

Arizona Public Service Company and International Brotherhood of Electrical Workers, Local Union No 387, Petitioner Case 28-RC-1944

May 18, 1970

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING, BROWN, AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Jordan Ziprin. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 28 transferred this case to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs which have been duly considered.

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:

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

2 The Petitioner is a labor organization claiming to represent certain employees of the Employer.

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

4 The Employer is a public utility engaged in the generation and distribution of electric power to all kinds of consumers in Arizona, maintaining its own generating plants, substations, transmission lines, and offices throughout the State for this purpose. It also distributes gas and maintains distribution lines in connection with that activity. The Petitioner represents about 1,120 of the Employer's 2,650 employees in a unit comprised principally of production and maintenance employees working in the Employer's electrical system.

The petitioner seeks a separate unit of about 18 persons employed in two classifications, System Load Supervisors (SLSs) and Assistant System Load Supervisors (ASLSs). Petitioner contends that individuals in these classifications are production and maintenance employees with a close and unique community of interests sufficient to warrant their establishment as an appropriate separate bargaining unit. The Employer contends that both the SLSs and the ASLSs are "supervisors" within the meaning of the Act, principally because they assign work to and responsibly direct field employees. However, in the event that the SLSs and ASLSs are found not to meet the statutory definition of supervisor, the Employer contends that individuals in the disputed classifications should then be considered production and maintenance employees who should be included in the overall unit of such employees already represented by Petitioner.

Petitioner was first recognized in a bargaining agreement as the representative of production and maintenance employees of the Employer in 1945, at which time the Employer operated a small radial electric system serving principally the Phoenix and Buckeye areas of Arizona. That agreement, and later ones up to 1949, listed "Load Dispatcher" and "Metro Dispatcher" as classifications within the unit represented by Petitioner. The latter classification still exists, and employees in it perform some but not all functions of SLSs, as herein-after described, but service only metropolitan areas and deal with lower voltage lines. In 1949, the parties mutually agreed to delete the "Load Dispatcher" classification from their bargaining agreement. The name of the "Load Dispatcher" classification was changed to "System Load Supervisor" by the Employer. Testifying from notes taken at the 1949 negotiations, Vice President Woods states that such action was taken because the Employer's system was expanding,¹ and in the Employer's view the Load Dispatchers had assumed increased responsibilities which qualified them as supervisors within the meaning of the Act. Growth of the Employer's system also led to the establishment of a new classification, "Assistant System Load Supervisor." In 1951, the parties agreeing that the new classification should be outside of the production and maintenance unit represented by Petitioner.

Eight SLSs and five ASLSs work in the Employer's main office at Phoenix and are responsible for various aspects of the operation of most of the Employer's utility system, using advanced metering and switching equipment, power control consoles, and a computerized electrical power dispatch system known as Automatic Digital Dispatch and Processing System (ADDAPS). One SLS and four ASLSs are employed at Employer's Flagstaff office where their duties pertain to operation of the northern part of the Employer's utility in Arizona. ASLSs at Flagstaff perform the same duties as the SLS at that location, functioning as part of a full 24-hour three-shift operation. They do not utilize ADDAPS, the computerized dispatch system, which is located only at Phoenix and is operated by the ASLSs there. SLSs and ASLSs are organizationally in the Employer's System Load Dispatch Office. They work under the authority of Mr. Wade, Supervisor of Load Dispatching, and his assistant, Senior System Load Supervisor Hannaman. Wade is in turn responsible to the Employer's manager of system electric operations. The pay range for SLSs is from \$844 to \$1,113 per month, and for ASLSs from \$716 to \$933 per month. Beginning salaries of SLSs and ASLSs are thus comparable to the highest paid classifications of production and maintenance employees represented by Petitioner, such as district serviceman, \$4 771 per hour (\$827 per month), and operations serviceman-metropolitan, \$4 861 per hour (\$842.50 per month). SLSs and ASLSs are required to have a high school education to qualify for their positions, as well as some experience in utility operations and

¹ The Employer's electrical system now serves 11 of 14 counties in Arizona and also has transmission ties with utilities in Utah and California.

adaptability to technical training. While 2 years of college training is preferred for SLS and ASLS positions, the three SLSs who testified at the hearing have had no such training and have advanced to their positions from less skilled ones in the production and maintenance unit represented by Petitioner, such as groundman and truckdriver.

Aided by advance hourly estimates of the electrical demand of consumers made by the Employer's scheduling department, the principal function of the ASLSs at Phoenix is to monitor and maintain an adequate supply of power in the Employer's utility system. Because the demand factor depends on such variable conditions as season, weather, and emergencies, the demand for power may vary from advance estimates. ASLSs determine the actual demand, and regulate the power in the system by ordering generating capacity taken on or off the line, either by use of remote control switches or by using communications equipment to contact generating plant personnel (ordinarily shift supervisors). Energy in the system can also be increased or decreased by purchasing it from, or selling it to, other utilities by any of three different methods. However, the cost factor in such sales is determined by computer, and, while the ASLS has the authority to buy or sell energy, the manner in which he does so in each case is fairly well dictated by such immediate circumstances as the urgency of the need for the power and its availability. ASLSs also receive regular on-the-job training for SLS positions, being the chief source of such personnel for the Employer. Such training lasts about 3 years and is given during peak periods and while SLSs are on vacation or leave.

