

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

NORTH GEORGIA ELECTRIC
MEMBERSHIP CORPORATION

Employer-Petitioner

and

Case 10-UC-223

LOCAL UNION #175 OF THE
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS¹

Union

DECISION AND ORDER DISMISSING PETITION

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

¹ The petition was amended at the hearing to reflect the name of the union as it appears on the current collective bargaining agreement with the Employer-Petitioner.

² Briefs filed by the Employer-Petitioner and the Union have been duly considered.

³ The Union filed a Motion to Dismiss the petition prior to hearing. I issued a Notice to Show Cause why the Union's Motion should not be granted. The Employer-Petitioner filed a response in opposition to the Union's Motion and I issued an Order and Notice of Hearing, concluding that the parties' positions could be more fully developed and better considered after record testimony at a hearing. At the close of the hearing, the Union renewed its Motion to Dismiss and the hearing officer referred the Union's Motion to me for decision.

2. North Georgia Electric Membership Corporation, herein called Employer-Petitioner or Employer, is a Georgia corporation with offices and places of business in Dalton, Fort Oglethorpe, Calhoun, and Trion, Georgia. The Employer is an electric membership corporation that installs, operates and maintains a power distribution system for customers in seven northwest Georgia counties. During the past calendar year, a representative period, the Employer received gross revenues in excess of \$250,000 from providing services to customers. During the same period, the Employer purchased and received materials and supplies at its offices and places of business valued in excess of \$50,000 directly from suppliers located outside the State of Georgia. Accordingly, the Employer-Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Employer-Petitioner seeks to clarify the existing Operations Department bargaining unit by excluding the approximately 10 employees in the Transformer Department.⁴ Employees in this department have been historically excluded from the unit since the department was formed about 10 years ago and are not represented by any union. The Employer claims clarification is appropriate because the Union has demonstrated an objective to represent them by filing certain grievances under the current collective bargaining agreement covering Operations Department employees. The Union denies any representational objective and at the hearing expressly disclaimed interest in representing the Transformer Department employees. According to the Union, the grievances protest the Employer-Petitioner's assignment of bargaining unit work to these unrepresented non-unit employees. Simply put, the Union "wants the work back".

⁴ This department's official name is the "Power Delivery and Technical Services Departmental," though often referred to in the record as the "Technical Services Department" or the "Transformer Department." Included among the approximately 10 employees in this department are Apparatus Technicians, Equipment Operator Technicians, and Meter Technicians.

Contrary to the Employer's contentions, the record is bereft of any evidence that the Union seeks to represent the Transformer Department employees. Rather, the Employer's change in the assignment of what the Union alleges to be bargaining unit work is at the heart of this controversy. Accordingly, I agree with the Union that this is a classic work assignment dispute not litigable in a unit clarification proceeding and I shall, therefore, grant the Union's Motion to Dismiss the petition. In reaching this conclusion, I have considered the following:

The Union⁵ was certified almost 35 years ago in 1967 to represent employees in the Employer's Operations Department, including linemen, apprentice linemen, helpers, groundmen, truckdrivers, meter readers, installers, collectors, tree trimmers, laborers and servicemen. The unit is more functionally defined in the current collective bargaining agreement as "all employees . . . included in the unit certified . . . , such employees being engaged in the work set out in Article X." There are approximately 60 unit employees working in the job classifications set out in Article X, including Line Workers/Service Workers, Apprentice Line Workers, Ground Workers, Laborers, Bucket Truck Operators, Winch/Derrick Operators, Installer/Collectors, Meter Readers and Tree Workers.

The Transformer Department employees are basically involved in the construction of substations and the installation, testing, and maintenance of all substation equipment. The Operations Department employees are primarily responsible for constructing and repairing lines, setting poles, installing distribution equipment, responding to power outages, and operating the

⁵ The Union was certified under a different local number.

necessary equipment to perform such work. The Employer's President and CEO, Ron Hutchins, testified at the hearing that the Employer decided in March, 2001 to assign certain work exclusively to Transformer Department employees that had previously been performed by both Transformer Department employees and Operations Department employees, or their respective Crew Leaders. The work switched exclusively to Transformer Department employees was: (1) the removal (for preventive maintenance purposes) and re-installation of reclosers⁶; and (2) the termination (for preventive maintenance purposes) and hook-up of certain industrial pad-mounted transformers.

For about ten years prior to March, 2001, this work had usually been performed in tandem by a combination of employees in both departments, usually an Operations Department lineman or Crew Leader⁷ and Transformer Department technicians. The Operations Department supervisor and Transformer Department supervisor had to coordinate use of personnel, as this required periodically splitting up linemen teams, thus diverting them from other work assignments. The Employer implemented the change in March, 2001 and assigned this work exclusively to Transformer Department employees in order to increase efficiency and accountability in the departments.

