

**Victory Electric Cooperative Association, Inc. and
Local Union 304, International Brotherhood of
Electrical Workers,¹ Petitioner. Case 17-UC-72**

July 27, 1977

**DECISION AND ORDER CLARIFYING
UNIT**

BY MEMBERS JENKINS, PENELLO, AND
WALTHER

Upon a petition duly filed on December 13, 1976, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Richard E. Auslander, at Dodge City, Kansas, on January 11, 1977. On February 1, 1977, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 17 issued an order transferring this case to the Board for decision. Thereafter, both parties submitted briefs.

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

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:²

1. The Employer, Victory Electric Cooperative Association, Inc., is a Kansas corporation engaged in the distribution of electrical energy and located in Dodge City, Kansas. The parties stipulated that, during the past calendar year, the gross volume of the Company's sales of goods and services exceeded \$500,000 and that the Company purchased goods and services valued in excess of \$50,000 directly from suppliers located outside the State of Kansas.

It is not disputed, and we find, that the Employer is engaged in commerce within the meaning of Section 2(b) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The parties stipulated, and we find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act and that Petitioner claims to represent certain employees of the Employer.

3. By a representation petition filed in Case 17-RC-8037 on May 26, 1976, Petitioner sought to represent all of the Employer's 10 employees,

excluding office clerical, professional, and supervisory employees and guards as defined in the Act. After a hearing on July 1, 1976, the Regional Director issued a decision on August 13, 1976, in which he found that none of the classifications disputed therein were either supervisory or managerial and ordered an election in a unit composed of all 10 of the petitioned-for employees. The Employer filed a Request for Review of the Regional Director's decision and, on September 14, 1976, the Board issued an order denying the Request for Review but voting subject to challenge two classifications, general foreman or leadman and materials supervisor-purchasing agent or material man. The challenges were not determinative of the outcome of the election and, thus, they were never resolved.

The Employer refused to bargain with respect to those classifications and Petitioner filed unfair labor practice charges in Case 17-CA-7409 which were dismissed by the Regional Director. Thereupon, Petitioner filed the instant petition for clarification of the unit.

Contentions of the Parties

Petitioner contends that both of the aforementioned classifications should be included within the bargaining unit it represents.

The Employer contends that the appropriate bargaining unit must exclude General Foreman Robert Pyle and Materials Supervisor-Purchasing Agent Terry Janson as they are supervisors within the meaning of the Act. The Employer also contends Janson is a managerial employee.

General Foreman Robert Pyle

Pyle is directly responsible to Superintendent Ike Kirkland with whom he shares an office, where Pyle spends 40 percent of his time. Pyle substitutes for Kirkland on occasion. Pyle does much of the engineering and planning work involved in the Employer's service and helps to oversee the work of the construction crew and the two service crews. He assigns work to the crews within the limits of the Employer's job priorities, as do Superintendent Kirkland and the crew chiefs. Pyle spends 20 percent of his time performing work of the crews.

Only Kirkland can fire. Kirkland testified that both Pyle and the crew chiefs can recommend discharge, but this has never happened. Since the beginning of Pyle's tenure as general foreman, two people have

the certification issued September 23, 1976. We do not in this proceeding effect an amendment to that certification.

² The record in the prior representation case involving the unit herein (17-RC-8037) has been considered insofar as it relates to the issues in this proceeding.

¹ Petitioner's name as appears on the unit clarification petition. At the hearing it was noted that this is the proper designation of the Petitioner; however, it was also noted that Petitioner's name appears as "International Brotherhood of Electrical Workers, Local Union 304" on the prior representation petition in Case 17-RC-8037 and therefore presumably on

been hired; both were interviewed and hired by Kirkland, although Kirkland discussed them with Pyle.

Both Pyle and the crew chiefs are consulted whenever a crewmember is under review for a regular 6-month wage increase, although the final decision is made by Kirkland and General Manager Sprenkle. Pyle is consulted on pay raises for crew chiefs and testified that his recommendations have always been followed. Pyle earns 25 cents per hour more than the crew chiefs; he makes out his own timecard, and he does not regularly approve the timesheets of other employees.

