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Public Service Company of New Hampshire d/b/a Eversource Energy and International Brotherhood of Electrical Workers, Local 1837. Case 01-CA-333259

January 13, 2025

DECISION AND ORDER

BY CHAIR WILCOX AND MEMBERS KAPLAN AND PROUTY

This is a refusal-to-bargain case in which Public Service Company of New Hampshire d/b/a Eversource Energy (the Respondent) is contesting the Union's certification as bargaining representative in the underlying representation proceedings. Pursuant to a charge filed on January 9, 2024, amended on February 20, 2024, by the International Brotherhood of Electrical Workers, Local 1837 (the Union), the General Counsel issued a complaint on April 5, 2024, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certifications in Cases 01-RC-314865 (Unit A) and 01-RC-318931 (Unit B). (Official notice is taken of the record in the representation proceedings as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On May 7, 2024, the General Counsel filed a Motion for Summary Judgment. On November 20, 2024, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On December 2, 2024, the Respondent filed a response to the Notice to Show Cause.

Ruling on Motion for Summary Judgment

The Respondent admits that it has refused to bargain but asserts that it has no duty to bargain and contests the validity of the Union's certifications of representative based on its contention, raised and rejected in the underlying representation proceeding, that the bargaining units include statutory supervisors.¹

¹ In its answer to the complaint, the Respondent denies the paragraphs alleging the appropriateness of bargaining Units A and B, the Union's status as the exclusive collective-bargaining representative of either unit, that it has violated the Act, and that its unfair labor practices affect commerce. The Respondent also denies that the Union made requests to bargain on behalf of Unit A on December 2, 2023, and on behalf of Unit B on January 8, 2024. It admits, however, that it has refused to bargain

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceedings. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it established any special circumstances that would require the Board to reexamine the decision made in the representation proceedings. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with various locations throughout the State of New Hampshire, including an office and place of business in Manchester, New Hampshire (the Manchester facility), and has been engaged as a public utility in the transmission and distribution of electricity to industrial, commercial, and residential customers in the State of New Hampshire.

Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$250,000 and purchases and receives at its Manchester facility goods valued in excess of \$50,000 directly from points outside the State of New Hampshire.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following an election conducted by secret ballot on November 16, 2023, the Regional Director issued a Decision and Certification of Representative in Case 01-RC-314865 on November 27, 2023, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit (Unit A):

All full-time and regular part-time Control Room Operators, System Operators, System Operations Supervisors Level 1, System Operations Supervisors Level 2, and

with the Union on behalf of Unit A since December 8, 2023, and on behalf of Unit B since January 9, 2024, to test the certifications because certain job classifications should have been excluded from each unit. Because those issues were fully litigated and resolved in the underlying representation proceeding, we conclude that the Respondent's denials of the allegations in paragraphs 7, 9, 10, 11, 12, and 13 of the complaint do not raise any issues warranting a hearing.

Operations Shift Supervisors employed at the Employer's Manchester, New Hampshire location, but excluding confidential employees, guards, and professional employees and supervisors as defined in the Act.

Following an election conducted by secret ballot on December 14, 2023, the Regional Director issued a Decision and Certification of Representative in Case 01-RC-318931 on December 22, 2023, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit (Unit B):

All full-time and regular part-time Associate Distribution System Operators; Operators, Distribution Systems; and Leads, Systems Operation Center employed at the Employer's Manchester, New Hampshire location, but excluding confidential employees, guards, and professional employees and supervisors as defined in the Act.

On November 19, 2024, the Board denied the Respondent's request for review of the Regional Director's decisions in both cases. The Union continues to be the exclusive collective-bargaining representative of the employees in both units under Section 9(a) of the Act.

B. Refusal to Bargain

The General Counsel alleges that on about December 2, 2023, the Union, by email, requested that the Respondent bargain with the Union as the exclusive collective-bargaining representative of Unit A. The Respondent admits that it received the December 2, 2023 email but denies that it was a request for bargaining. The Respondent has not raised a genuine issue of material fact, however, because the Respondent also admits that, on December 8, 2023, it informed the Union that it would not bargain over the terms and conditions of employment of the Operations Shift Supervisor position, stating that it had filed a request for review of the Union's certification and that, if the Board affirmed the certification, the Respondent would test the certification by refusing to bargain. Since December 8, 2023, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

The General Counsel also alleges that on about January 8, 2024, the Union, by email, requested that the Respondent bargain with the Union as the exclusive collective-bargaining representative of Unit B. The Respondent admits that it received the January 8, 2024 email but denies that it was a request for bargaining. The Respondent has not raised a genuine issue of material fact, however, because the Respondent admits that, on January 9, 2024, it informed the Union that it was taking the same position regarding the Leads, Systems Operation Center position that it had with the Operations Shift Supervisors in Unit A.

Since January 9, 2024, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in Unit A since about December 8, 2023, and of the employees in Unit B since about January 9, 2024, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Public Service Company of New Hampshire d/b/a Eversource Energy, Manchester, New Hampshire, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the International Brotherhood of Electrical Workers, Local 1837 (the Union) as the exclusive collective-bargaining representative of the employees in bargaining Units A and B.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate units concerning terms and

conditions of employment and, if an understanding is reached, embody the understanding in signed agreements:

Unit A: All full-time and regular part-time Control Room Operators, System Operators, System Operations Supervisors Level 1, System Operations Supervisors Level 2, and Operations Shift Supervisors employed at the Employer's Manchester, New Hampshire location, but excluding confidential employees, guards, and professional employees and supervisors as defined in the Act.

Unit B: All full-time and regular part-time Associate Distribution System Operators; Operators, Distribution Systems; and Leads, Systems Operation Center employed at the Employer's Manchester, New Hampshire location, but excluding confidential employees, guards, and professional employees and supervisors as defined in the Act.

(b) Post at its facility in Manchester, New Hampshire, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 8, 2023.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 13, 2025

Gwynne A. Wilcox, Chair

Marvin E. Kaplan, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the International Brotherhood of Electrical Workers, Local No. 1837, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining units described below.

communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

² If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining units:

Unit A: All full-time and regular part-time Control Room Operators, System Operators, System Operations Supervisors Level 1, System Operations Supervisors Level 2, and Operations Shift Supervisors employed at the Employer's Manchester, New Hampshire location, but excluding confidential employees, guards, and professional employees and supervisors as defined in the Act.

Unit B: All full-time and regular part-time Associate Distribution System Operators; Operators, Distribution Systems; and Leads, Systems Operation Center employed at the Employer's Manchester, New Hampshire

location, but excluding confidential employees, guards, and professional employees and supervisors as defined in the Act.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

The Board's decision can be found at www.nlrb.gov/case/01-CA-333259 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

