In the Matter of GREAT LAKES PIPE LINE COMPANY, EMPLOYER *and* OIL WORKERS INTERNATIONAL UNION, LOCAL NO. 348, PETITIONER

Case No. 17–RC–795.—Decided December 8, 1950

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William J. Scott, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.[1]

4. The Petitioner seeks a unit of all operating and maintenance employees of the Employer's branch line from Albert Lea to Mankato, Minnesota, excluding telephone linemen, the area clerk, terminal and billing clerks, terminal testers, junior terminal testers, testers' helpers, chief terminal clerk, chief terminal tester, and all other supervisory employees.[2] In the alternative, the Petitioner has indicated its willingness to include these employees with the other operating and maintenance employees of the Employer it currently represents. The Employer contends that the separate unit is inappropriate but agrees with the Petitioner's alternative request that the employees sought by the Petitioner should be included with the other operating and maintenance employees of the Employer's system.

The prior history of collective bargaining shows that the Petitioner has, at various times, been certified as the bargaining representative of a number of separate units of employees in the Employer's system,

[1] Although the Employer and Petitioner have a current contract which might be urged as a bar to these proceedings under the alternative unit request of the Petitioner, the parties have declined to urge a contract bar. Under the circumstances, we find that the contract does not preclude a present determination of representatives. See *The Ohio Bell Telephone Co.*, 87 NLRB 1555.

[2] There is no prior history of collective bargaining with respect to these employees.

consisting of operating and maintenance employees in each of the other five separate superintendent districts, and certain separate terminal units.[3] In finding that a separate superintendent district constituted an appropriate unit, the Board repeatedly expressed the opinion that "ultimately, a system-wide unit will be proper."[4] Under the current collective bargaining agreement, all the separately certified bargaining units are pooled within the coverage of the one contract; and these piecemeal units have been effectively merged into a single system-wide unit as previously anticipated by prior Board decisions involving this Employer.[5]

Our dissenting colleague would dismiss the petition herein principally upon the ground that the Board has not found that the group of employees herein concerned may constitute an appropriate unit prior to directing an election among such employees.[6] The contention is made that the Board has no authority under the Act to direct elections among groups of employees who have not been found and could not be found to constitute appropriate units. Furthermore, it is argued that Section 9 (a) of the Act which provides for the exclusive right of representation by bargaining representatives designated or selected by a majority of the employees in an appropriate unit, limits the authority of the Board in directing elections to groups which are or may be found to be appropriate units. We do not so construe the language of the statute. Although we recognize that the *certification* of a bargaining representative can only be based upon a majority representation in an appropriate unit, we find nothing in the Act that requires as a preliminary to an election in any group, that the Board determine that such group may constitute an appropriate unit. On the contrary, we believe that the Act considered as a whole clearly authorizes the Board to conduct elections among groups of employees regardless of whether or not they may be found separate appropriate units whenever it becomes relevant in a Board proceeding to ascertain the desires of the majority in a particular group with respect to the form of representation preferred for purposes of collective bargaining.

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[3] See *Great Lakes Pipe Line Company*, 88 NLRB 1370, and cases cited therein.

[4] *Great Lakes Pipe Line Company*, 88 NLRB 1370; 56 NLRB 227; 64 NLRB 1296.

[5] See footnote 4, *supra*.

[6] Although not to be considered in any way limiting the scope of our present decision, we note in passing that the employees for whom an election is hereinafter directed constitute an unrepresented residual group of the type which the Board has frequently found to be an appropriate unit. *Jordan Marsh Company*, 85 NLRB 1503 (markers); *Guntert & Zimmerman Construction Division, Inc.*, 81 NLRB 874 (crane operators); *Carbide and Carbon Chemicals Corporation*, 56 NLRB 779 (laborers); cf. *Phelps Dodge Corporation*, 60 NLRB 1431 (laborers). In such instances the Board has found residual groups appropriate, although, absent their residual character, such groups could not, under normal Board standards, constitute appropriate units. See *Jordan Marsh Company, supra; Guntert & Zimmerman Construction Division, Inc., supra.*

