

In the Matter of PACIFIC GAS AND ELECTRIC COMPANY and UNITED  
ELECTRICAL & RADIO WORKERS OF AMERICA

Case No. R-274.—Decided October 16, 1937

*Gas and Electric Utility Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as exclusive representative; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* clerical employees excluded from; where other considerations determinative of appropriate unit are such that either of two contentions is valid, decisive factor is the desire of the employees involved; determination of dependent upon results of elections—*Elections Ordered*

*Mr. Bertram Edises* and *Mr. John P. Jennings* for the Board.

*Mr. Thomas J. Straub*, *Mr. J. Paul St. Sure*, and *Mr. J. G. Wood*, of San Francisco, Calif., for the Company.

*Mr. Richard Gladstein*, *Mr. Aubrey Grossman*, and *Mr. Matthew J. Dooley*, of San Francisco, Calif., for the U. E. R. W.

*Henry & Bedeau*, by *Mr. Jay L. Henry*, of Sacramento, Calif., for the California Union.

*Mr. Gene Gaillac*, of San Francisco, Calif., for the Brotherhood.

*Mr. O. A. Rowan*, of Oakland, Calif., for the Amalgamated.

*Mr. Joseph Friedman*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On May 19, 1937, United Electrical & Radio Workers of America, herein called the U. E. R. W., filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees in the outside or physical forces of Pacific Gas and Electric Company, San Francisco, California, herein called the Company, up to and including the rank of job foremen, but excluding executive and office employees, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 26, 1937, the National Labor Relations Board,

herein called the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to a notice of hearing duly issued and served by the Regional Director upon the Company, the U. E. R. W., and upon International Brotherhood of Electrical Workers, herein called the Brotherhood, and California Gas and Electric Employees Union, herein called the California Union, labor organizations named in the petition as claiming to represent all the Company's employees, including clerical employees, a hearing was held at San Francisco, California, on July 22, 23, 26, 27, and 28, 1937, before Clifford D. O'Brien, the Trial Examiner duly designated by the Board. The Board, the Company, the U. E. R. W., the Brotherhood, and the California Union were represented by counsel at the hearing.

At the commencement of the hearing, the Company appeared specially and made a motion to dismiss the petition upon various jurisdictional and constitutional grounds, of which the chief were (1) that the Act was not applicable to the Company, its business, and its relations with its employees, and (2) that if the Act was applicable, it was unconstitutional as not within the commerce powers of the Federal Government under the Constitution. The motion was supported by an affidavit of P. M. Downing, vice president and general manager of the Company, containing a statement of facts tending to show that the Company's business is carried on wholly within the State of California. The motion was denied. Thereupon, counsel for the Company appeared generally and renewed the motion to dismiss. The Trial Examiner denied the motion in so far as it was based upon the *ex parte* affidavit, expressly reserving to the Company, however, the right to renew the motion at any subsequent stage of the proceeding.

During the hearing, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division No. 256, herein called the Amalgamated, filed a motion for leave to intervene, claiming that the Amalgamated represented certain of the employees of the Company engaged in the transportation of passengers in and around the City of Sacramento, California. The parties raised no objections and the Trial Examiner granted the motion.

Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all the parties, including the intervenor.

At the close of the hearing the Trial Examiner granted to the parties leave to file written motions within five days. Within that period the Company filed with the Regional Director a motion to

dismiss, accompanied by a separate writing, entitled "Objections of Pacific Gas and Electric Company", both of which were forwarded to the Board as part of the record. The two writings in substance restated the grounds of the Company's initial motion to dismiss, but were based at this time upon the entire record in the proceeding. We have considered the Company's motion to dismiss and its attendant list of objections and hereby overrule the objections and deny the motion.

Pursuant to notice, a hearing was held before the Board on August 17, 1937, in Washington, for the purpose of oral argument. Only the U. E. R. W. and the California Union appeared. They were represented by counsel and participated in the oral argument.

