

the strike was called off on July 10, 1959, and furthermore, is required to prove that if such a change in policy was made, it was made for the purpose of and did, in fact, result in discrimination against the strikers.

If a change in policy or practice did occur, it must have occurred more than a year before the filing of the first charge on March 14, 1961. Under Section 10(b), therefore, September 16, 1960, must be the latest cutoff date, more than a year after the termination of the strike and the failure to employ all strikers who applied for reinstatement.

As recorded in footnote 2, *supra*, Case No. 10-CA-4176, the prior case, 133 NLRB 877, is now pending before the Circuit Court of Appeals for the Second Circuit.

In view of my findings set forth above, I do not find it necessary to determine whether the proviso of Section 10(b) is applicable in the instant case. If it were necessary to decide the question, I would find that the acts complained of here, even if the evidence supported them, cannot be construed as continuing violations of such a nature as would toll the running of the limitation proviso of Section 10(b) of the Act.

Upon the basis of the foregoing findings of fact, and on the record as a whole, I make the following:

#### CONCLUSIONS OF LAW

1. Fitzgerald Mills Corporation, the Respondent herein, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in unfair labor practices as alleged in the consolidated complaint.
4. The General Counsel has failed by the preponderance of evidence to support the allegations of the consolidated complaint.
5. The motion of the Respondent to dismiss the consolidated complaint herein should be granted.

#### RECOMMENDED ORDER

I recommend that the motion of the Respondent to dismiss the consolidated complaint herein be granted, and that an order be entered dismissing the consolidated complaint in its entirety.

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**West Penn Power Company and Utility Workers of America System Local 102, CIO.** *Case No. 6-RC-846. November 7, 1962*

#### DECISION AND ORDER

On June 20, 1951, following a consent election, the Board certified the Petitioner as the collective-bargaining representative of the following employees: "All load dispatchers of the West Penn Power Company who are located in the Springdale, Pennsylvania, power station, and Charleroi, Pennsylvania, dispatching center, excluding all other employees and guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended." Thereafter, the parties entered into collective-bargaining agreements covering this unit.

On February 7 and March 14, 1962, the Employer filed motions with the Board for clarification and/or amendment of the certification, contending that certain employees classified as "transmission and distribution supervisors" were supervisors within the meaning of the Act, and were not, therefore, properly includable in the bargaining unit. On March 15, 1962, the Petitioner filed its statement of position on the Employer's motions.

On April 3, 1962, the Board issued an order remanding the matter to the Regional Director for the Sixth Region for the purpose of receiving evidence on the issues involved. Pursuant thereto, a hearing was held on June 11, 14, and 25, 1962, before Alfred C. Dybeck, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to Section 3(b) of the National Labor Relations Act, the Board has delegated its powers herein to a three-member panel [Chairman McCulloch and Members Rodgers and Leedom].

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

#### FINDINGS OF FACT

Prior to September 1, 1960, the employees in the certified unit were divided into three classifications, namely, Charleroi first load dispatchers, Charleroi second load dispatchers, and Springdale load dispatchers. On the above date the Employer, as part of certain engineering and organizational changes, essentially a decentralization program, discontinued and abolished the latter two classifications and created in their stead the classification of transmission and distribution supervisors, herein called T & D supervisors.<sup>1</sup> All employees who had formerly been Charleroi second load dispatchers and Springdale load dispatchers were interviewed for the position of T & D supervisor and all but one of these employees were "promoted" to the new classification. Of the 24 T & D supervisors chosen, 18 were former load dispatchers.

The Employer now contends that the T & D supervisors have greater duties and responsibilities than the load dispatchers had, and are either managerial employees or supervisors within the meaning of the Act. The Petitioner denies this, and contends that the position of T & D supervisor is not a new job, but entails essentially the same duties as that of the former Springdale load dispatcher and Charleroi second load dispatcher. The Petitioner further argues that the new duties and responsibilities allegedly assigned to the T & D supervisors are either routine in nature or "paper duties."

