

In the Matter of CAROLINA POWER & LIGHT COMPANY, EMPLOYER AND
PETITIONER *and* LOCAL UNION B-907, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, A. F. L.

Case No. 34-RM-3.—Decided December 16, 1948

DECISION

AND

DIRECTION OF ELECTIONS

Upon a petition duly filed by the Employer, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. Local Union B-907, International Brotherhood of Electrical Workers, A. F. L., hereinafter called the Brotherhood, is a labor organization claiming to represent employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Employer's petition sets out, as an appropriate unit for collective bargaining purposes, all regular full-time employees in its Western Division engaged in transmission and distribution line work, customer service work, single phase meter testing, operation and maintenance of the Elk Mountain, Weaver, and Marshall generating plants, maintenance and construction of substations, operation of the Avery Street substation, and garage work, but excluding clerical and professional employees and supervisors. The Brotherhood agrees that all classifications set out in the petition should be included in the unit,

*Chairman Herzog and Members Reynolds and Gray.

but it would also add all regular full-time employees at the Walters hydroelectric plant and dam at Waterville, North Carolina.

The parties disagree as to the supervisory status of the local representatives at Hazelwood and Black Mountain, line foremen, the garage foreman, the foreman at the Elk Mountain steam plant, the substation construction and maintenance foreman, the chief operator at the Avery Street substation in Asheville, and the load dispatchers at the Canton Dispatching Station. The Employer contends that the employees holding these positions are supervisors or, as to the load dispatchers, that if they are held not to be supervisors, they should be found to have no interests in common with a production and distribution unit, and should either be excluded from the unit or permitted a self-determination election.

The Employer is a public utility engaged in the generation and distribution of electric energy in parts of North and South Carolina. It is divided into two areas, the Eastern and the Western, which are about 280 miles apart. The Eastern Area is larger, and is subdivided into a number of administrative divisions. The Western Area, centered at Asheville, covers a territory roughly 30 by 80 miles. It constitutes the Employer's Western Division, except that the Walters hydroelectric plant and dam, although located physically within the Western Area, is not administratively part of the Western Division. In that respect it differs from the other generating stations in the Western Area, which are responsible to the Western Division superintendent on personnel matters while remaining subject, as to operating policies, to the Superintendent of Power, located at the Employer's main office at Raleigh, North Carolina.

Bargaining history: The Employer and the Brotherhood have bargained collectively, without Board certification, for employees in the Western Division since 1938. Prior contracts have covered all but one of the job classifications which the Employer contends are supervisory,¹ but only after objection by the Employer to the inclusion of what it regarded as supervisory positions. When a new contract was being negotiated in March 1946, the Employer agreed to include the disputed classifications only after stipulation by the Brotherhood that the Employer was acting under protest, and that if the Brotherhood petitioned for certification as representative of a collective bargaining unit in any part of the Employer's system other than the Western Division, it would consent to put into effect the Board's findings with respect to supervisors in the current contract covering employees of the Western Division. The March 1946 contract was amended in December 1946, to include the load dispatchers in the unit, after the Brotherhood again

¹The exception was the chief operator at the Avery Street substation.

agreed to such a stipulation. In the negotiations for a contract to succeed the one expiring in March 1948, the Employer refused to include the alleged supervisory positions within the unit and as a consequence, no contract was signed. On March 18, 1948, the instant petition was filed by the Employer, seeking to determine the majority status of the Brotherhood and the composition of a unit appropriate for bargaining purposes in the Western Division.

Scope of the unit: The Employer's Western Division has two hydro-electric plants, known as the Weaver and Marshall plants, and a steam generating plant at Elk Mountain, less than a mile from the Weaver plant. The three plants have a total capacity of 15,000 kilowatts, all of which is normally used in the Western Division to help meet the 45,000 kilowatt load of that Division. The remaining demand of 30,000 kilowatts is supplied by other public utilities or by the Employer's own generating capacity at the Walters plant in the Western Area and generating plants in the Eastern Area.

The Walters plant has a 100,000 kilowatt capacity, and most of the power generated there is used outside the Western Division. It is located in an isolated part of western North Carolina, about 40 miles from the closest point of the Employer's service area in the Western Division. There are 25 employees at the plant and dam, under a superintendent who reports directly to the Superintendent of Power for the entire system. Maintenance work at the plant is done by the employees stationed there, but work on the transmission lines leading from the plant is done by line crews assigned to the Western Division. There are no temporary exchanges of employees between the Walters plant and other generating plants in either the Western or Eastern Areas. In a consent election conducted in October 1946 for Walters plant employees, in which the Brotherhood sought certification as their collective bargaining representative, a majority of the employees voted against the Brotherhood. While the record does not disclose that the Walters plant employees have interests or duties which would prevent their inclusion in the present bargaining unit, we shall adhere to our usual practice and not disturb the unit established as the result of long collective bargaining, in the absence of compelling circumstances warranting a contrary finding.² As a question concerning their representation has been raised by the Brotherhood's contention that the Walters dam and plant employees should be included in the unit, which would otherwise be unresolved, we shall grant these employees an opportunity to vote on whether they wish to join the unit of Western Division employees which we find to be appropriate.

² *Matter of Petersen and Lytle*, 60 N. L. R. B. 1070.

