

Duke Power Company *and* System Council U-20,  
International Brotherhood of Electrical Workers,  
AFL-CIO,<sup>1</sup> Petitioner. Case 11-RC-2716

October 21, 1968

## DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before John J. Connerton, Hearing Officer. Following the hearing, pursuant to Section 102.67 of National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, this case was transferred to the National Labor Relations Board for decision. Thereafter, briefs were filed by the Employer and the Petitioner, and the latter also filed a supplemental brief, all of which have been duly considered.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds no prejudicial error. The rulings are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act<sup>2</sup> and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organization<sup>3</sup> involved claims to represent certain employees of the Employer.

3. The Employer is a North Carolina corporation, operating as a Public Utility within and between the States of North and South Carolina, and is engaged in the generation, distribution and sale of electricity. The function of distributing the power is performed by the Employer's Distribution Department. Each of the 18 districts in the Distribution Department is fully equipped to serve on a day-to-day basis customers located within its geographical region. These districts contain 68 branches, most of which, depending upon the number of people within their geographical region, can either function as do the districts, or be a mere collection office. In most of the districts and a few of the larger branches there are operation centers,<sup>4</sup> which are composed of the five

subdepartments that come under the Distribution Department, namely: Line Department, Meter Department, Service Department, Stores Department, and Engineering Department

The Employer and various locals of the IBEW have been parties to contracts spanning many years. The latest of these covers the approximately 115 "units" for which one or another local has been recognized voluntarily by the Employer over the years. As each "unit" was recognized, it was added to the parties' contract. The current contract, as with several preceding it, provides for uniform conditions of employment, including classifications and wages. All provisions, with the exception of seniority, span "unit" lines. Bargaining has been conducted jointly with the various locals that have been recognized in the many units. The parties have long bargained in an overall unit, which is composed of, and has subsumed, the many so-called smaller units. We therefore find that the employees covered by the contract constitute a single unit.

The Petitioner, System Council U-20, is a composite of the six local unions of IBEW (to wit, Local Unions 355, 407, 745, 913, 957, and 962) that currently jointly represent the employees in this unit. The parties' current contract covers some 850 "physical labor" employees in the Distribution Department, and 35 clerks from the Line, Meter, and Service Departments. The Petitioner seeks an election in a unit that includes these 885 employees, plus the remaining physical labor employees in the Distribution Department, and the clerks who work in the operation centers. In its brief this is referred to as a systemwide unit of employees in the Distribution Department, apparently excluding the engineering subdepartment, except for the engineering clerks here sought.

The Employer's first contention is that the petition raises no question concerning the representation of approximately 885 of the employees sought, as the parties' current contract is a bar to an election among them. We find no merit in this contention. Even though this proceeding involves a bargaining unit now represented by the Petitioner, the Petitioner, under established Board principles, is entitled to the benefits of Board certification.<sup>5</sup> Thus, the Petitioner would be entitled to an election for purposes of gaining certification in the historical unit. However, it does not seek an election in that unit. Rather, it claims to represent the employees in the overall unit, including

<sup>1</sup> The name of the Petitioner appears as amended at the hearing.

<sup>2</sup> During the past 12-month period, the Employer had gross revenues in excess of \$250,000, and during the same period received materials for use at its facilities within North and South Carolina, from points outside both States, in excess of \$50,000.

<sup>3</sup> Though the Employer refused to stipulate that the Petitioner is a labor organization within the meaning of the Act the record shows that the Petitioner is made up of a combination of six local unions that represent various employees of the Employer. These local unions are

chartered by the IBEW and accept into membership employees of the Employer. The employees participate in the operation of the Union and part of the purpose of the Union is to deal with the Employer concerning wages, hours, and working conditions. Petitioner has used the processes of the Board in the past and has been a party to at least two representation proceedings. The Board is satisfied that the Petitioner is a labor organization within the meaning of the Act.

<sup>4</sup> There are 13 districts and 2 branches with operation centers

<sup>5</sup> *Bell Aircraft Corporation*, 98 NLRB 1277, 1278

both the currently represented employees and the currently unrepresented (approximately 415) employees. The contract cannot, of course, bar an election as to those employees currently unrepresented.

We find, accordingly, that 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.

#### 4. The appropriate unit.

The overall organization of the Employer's operations is set forth in detail under section 3 above. The Petitioner, as pointed out, seeks an election in the entire Distribution Department; it describes the alleged appropriate unit as follows: All employees in the Distribution Department, including linemen, servicemen, truck drivers, groundmen, cable splicers, helpers, meter testers, meter readers, garage mechanics and attendants, water meter testers, special equipment operators, water plant operators, laborers (Distribution), janitors, and operation center clerks (Distribution), excluding employees outside the Distribution Department, office clerical employees, supervisors and those excluded by the Act.

There are employees throughout the systemwide Distribution Department who are in identical classifications and who perform identical or substantially similar job functions who are represented by the Petitioner at one or more operation centers, or in one or more branches or districts, but who are unrepresented in others, because the Employer has in the past granted recognition to the Petitioner on that basis. The makeup of the unit has thus become neither geographically nor functionally coherent.

