

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUB-REGION 33

MIDAMERICAN ENERGY COMPANY

Employer

and

Case 33-UC-179

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO, LOCAL
UNION 499

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
ORDER DISMISSING PETITION**

The Employer, MidAmerican Energy Company, is engaged in providing gas and energy services to commercial and residential customers. The Petitioner, International Brotherhood of Electrical Workers, AFL-CIO, Local Union 499, here called IBEW, currently represents 1138 employees¹ employed in various classifications by the Employer at certain facilities located in Iowa, Illinois, Nebraska and South Dakota. The IBEW and the Employer are parties to a collective bargaining agreement effective from May 1, 2006 through April 30, 2009 applicable to those employees.

The Employer also operates a facility in Fort Madison, Iowa that employs six employees. The employees employed at the Fort Madison, Iowa facility have been historically excluded from the larger bargaining unit because these employees were represented by Local Union No. 125, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, here called the UA. The employees represented by the UA perform the same duties and functions

¹ International Brotherhood of Electrical Workers Local 109 is a joint union representative with Local 499 and signatory to the parties Collective Bargaining Agreement, however Local 109 is not a separate party to the instant petition.

as those employees represented by the IBEW, however there is no interchange or common supervision between the two. In February 2008, the UA disclaimed interest in representing the employees of the Fort Madison, Iowa, facility and subsequently, the Employer granted voluntary recognition to the IBEW as the representative of the Fort Madison, Iowa employees.

After being granted recognition, the IBEW also requested that the Employer agree to accrete the Fort Madison, Iowa employees into its existing larger bargaining unit. The Employer refused and instead insisted that the units remain separate bargaining units. The IBEW filed this petition under Section 9(b) of the National Labor Relations Act seeking to include employees employed by the Employer at the Fort Madison, Iowa facility in its larger existing bargaining unit.

The Employer and the Union concede that the Fort Madison, Iowa, employees have been historically excluded from the unit represented by IBEW. However, IBEW contends that unit clarification is appropriate because the classifications which exist at the Fort Madison, Iowa facility are the same classifications covered by the current Collective Bargaining Agreement between the Employer and IBEW. The Employer contends that the existing unit at the Fort Madison facility has been historically excluded, is an appropriate separate unit and therefore, accretion is inappropriate and the petition should be dismissed. After careful investigation and consideration, I find that clarification is not warranted and accordingly, I shall dismiss the petition.

I. BACKGROUND

Since 1935, IBEW has been the exclusive bargaining representative of employees employed at various locations of the Employer's operations in Iowa, Illinois, Nebraska, and South Dakota in the following job classifications:

Crew Leader Electric, Sub Electric Crew Leader, SS Electric Technician & Crew Leader, Underground Crew Leader, Cable Splicer Crew Leader, Electrician Crew Leader, Substation Electrician Apprentice, Substation Electrician

Journeyman, Substation Electric Technician Apprentice, Substation Electric Technician, Electric Meter Technician Apprentice, Electric Meter Technician, Journeyman Lineman Apprentice, Journeyman Lineman, Cable Splicer Apprentice, Cable Splicer, Distribution Technician Apprentice, Distribution Technician, Utility Operator, Crew Leader-Gas, Journeyman Gas Apprentice, Journeyman-Gas, Journeyman Welder Apprentice, Journeyman Welder, Certified Pipeline Welder, Combination Lineman/Serviceman, Combination Serviceman, Tool & Equipment Repair Technician, Serviceman-Gas Apprentice, Serviceman-Gas, Meter & Control Technician Apprentice, Meter & Control Technician, Regulator Technician Apprentice, Regulator Technician, Gas Meter Technician, Locator/Leak Surveyor, Non-Rotating LNG/Propane Plant Technician, Rotating LNG/Propane Plant Technician, Tree Trimmer Working Crew Leader, Tree Trimmer, Crew Leader-Garage, Garage Mechanic Apprentice, Garage Mechanic, Storekeeper, Crew Leader Storekeeper, Meter Utility Person, Rubber Goods/Hot Line Tool Tester, Laborer, Meter Reader-Tier II, Meter Reader, Equipment Operator, Equipment Operator Apprentice, Assistant Unit Operator Apprentice, Assistant Unit Operator, Unit Operator, Non-Rotating Fuel Handling Crew Leader, Rotating Fuel Handling Crew Leader, Non-Rotating Fuel Handling Technician, Rotating Fuel Handling Technician, Non-Rotating Fuel Handling Technician Apprentice, Rotating Fuel Handling Technician Apprentice, Machinist Mechanic Welder Crew Leader, Mechanic, Mechanic Welder, Mechanic Welder Certified, Machinist Mechanic Welder Apprentice, Machinist Welder, Machinist Mechanic Welder Certified, Electrical Crew Leader, Electrical Technician Apprentice, Electrical Technician, Instrument Crew Leader, Instrument Technician, Instrument & Electrical Crew Leader, Instrument & Electrical Technician Apprentice, Instrument & Electrical Technician, Plant Helper, Plant Helper Crew Leader, Custodian, Laboratory Technician Apprentice, Laboratory Technician, Combined Cycle Operator Crew Leader, Combined Cycle Operator, Combustion Turbine Specialist Apprentice, Combustion Turbine Specialist, Facilitator for Behavior Based Safety, Trainer-Electric & Gas, Wind Turbine Technician Crew Leader, Wind Turbine Technician, Senior Service Representative, Senior Customer Account Clerk, Service Representative, Office Services Technician I, Production Control Clerk, Customer Account Clerk, Officer Service Technician II, Mail Service Clerk, and Operations Clerk.

