant as that plant was not acquired by the Company until August 1943, by merger of the Erie County Electric Company. In November 1943, the Company and the I. B. E. W. were notified of the resignation from Locals Nos. 30 and 906 of approximately 78 persons in the Erie Division, effective as of the termination date of the contract. Thereupon the U. W. O. C. commenced organizational activities in this Erie Division, and secured an alleged 100 percent representation among the employees at the Strong Station power plant, which has never been represented by the I. B. E. W., as well as substantial representation among employees theretofore represented by the I. B. E. W.

While in the past there has not been uniformity between the various divisions with respect to job classifications, wage rates, hours of work, and working conditions, the Company has been endeavoring, since the completion of the mergers, to work out a uniform labor policy for its

[3] The latest one was effective from December 1, 1942, to December 1, 1943.

[4] Locals Nos. 30 and 906 later negotiated supplementary agreements covering meter readers, meter testers, Front and Peach Street plants, substation operators, substation repairmen, and load dispatchers.

entire system. It appears that early in 1943, when it was learned that the Pennsylvania Electric Company would acquire the Erie County Electric Company, the Bradford Electric Company, and the Keystone Public Service Company, there was some discussion between the I. B. E. W. and the Company with regard to a single contract covering all divisions of the Company. Mr. P. J. Farran, personnel director of the Company, was present during the negotiations in 1943 of the contracts between the I. B. E. W. and both the Keystone Public Service Company and the Bradford Electric Company, and both of those contracts are patterned after the Company's Johnstown Division contract with the I. B. E. W. It appears that no definite step was taken toward a system-wide contract until October or November 1943, when the I. B. E. W. discussed this matter with the Company and it was agreed the Company would prepare a list of uniform job classifications to apply to all divisions of the Company. Such schedule of uniform job classifications was to be further discussed at a later meeting at which would be present representatives of all of the various I. B. E. W. locals involved, as well as representatives of the Company. Such meeting was finally held at Pittsburgh, Pennsylvania, commencing on January 12, 1944, and lasted for several days. Representatives of all six I. B. E. W. locals were present and after the Company submitted its proposed job classifications or job evaluations, a joint meeting of representatives of all the locals was held and exhaustive discussions were had of the various job classifications. It was agreed that the representatives of the locals would take the classifications back to their respective locals for approval. However, nothing further was accomplished toward completing the schedule of uniform job classifications because of the petition for investigation and certification which was filed by the U. W. O. C.

Although in the past each of the Company's divisions was operated as a distinct autonomous unit, headed by a division manager assisted by a personnel manager with almost complete discretion in personnel matters, upon the completion of the merger of the three companies acquired in the fall of 1943, the Company as of January 1, 1944, put into effect a plan of operation of its various departments and functions, by which centralized control of its operations and labor policies was centered in the main offices at Johnstown. Now, all matters of general policy, including wages, hours of work, standards of employment, and job evaluations, are determined at the Company's general offices in Johnstown, and any collective bargaining contracts must be negotiated through its main office.

In support of its contention that the Erie Division may constitute a separate unit for collective bargaining purposes, the U. W. O. C. relies principally upon the fact that in the past the Company's collective bargaining experience with the I. B. E. W. has been on a divi-

sional basis, that transfer of employees between the divisions has been very infrequent, that job classifications, wage scales, and working conditions have not been uniform between the divisions, and that in the past the divisions have been conducted as separate autonomous operating units.

On the other hand, all four of the Company's divisions are but parts of a presently integrated system, and all are engaged in identical or related activities, serving the same general area. The only difference between divisions is that all of the Company's gas operations are conducted in the Johnstown Division, which also conducts the same type of operations as the other divisions. While transfer of employees between the divisions has been very slight heretofore, the Company has indicated that it may find them more frequently necessary in the near future, due to the merger with the Company of the three companies acquired in August 1943; and the Company points out that a system-wide unit for collective bargaining would be more likely to facilitate interdivision transfer of employees than would bargaining on a divisional basis. Heretofore, seniority has been on a district basis, within divisions.

