

Virginia Electric and Power Company and System Council U-1,
International Brotherhood of Electrical Workers, AFL-CIO,
Petitioner and Utility Employees Association, Intervenor.
Case 5-UC-7. February 2, 1967

DECISION AND ORDER

Upon a petition for clarification duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Maurice J. Nelligan of the National Labor Relations Board. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, briefs were filed by the Petitioner, herein called IBEW, the Employer, herein called VEPCO, and by the Intervenor, herein called UEA.¹

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

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

1. VEPCO is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. IBEW and UEA are labor organizations claiming to represent certain employees of VEPCO.

3. IBEW seeks a clarification of its certification which would entitle it to represent 26 service desk operators, 4 statisticians, and 3 power station clerk typists, who have been represented by UEA in the unit represented by IBEW, which includes electric serviceman dispatchers and plant clerks, because of their overlapping duties.²

In 1944, VEPCO and the Virginia Public Service Company (VPS), were merged. At the time of the merger, IBEW's predecessor represented an agreed-upon unit of production and maintenance employees of VPS which did not coincide with the unit at VEPCO for which it had been certified in 1943. This fact gave rise to a dispute over the appropriate IBEW unit in the merged Company. The same problem did not arise with respect to the clerical unit.

¹ IBEW is the successor to the "International Brotherhood of Local Unions on V.E.P. Properties, AFL," which in 1943, in Cases 4-5227 and R-5228, was certified to represent certain employees in a production and maintenance unit. UEA is the successor to the Utility Workers Union, which in 1946, in Cases 5-R-2347 and 5-R-2348, was certified to represent all office clerical employees.

² The petition also listed distribution inspector, which Petitioner currently represents, among the classifications of employees as to whom an issue is raised, but this classification was dropped during the hearing with the intention of resolving this dispute through pending arbitration proceedings.

Early in 1946, the dispute was resolved by an election, as a result of which, on April 9, 1946, pursuant to a supplemental decision of the Board in Case 5-R-2000, the classifications of "plant clerks, clerks, line clerks, system operators, load dispatchers, electric service men dispatchers," and certain other groups, were added to the previously certified production and maintenance unit.

On April 16, 1946, IBEW's predecessor filed petitions for an election in two companywide units consisting of (1) all technical and professional employees (Case 5-R-2347), and (2) all clerical employees (Case 5-R-2348). Thereafter, VEPCO, IBEW's predecessor, and UEA's predecessor, signed a stipulation for certification upon consent election in a unit consisting of "All scientific, professional, and technical employees . . ." and an identical stipulation for an election in a unit consisting of "All office and clerical employees . . ." Among the eligible voters in the clerical unit were employees classified as service desk operators, statisticians, and distribution department clerks. An election in each unit was held August 12, 1946. A majority of the voters in each election chose UEA's predecessor, Utility Workers Union, as its representative, and the latter was duly certified, on August 30, 1946, as the representative for the employees in each unit. IBEW's predecessor has continued to represent employees in the previously certified production and maintenance unit as added to by the earlier supplemental decision of the Board dated April 9, 1946. Since its certification, UEA and its predecessor have negotiated successive contracts with VEPCO, the recognition clause being based upon the Board's 1946 certifications in Cases 5-R-2347 and 5-R-2348.

IBEW now contends that, over the intervening years, VEPCO has assigned work to the service desk operators, the statisticians, and certain of the plant clerical employees which duplicates or substantially duplicates the work performed by electric serviceman dispatchers and plant clerks who are in the production and maintenance unit represented by IBEW, and that the service desk operators, statisticians, and certain clerk typists represented by UEA should be represented by IBEW. In short, IBEW asks the Board to clarify the production and maintenance unit by including therein all employees represented by UEA who are performing the work of the type performed by classifications which IBEW represents. In its petition, IBEW states that the clarification is desired "to prevent the employer cutting back the number of employees in the petitioner's certified unit."