The working foremen: The substation construction and maintenance foreman, the line foremen, the garage foreman, and the plant foreman at the Elk Mountain steam plant are on the lowest level of the Employer's supervisory hierarchy. The individuals in these categories perform comparable functions and possess similar authority. They perform manual work with their crews, which range in size from 2 to 23 men. They make recommendations with respect to hiring, dismissing, or changing the status of men in their crews; and, although their recommendations are subject to an independent investigation by their supervisors, we are satisfied from the record that the foremen have an effective voice in personnel matters affecting their crews. In all cases, the foremen responsibly direct the work of the members of their crews, assigning specific tasks, keeping records of their time, authorizing overtime within the limits set by the Employer, and incurring expenses for food and lodging when the crews are away from their base. Accordingly, we believe that the powers and duties of these foremen are of a sufficiently responsible nature to warrant our finding that they come within the Act's definition of a supervisor. We shall therefore exclude them from the unit.

The local representatives at Hazelwood and Black Mountain: The local representatives serve as the Employer's contact with its customers at these two small communities. They take applications for service, read meters, collect bills, and do all the manual work in connecting and disconnecting service and in maintaining such service, if it does not require extensions of poles. Each local representative is in charge of an office, which normally has only one other employee, an office girl. In the last 6 years, each of the local representatives has made only one recommendation with respect to hiring or dismissing an employee. We are not satisfied from the record that they exercise sufficient independent judgment or perform supervisory functions frequently enough to indicate that they have any substantial supervisory authority. We shall therefore include the local representatives at Hazelwood and Black Mountain in the unit in the Western Division.

The chief operator at the Avery Street substation: This substation transforms high voltage power to lower voltage for use in the city of Asheville. The classification of chief operator at the substation was not included as part of the unit in any bargaining contract between the parties, and was never considered in issue until the Brotherhood contended at the hearing that the position was not a supervisory one. Each of the four regular employees, including the chief operator, works a one-man shift. Although the chief operator is normally absent from shifts other than his own, he exercises general supervision over the other operators by assigning them additional help when needed,

excusing operators from work, and arranging for their replacements. He is responsible for training the operators, and for seeing that safety precautions are adhered to. He is paid by the month, and receives a substantially greater amount than the other operators who are hourly rated. He has on occasion made effective recommendations with respect to hiring or dismissing operators from the substation. We find that he acts in a supervisory capacity, and shall therefore exclude him from the unit.

The load dispatchers: There are four load dispatchers and a chief dispatcher³ in the Western Division, located in their own building on the outskirts of Canton, North Carolina. They work in shifts, at least one of them being on duty at all times. They regulate the flow of electricity throughout the Western Division and into the Eastern Area, using a system of telephone communications by which they direct the various generating stations, substations, connected neighboring power companies, and line crews. The Employer's entire operations and the safety of its operating employees depend to a great extent on the good judgment, accuracy, and skill of the dispatchers. The Employer, although admitting that the dispatchers have no employees under their immediate supervision, nevertheless contends that they are supervisors because they give orders to employees throughout the Division regarding the handling of power. However, it appears that these orders are only with respect to such mechanical operations as opening and closing switches. The employees are at the same time responsibly directed in their daily activities, at their place of work, by foremen or other admitted supervisors. Nor do the load dispatchers have the power to change, or effectively to recommend any change in, status of any employee. Hence, as they have no true subordinates, we find that the load dispatchers are not supervisors.⁴

The Employer, alternatively, contends that the load dispatchers constitute a homogeneous and clearly identifiable group, having separate interests from the other employees in the production and distribution unit, and that they should be permitted to determine by a separate election whether they wish to join the bargaining unit set out in the petition. We have declined to exclude load dispatchers from a unit of production and maintenance employees in a public utility where they had been included in such unit during the course of a long history of collective bargaining.⁵ In cases where there was no history of bargaining for load dispatchers, we have directed separate elec-

³ The parties agree that the chief dispatcher is a supervisor.

⁴ *Matter of Texas Electric Service Company*, 77 N. L. R. B. 1258; *Matter of Rockland Light and Power Company*, 72 N. L. R. B. 1117; *Matter of Illinois Power Company*, 70 N. L. R. B. 1043.

⁵ *Matter of The Toledo Edison Company*, 63 N. L. R. B. 217.

tions to determine their choice of units or to ascertain whether they wished to join an existing unit.⁹ In this case, in view of the greater technical skill required of the dispatchers, the absence of a collective bargaining history clearly demonstrating their representation by the Brotherhood, and their close integration with a system-wide production and distribution pattern, we believe that the dispatchers should be given an opportunity to express their wishes concerning representation in a division-wide unit.

We shall direct that separate elections be held in the following voting groups, excluding from each group clerical and professional employees and supervisors, and shall defer our determination as to the scope of the unit until the the results of these elections have been ascertained.

1. All regular full-time employees in the Employer's Western Division engaged in transmission and distribution line work, customer service work, single phase meter testing, operation and maintenance of the Elk Mountain, Weaver, and Marshall generating plants, maintenance and construction of substations, operation of the Avery Street substation, and garage work, including the local representatives at Hazelwood and Black Mountain, but excluding the substation construction and maintenance foreman, the line foremen, the garage foreman, the plant foreman at the Elk Mountain steam plant, and the chief operator at the Avery Street substation.

2. All regular full-time employees at the Walters hydroelectric plant and dam.

3. All load dispatchers at the Canton dispatching station.

DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, separate elections by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the voting groups described in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those

⁹ *Matter of Rockland Light and Power Company, supra*; *Matter of Illinois Power Company, supra*; *Matter of Pacific Gas and Electric Company*, 69 N. L. R. B. 258; *Matter of Virginia Electric and Power Company*, 66 N. L. R. B. 271.

employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Local Union B-907, International Brotherhood of Electrical Workers, A. F. L.