While it is true that the I. B. E. W. has conducted collective bargaining through its locals on a divisional basis, its organization has paralleled the Company's growth and administrative integration, and now that the Company is achieving a compact operating system, the I. B. E. W. seeks to represent the employees on a system-wide basis. Furthermore, prior to the filing of the petition by the U. W. O. C., the I. B. E. W. had already commenced negotiations in an effort to secure system-wide uniformity in respect to job classifications and wage rates.

We have frequently stated that where employees in a public utility system are involved, the employer's organization, management, and operation of its business as an integrated enterprise results in an intimate interrelation and interdependence in the work and interests of the employees. It is common knowledge that workers in an electrical utility system are intimately associated with each other in their work despite geographic separation of work sites. There is marked interdependency in the different operations performed throughout the system, as well as uniformity in employee function in different parts of the system. The employees' functions and interests are similar and closely related. In view of these circumstances, we have repeatedly held that a system-wide unit of a public utility is appropriate whenever there is a labor organization in a position to represent employees throughout the system.[5] In the instant case, the

[5] See *Matter of Tennessee Electric Power Company*, 7 N. L. R B. 24; *Matter of Northern States Power Co. of Wisconsin*, 37 N. L R. B. 991, and cases therein cited; *Matter of Iowa Southern Utilities Co*, 15 N. L. R. B 580; *Matter of Gulf States Utilities*, 31 N. L. R B. 740; *Matter of Florida Power & Light Company*, 42 N L. R. B. 742.

I. B. E. W. has either current or recently expired collective bargaining contracts covering each of the four divisions of the Company, and thus appears to be in a position to represent employees throughout the system. Under all the circumstances, we find that a system-wide unit is best calculated to meet the needs of collective bargaining, and therefore, we consider a unit composed of the production and maintenance employees in the classifications set forth below, in all four of the Company's divisions, excluding the employees at the Oil City power station which are at present under a collective contract with the Company represented by another A. F. L. affiliate, to be appropriate for the purposes of collective bargaining. We further find that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and will otherwise effectuate the policies of the Act. We will, therefore, dismiss the petition for investigation and certification of representatives filed by the U. W. O. C.

B. *Constituency of the unit*

The I. B. E. W. and the U. W. O. C. are in agreement as to the general classifications of employees to be included within the bargaining unit. Both unions would exclude clerical employees, armed guards, and supervisory employees within the Board's usual definition. The U. W. O. C. in its petition listed watchmen as a category to be excluded. The watchmen are included by the Company within the descriptive term "regular production worker" covered by the collective bargaining contracts with the I. B. E. W. The watchmen are unarmed and their work for the most part is inside, whereas the armed guards are on the outside. In view of the bargaining history, we shall include the watchmen in the bargaining unit.

The pay roll submitted by the Company at the hearing contained several classifications which indicated possible supervisory status, and evidence respecting the following classifications was introduced at the hearing. The unions and the Company took no position with respect to the inclusion within or exclusion of these classifications from the bargaining unit.

Chief linemen in the Bradford Division, supervise three or four persons, are working foremen, receive a higher rate of pay than the men under them, and have the power to make recommendations which may involve the status of the employees under them. We find that the chief linemen in the Bradford Division are supervisory employees within our usual definition and shall accordingly exclude them from the unit.

Line foremen are in charge of line crews and exercise supervisory powers in that they make effective recommendations regarding the men working in the crews under them. We shall exclude them in the unit.

District representatives and *district supervisors* do not in fact supervise other employees but have charge of service work in small districts, and perform the work themselves. We shall include them in the unit.

District storekeepers do not ordinarily supervise other employees, but might during peak periods have other individuals help them. We find that they are not supervisory employees within the meaning of our usual definition and shall include them in the unit.

Garage supervisors at Johnstown are first-class auto mechanics, and supervise one or two, sometimes three or four individuals. They are paid on a salary basis, whereas the other mechanics are paid on an hourly basis. They are directly responsible to a general foreman. The garage supervisors do not appear to be charged with the duty of making effective recommendations regarding the other men working with them, but rather any recommendation they would make would be considered more in the nature of a complaint, which would be handled through their immediate superior, the general foreman. We are of the opinion that the garage supervisors at Johnstown are not supervisory employees within the meaning of our usual definition, and accordingly we shall include them in the unit.