The parties have negotiated successive bargaining agreements for many years. IBEW and the Employer's most current collective bargaining agreement, here called the CBA, covering the aforementioned classifications, is effective from May 1, 2006 through April 30, 2009. The CBA is silent with respect to the Fort Madison, Iowa facility and the parties concede that it has never been discussed during contract negotiations. The CBA does not specify the Employer's locations in each state covered by the CBA. However, all parties agree that the Fort Madison, Iowa facility is not, nor has it ever been, covered by the CBA.

The UA and the Employer had successive collective bargaining agreements covering the employees of the Fort Madison, Iowa facility since 1975. The most recent collective bargaining agreement was effective from March 1, 2005 through February 28, 2008. This agreement was applicable to all employees who worked in the area serviced by the Employer from its Fort Madison, Iowa facility who were employed in the following classifications:

Senior gas Service Technician, Gas Service Technician, Technician 1st Step, Technician 2nd Step, Technician 3rd Step, Technician 4th Step, Utility Person, Meter Reader, Leadperson, and Welder.

The Employer employs a total of six unit employees at its Fort Madison, Iowa location. The six employees consist of one meter reader and five Gas Service Technicians. The six employees perform the work of gas meter reading, welding of gas piping, service work for gas customers and gas distribution construction work. This same work, albeit in different locations, is also performed by the employees represented by IBEW. Unlike the larger unit represented by IBEW, the Fort Madison employees perform duties outside of their specific classifications on a regular basis. While the six employees have the same job classifications and perform the same duties as those represented by IBEW, these six employees have historically had no interchange with those employees in the larger unit represented by IBEW. The six employees do not share supervision with those employees in the larger unit and have separate work rules, pay and benefit scales. In addition, the Fort Madison employees do not perform work outside of the area serviced by the Fort Madison, Iowa facility and are not permitted to bid on jobs at the Employer's other facilities. The larger unit performs duties where needed within their covered area and can bid on jobs at other IBEW-represented facilities.

On February 28, 2008, the UA notified IBEW that it had disclaimed interest in representing the Fort Madison, Iowa employees, and that the six employees had signed authorization cards seeking IBEW representation. Subsequently, the IBEW sought verification of the disclaimer from UA International Union so as not to violate their no-raiding agreement. On March 18, 2008, IBEW received a letter from the UA releasing the six Fort Madison employees.

On March 18, 2008, IBEW notified the Employer that the Fort Madison employees desired to be represented by IBEW. The parties agreed to meet in accordance with Article 1 of their CBA which provides:

Section 2.1 In the event a group of employees not represented by the Union demonstrate their desire to be represented, the Company agrees to immediately schedule a meeting to discuss representation with the System Council or Union Business Manager with ten (10) days written notice from the Union.

Section 2.2 In the event the Company is satisfied there are no matters of disagreement on issues such as a majority number of employees, the craft of class of employees desiring representation, or other similar areas of disagreement, the Company will voluntarily recognize the Union as representing such employee group. At such time the parties will agree on a negotiating schedule to address wages, work rules, and working conditions for such employee group.

Section 2.3 Should there be any disagreement as to the majority of employees, the willingness to be represented by the Union, the classification of employees, or otherwise, the question will be settled in accordance with the provisions of the National Labor Relations Act.