Pyle testified that he can assign overtime within the Employer's policy or grant time off but most of the time he checks with Kirkland before doing so. Vacations must be approved by Kirkland.

Pyle testified that he cannot adjust grievances and must refer them to Superintendent Kirkland.

On these facts, we find that Pyle is not a supervisor within the meaning of the Act. Rather we find that Pyle is a leadman who does not participate in formulating the Employer's labor relations policies but who instead merely operates as a conduit for orders and directions from higher management. Accordingly, we will clarify the unit to include the classification of general foreman.

Materials Supervisor-Purchasing Agent Terry Janson

Janson is directly responsible to the office manager, a position which until recently was held by Arnold Esplund and is now vacant. Janson presently reports to General Manager Ray Sprenkle. Janson independently decides what to purchase, has authority to pledge the Company's credit, and for the last 12 months made purchases totaling between \$500,000 and \$600,000.

Janson has his own office next to the warehouse where he spends at least 75 percent of his time.

One man, Warehousemen Russel Buchanan, presently works under Janson. His job is to unload material, help check out material to the crews, and clean the warehouse. Other employees, including part-time and temporary, have worked for Janson in the past. During an ice storm in 1973 there were three or four additional persons hired to work under Janson. Janson effectively recommended the hiring of Buchanan after interviewing several candidates. All the other employees were personally hired by Janson. He has never discharged anyone except for lack of work, although he has the authority to do so.

³ I concur in my colleagues' clarification of the unit to exclude the classification of materials supervisor-purchasing agent.

Janson earns \$5.75 per hour, while Buchanan earns \$3.70; unless the payscale is changed, the maximum that Buchanan could earn would be a little over \$4.

Janson has authority to effectively recommend wage adjustments for warehouse employees and his recommendations have always been followed.

Vacation schedules for warehouse employees are approved by Janson and he has the authority to grant Buchanan time off. He granted Buchanan time off most recently in December 1976 for a dental appointment. Janson has exercised the authority to assign himself and Buchanan overtime.

Janson is responsible for seeing that Buchanan's work is done properly and Janson could be disciplined for the poor work performance of a warehouse employee.

On these facts, we find that Terry Janson is a supervisor within the meaning of the Act and shall clarify the unit to exclude his job classification. In view of this conclusion, we find it unnecessary to pass on whether Janson is also a managerial employee.

ORDER

It is hereby ordered that the certified collective-bargaining unit of all employees of Victory Electric Cooperative Association, Inc., located in Dodge City, Kansas, excluding office clerical, professional, and supervisory employees and guards as defined in the Act, and represented by Local Union 304, International Brotherhood of Electrical Workers, be, and it hereby is, clarified to include the classification of general foreman and to exclude the classification of materials supervisor-purchasing agent.

MEMBER WALTHER, dissenting in part:

Contrary to my colleagues, I would find General Foreman Robert Pyle to be a supervisor within the meaning of the Act. Accordingly, I would clarify the certified collective-bargaining unit to exclude this classification.³

The Employer is engaged in the distribution of electrical energy. Superintendent Kirkland, an admitted supervisor, is in charge of the Employer's outside operations; i.e., insuring that electrical power is provided to the consumers. The Employer utilizes a construction crew, comprised of three employees, and two service crews, comprised of two employees each, in its outside operations. The work performed by the construction crew includes the building of new power lines and the converting of existing power lines. The work of the service crews includes repairing lines, setting poles, connecting and disconnecting lines, and reading meters.

Pyle spends approximately 40 percent of his working time in an office which he shares with Kirkland. Pyle, as does Kirkland, writes up applications of new customers for electric service and handles customer problems and complaints. In addition, Pyle has responsibility with respect to the engineering aspects of the Employer's operations. In this regard, Pyle in his field work will "shoot the line," determine right-of-ways, decide on the type of line and structures to be used, determine the grading and elevation of the line, and stake the line. Thereafter, he draws up construction plans to be used as guidelines for the construction crews. Although Pyle spends approximately 20 percent of his time performing some of the duties of the service crew members, he performs line maintenance work, which comprises some 70 percent of service crew work, only in emergency situations. Pyle does not perform any of the duties of the construction crew members.