The Employer is in substantial agreement that an overall unit would be appropriate.<sup>6</sup> It argues however, first that the current contract is a bar to any election, and in the alternative that, if there is to be an election it should only be a self-determination election among the 415 unrepresented employees in the Distribution Department.

The contract bar issue we have settled above. Based upon the parties' agreement, and the entire record in this case, we are satisfied that the overall unit is an appropriate one. Indeed, a unit encompassing only the 885 employees which the Petitioner represents, and excluding the remaining 415 employees still unrepresented, would, in the absence of a bargaining history, have been beyond question an inappropriate unit. The unrepresented group here derives from historical accident, not from any real difference in

functions. It is an unidentifiable fragment, and the result of a Union defeat in the fragmented unit would be to preserve a unit which could derive its appropriateness only from the bargaining history.

Upon consideration of all the facts in this case, we find that the unrepresented group is not entitled to a self-determination election,<sup>7</sup> that the parties' contract does not bar an election in a unit including the covered employees, and that an election should be held in the overall unit herein found appropriate.<sup>8</sup>

We turn to the final question of the inclusion or exclusion in the appropriate unit of the engineering clerks and store clerks.<sup>9</sup> The Petitioner contends that both the engineering clerks and store clerks should be included in the unit, stating in essence that the nature of their work gives them a close community of interest with the other clerks and employees that are included in the unit. The Employer believes that both these groups should be excluded, contending that the store clerks are really office clerks (who are excluded), and that the engineering clerks should be excluded as technical employees. Further, it argues that even if they are not found to be technicals, they do not possess the requisite community of interest to be included with the other employees.

The duties of the store clerks consist of requisitioning and keeping inventory of the materials they have on hand. In each of the operation centers there are other clerks (the "physical store clerks" spoken of above) who go into the storage areas to take inventory and physically move stock. The store clerks in question also occasionally perform these functions. The store clerks and physical store clerks are in the same departments, work under the same supervision, work the same hours, and enjoy fringe benefits identical to the physical clerks and others included in the unit. They are located in buildings separate from those in which office clerical employees work, and work in conjunction with physical store clerks on a daily basis. We find that the store clerks perform duties typical of plant clerical employees. We here find that their duties and interests are closely related to those of physical store clerks and other production and maintenance employees, and we shall include them in the unit found appropriate.<sup>10</sup>

With regard to engineering clerks, the record shows that their duties consist of making load studies and short circuit calculations, assisting the engineer and making minor surveys, handling lighting requests, and assisting in the design of the overhead and underground installations to homes and industrial cus-

<sup>6</sup> Its positions as to engineering clerks and store clerks are dealt with below.

<sup>7</sup> Cf. *The Martin Co.*, 162 NLRB No. 20, where an identifiable group of unrepresented technicians was found an appropriate voting group, without reaching the question of their appropriateness as a separate unit.

<sup>8</sup> *D.V. Displays Corp., etc.*, 134 NLRB 568, 571.

<sup>9</sup> These store clerks form two groups. One group does certain

physical labor described below. These store clerks will be called "physical store clerks." The Employer agrees they should be included. The other group keeps records on the inventory and it is this group that we are concerned with. We will refer to them simply as store clerks.

<sup>10</sup> See, e.g., *Raybestos Manhattan, Inc.*, 115 NLRB 1036. The Board ordinarily will include plant clericals in a production and maintenance unit unless the parties have agreed to exclude them.

tomers. In essence their job is an apprenticeship consisting of on-the-job training. If they become proficient, they will be advanced to the position of assistant engineer. Their contact with the employees from the Line and Service departments comprises only 10-15 percent of their work. The engineering clerks' entire function is to aid and inform the engineers. Their immediate supervisor is either an engineer or an assistant superintendent in charge of engineering, and they are considered part of the Engineering Department.<sup>11</sup> Considering all pertinent factors, especially the engineering clerks' separate supervision and departmental location, and the nature of their job as an apprenticeship to employees excluded from the unit, we shall exclude engineering clerks from the unit as they do not possess the requisite community of interest with those included in the unit.

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<sup>11</sup> This is as opposed to the line service and meter clerks who work under a line supervisor or a meter supervisor etc. in their own respective departments.

<sup>12</sup> An election eligibility list containing the names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 11 within 7 days after the date of this Decision and

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All employees in the Distribution Department, including linemen, servicemen, truck drivers, groundmen, cable splicers, helpers, meter testers, meter readers, garage mechanics and attendants, water meter testers, special equipment operators, water plant operators, laborers (Distribution), janitors, and operation center clerks (Distribution), excluding all employees outside the distribution department, engineering clerks (operation center), office clerical employees, supervisors as defined in the Act, and all other statutory exclusions.

[Text of Direction of Election<sup>12</sup> omitted from publication.]

*Direction of Election.* The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.* 156 NLRB 1236.