On March 18, 2008, the same day IBEW notified the Employer that it had majority status of the Fort Madison employees, the Employer inspected the cards and granted recognition to IBEW. IBEW then requested that the Fort Madison employees be added to the existing larger bargaining unit. The Employer notified IBEW that it would not agree to add the Fort Madison employees into the existing bargaining unit, but agreed to bargain separately for that unit. In response, IBEW told the Employer it intended to file the instant petition.

On March 31, 2008, the Employer sent IBEW a letter confirming that it would not agree to add the Fort Madison employees to the existing bargaining unit.

The Employer requested bargaining regarding the Fort Madison employees as a separate unit. In response to the Employer's request, IBEW sent a letter requesting that the Employer agree to submit the issue of the appropriate placement of the Fort Madison bargaining unit to an arbitrator for expedited resolution. On April 8, 2008, the Employer responded by stating that accretion matters should be left with the National Labor Relations Board and that given the long history of separate representation, the unit should be kept separate. The Employer again requested bargaining.

II. PARTIES' POSITIONS

The Employer contends that the petition should be dismissed because the Fort Madison employees have been historically excluded from the existing bargaining unit, a new classification has not been created, nor have changes been made to any existing classifications, job duties or responsibilities. In addition, the Employer contends that the Fort Madison employees do not share a community of interest with the larger unit and therefore, the Fort Madison employees constitute a separate appropriate bargaining unit.

IBEW maintains that accretion is appropriate because the Employer's operations are integrated throughout Iowa, the scope of their CBA covers a statewide unit and the job tasks being performed by the Fort Madison, Iowa employees are the same as those covered by their current CBA. In addition, IBEW claims that the Employer has historically accreted formerly unrepresented employees in the contract, during the term of the agreement, however IBEW provided no evidence of this or the surrounding circumstances. IBEW also contends that the prior exclusion of the Fort Madison employees was based solely on the basis of those employees being represented by a

different union and since the identity of the representative has changed, the prior bargaining history is insufficient to establish that accretion is inappropriate.

III. ANALYSIS

The Board will not process a petition seeking to clarify a unit to confirm the exclusion of a historically excluded group of employees. Unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement, or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create doubts as to whether the individuals in such classification continue to be excluded or included in the bargaining unit. *Bethlehem Steel Corp.*, 329 NLRB 243-244 (1999); *Union Electric Co.*, 217 NLRB 666, 667 (1975). However, if a new classification performs the same basic functions as those historically performed by a unit classification, the new classification is properly viewed as remaining in the unit. *Premcor, Inc.*, 333 NLRB 1365, 1366 (2001). Normally, "[a]ccretion cannot be found where 'the group sought to be accreted has been in existence at the time of recognition or certification, yet not covered in any ensuing contract.'" *Id.* at 28. The Board would require "recent, significant changes" in the Employer's operations that virtually obliterate the separate identity of a historically unrepresented group to justify its accretion. *Lennox Industries, Inc.*, 308 NLRB 1237, 1238 (1992) (citing, among others, *Batesville Casket Co.*, 283 NLRB 795, 797 (1987)).

In the instant petition, it is undisputed that the unit which IBEW is seeking to accrete into the existing larger bargaining unit has been excluded from the bargaining unit for many years. It is also undisputed that no new classifications have been created, nor have recent significant changes in job duties or responsibilities of the newly represented employees employed by the Employer taken place. Given that the

Petitioner has failed to present any facts which would suggest ambiguities exist concerning unit placement of individuals, accretion is not appropriate. Indeed, the Petitioner requested and the Employer granted recognition of the Petitioner in a presumptively appropriate single-facility unit that had been represented on such single-facility basis, albeit by another labor organization, for more than 30 years.

Accordingly, I conclude the unit which the Petitioner is seeking to accrete has been historically excluded, no newly established classifications have been created, and no recent, substantial changes in the duties and responsibilities of the employees has occurred so as to create real doubt as the individuals appropriate placement. Therefore, clarification of the unit to confirm the historical exclusion of the Fort Madison employees is not appropriate.

IV. ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

V. 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 the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., (EDT) on August 28, 2008. The request may not be filed by facsimile.

E-filing: In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of these documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board website at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-**

Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

Dated: August 14, 2008
at: Peoria, Illinois

/s/ Ralph R. Tremain, Regional Director

Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14