The Board has reviewed the rulings of the Trial Examiner on the motions and objections raised by the Company and the several labor organizations and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

#### FINDINGS OF FACT

##### I. THE COMPANY AND ITS BUSINESS

Pacific Gas and Electric Company is a public utility corporation organized under the laws of California, and has its principal office and place of business in San Francisco, California. It is engaged principally in the business (a) of generating, buying, transmitting, selling, and distributing electric energy, (b) of buying, transporting, selling, and distributing natural gas, and (c) of manufacturing, transporting, selling, and distributing manufactured gas, all for light, heat, and power purposes in the central and northern portion of California. As an incident to its gas and electric business, it sells gas and electric appliances at retail. It distributes and sells water in certain small cities and towns in certain rural areas for domestic and irrigation purposes; it produces and sells steam to 855 customers in San Francisco and Oakland, California; and it operates a street car and bus system in Sacramento, California.

The Company is the third largest electric power company in the United States. It is the sole commercial source of electric energy and the only practical commercial source of natural and manufactured gas in the central and northern portion of California, an area larger than the whole of New England. The San Francisco-Oakland area, which is entirely dependent on the Company for electric energy and gas, is one of the foremost industrial and commercial centers in the United States. San Francisco is the distribution center of the West Coast, and as a port ranks second in the United States in the value of water-borne commerce.

The Company owns and operates 39 hydro-electric generating plants and eight steam electric generating plants, all of which are situated in California. In 1936 its total electrical load, consisting of all electric energy generated, purchased, and received on consignment, was 4,136,698,502 kilowatt hours, of which amount approximately 6 per cent, or 261,258,800 kilowatt hours, was purchased from California-Oregon Power Company, which maintains generating plants in both Oregon and California, and delivered to the Pacific Gas and Electric Company at Delta, California, approximately 70 miles south of the California-Oregon State line. During 1936, California-Oregon Power Company generated 236,140,112 kilowatt hours at its generating plants in California—an amount less than that purchased from the California-Oregon Power Company by the Pacific Gas and Electric Company. The entire electrical load of the Company is sold and delivered in California. In 1936 it sold 13,810,700 kilowatt hours, chiefly for use in Nevada, to Sierra-Pacific Company, which generates and distributes electric energy in both Nevada and California. The energy is delivered in the Company's transmission lines to Summit, California, 20 miles west of the Nevada-California State line. There the Company's transmission lines connect with the transmission lines of Sierra-Pacific Company, which carry the energy into Nevada. In 1936, Sierra-Pacific Company distributed only 5,673,279 kilowatt hours in California.

The Company owns and operates a large gas compressor station in California, from which extend two transmission pipe-lines for the transportation of natural gas in central and northern California. It owns and operates 14 gas manufacturing plants, all of which are situated in California. Seven are stand-by plants reserved against the interruption of natural gas service. All the plants, except the Marysville plant, are operated by fuel oil produced and purchased in California. The Marysville plant, which manufactures 330,240,000 cubic feet of gas—slightly more than half of the Company's total output of manufactured gas—is operated by coal produced in Utah and purchased by the Company from a dealer in California. Its total output of manufactured gas in 1936 was 643,869,700 cubic feet. In 1936 the Company purchased 59,893,041,000 cubic feet of natural gas from producers operating in the gas fields in California.

During 1936 the Company purchased almost \$2,000,000 worth of the following materials, all manufactured or originating outside California: steel pipe, transformers, cables, switches, incandescent lamps, cable and tree wire, gas appliances, electric appliances, poles, insulators, meters, valves, insulator pins and clamps, fittings, bolts, screws, nails, and similar materials.

In 1936 its gross revenue amounted to \$80,943,519.93, of which \$55,056,179.31 represented the revenue from its electric business and

\$24,656,954.45 the revenue from its gas business. The remainder represented the revenues from its street railway, water, and steam business. Exclusive of executive and management officers, heads of departments, and division managers, the Company had in its employ 10,232 employees, as of May 31, 1937. Its total annual pay roll for all of its employees in 1936 amounted to \$16,526,054.98.