Nor are we persuaded, as argued by our dissenting colleague, that to permit an election under the circumstances here presented, is a holding that a majority of the employees in the category concerned are entitled to veto the Board's determination of the appropriateness of the bargaining unit. A contrary conclusion is indicated by the fact that our prior unit determination expressly left open the proper unit placement of the employees involved in this proceeding. Moreover, the holding of a "Globe" type election of the kind here directed does not in and of itself determine the character of the appropriate unit; nor does a subsequent finding that the voting group may henceforth bargain as part of the existing unit constitute a determination that the existing unit is or is not an appropriate unit. There remains unimpaired the Board's function to determine the appropriate unit. In the performance of this latter function, we are persuaded that it is our duty to prevent injustice being done to minority groups by gerrymandering practices which would require the arbitrary inclusion of such groups in a larger unit wherein they would have no effective voice to secure the benefits of collective bargaining. We believe, therefore, that far from constituting a gerrymandering practice, the use of the "Globe" type election as here directed, is in fact an effective guarantee against the very gerrymandering practices envisaged by our dissenting colleague.

In view of the foregoing, and, as the Petitioner has expressed its willingness to accept these employees as part of the system-wide unit, we believe that the above-mentioned employees may, if they so desire, be represented as part of the existing bargaining unit.[7]

We shall therefore direct an election among employees in the following voting group: All operating and maintenance employees of the Employer's branch line from Albert Lea to Mankato, Minnesota, excluding telephone linemen, area clerk, terminal and billing clerks, terminal testers, junior terminal testers, testers' helpers,[8] all other employees, and all supervisors[9] as defined in the Act.

If a majority of the employees in the voting group cast their ballots for the Petitioner, they will be taken to have indicated their desire to be part of the over-all system-wide operating and maintenance unit, and the Petitioner may bargain for such employees as part of the existing unit.

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[7] See *The Post Printing & Publishing Company*, 91 NLRB No. 4. The cases of *Lone Star Producing Company*, 85 NLRB 1137 and *Waterous Company*, 92 NLRB 76, cited by our dissenting colleague are distinguishable from the present case in that in the instant proceeding no union is seeking an election in the over-all unit.

[8] The terminal and billing clerks, terminal testers, junior terminal testers and testers' helpers, are excluded inasmuch as they are already part of the over-all bargaining unit. *Great Lakes Pipe Line Company*, 88 NLRB 1370.

[9] Included in this category are the chief terminal clerk and chief terminal tester.

[Text of Direction of Election omitted from publication in this volume.]

MEMBER MURDOCK, dissenting:

It seems to me that my colleagues in the majority are perpetuating a fundamental error of law and logic by directing an election in this case. They are apparently proceeding on the theory already largely repudiated by this Board, that a heterogenous group of employees, who could not otherwise constitute a separate appropriate unit, should not be included in an existing over-all unit of which they are properly a part, unless a majority of them so express their desires in a Board election.[10] This conclusion is all the more amazing to me in view of the fact that not only the Board, but the Employer and the Petitioner are agreed that these employees belong in a single system-wide bargaining unit developed over a period of years.

The question raised in this case, in my opinion, is not a question of representation, necessary to the direction of an election, but merely a question relating to the inclusion or exclusion of a small group of employees in an established unit. These employees, however, cannot separately constitute an appropriate unit. Indeed, the majority finds that they are entitled to representation only as an integral part of the established unit, which is currently represented by a certified bargaining representative. It therefore follows that the majority are in the position of directing an election in an *inappropriate* unit. But Section 9 (a) of the Act provides that representatives selected for the purposes of collective bargaining shall be selected by a majority of employees "*in a unit appropriate for such purposes.*" (Emphasis added.) Congress has left the determination of appropriate units exclusively to the Board. It has not granted the Board carte blanche authority to direct elections among groups of employees who comprise something less than such a unit. To do so approaches the familiar gerrymandering practice whereby election districts are split into unrecognizable sections because of political bias rather than legitimate considerations. Volumes of Board decisions have been filled with cases in which the Board has exercised its function of determining inclusions in or exclusions from bargaining units. Here the Board again finds upon all the evidence, and the parties agree, that a group of employees are properly included in a specific bargaining unit. It is inconceivable to me that the Board should further hold, as the majority do, that a majority of