Prior to the filing of the instant petition, the Union filed two grievances over the change in work assignments. The first grievance, filed on March 7, 2001, protested the performance, by "Transformer Department, non-bargaining unit personal [sic]" of "bargaining unit work by doing the terminations (hookups) on the pad mount transformer at the new Ruby Tuesday's Restaurant

⁶ Reclosers are devices mounted throughout the distribution system for the purpose of minimizing outages and providing more reliable power.

⁷ The unit employees are directly supervised by approximately 13 Crew Leaders. Both the Union and the Employer agree that the Crew Leaders have historically been excluded from the unit and there is no evidence that the Union currently seeks to represent them. Accordingly, the Union seeks only the reassignment of work to the extent it had previously been performed by Operations Department unit employees.

in Ringold." The relief requested by the Union was "non-bargaining unit personal [sic] to cease doing work that has been done historically by bargaining unit employees." The Employer denied the grievance, in part, because the "work complained about is not bargaining unit work and not covered by [the] collective bargaining agreement."

In the second grievance, filed on April 3, 2001, the Union protested that "work being performed on March 30, 2001 at Hwy 41, Catoosa by Transformer Department employees has historically been done by bargaining unit employees" and claimed "this is a clear violation of a past practice that has existed for approximately 35 years." The relief requested was "in the future, this work shall continue to be done by bargaining unit employees." The Employer denied this second grievance and has refused to arbitrate both grievances.⁸ The Union filed an action on January, 10, 2002 in federal district court to compel arbitration pursuant to the current collective bargaining agreement. The Employer filed the instant unit clarification petition two weeks thereafter on January 25. The proceedings in federal district court have been stayed pending disposition of the instant petition.

It is clear from the foregoing that the Union's objective is to force the Employer to return work to bargaining unit employees which the Employer unilaterally assigned in March, 2001 to Transformer Department employees. Whether or not the Employer's unilateral action is a breach of the collective bargaining agreement, as the Union alleges, is at the core of this dispute.

⁸ The Union filed a third grievance on April 23, 2002 after the hearing in the above matter on April 16, 2002. I hereby grant the Employer's unopposed post-hearing Motion to make this grievance a part of the record in this proceeding. This third grievance protests "the Company's unilateral decision to transfer work that has been historically and traditionally performed by the bargaining unit to employees in the" Transformer Department. The Union claims "the extent and nature of this unilateral action . . . was discovered by the Union in the NLRB hearing . . . This grievance is continuing in nature and is intended to cover all such assignment of work . . . in the future and the past until such time as the Company stops engaging in this conduct." There is no evidence that the Union has threatened to strike over any of these grievances.

Contrary to the Employer's contentions, I find that there is no evidence the Union is seeking to represent the Transformer Department employees. In view of the above, I find that the record is devoid of evidence of any representational objective on the part of the Union with respect to the Transformer Department employees. There is simply no indication in this record that the Union is seeking anything other than the reassignment of disputed work back to the bargaining unit.⁹ Accordingly, this is clearly a work assignment dispute and is, therefore, not appropriate for determination by a unit clarification proceeding. Coatings Application and Waterproofing Co., 307 NLRB 806 (1992); Machine Printers and Engravers Ass'n, 269 NLRB 223, fn. 2 (1984); and Harley-Davidson Motor Co., Inc., 234 NLRB 1121, 1123, fn. 2 (1978). Accordingly, I shall dismiss the Employer's unit clarification petition.

ORDER DISMISSING PETITION

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

⁹ The Employer's reliance on United Steelworkers of America, Local 392 (BP Minerals), 293 NLRB 913 (1989), and Monsanto Research Corporation, 195 NLRB 336 (1972) is misplaced. In those cases, unlike here, there was some evidence of a representational objective on the part of the unions involved. I also find that several other cases relied upon by the Employer are inapposite. These cases involved a new facility, the acquisition of new machinery, or accretion issues not involved herein. In any event, none of these cases supports the Employer's position in the instant case that the Union seeks to represent the Transformer Department employees. See cases cited by Employer: Archer Daniels Midland Co., 333 NLRB No. 81 (2001); Teamsters Union 158 (Holt Cargo Systems), 293 NLRB 917 (1989); and McDonnell Co., 173 NLRB 225 (1968).

the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by May 30, 2002.

Dated at Atlanta, Georgia, on this 16th day of May, 2002.

/s/ Martin M. Arlook
Martin M. Arlook, Regional Director
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