### *Effect on Commerce*

The evidence specifically discloses the following effects on the operation of the instrumentalities of interstate and foreign commerce and communication in the event of the cessation or curtailment of the flow of power from the Company, such as would attend industrial strife between the Company and its employees:

1. *Navigation.*—All the United States light houses and aids to navigation situated in San Francisco Bay and along the coast of central and northern California are operated by electricity furnished by the Company. "Aids to navigation" are lights and fog signals. A cessation of the flow of power would seriously handicap and imperil navigation in and out of San Francisco Bay and along the coast of central and northern California, as the stand-by lights which would be utilized in such an event are not sufficiently powerful for the efficient and safe guidance of navigation.

2. *Navigation; operations on piers and vessels in port.*—The Company furnishes electric power to the State of California for use on the piers and docks in San Francisco Bay and other ports along the coast of central and northern California, all of which are under the supervision of the California State Board of Harbor Commissioners. The power is used for lighting the piers and docks, and for the operation of conveyors, freight-moving trucks, and for the operation of loading and unloading machines, which are manipulated to enter the holds of vessels to load or unload cargo. The Board of Harbor Commissioners operates eight sirens, eight bells and eight signal lights, all of which are essential for safe navigation in San Francisco harbor. They are all electrically powered and are supplied with electricity by the Company. The Harbor Commissioners also use the power furnished by the Company to supply light to ships docked at the piers. The testimony of an expert in the employ of the California State Board of Harbor Commissioners clearly shows that a cessation of the flow of power from the Company would be disastrous to navigation in San Francisco harbor and would completely shut down all operations on the piers and docks.

3. *Railroads.*—All the railroads operating in the area served by the Company are dependent on the Company for electrical energy for the operation of their signalling systems. Train movements are de-

pendent on the proper and precise operation of the signalling systems. A cessation of the flow of power from the Company would seriously curtail the operation of the signalling systems and, therefore, the train movements. A cessation of the flow of power would immediately handicap the operation of signalling systems, and, in the case of a cessation for two weeks, would exhaust the reserve power stored in the batteries and thereafter there would be a complete shut-down of all train movements in the area served by the Company. Three interstate railroads operate in the area served by the Company, namely, Southern Pacific Railroad, Western Pacific Railroad, and Atchison, Topeka and Santa Fe Railroad.

4. *Telegraph*.—All the motors and electrical appliances used by the telegraph companies and their branches situated in central and northern California are operated by electric power furnished by the Company. Electric energy is necessary for the transmission of telegraphic messages. Cessation of the flow of power from the Company for any length of time would seriously disrupt and perhaps completely stop the transmission of interstate messages, as the standby power plants of the telegraph companies are inadequate and designed for use only in short-lived emergencies.

5. *Telephone*.—Only one large telephone company, Pacific Telephone and Telegraph Company, operates in the area served by the Company. The operation of its business is dependent upon the electric power furnished by the Company. A cessation of the flow of power from the Company would result in the cessation of all telephone communication, including interstate communication.

6. *Radio*.—All the radio broadcasting stations in the area served by the Company are dependent upon it for the electric power which is indispensable to their operations. Upon the cessation of the flow of power from the Company, all radio broadcasting in California, and from California into other States, would cease within 18 hours. Three nationally known radio broadcasting companies maintain broadcasting stations served by the Company, namely, National Broadcasting Company, Radio Corporation of America, and Mackay Radio and Tel. Co.

It, thus clearly appears from the above findings that a labor dispute between the Company and its employees might result in the serious curtailment or complete cessation of the flow of power from the Company, thereby paralyzing the operations of virtually all the instrumentalities of interstate and foreign commerce and communication in the vast and highly industrialized area served exclusively by the Company. The paralysis of the instrumentalities of commerce and communication would stop not only the transportation of commodities in commerce, but also the operation of all businesses

dependent upon the movement of commodities in interstate and foreign commerce.

It also appears from the evidence that a large number of industries, such as manufacturing, situated in the area served by the Company and engaged in shipping and receiving commodities in interstate or foreign commerce, are wholly dependent on the Company for gas and electric power which are essential to the operation of their plants. Oral testimony specifically discloses the following:

1. *Oil refining industry.*—Two oil refining companies, Shell Oil Company and Associated Oil Company, shown by the evidence to be engaged in foreign commerce, are dependent on the Company for electric power. Electricity is indispensable for the chief oil refining process, known as the Edleanau process. Electrical power is also necessary for the operation of pumps which pump oil from tank farms to tank ships, which as instrumentalities of commerce transport the oil in foreign commerce. Cessation of the flow of power from the Company would result in a complete shut-down of the oil refining companies situated in the area exclusively served by the Company. Testimony was adduced showing that on two previous occasions when the flow of power from the Company was temporarily severed the operations of Shell Oil Company were virtually at a standstill.

