

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

NEXTERA ENERGY OPERATING SERVICES,
LLC

Employer-Petitioner

and

Case 33-UC-000181

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 150, AFL-CIO

Union

DECISION AND ORDER DISMISSING PETITION

The Employer-Petitioner, NextEra Energy Operating Services, LLC, here called the Employer, operates a wind farm in Shabbona, Illinois. On June 24, 2011, in Case 33-RC-5185, the International Union of Operating Engineers Local 150, AFL-CIO, here called the Union, was certified as the exclusive collective-bargaining representative for all site technicians, central maintenance technicians, business services technicians, and high voltage technicians employed by the Employer at its Shabbona wind farm, excluding all other employees, managers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

On July 5, 2011, the Employer filed this petition under Section 9(b) of the National Labor Relations Act seeking to clarify the unit to exclude the business services technician position from the bargaining unit. A hearing officer of the Board held a hearing, and the Employer and the Union filed briefs with me, which I have carefully considered.

At the hearing, counsel for the Employer stated the issue to be determined is whether an office clerical employee, Matt Hoffman, should be excluded from the unit.

Contrary to the Employer, the Union contends that Hoffman is a business services technician, a classification specifically agreed as being part of the unit in the Stipulated Election Agreement, here called the Agreement, approved on May 25, 2011. Because the unit description is clear, the Union argues that clarification is not appropriate.

While admitting that Hoffman is classified as a business services technician, the Employer argues the unit description in the Agreement is ambiguous because Hoffman is an office clerical employee, a position excluded from the unit. Counsel for the Employer testified that in the course of discussions with the Board agent regarding the Agreement in Case 33-RC-5185, the Union sought to exclude the high voltage technician from the unit while the Employer sought to exclude Mr. Hoffman. He added that in the course of those discussions, the Employer entered into the Agreement with the understanding that it could subsequently challenge Mr. Hoffman if it needed to after the election was held.¹ At the election, the Employer challenged Hoffman's ballot. However, because the number of challenged ballots was insufficient to affect the results of the election, the issue was not resolved in Case 33-RC-5185. In light of the above, the Employer argues it has properly preserved its position to raise the issue of Hoffman's status in this proceeding.

After careful consideration of the evidence and arguments presented by the parties, I find that the Agreement is clear and unambiguous, and specifically includes Hoffman's position as business services technician as part of the bargaining unit. Moreover, I find that the Employer

¹ Shortly following this testimony, the Union objected to the relevancy of testimony concerning the Board agent's alleged advising to the attorney that the Union was proposing a Norris-Thermador list. The objection was on the ground that such testimony had no value towards the interpretation of the Agreement. It appears that the hearing officer sustained some or all of the objection. However, it is not clear if the ruling applied only to the Norris-Thermador testimony or also to the testimony concerning the Board agent's alleged assertions that the Employer could challenge Hoffman's ballot after the election. Regardless, in light of my determination, the hearing officer's ruling was not prejudicial.

has failed to establish that Hoffman is an office clerical employee. Accordingly, unit clarification is not warranted and I shall dismiss the petition.

I. OVERVIEW OF OPERATIONS

The Employer is engaged in the generation of energy and operates wind farms in several states. The Employer's wind farm in Shabbona, Illinois is the only facility at issue in these proceedings. The Shabbona wind farm occupies an area of approximately ten by ten miles and consists of 145 turbine towers that use the wind to generate energy. The energy generated is converted into electricity and stored/distributed at a substation on the farm. The wind farm employees work out of an office building located near the substation. The office building contains three offices, a conference room, a communications room, a tool room and shop containing a locked inventory storage area.

As of May 2011, 13 employees and a site lead worked at the wind farm. The site lead supervises the farm and performs managerial functions. Eleven of the 13 employees were classified as either site technician or central maintenance technician. As of the date of hearing, these two classifications had been reduced to 6 site technicians and 2 central maintenance technicians. At all times, the only other employees on the site have been one high voltage technician and the business services technician Hoffman.²

All of the employees at the facility work in jeans and steel-toed boots. The site technicians work in pairs and are mainly responsible for troubleshooting the turbines. They spend 90% of their time working outside on turbines when the weather permits. The central maintenance technicians also work in pairs. They perform preventative maintenance on the

² The record reflects that the business services technician classification was previously known as plant technical and notwithstanding the name change, the duties and responsibilities of the position have not changed.

turbines and spend a significant amount of time outdoors. The high voltage technician is responsible for operating the electricity substation.

Business services technician Hoffman spends 90% of his time in the office building. However, he does go outside to deliver parts or tools to the site and central maintenance technicians. He is responsible for preparing monthly reports establishing the facility's productivity and power output. The reports indicate the amount of time the wind farm is shut down due to low electricity prices. Hoffman also does daily budget forecasting. Hoffman also orders and receives parts and supplies, communicates with vendors, and logs parts that have been issued. He does not perform receptionist duties such as answering telephones and he does not routinely prepare correspondence. Most of his work is performed on a computer. Unlike the other employees at the facility, Hoffman's supervisors are located in Iowa and Texas. Additionally, Hoffman serves as the business services technician for a smaller wind farm in Texas. When Hoffman takes time off, his responsibilities are performed by a business services technician located at a different Illinois facility.