VEPCO contends that the instant dispute is essentially a dispute over work assignments and that such disputes are not properly resolved in a representation case. Further, VEPCO points out, and

the record clearly establishes, that the classifications of service desk operator, statisticians, and clerk typists were in existence prior to the certifications of 1946. Additionally, VEPCO maintains that all employees in these classifications were listed, by agreement among the parties, as eligible voters in the election for the clerical unit prior to the election of August 12, 1946, and that they chose to be represented by UEA's predecessor.

Prior to the merger of VPS and VEPCO, electric serviceman dispatchers were employed only in VPS. Their duties consisted chiefly in receiving trouble calls by telephone, writing up trouble orders and new work orders, and assigning required work to servicemen. Substantially the same duties were performed in VEPCO by service desk operators. With the expansion of the merged Company's operations and demands for service, the workload of the dispatchers increased to the point that additional service desk operators were employed to relieve the dispatchers of most of their strictly dispatching duties. In course of time, the number of electric serviceman dispatchers, all of whom worked in the old VPS territories, was reduced through promotions, retirements, the consolidation of offices and the generally changed pattern of VEPCO's operations, so that, as of July 1, 1966, only two dispatchers were left on the Company's payroll.

With respect to the plant clerks, statisticians, and clerk typists, the record establishes that in 1945, 1 year after the merger, VEPCO had five plant clerks formerly with VPS, and five who were with VEPCO prior to the merger. At some stations, record clerks were employed, and at others, the same or similar work, was performed by statisticians. As previously observed, IBEW was certified by the Board on April 9, 1946, to represent plant clerks and 8 days later petitioned for a clerical unit including the statisticians but lost the election to UEA's predecessor. The record herein contains a description of the duties of the statistician used during the preelection conference held between VEPCO and the two unions involved, showing that the statisticians "keep plant records on maintenance and operations," and "compile data from plant records as required for correct and efficient operation." Again, it is clear from the record that the consolidations or closing of certain plants or stations, and the general change in the pattern of VEPCO's operations has resulted in a reduction of the number of plant clerks to the point where only one employee is presently carried in that classification. For example, the plant clerks formerly in VPS used to perform work that was done by employees in the stores' department in VEPCO and the latter has added more employees to that department. These employees are included in the production and maintenance unit. One former plant clerk who used to work at the 12th Street power station, was trans-

ferred to another job at her own request for lack of work. At another station, the production records are kept by computers, thereby eliminating the need for a plant clerk there.

An undisclosed number of clerk typists were shown to be employed in the power stations and in the general offices of VEPCO. Those employed in the power stations serve as switchboard operators and receptionists, do most of the typing of various reports, requisitions, memoranda, and keep certain simple records. It was stipulated at the hearing that, with one exception, all clerk typists are properly included in the unit represented by UEA. The one exception was the statistician at the Brema plant who was a clerk typist prior to her promotion to the job she now holds. IBEW contends that even though she was in the clerical unit as a clerk typist she should have been in the unit represented by IBEW because the statisticians and the clerk typists, in the plants, although performing separate duties, are each performing the work that was formerly done by the plant clerks who were in the IBEW unit.

As indicated, the record shows that the classifications in question were in existence prior to the certification of IBEW's predecessor in 1946. Notwithstanding the latter's contention that they should be included within its unit, those categories were held to be within the unit for which UEA's predecessor was soon thereafter certified, which unit has since been represented by UEA and its predecessor. The record further reveals that there has been no substantial change in the nature of the duties of the disputed categories. Under these circumstances, the IBEW cannot now, by way of this motion for clarification of its certification, add these classifications to its unit.³ Accordingly, we shall dismiss the petition.

[The Board dismissed the petition to amend and clarify certification.]

³ Cf. *Lapp Insulator Co., Inc.*, 150 NLRB 596; *Douglas Aircraft Company, Inc.*, 143 NLRB 592, 595-596.

Bedford Can Manufacturing Corp. and Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Allied Trades Union, Local 18, Party to the Contract. *Case 29-CA-450. February 3, 1967*

DECISION AND ORDER

Upon a charge duly filed on November 4, 1965, by Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, Inter-162 NLRB No. 133.