2. *Shipbuilding and repair.*—There are three shipbuilding and ship repair concerns in the area served by the Company. All their floating drydocks, pumps, and other machinery are operated by electricity furnished by the Company. Cessation of the flow of power from the Company would result in the complete stoppage of the operations of the three companies, which means that no vessel could be repaired or drydocked in San Francisco Bay, except for such repairs as could be made by the use of graving or land docks, which are or could be operated by steam and of which there are only a negligible number in that area.

In the written general stipulation concerning the Company and its business there are listed 84 of the Company's largest customers for electric energy and 17 of its largest purchasers of natural gas. Many of the companies listed are nationally-known concerns. They are grouped under various captions, such as, for example, five companies under "Oil", ten under "Metals", fifteen under "Mining and Dredging", ten under "Food Products", including Shredded Wheat Company, Swift and Company, and Albers Milling Company, seven under "Chemicals", including Hercules Powder Company, four under "Cement Companies", including Pacific Portland Cement Company and Santa Cruz Portland Cement Company, and ten under "Lumber and Other Building Materials", including Diamond Match Company. The list indicates that all the companies listed purchase large quantities of electricity for power purposes.

The written stipulation further shows that the United States Government purchases large quantities of electricity and gas from the Company, for the purpose, among others, of operating its numerous post offices situated in the area served by the Company. The Company also supplies power to all the newspapers located in the area which it serves, to the Associated Press, to the San Francisco and Oakland airports, to the Dow-Jones and Company ticker service, and to ten steamship lines.

In summary, it appears from the evidence adduced at the hearing and from the oral and written stipulations, (1) that a vast and highly industrialized and commercialized territory, larger than the whole of New England and including within its limits the cities of Sacramento, Oakland, and San Francisco, the latter the second largest shipping center in the United States on the basis of value of water-borne cargo, is entirely dependent on the Company for electric power and almost entirely dependent on the Company for gas; (2) that a cessation of the flow of power from the Company to its customers, such as would tend to accompany a labor dispute between the Company and its employees, (a) would in a short time paralyze the operations of virtually all the instrumentalities of interstate and foreign commerce and communication in the area served by the Company, and thereby also paralyze the operations of all the industries situated in that area which are engaged in interstate or foreign commerce, and (b) would directly cause the cessation of the operations of the businesses in the area served by the Company which are dependent on the Company for power and which are engaged in shipping and receiving commodities in interstate or foreign commerce; and (3) that a labor dispute between the Company and its employees might seriously curtail (a) the flow of a large quantity of electricity, which the Company purchases from the California-Oregon Power Company, across the California-Oregon state line, (b) the flow of electricity, sold by the Company to the Sierra-Pacific Company, across the California-Nevada state line, and (c) the movement in interstate commerce of the various materials, appliances, and coal originating in states other than California and purchased by the Company, amounting in value to almost \$2,000,000 annually.

Expressed concisely, the effect on interstate and foreign commerce of a labor dispute between the Company and its employees might be substantially equivalent to that caused by simultaneous labor disputes among the businesses operating the instrumentalities of interstate and foreign commerce and communication and the myriad businesses situated in central and northern California which are engaged in shipping and receiving commodities in interstate or foreign commerce.

## II. THE ORGANIZATIONS INVOLVED

A. *The United Electrical and Radio Workers of America*

The U. E. R. W. is a labor organization affiliated with the Committee for Industrial Organization. The U. E. R. W. claims jurisdiction over employees in the whole of the electrical and radio industry, including those employed by public utilities such as the Company. District 14 of the U. E. R. W. covers the States of California, Oregon, Washington, Nevada, and Arizona. Ten locals of District 14 cover the geographical area served by the Company. The membership of these ten locals is composed solely of employees of the Company. The ten locals admit to membership all classes of workers employed by the Company in its outside or physical forces up to and including the rank of job foremen, and excluding clerical employees. The constitution and by-laws of the U. E. R. W. do not exclude clerical workers from membership, but at the present time it is apparently the policy of the ten locals to refuse membership to clerical employees.