Prior to the Employer's effectuation of its decentralization program on September 1, 1960, its dispatching centers, located in Charleroi and Springdale, were responsible for the transmission and distribution of

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<sup>1</sup> At the same time, the Employer changed the Charleroi first load dispatcher classification to power dispatcher with admittedly no change in duties. On or about June 27, 1962, the Employer filed a motion to amend its motion for clarification, seeking to introduce testimony that the power dispatchers were supervisors or managerial employees. On July 17, 1962, the Board denied the motion to amend, in part on the ground that nothing contained in the motion warranted exclusion of the former dispatchers as supervisors or managerial employees. Thereafter, the Employer filed a petition for review. As nothing new has been presented warranting either a hearing or a reversal of the Board's Order denying the motion to amend the original motion for clarification, the Employer's petition for review is denied.

power from the generating stations to the district substations. The substations broke the power down to lower voltages for distribution to the Employer's customers. As a means of increasing both its efficiency and economy of operation, the employer established a new operating center in each of its divisions and converted substantially all of its substations to a fully automated basis. The T & D supervisors at the operating centers are now responsible for the complete transmission of power from the generating stations to the customers. In addition, the T & D supervisors were given the duties formerly performed by the operating instructors, another classification abolished by the Employer on September 1, 1960.<sup>2</sup> Accordingly, the present duties and responsibilities of the T & D supervisors consist of work formerly performed by the Charleroi second load dispatchers and Springdale load dispatchers, work done by the operating instructors, and certain duties set forth below not previously performed by any of the above.

The principal duties of the former load dispatchers, now performed by T & D supervisors, include: controlling the operation of all substations, transmission, subtransmission, and communication facilities; maintaining adequate power and voltage at all important substations; coordinating both scheduled and emergency outages of all transmission and substation facilities in their assigned area; calling out and dispatching field personnel to switching locations and, during switching assignments, directing field personnel in the performance of switching and tagging operations required to either remove equipment from service or restore it to service.

All of the above operations, however, involve only predetermined procedures which are set out in detail by the Employer in its operating manuals. In cases involving other power companies, the Board has found such operations not to be indicative of supervisory status, but rather to be merely a routine exercise of authority not requiring the use of independent judgment within the meaning of Section 2(11) of the Act.<sup>3</sup>

The duties which were performed in the past by the operating instructors and are now the responsibility of the T & D supervisors consist of the training of linemen, servicemen, substation operators, and electricians in switching, and the initial rating and subsequent re-examination of the aforementioned employees, along with general foremen and line foremen, in their switching eligibility. This work requires the T & D supervisors at each of the operating centers to spend a portion of their time in the field, usually on a rotating basis. The

<sup>2</sup> Although witnesses for the Employer testified that the operating instructors were considered supervisors, no such determination was ever made by the Board, or agreed to by the parties; nor does the evidence establish that they were supervisors.

<sup>3</sup> See *The Connecticut Light and Power Company*, 121 NLRB 768; *Carolina Power & Light Company*, 80 NLRB 1321; *Illinois Power Company*, 70 NLRB 1043.

evidence in the record, however, convinces us that neither the training nor the rating of field personnel requires the use of any independent judgment on the part of the T & D supervisors. The job of switching and the procedure involved in the switching operation is fully set out by the Employer in its manuals. Thus the T & D supervisor merely trains the field employees according to the manual and then tests them on the procedures they have been taught. In addition, a form containing specific questions to be asked as a part of such test is given the T & D supervisor by the Employer. One of the T & D supervisors testified that when he was an operating instructor he had no employees under his supervision and was not authorized to discipline any field personnel. He further testified that the field personnel, depending on their category, were supervised by the district operating superintendent, general foreman, district manager, substation foreman, or line foreman. In these circumstances, it is clear that the training and rating of employees are of the routine nature only and are not indicia of supervisory status.

The new duties which the Employer contends are performed by the T & D supervisors include: assigning and directing the work of communications technicians; recommending disciplinary action to be taken with employees engaged in switching, and participating in the adjustment of first-level grievances on differences arising from work under their supervision; attending management meetings; manning the districts in the event of storms or in emergency situations; controlling the amount of employee overtime; and being in complete charge of the division during other than regular office hours. The Employer relies for the most part on the aforementioned responsibilities as warranting exclusion of the T & D supervisors for the unit as either managerial employees or supervisors within the meaning of the Act.

The communication technicians repair radios at the substations. They report to the T & D supervisors and are dispatched by the latter to whatever substation has need of them. However, the T & D supervisors testified that they have no personal knowledge with respect to radio repairs and do not actually supervise the communication technicians in their work. Rather, the function of the T & D supervisor again calls for the application of purely routine direction and assignment of these technicians.