The employees generally work from 7 a.m. until 3:30 p.m., excluding overtime work.³ The workday begins with a meeting for all employees in the office building. During this 15 to 30-minute meeting, employees discuss operational issues, including possible inventory concerns raised by Hoffman. The meeting ends with everyone except the site lead and high voltage technician performing stretching exercises.

After the morning meeting, Hoffman generally goes into the office to work on the computer while the site and central maintenance technicians work outside on the turbines. Hoffman generally eats lunch in the office with the site and central maintenance technicians.

³ Hoffman rarely works overtime. It is not clear how much overtime is performed by the other employees.

Through the day, he interacts with the other employees on regular occasions when they come to the building.

Each week, Hoffman and the other employees perform safety observations of each other and enter the results into a computer. Hoffman has also worked on quality improvement stories with the other technicians. These are narratives describing a problem and proposing a solution.

Like the site and central maintenance technicians, Hoffman has been authorized to climb turbines and has been trained to perform CPR. He also participates in a company-wide online learning system.

Hoffman is able to perform certain site and central maintenance technician functions such as resetting the turbines by computer and performing the Employer's version of a lockout tagout procedure. Further, in order for site and central maintenance technicians to be promoted, they must be familiar with completing the business services technician's reports.

Hoffman is paid hourly, as are the other unit employees. All employees enter their hours into a computer system. The employees may all contribute to a 401(k) plan.

II. ANALYSIS

In resolving eligibility issues in stipulated unit cases, the Board has adopted a three-part analysis. First, the Board must determine whether the stipulation is ambiguous. If the objective intent of the parties is expressed in clear and unambiguous terms in the stipulation, the Board simply enforces the agreement. If, however, the stipulation is ambiguous, the Board must seek to determine the parties' intent through normal methods of contract interpretation, including examination of extrinsic evidence. If the parties' intent still cannot be discerned, then the Board determines the bargaining unit by employing its normal community of interest test. *Desert Palace, Inc. d/b/a Caesars Tahoe*, 337 NLRB 1096 (2002).

Here, the Agreement clearly and unambiguously includes the classification of business services technician in the unit. The Employer admits that Hoffman is classified as such and, in fact, admits that Hoffman is the only business service technician employed at the Shabbona wind farm. In light of the above, no other evidence need be examined. The Board has consistently found that a stipulated election agreement is a binding contract to which the parties will be held, and that the Board will not examine extrinsic evidence to determine the parties' intent regarding bargaining unit composition if the unit description of the agreement is expressed in clear and unambiguous terms., *South Coast Hospice, Inc.*, 333 NLRB 198 (2001); *Laidlaw Transit, Inc.*, 322 NLRB 895 (1997). Moreover, the Employer does not assert that the position has undergone any changes since it stipulated to the inclusion of the business services technicians. The Employer also does not claim any new and previously undiscovered evidence impacts the unit placement of the business services technician. In these circumstances, the Employer is bound by its agreement and cannot challenge the unit placement of the business services technician following its voluntary stipulation to his inclusion in the unit. *Premier Living Center*, 331 NLRB 123 (2000); *South Coast Hospice, Inc.*, supra.

Assuming, for the sake of argument only, that the Agreement is ambiguous because it simultaneously includes business services technicians while excluding office clerical employees (establishing some kind of either/or choice for Hoffman's eligibility) I find upon examining the duties of the business services technician position, that the Employer has failed to establish that Hoffman is an office clerical employee. Concededly, Hoffman performs some clerical functions. However, the great bulk of his work is more closely allied to the daily operations of the facility than to general office operations. Thus, his duties more closely resemble those of a plant clerical employee rather than an office clerical employee. Indeed, the previous designation of the

business services technician position as a “plant technical” is indicative of his role. Historically, the Board has taken the position that plant clericals are normally included in production and maintenance units while office clerical employees are excluded. In light of the fact that the Employer has failed to establish that Hoffman’s duties are office clerical functions, I find that he does not fall within that unit exclusion. *Desert Palace, Inc. d/b/a Caesars Tahoe*, supra. Accordingly, in accordance with the parties’ Agreement, he is appropriately included within the unit as a business services technician.

III. CONCLUSION AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings made at hearing are free from prejudicial error and are hereby affirmed.⁴
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.
3. The Union is a labor organization within the meaning of the Act.
4. The bargaining unit currently represented by the Union shall not be clarified as requested by the Petitioner.

IV. ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

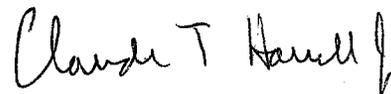
V. RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board’s Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the

⁴ In light of the determination, the Union’s September 9 Motion to Quash Notice of Hearing and October 5 Motion to Reply or Strike are moot.

Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by December 2, 2011. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁵ but may not be filed by facsimile.

Dated in St. Louis, Missouri, this 18th day of November 2011.



Claude T. Harrell Jr., Regional Director
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⁵ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.