B. *California Gas and Electric Employees Union*

California Gas and Electric Employees Union is a labor organization formed and incorporated under the laws of California on May 1, 1937. Its membership is limited to employees of the Company. It admits to membership all employees of the Company, including clerical employees, but excluding officials, executive officers, shop foremen, and supervisory employees. The Board of Directors of the incorporated union is authorized by the by-laws to organize locals to cover the various territorial divisions of the Company's business. Several of such locals had been formed at the time of the hearing.

C. *The Brotherhood*

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor. It claims jurisdiction over all types of electrical workers in the United States. Although until recently the locals claiming jurisdiction over the Company's employees have not admitted the clerical employees of the Company to membership, at the present time their policy is to admit all employees of the Company, including clerical employees, but excluding officials, executive officers, shop foremen, and supervisory employees.

D. *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 256*

The Amalgamated is a labor organization affiliated with the American Federation of Labor. It admits to membership all the em-

ployees of the Company engaged in operating the Company's street railway and bus system at Sacramento, California, including both platform and car-house shop men, but excluding supervisory and clerical employees.

### III. THE QUESTION CONCERNING REPRESENTATION

In 1933 Utility Gas and Electric Employees of California, herein called the Utility Union, a non-profit corporation, was organized as an independent labor organization by 15 employees of the Company. Its membership was limited to employees of the Company. As its membership increased, it made efforts from time to time to bargain with the Company, resulting in 1935 in a hearing under the National Industrial Recovery Act before the old Regional Labor Board, which thereupon ordered the Company to bargain collectively with the organization. The order was never enforced; however, as shortly thereafter the National Industrial Recovery Act was invalidated. Late in 1936 the Utility Union made another effort to confer with the Company, submitting a proposed contract accompanied by a request for negotiations concerning it. In January 1937, the Company replied by a letter of P. M. Downing, its first vice president and general manager, that the Company was not interested in considering the proposed contract. In April 1937, the Utility Union became a part of the U. E. R. W. In May 1937, at a conference attended by officers of the Company and of the U. E. R. W., the Company indicated that it intended to recognize certain other labor organizations, and that it was undecided as to the course it would pursue toward the U. E. R. W. The failure of the Company to meet the demand of the U. E. R. W. for recognition as the exclusive representative of the outside or physical forces, coupled with the feeling among certain of the locals of the U. E. R. W. that the Company was guilty of discriminatory practices against their members, led three locals, shortly before the commencement of the hearing, to recommend that a strike vote be taken if conditions continued unremedied.

The U. E. R. W. claimed a membership of approximately 2,800 in the ten locals confined to the Company's employees. While a very few of these members may be properly classified as strictly clerical employees, practically the entire membership is composed of outside or physical employees. As there are more than 6,000 employees in the various classifications of outside or physical workers, the U. E. R. W. conceded its failure to establish that it had the membership of a majority among the employees in the unit claimed by it to be appropriate. It therefore desires an election.

The California Union enrolled its members rapidly after its membership campaign began in May 1937. At the time of the hearing

it claimed a membership of 4,565, of which more than 20 per cent was estimated to represent clerical personnel. While the Company has signified to the California Union its willingness to negotiate with it as the representative of its members, it has declined to recognize it as the exclusive representative of all its employees.

The California Union conceded its failure to prove that it had the membership of a majority among all the employees of the Company, who number over 10,000. There was no specific evidence on the basis of which its membership could be classified according to the smaller units claimed to be appropriate by the U. E. R. W. and the Amalgamated. It is claimed that there is considerable overlapping between the members of the California Union and the U. E. R. W., and that some employees have applied for membership in both of these organizations and in the Brotherhood as well. It is thus impossible to determine whether the California Union has the membership of a majority among the employees in either of the smaller units claimed to be appropriate by the U. E. R. W. or the Amalgamated. The California Union conceded that an election was necessary.

