

In the Matter of DALLAS POWER & LIGHT COMPANY *and* INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-69, AFL

Case No. 16-R-951

SECOND SUPPLEMENTAL DECISION

AND

AMENDED CERTIFICATION OF REPRESENTATIVES

December 27, 1944

On September 19, 1944, the National Labor Relations Board issued a Supplemental Decision, Certification of Representatives, and Order,¹ certifying International Brotherhood of Electrical Workers, Local B-69, AFL, herein called the Union, as the collective bargaining representative of all employees of Dallas Power & Light Company, Dallas, Texas, herein called the Company, engaged in its Overhead Construction Division, Underground Construction Division, Meter Division, and Trouble Division, including senior clerks of the Trouble Division, but excluding stenographers, chief clerks, senior clerks of all divisions except the Trouble Division, and Foremen-Line (supervisory), Class A-1 and A, Foremen-Operating-Pole Setting, Foremen-Operating-Transformer Repair, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

As indicated in the Supplemental Decision, the Union, on September 11, 1944, filed a "Petition for Interpretation of the Board's Decision and Direction of Election . . ."² alleging, in effect, that the Company had indicated that it will refuse to bargain collectively with respect to certain classifications of employees, contending that such employees are supervisory within the meaning of the Board's customary definition, and requesting a clarification of their status. For this reason, the Board issued the Order of September 19, referred to above, directing that the record in this proceeding be reopened and a further hearing be held for the purpose of receiving evidence with respect to the supervisory status of the classifications of em-

¹ 58 N. L. R. B. 409.

² Said Decision and Direction of Election is reported in 57 N. L. R. B. 791.

59 N. L. R. B., No. 228.

ployees which were the subject of the Union's petition, and referred the proceedings to the Regional Director for the purpose of holding said hearing.

Pursuant thereto, a hearing was held upon due notice at Dallas, Texas, on October 14 and 31, 1944, before Glenn L. Moller, Trial Examiner. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

The Company contends that Foreman-Cable (all classes) and Foreman-Utility in the Underground Lines Division; Foreman-Line-Working (Classes B and C) and Foreman-Utility in the Overhead Lines Division;³ and Foreman-Service, Classes A-1 and A, in the Meter Division, are supervisory employees, and should, therefore, be excluded from any collective bargaining unit. The Union contends the contrary.

The record discloses that the Company has, at the present time, no employees engaged as Foreman-Cable, Classes A and C; Foreman-Service, Class A; Foreman-Utility-Pole Hole Digging; Foreman-Utility Concrete; and Foreman-Utility-Cable Pulling. It further discloses that the one person designated by the Company as a Class B cable foreman is presently engaged as an inspector and is not performing the duties of a Class B cable foreman. Under these circumstances, we shall make no disposition at this time with respect to any of the afore-mentioned classifications, and the status of employees occupying them in the future will be dependent upon the terms and conditions of employment under which they will have been engaged. With respect to the employee designated by the Company as a Class B cable foreman, he, as an individual, shall be considered as part of the collective bargaining unit so long as he is engaged in work of a non-supervisory nature.

With respect to the remaining classifications in dispute, we shall discuss their status *infra*, and shall amend our certification of September 19, 1944, in accordance with the findings hereinafter made.

Foreman-Cable—Underground Lines Division. This classification is divided into four classes—A-1, A, B, and C, distinguished only by

³ It appears that Underground Lines Division and Overhead Lines Division are synonymous with Underground Construction and Overhead Construction Division. We shall, therefore, construe the words "Lines" and "Construction" as interchangeable.

length of service and minimum age requirements.⁴ The Company's job description states that cable foremen supervise approximately 20 cable splicers and cable helpers; lay out and plan work for subordinates; assign work; supervise splicing of cable, installation and maintenance of cable, and related equipment; and train cable splicers and helpers. The wage scale for Foreman-Cable, Class A-1, is \$280 per month, and this position is listed with the Treasury Department for wages stabilization purposes. The record discloses that at the present time the Class A-1 Cable Foreman has a crew of approximately 8 employees.

The Company's personnel director testified that the cable foremen are authorized to make changes in plans involving additional expense to the Company, provided they do not constitute major increases in costs; that they have authority to recommend promotions and that these recommendations are effective; that they can send a recalcitrant employee to the office for his pay, and that, as a general rule, when such an event occurs, the employee is discharged. He admitted, however, that he knew of no instance in which such action was taken.

The Class A-1 cable foreman testified that he had had as many as 24 persons working under him, and that he does not ordinarily engage in manual labor himself except when an emergency situation makes it necessary; that he makes recommendations concerning changes of status of subordinates which have sometimes been followed and at other times have not been followed; that the Company calls upon him to make recommendations and that he is "supposed to have" authority to discipline, but he has never exercised it. He further testified that he is also "supposed to have" authority to discharge but he has never done so; that he has reported men for violating rules, but does not know of any instance where such employees were disciplined for the violations; and that he has never been asked for a recommendation concerning the status of employees.

Since the testimony of the Class A-1 cable foreman indicates that he is expected to and does exercise the functions of a supervisor as part of his duties, we shall exclude him.