The record establishes that Pyle has considerable responsibility for the daily assignment of work to the construction and service crews. Thus, it is undisputed that Pyle and Kirkland together prepare the daily assignments for the crews. While either may actually notify the crews of their assignments, Kirkland testified that Pyle "pretty well assigns them." It is also clear that Pyle has particular responsibility in assigning work to the construction crew. In this regard, the construction crew uses the engineering plans previously drawn up by Pyle as a basic guideline for its work and performs its work according to the stake lines set by Pyle. Pyle, because of his previous work in staking the line, is familiar with potential problems in constructing a line, such as fences, ditches, gaslines, or buried cables, and it is he who informs the crew chiefs of such difficulties. In the event a crew chief encounters other problems in the field, he will call either Kirkland or Pyle. Additionally, it is clear that Pyle in his discretion may exercise the authority to change the order and priority of the work of the crews. Thus, Kirkland testified without contradiction that there have been instances in which Pyle has determined that certain new work is entitled to priority over an ongoing project and that in such cases Pyle in the exercise of his own independent judgment has reassigned the crews to perform the new work.

It is further clear that Pyle exercises the authority to transfer employees. Thus, Pyle often requires the assistance of others in staking a line and on such occasions on his own he will select a crewmember to help him. Furthermore, Kirkland testified without contradiction that Pyle has the authority to transfer crews from one location to another and to transfer

one crew to another crew without Kirkland's approval, and that Pyle has in fact done so.

The record establishes that Pyle does not have the authority to hire and fire. Both Kirkland and Pyle, however, testified that Pyle does possess the authority to effectively recommend discharge. In this regard, although Pyle has not as yet had an occasion to exercise such authority, Kirkland testified without contradiction that if Pyle were to recommend that a crewmember be discharged, he would accept Pyle's recommendation.

Pyle also testified that he has been told by the Employer that he has the authority to recommend wage adjustments for both crewmembers and crew chiefs, and the record indicates that he has made effective recommendations in this regard. As an initial matter, it is significant that Pyle took part in a meeting in November 1975 with Kirkland and Sprengle, the Employer's general manager, at which the Employer's present wage ranges for crewmembers and crew chiefs were established. Furthermore, Kirkland and Pyle together meet with the crew chiefs in making periodic reviews of crewmembers for wage adjustment purposes. After the crew chief makes his recommendations as to whether a wage increase should be granted and the amount of any such increase, Pyle then makes his recommendations. According to Kirkland, if Pyle and the crew chief agree, he "has to go along with them unless I have something that they don't have," and that so far he "has seen it the way they have." Pyle also testified that in one instance he recommended that a crewmember not receive a wage increase and that employee was not granted the increase. Pyle is also consulted with respect to wage increases for crew chiefs. Both Kirkland and Pyle testified that it is necessary that Pyle recommend a wage increase for a crew chief before it would be granted.

While Pyle testified that he does not handle "grievances," he stated that it is his understanding that the crewmembers have "a channel to him" with respect to employee problems. He further testified that, since becoming the general foreman, crewmembers have come to him with problems concerning pay, sick leave, and hospitalization benefits and that he had investigated such problems and attempted to correct them. He related one specific instance, when Kirkland was not present, in which he investigated an employee's complaint and in fact corrected it. Pyle's authority with respect to other aspects of the working conditions of the crewmembers is evident from his admission that he and Kirkland at one time discussed the problem of the crews taking only one-half hour for lunch, rather than a full hour, and that "We decided to stop it."

Additionally, it is undisputed that Kirkland is out of town, on vacation, or on sick leave approximately 10 to 15 percent of the year and during such times Pyle automatically "fills in" for Kirkland. Finally, when Kirkland is out of the office, Pyle approves the employees' timecards.

My colleagues conclude that Pyle is a leadman who merely serves as a conduit for orders and directions

from higher management. I find no basis on this record for such a conclusion. Indeed, the foregoing record facts compel the conclusion that Pyle is a supervisor within the meaning of the Act. Accordingly, contrary to my colleagues, I would clarify the unit to exclude the classification of general foreman.