A few months prior to the hearing, the Brotherhood began a vigorous campaign for membership, endeavoring to gather into its fold all the employees of the Company, except supervisory employees, on a comprehensive industrial basis. While in the rather distant past it has had collective bargaining relationships with the Company on behalf of certain craft groups among the employees, for several years prior to the hearing it has not maintained any relationships with the Company. At the time of the hearing the Brotherhood claimed 500 members, of whom 25 were clerical employees.

In the past the Amalgamated has had written contracts with the Company concerning the wages, hours, and working conditions of its members, but there has been no contract for several years. The Company has expressed a willingness to negotiate a written contract with the Amalgamated as the representative of its members.

The Amalgamated claimed 76 members among the employees engaged in operating the Company's street car and bus system in Sacramento, California. The evidence as to its membership claims was oral, hearsay testimony by its representative and was not based on personal knowledge or documentary evidence. As there are 163 employees in the unit claimed to be appropriate by the Amalgamated, its membership does not constitute a majority in any event. Moreover, it is claimed that a substantial number of members of the Amalgamated have become members of the California Union, the U. E. R. W., and the Brotherhood.

Thus the evidence discloses that none of the labor organizations involved in this proceeding has established that it has the member-

ship of a majority of the employees in any of the units claimed to be appropriate. We find that a question has arisen concerning the representation of employees of the Company. This question can only be resolved by a secret ballot, regardless of the determination made as to the appropriate unit. In accordance with our usual practice, eligibility to vote should be based on the Company's pay roll for the week including May 19, 1937, the date of the filing of the petition, when the question concerning representation had become acute.

#### IV. THE APPROPRIATE UNIT

As of May 31, 1937, the Company had in its employ, exclusive of executive and management officers, heads of departments, and division managers, 10,232 employees. The parties acquiesced in the use of this pay roll as an average or normal pay roll, typical of the job classifications and the number of its employees. They are classified by the Company in the following manner:<sup>1</sup>

Outside field employees.....	4,849
Railway:	
Superintendent of Ways and Equipment.....	1
Timekeeper.....	1
Car House.....	60
Office and Supervisory.....	9
Operators and Coach Drivers.....	103
	174
Electric generation station.....	377
Electric sub-station.....	541
Gas plant.....	68
Steam plant.....	266
Other plant or shop employees.....	552
Meter-readers.....	134
Collectors.....	240
Combination meter-readers and collectors.....	85
	459
Sales Force:	
Sales Supervisors.....	13
Clerical Force.....	75
Salesmen.....	305
	393
Clerical and office employees.....	2,553
	10,232

The U. E. R. W. contends that the outside field employees, the railway employees, the workers employed in generating stations, in sub-stations, in the gas plant, in the steam plant, and in other plants and shops, the meter-readers, the combination meter-readers and

<sup>1</sup> The classification contains a number of supervisory employees who are not eligible for membership in any of the unions involved herein.

collectors, the collectors, and the salesmen, up to and including the rank of job foremen, but excluding all supervisory employees above that position and all clerical employees throughout the Company's entire system, constitute a unit appropriate for the purposes of collective bargaining. The California Union contends that all employees eligible for membership therein, i. e., all regular employees other than supervisory employees, shop foremen, officials and executive officers, but specifically including all clerical employees, constitute an appropriate unit. The Brotherhood's contention is substantially that of the California Union. Job foremen are employees in charge of particular jobs to be performed in the field and participate in the work along with the other workers. The contentions of the various labor organizations, although expressed in different formulas, are not in conflict concerning the supervisory employees to be excluded from the outside or physical workers, since all concur in the inclusion of job foremen and the exclusion of foremen in superior positions. The Amalgamated contends that the railway employees engaged in the operation of the street car and bus system in Sacramento, California, including platform men on the street cars, shop men in the car-houses, and motor coach drivers, and excluding supervisory and clerical employees, constitute an appropriate unit. The tenor of the cross-examination conducted by counsel for the Company indicates that the Company prefers the appropriate unit claimed by the California Union and the Brotherhood, excluding, however, the railway employees, concerning whom it has expressly signified its willingness to bargain with the Amalgamated.