Foreman-Line (working)—*Overhead Lines Division*. The Company's job description states that the occupants of this position supervise one lineman and one helper, or a crew of 10 linemen and helpers when necessary; supervise the maintenance and construction of overhead lines; and inspect the work of the men in their crews. There are two classes of foremen in this category—Classes B and C. The Class B wage scale is \$240 per month, and the class C wage scale is \$225 per month.⁵ The Foreman-Line (supervisory), Class A, who

⁴ Classes A, B, and C, have been referred to above.

⁵ The Class C working line foremen never have more than two men under them.

is superior to the working line foremen, receives \$255 per month. The classifications of supervisory line foremen⁶ are listed with the Treasury of the United States, whereas the working line foremen classifications are listed with the War Labor Board.

The Company's personnel director testified generally that working line foremen have authority to make effective recommendations with respect to the status of employees, and that such recommendations are given consideration by the Company. According to the testimony of a Class A lineman, who actually had served as a working line foreman, the working line foreman picks up written instructions each morning at the office, drives a small truck in which he and his crew go out to locations where work is to be performed, and performs manual labor alongside his men as part of a team. This witness stated that he has never had a working foreman "order him to do anything"; that he had never given orders to a lineman while he himself acted as foreman; and that, if any difficult problems arose, the working foreman called the division head, who came to the scene and decided what was to be done.

In view of the more specific testimony of this witness, and the entire record, we are of the opinion that Foreman-Line (working), Classes B and C, are not supervisory employees, and we shall include them.

Foreman-Service—Meter Division. There are two classes of service foremen—Class A-1 and A. The Company's job description states that service foremen direct the work of two employees, a lineman and a meterman; that the functions of the service foreman's crew is to connect lines from the main lines to the customer's premises and install and test meters. It further states that service foremen drive a small truck, and prepare reports on work done and materials used. The record indicates that service foremen, Class A-1, receive \$210 per month, and that all classifications of service foremen are listed with the War Labor Board.

According to the personnel director, the service foremen have authority to recommend promotion, discharge, or disciplinary action, and such recommendations are effective. On the other hand, a witness for the Union who worked in the distribution department for 23 years and had close contact with all of the categories herein involved testified specifically that he never knew that service foremen had authority to recommend changes in the status of employees, and knew of no instance in which a service foreman attempted to discipline an employee.

⁶ As indicated in the original Decision in this proceeding, these employees are divided into two classes—Class A-1 and A.

From the record, we are of the opinion that the duties of employees acting as Foremen-Service, Class A-1, are not clearly such as would warrant their exclusion from the collective bargaining unit. We shall, therefore, include them.

Foremen-Utility—Overhead Lines and Underground Lines Division. The Company has listed several classifications of utility foremen in both its Overhead Lines Division and its Underground Lines Division. Thus, in the former division there are listed Tree Trimming, Pole Hole Digging, Pole Hauling, and Concrete Utility Foremen; and in the latter division there are Cable Pulling and Excavating Utility Foremen. The salary range for utility foremen is between \$110 and \$170 per month, and all utility foremen classifications are listed with the War Labor Board.

As hereinbefore indicated, we shall make no findings with respect to Foreman-Utility-Pole Hole Digging, and Foreman-Utility-Concrete in the Overhead Lines Division and Foreman-Utility-Cable Pulling in the Underground Lines Division, positions which are not filled at the present time. With respect to the remaining utility foremen, the record indicates that they are manual workers who are assisted in their duties by semi-skilled and unskilled personnel. Although the Company adduced general evidence to the effect that all utility foremen possess authority to make effective recommendations with respect to the status of their crews, the record discloses that many of the utility foremen were never told until recently that they possess such authority or that they were also considered as supervisory employees. All these employees act as conduits for instructions, and none of them appears to have authority to act upon his own initiative when unforeseen circumstances arise. We are of the opinion that the relationship between utility foremen and their assistants is more that of skilled workers to their helpers than that of supervisors to subordinates. Accordingly, we shall include all employees designated as Foreman-Utility-Tree Trimming and Foreman-Utility-Pole Hauling, attached to the Overhead Lines Division, and Foreman-Utility-Excavating, attached to the Underground Lines Division.

AMENDED CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended,

IT IS HEREBY CERTIFIED that International Brotherhood of Electrical Workers, Local B-69, AFL, has been designated and selected by a majority of all employees of Dallas Power & Light Company, Dallas, Texas, engaged in its Overhead Construction (Lines) Division, Un-

derground Construction (Lines) Division, Meter Division, and Trouble Division, including senior clerks of the Trouble Division, Foreman-Line (working), Class B and C, of the Overhead Lines Division, Foreman-Service, Class A-1 of the Meter Division, Foreman-Utility-Tree Trimming and Foreman-Utility-Pole Hauling of the Overhead Lines Division, and Foreman-Utility-Excavating of the Underground Lines Division, but excluding stenographers, chief clerks, senior clerks of all divisions except the Trouble Division, Foreman-Line (supervisory), Classes A-1 and A, Foreman-Operating Pole Setting, Foreman-Operating-Transformer Repair, Foreman-Cable, Class A-1, of the Underground Lines Division, and all other supervisory employees having authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the aforesaid organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.