At the hearing, contradictory statements were elicited from the T & D supervisors as to their authority to hire, discharge, discipline, or promote employees, or effectively to recommend such action. Similarly, there was a lack of agreement as to their authority to participate in the adjustment of grievances. Although the job description for a T & D supervisor vests in him the authority to discipline employees and participate in the adjustment of first-level grievances, the Board must consider all the circumstances, and not merely the Employer's

self-serving declarations, to determine whether such supervisory authority actually exists.<sup>4</sup> The record herein contains no mention of any instance of discipline or recommended discipline by a T & D supervisor in the period of almost 2 years since the establishment of that classification. The same is true for the settlement of employee grievances. In fact, the only indication of actual supervisory authority on the part of any of the 24 T & D supervisors is 1 single recommendation of a promotion. Certainly, this is too isolated an incident to be proof that all or any of the 24 are supervisors.

The T & D supervisors attend management meetings. However, the record does not disclose what matters are discussed at these meetings, and we are not convinced from an appraisal of the duties and responsibilities of the T & D supervisors that they attend the meetings in a supervisory capacity. To the contrary, their attendance can be explained by the fact that they are responsible for the safe and proper transmission of power from the generating station to the Employer's customers, pursuant to any operating changes the Employer may put into effect from time to time.

The T & D supervisors are authorized to call out personnel to man the districts under specific situations detailed in the Employer's manual. These situations arise either when the T & D supervisors have received notice of an approaching storm, or when, for some reason, the division office is receiving more phone calls than it can handle. This authority, however, is a routine effectuation of company policy, fully set out in the Employer's operating manuals.

The granting of overtime by a T & D supervisor takes place most often in the circumstance where a lineman in the field has been dispatched to a trouble spot, but is unable to finish the job without running into overtime. The lineman may at that time request to be relieved from performing any overtime work. It is standard procedure under these circumstances for the T & D supervisor to relieve the employee if another employee is available, but to have the same employee complete the work (which is almost always of an emergency nature) if no other lineman can be summoned. The Board has dealt with this situation before and has found the granting of overtime in these circumstances to be routine and to fall short of being a supervisory function.<sup>5</sup>

Finally, there is the fact that the T & D supervisors are in complete charge of their respective divisions at night, on weekends, and on holidays. However, there appear to be very few added duties at such times, and the total work involved continues to be merely routine, encompassing little more than those duties formerly assigned to the load dispatchers.

<sup>4</sup> *The Connecticut Light and Power Company, supra.*

<sup>5</sup> *Boston Gas Company, 136 NLRB 219.*

In view of all the foregoing, and on the basis of the entire record, it appears that the T & D supervisors are primarily concerned with the transmission of power from the Employer's generating plants to its customers, and that their other duties are merely incidental to this function, and are routine and not indicative of supervisory status requiring the use of independent judgment. In these circumstances, we find that the T & D supervisors are not supervisors within the meaning of the Act.

Nor can we find that the T & D supervisors are managerial employees. Although they receive a salary as compared to the hourly wages of field personnel, and although their fringe benefits are somewhat higher than those of other employees, there is no evidence that they participate in the formulation of the Employer's policy matters or in any other manner qualify as managerial employees.<sup>6</sup>

As we have herein found that the transmission and distribution supervisors are neither managerial employees nor supervisors within the meaning of the Act, we shall include them in the unit heretofore found appropriate.

### ORDER

IT IS HEREBY ORDERED that the certification issued in the above-captioned proceeding be, and it hereby is, clarified by specifically including in the unit all transmission and distribution supervisors.

<sup>6</sup> *The Connecticut Light and Power Company, supra.*

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**American Manufacturing Company of Texas and Local 47, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case No. 16-CA-1386. November 8, 1962**

### DECISION AND ORDER

On February 6, 1961, Trial Examiner Robert E. Mullin issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. He also found that the Respondent had not engaged in certain other unfair labor practices as alleged in the complaint and recommended that these particular allegations be dismissed. Thereafter, the Charging Party and the Respondent filed exceptions to the Intermediate Report. The General Counsel also filed exceptions to the Intermediate Report together with a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The