*A. Controversy concerning clerical employees and outside or physical workers*

The considerations advanced in support of the separation of clerical workers from outside or physical workers follow familiar patterns. It was urged that the difference in the type of work performed, the traditional divergence in their social outlook and in their attitude toward labor organizations, and the fact that 75 per cent of the clerical employees are women, that large numbers of the outside or physical workers possess special training and skill, and that the outside or physical workers are primarily concerned with hazards of work, a matter in which clerical workers can have but little interest, are compelling reasons for the separation of the two classes of employees into separate units. This contention receives further support from the fact that in the past only the outside or physical workers have become members of labor organizations, while the clerical employees, until very recently, have never been organized as a distinct group or as a part of a larger group.

The considerations advanced for the inclusion of the clerical workers with the outside or physical workers are not persuasive. It was urged that the attitude of the clerical workers toward unionization, while traditionally hostile, or at least apathetic, suddenly became actively favorable upon the rendition, in April 1937, by the United States Supreme Court of its decisions sustaining the validity of the National Labor Relations Act. Although it is clear and undisputed that, until that date the clerical employees have resisted all efforts to absorb them into labor organizations, it is maintained that the large number of them who have joined the California Union since its inception in May 1937, is a striking indication of the change in the attitude of the group. Other interpretations of this phenomenon, however, are equally permissible, particularly in the light of clear indications in the record that many employees, both clerical and outside workers, joined the California Union under the impression that such action would be regarded favorably by the Company. The Brotherhood sought to prove that the clerical workers would function successfully as an integral part of a labor organization negotiating with the Company concerning the wages, hours, and working conditions of the outside or physical employees, by introducing evidence tending to show that the Brotherhood had organized and was attempting to organize the employees of other electric utilities into a single comprehensive industrial unit, including clerical employees. It appears, however, that this type of organization by the Brotherhood, so far as clerical employees are concerned, is a development of so recent a date that it can hardly afford a basis for reliable conclusions concerning its successful functioning. Moreover, the evidence fails to disclose whether such other utilities present parallel situations with that of the Company. There is thus no persuasive evidence tending to blur the well-defined line of demarcation existing between the clerical workers and the outside or physical workers in the operations of the Company. We shall therefore not include the clerical employees in the same unit with the outside or physical employees.

While there was some question of the propriety of denominating meter-readers, combination meter-readers and collectors, salesmen, collectors, and estimators as outside or physical workers, as claimed by the U. E. R. W., none of the contending labor organizations urges their separation from the outside or physical group. The Company has taken no position on the question. Substantial numbers of such workers have joined each of the labor organizations having membership among the outside or physical employees. On the basis of the absence of any contention by the parties for their exclusion from the outside or physical group and on the evidence of the actual participation of such workers in labor organizations together with outside

or physical workers, we find that meter-readers, combination meter-readers and collectors, salesmen, collectors, and estimators should be included in the outside or physical group.

None of the labor organizations involved herein claims to represent the clerical workers as a separate unit or has endeavored to negotiate with the Company on that basis; nor did any of them submit a petition for certification of representatives of such employees. This case raises no question of representation of any employees other than the outside or physical workers and the railway workers.

*B. Controversy concerning railway employees and outside or physical employees*

A question was raised as to whether the employees engaged in the operation of the street car and bus system in Sacramento, California, namely, platform men on street cars, shop men in the car-houses, and motor coach drivers, but excluding all clerical and supervisory employees, should be included with the outside or physical workers in a single unit. The contentions for their segregation into a separate unit are, in substance, that they are engaged in a distinct line of work, and that their past history shows that they have always been treated as a separate unit for purposes of collective bargaining. The contentions for their inclusion with the outside or physical workers are (1) that they perform outside or physical work, (2) that even though their work is different, the difference is not appreciably greater than that between electric workers and gas workers, who successfully function together in a single unit, (3) that the railway employees are hired out of the same office and are under the same personnel supervision as the outside or physical workers, and (4) that the Amalgamated has been inactive for several years, during which time many of the railway employees have attached themselves to the U. E. R. W. and the California Union. The considerations are thus balanced, it appearing that the railway employees could function equally well as a separate unit or as part of a larger unit. The determining factor when the opposing contentions are evenly balanced, is the desires of the employees in the disputed group. We will therefore direct elections to be held separately among the railway employees and among the outside or physical workers.