[10] *Peterson & Lytle,* 60 NLRB 1070; distinguished in *Lone Star Producing Company,* 85 NLRB 1137, Board Member Reynolds dissenting; specifically overruled, where the only union seeking to represent fringe employees was, at the same time, seeking an election in the over-all unit, *Waterous Company,* 92 NLRB 76, Chairman Herzog and Member Reynolds dissenting.

this category of employees are now entitled to veto the Board's determination of that issue. But the majority contend that this is not the effect of their decision. Indeed, they regard the "arbitrary inclusion" of a minority group in a larger unit as a gerrymandering practice. However, it is clearly the statutory duty of this Board to make careful and necessarily final determinations with regard to the inclusion of disputed categories of minority groups in appropriate bargaining units. I submit that the exercise of this duty should not be affected by the desires of a majority of such employees.

As I analyze the majority's position in this case, the election directed herein will decide two questions for the majority: First, as indicated above, it will decide whether this group of employees, who have insufficient unit characteristics to be represented separately, shall join the existing over-all unit, notwithstanding the fact that the Board has already decided, in agreement with the parties, that they are properly a part of the over-all unit and cannot function as a separate unit. The decision to join or not join will be made by a majority of the group, *acting as a unit.* Second, the election will decide whether those employees, again acting as a unit, desire to be represented by the Petitioner. I shall not further labor the point that the resolution of the first question in this manner is an improper use of the Board's normal election procedures whereby employees in *appropriate* units determine their representative status by majority vote.[11] As to the second question, it is indeed unfortunate that the small group of operating and maintenance employees on the Employer's branch line from Albert Lea to Mankato, Minnesota, in the Northern District have never had an opportunity to vote for or against the Petitioner in a Board-conducted election. A previous decision of the Board reveals that these employees were originally excluded from coverage within the Northern District unit because the branch line was then newly established and had not yet been staffed.[12] Be that as it may, it is nothing new in Board

[11] I regard the election directed in this case as clearly distinguishable from the Board's normal "Globe" type election in which a craft or otherwise properly constituted unit is permitted to decide whether it wishes to be represented in a separate or over-all unit. In those cases the Board holds that either unit would be appropriate. Contrary to the opinion expressed by the majority in footnote 6, I also regard the instant case as distinguishable from those cases in which the Board has held residual groups of employees to constitute appropriate units. The cases cited in support of the majority's findings to this effect reveal that the employees there sought to be represented were not, as here, mere accretions of employees performing functions identical to those of employees in the existing unit. Moreover, unlike the instant case, the Board's direction of election in those cases was predicated on the theory that the requested residual groups either would or could, if they so desired, function as separate appropriate units.

[12] *Great Lakes Pipe Line Company,* 73 NLRB 454, 456. In limiting the scope of the unit to those employees working on facilities then currently operated by the Employer, the Board specifically stated: "Such limitation is without prejudice to later proceedings and a future determination of the proper unit placement of employees hired to operate the branch line and terminal."

law or, for that matter, in the democratic process generally, that a unit, properly established and represented, be swelled by the addition of new members, who cannot until the next election express their individual desires with regard to representation.

The argument has been made most strenuously by Board Member Reynolds in his dissenting opinion in the *Lone Star Producing* case [13] that any group of employees who have been omitted from a bargaining unit should be permitted a separate election to determine whether they wish to be represented by a labor organization. Rejecting his argument, the Board majority in that case held that the employees in question constituted "only accretions to the existing unit" and that they were not entitled to a separate franchise on the issue of their representation in collective bargaining. I believe the logic of the majority in that case is applicable here. Nor do I think it a material distinction, as the majority in the instant case do, that in the *Lone Star Producing* case an election in the over-all unit was being held in which the new group of employees could cast individual votes. It is to my mind a fair interpretation, if not a requirement of the Act, that a majority of employees in a Board-directed election can bind their fellows on the question of representation by a labor organization *only* in a unit established as appropriate by this Board.

Under the circumstances of this case, particularly the small size of the group and the uncontradicted preponderance of evidence favoring their inclusion, I would find that these employees are presently a part of the established unit and entitled to representation by the certified representative of that unit.

[13] *Supra.*