SLSs in both Phoenix and Flagstaff, and also ASLSs at the latter location, have the duty of keeping the Employer's entire electrical system functioning, from its generating sources to its substations, where the energy is reduced in voltage for distribution to customers. They have at their disposal telephone and radio communication equipment, metering dials which show the amount of power flowing through various parts of the system, remote control switches with which they can energize, deenergize, or test separate circuits, and a power system map which indicates the condition of each switch as open, closed, or subject to special procedures such as "clearance." SLSs monitor the system using the aforementioned facilities to detect any threatened power overload or insufficiency, or any signs of trouble or disruption caused by unanticipated peak or emergency conditions.

In the event of a problem, they allocate and identify its source by testing and switching procedures which utilize the remote control switches and communications devices, and they initiate whatever corrective action is necessary to energize or deenergize electrical circuits as conditions require. Normally, SLSs (and ASLSs functioning as such) dispatch crews of servicemen to trouble spots by orders issued to station managers or foremen, although in remote areas or in emergency situations there may also be direct contact with crewmembers. Where power circuits are affected by conditions arising on their shifts, SLSs may also direct generating plants

to increase or decrease power generation by putting units on or off particular lines. This is ordinarily done by contacting station managers or foremen at such plants. SLSs also plan and schedule when power stations shall be in or out of service where preplanned repair work is involved, and are the final authority on the issuance of holds and clearances which protect the lives of servicemen by deenergizing appropriate sections of the power system. It appears that a substantial amount of the SLS's time is devoted to watching meters, making entries in logs, and operating remote control devices.

The Employer concedes that the SLSs and ASLSs lack most of the ordinary indicia of a "supervisory," as that term is defined by Section 2(11) of the Act, but contends nevertheless that individuals in both classifications do assign work and responsibly direct other employees, and by virtue of such activities qualify as supervisors under Section 2(11).

On the present record we find no merit in the Employer's position. There is, of course, no question that SLSs and ASLSs, both in Phoenix and Flagstaff, perform important functions in terms of the responsibilities imposed upon them and the conceivable implications of their actions. Here, as in a number of earlier cases, the functioning of the Employer's utility system and the safety of its operating and maintenance employees often depends on the good judgment, accuracy, and skill of the SLSs and ASLSs. A preponderance of the evidence in the present case, however, discloses that SLSs and ASLSs, in directing field functions, normally transmit their instructions to managers of area offices or generating stations, or to shift supervisors, construction superintendents, or crew foremen, who in turn provide specific local supervision to field employees performing the requisite tasks. Direct contacts with field employees by SLSs and ASLSs appear to be limited and almost always by telephone, and even then often occur only after the field employees have been ordered by their immediate supervisors to communicate with the SLSs or ASLSs in order to clarify general directions already received from them. Furthermore, orders given directly to field employees by SLSs or ASLSs are normally in the form of routine directives to perform certain known mechanical functions.

The Employer's utility has undergone rapid expansion necessitating a division of the work load formerly performed by its "load dispatchers," such duties now being performed in part by "system load supervisors" and in part by "assistant system load supervisors." The duties of employees in the classifications in question, of course, determine whether they qualify as supervisors under Section 2(11), and not the terminology applied to them by the Employer. It appears from the record that the duties of SLSs and ASLSs are, in their basic content, substantially the same as those of the load dispatchers whose status we considered in the *Connecticut Light and Power Company* case² (and earlier cases cited therein), and found to be ordinary production employees, not supervisors within the meaning of the

² *The Connecticut Light and Power Company*, 121 NLRB 768, 770

Act Thus, such orders regarding the handling of power as are here transmitted by SLSs and ASLSs directly to field employees relate primarily to such regular mechanical operations as opening and closing switches. Also, as in past cases involving load dispatchers, the field employees here who have contact with the SLSs and ASLSs actually receive their principal direction from immediate supervisors who implement substantive orders issued by the SLSs and ASLSs.

The question remains whether SLSs and ASLSs should be represented in a separate unit, as Petitioner requests, or as part of the production and maintenance employees unit already represented by Petitioner, as the Employer maintains. Employees in both classifications have separate skills from those exercised by other unit employees, yet their duties are integrated, through intermediate personnel, with those of the field employees of the Employer. SLSs and ASLSs serve, albeit in a more vital capacity, much the same purposes as any member of the presently represented unit. In the above circumstances, we believe that the system load supervisors and the assistant system load supervisors should be represented, if at all, as a part of the existing unit of production and maintenance employees.³ However, as they are presently excluded from that unit, we believe that they should not now be included without being given an opportunity, by a self-determination election, to express their desire to be included, or to remain unrepresented. Accordingly, we shall direct an election in the following voting group:

All system load supervisors and assistant system load supervisors employed in the Employer's System Load

Dispatching Department, excluding all other employees, clericals, professionals, guards and supervisors as defined in the Act.

If a majority of employees in the above voting group cast their ballots for the Petitioner, they will be taken to have indicated their desire to constitute a part of the existing production and maintenance unit currently represented by the Petitioner, and the Petitioner may bargain for such employees as part of that unit. If a majority of them vote against the Petitioner, they will be taken to have indicated their desire to remain outside the existing unit and unrepresented, and the Regional Director will issue a certification of results of election to that effect.

[Direction of Election⁴ omitted from publication.]

³ *The Toledo Edison Company* 63 NLRB 217

⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.* 156 NLRB 1236. *NLRB v. Wyman-Gordon Company* 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list containing the names and addresses of all eligible voters must be filed by the Employer with the Regional Director for Region 28 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.