On the result of these elections will depend the appropriate unit for the purposes of collective bargaining. If a majority of the employees in the railway group and in the outside or physical group elect to be represented by the same union, both groups together will constitute a single unit. If a majority of the employees in the railway group

elects to be represented by the Amalgamated, then the railway group will constitute a single separate unit. If a majority of the employees in the railway group elects to be represented by any one of the three unions other than the Amalgamated, it will become part of a single unit with the outside or physical group, such a choice by them placing the employees of the railway group in the larger unit. The question would remain, however, as to which union represents the larger unit. If the union elected by the railway group is different from the union elected by a majority of the employees in the outside or physical group, it will be necessary to determine whether either of the two unions has received a majority of the votes cast by both the railway workers and the physical or outside workers, treating both groups as a single unit. If neither has received a majority, it will then be necessary to conduct another election among the railway workers and the outside or physical workers, as a single unit, to determine which of the unions, which in these proceedings contend for the larger unit, shall represent the employees in the unit. If none of the unions receives a majority of the votes cast by the employees of the railway group in the election directed in the instant Direction of Elections, but the number of votes cast for the unions claiming the larger appropriate unit constitutes a majority, the railway group will be treated as a part of a single unit together with the outside or physical group.

#### V. THE EFFECT OF THE QUESTIONS OF REPRESENTATION ON COMMERCE

We find that the question of representation which has arisen, occurring in connection with the operation of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, commerce, transportation, and communication among the several States and with foreign countries, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### VI. CONDUCT OF ELECTIONS

Since the employees of the Company are scattered over the territory of central and northern California, problems concerning the method of conducting the elections arise. The record affords no aid in determining whether the elections can be conducted conveniently in certain specially designated places throughout the area served by the Company, except that such a plan may be feasible with respect to the employees engaged in the operation of the street car and bus system in Sacramento. We will direct the elections to be held under the direction and supervision of the Regional Director for the Twentieth Region, who shall determine in her discretion the exact times, places, and the procedure for giving notice of the elections and for

balloting. We expressly authorize the use of the United States mail for such purposes and the use of agents, if feasible, to journey through the Company's various territorial divisions to conduct elections at appropriate places, collecting the votes in sealed envelopes for delivery to the Regional Director.

In accordance with our usual practice, eligibility to vote will be determined by the pay roll of the Company for the week including May 19, 1937, the date of the filing of the petition.

#### CONCLUSIONS OF LAW

On the basis of the above findings of fact, the Board makes the following conclusions of law:

A question affecting commerce has arisen concerning the representation of employees of Pacific Gas and Electric Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

#### DIRECTION OF ELECTIONS

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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Pacific Gas and Electric Company, elections by secret ballot shall be conducted within sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among those employees of Pacific Gas and Electric Company who fall within the groups described below who were on the payroll of the Company for the week which included May 19, 1937:

1. Those engaged in the outside or physical forces, including outside field employees, workers employed in generating stations, in sub-stations, in the gas plants, in the steam plants, and in other shops and plants, and meter-readers, combination meter-readers and collectors, salesmen, collectors, and estimators, up to and including the rank of job foremen, but excluding employees above that position, to determine whether they desire to be represented by United Electrical and Radio Workers of America, by California Gas and Electric Employees Union, by International Brotherhood of Elec-

trical Workers for the purposes of collective bargaining, or by none of them;

2. Those engaged in the operation of the street car and motor bus system in Sacramento, California, including platform men on the street cars, shop men in the car-houses, and motor coach drivers, excluding clerical and supervisory employees, to determine whether they desire to be represented by Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division No. 256, by United Electrical and Radio Workers of America, by California Gas and Electric Employees Union, by International Brotherhood of Electrical Workers for the purposes of collective bargaining, or by none of them.