Service foremen in the Johnstown Division are in charge of the first-class linemen, and in some districts have as assistants in addition to the first-class linemen, or second-class linemen, a service man. The service foremen are responsible for the service to the customers in the particular area or district. Altogether they have perhaps two or three persons working under them, and have the right, to make complaints concerning them to the general foreman for that district, but they are not charged with the duty or power of making effective recommendations concerning these other employees. We are of the opinion and find that the service foremen are not supervisory employees and shall include them within the unit.

Chief foreman in the Johnstown Division, normally works alone, although at times when repairs have to be made to the steam mains, he may have helpers assigned to him. He is an hourly paid employee and it appears that he is not in fact a supervisory employee. Therefore, we shall include him in the unit.

Gas and steam foreman in the Clearfield District of Johnstown Division, has been assigned to a system for the maintenance of construction of gas and steam. He does not regularly have men assigned to him, except perhaps once a year for as long as 3 or 4 weeks he may have helpers assigned to him. We find he is not a supervisory employee and shall include him within the unit.

Chief maintenance man and welder in the Oil City Division, performs welding jobs. He has no one under his supervision and performs no supervisory functions. We shall include him in the unit.

First-class linemen. Alvin Fischer, a first-class lineman, testified that he had supervised employees, but this was only in the case of an emergency which occurred a number of years ago. First-class linemen do not ordinarily supervise other employees and therefore we shall include them in the unit.

We find that all production and maintenance employees in all four of the Company's divisions, including district representatives, district supervisors, district storekeepers, garage supervisors at Johnstown, service foremen, chief foreman, and gas and steam foreman in the Johnstown Division, chief maintenance man and welder in the Oil City Division, and watchmen, and excluding the employees at the Oil City power station in the Oil City Division, clerical employees, armed guards, chief linemen in the Bradford Division, line foremen, and all other supervisory employees with authority to hire, promote, 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 find that the question concerning representation which has arisen can best be resolved by an election by secret ballot among employees in the unit found appropriate in Section IV, above.

Since it appears that the U. W. O. C. represents a substantial number of employees in the Erie Division and thus an appreciable number of the employees in the larger unit found appropriate for such employees, we shall provide that the U. W. O. C. may participate in the election. If the U. W. O. C. does not desire to participate in the election, it may withdraw its name from the ballot, provided it notifies the Regional Director within five (5) days from the date of the issuance of this Decision, Direction of Election and Order that it does not desire to participate in the election.

The collective bargaining contracts between the Company and the I. B. E. W. locals, mentioned in Sections III and IV, *supra*, covered only the Company's "regular" employees, and each of these contracts defined "regular" employees as, in effect, those who have completed a 6-month probationary period of employment with the Company. Out of a total of 1,908 employees shown on the Company's pay-roll list submitted at the hearing 106 were designated as "temporary production and maintenance" employees. The evidence discloses that the Company's rate of turn-over during the 3-month period preceding February 1, 1944, was 5 percent per month. The parties took no position concerning the eligibility to vote of these employees. Since it appears that the "temporary" employees are probationary employees who have a substantial expectancy of regular employment, we shall, in accord-

ance with our usual practice, permit them to participate in the election.[6]

Those eligible to vote in the election shall be all employees of the Company within the appropriate unit who were employed during the pay-roll 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, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Pennsylvania Electric Company, Erie, Pennsylvania, 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 Sixth 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, and the findings in Section V, above, 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 the said pay-roll 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 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 they desire to be represented by Utility Workers Organizing Committee, Local 297 (C. I. O.), or by International Brotherhood of Electrical Workers (A. F. L.), for the purposes of collective bargaining, or by neither.

ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in the cases, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Pennsylvania Electric Company, Erie, Pennsylvania, filed by Utility Workers Organizing Committee, Local 297 (C.I.O.), in Case No. 6–R–897, be, and it hereby is, dismissed.

[*See infra*, 56 N. L. R. B. 1515 for Supplemental Decision and Amendment to Decision and Direction of Election.]

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[6] See *Matter of E. R. Squibb & Sons*, 54 N. L. R. B. 1424, and cases cited therein; *Matter of Indian Refinery Company*, 44 N. L. R. B. 774, and cases cited therein; *Matter of Nineteen Hundred Corporation*, 32 N. L. R. B. 327, and cases therein cited.