**UNITED STATES OF AMERICA**
**BEEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 27**

**PUBLIC SERVICE COMPANY OF COLORADO,**

**Employer,**

**and** **Case No. 27-RC-7997**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 111,**

**Petitioner.**

## DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

**Attachment K**

2. The parties stipulated and I find that Public Service Company of Colorado, herein called the Employer, is a Colorado corporation, with a principal place of business in Denver, Colorado, and is engaged in the retail and non-retail supply of electricity and gas. During the last calendar year, the Employer received revenues in excess of $250,000 and purchased goods valued in excess of $50,000 directly from suppliers located outside the State of Colorado. I find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Further, I find that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that International Brotherhood of Electrical Workers, Local No. 111, herein called the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act.

4. 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.

## STATEMENT OF THE CASE

A. Background

The Employer is a public utility engaged in the generation and distribution of electric power and gas to consumers throughout the State of Colorado. Electricity originates in power plants and is then transported to the homes and businesses of the Employer's consumers. The transportation of electricity is performed by transmission and distribution systems. Electrical energy is transmitted from power plants to substations via transmission lines and then from the substations to consumers over

distribution lines. Distribution dispatchers are principally responsible for monitoring the distribution lines. Substation operators or distribution operators are responsible for monitoring the substations. The transmission lines are monitored by transmission operators, senior transmission operators and senior system operators. These three classifications collectively are referred to as transmission employees. The approximately 14 transmission employees of the Employer are at issue in this proceeding.

Since 1946, the Petitioner has represented the Employer's operating, production, and maintenance employees in a statewide unit of approximately 2,000 employees, herein referred to as the OP & M Unit. The most recent collective bargaining agreement, which was initially effective from June 1, 1997 to May 31, 2000, has been modified to extend until the year 2002.

Distribution dispatchers were found to be subject to collective bargaining in a decision issued by the Regional Director for Region 27 in Case 27-RC-6934 on May 5, 1989. Pursuant to the election results in that matter, distribution dispatchers have been represented by the Petitioner as part of the OP & M Unit. In that same Decision and Direction of Election, the Regional Director found substation operators to be exempt from collective bargaining, because they were statutory supervisors based on the Board's decision in *Big Rivers Electric Corp.*, 266 NLRB 380 (1983). The decision in Case 27-RC-6934 also found the transmission employees at issue in the instant case to be exempt from collective bargaining, based upon a stipulation of the parties that the transmission employees were managerial employees. Thus, the Petitioner has never represented transmission operators, senior transmission operators and senior system operators, and there is no bargaining history concerning these employees and the Employer.

In *Mississippi Power and Light*, 328 NLRB No. 146 (1999), the Board overruled its holding in *Big Rivers Electric Corp.* and held that employees who monitor electrical power distribution are not supervisors pursuant to Section 2(11) of the Act. Based on that holding, on November 4, 1999, the Undersigned issued a Decision and Direction of Election in Case No. 27-RC-7984, finding that six electrical distribution operators employed by the Employer were to be included in the Unit[1]

In the case at hand, the Petitioner seeks an election under the procedures established by the Board in *The Globe Machine and Stamping Co.,* 3 NLRB 294 (1937), to determine whether the transmission operators, senior transmission operators, and senior system operators choose to be represented by the Petitioner as part of the existing OP & M Unit.

The Employer maintains that the transmission employees are supervisors within the meaning of Section 2(11) of the National Labor Relations Act and that they should be excluded from the existing bargaining unit for that reason. Additionally, the Employer argues that senior system operators are not subject to collective bargaining, because they are managerial employees. In support of the latter argument, the Employer states that senior system operators have the authority to bind the Employer by purchasing power from outside providers, and that this fact requires a finding that the senior system

[1] The Employer's argument that the electrical distribution operators were supervisors under Section 2(11) of the Act was rejected in that matter. Additionally, the six electrical distribution operators were found to have a sufficient community of interest with the OP & M Unit, as demonstrated by their similar work functions, employee contacts, common supervision, and regularity and substantiality of working hours, to warrant their inclusion in that unit if they chose to be represented through a secret ballot election.

Additionally, on January 14, 2000, the Acting Regional Director for Region 27 issued a decision in Case 27-RC-7994 in which it was determined that gas system controllers were not supervisors within Section 2(11) of the Act. That decision, which relied in part on *Mississippi Power and Light*, also concluded that the gas system controllers share a sufficiently strong community of interest with the OP & M Unit to entitle them to be represented by the Petitioner in the currently established collective-bargaining unit, if they so desire.

operators are managerial employees. Alternatively, the Employer argues that, if it is determined that the transmission employees are not statutory supervisors or managers, they still do not share a sufficient community of interest with the existing OP & M Unit such that they could be combined with that unit. Rather, the Employers argues that the Board should more appropriately find that the transmission employees would be best represented in their own separate unit.

Henry C. Klaiman is the senior operations coordinator for the Employer's WSCC (Western System Coordinating Council) Transmission Operations Department. Klaiman is responsible for supervising the transmission employees in their monitoring of the Employer's electric transmission system. The Employer presently employs two transmission operators, four senior transmission operators and eight senior system operators.[2]

B. Transmission Operators and Senior Transmission Operators

Transmission operators and senior transmission operators, herein collectively referred to as transmission operators, essentially perform the same functions. Transmission operators are responsible for facilitating routine and emergency maintenance and construction activities via switching orders and for monitoring the entire electrical transmission and generation system to ensure that it is within acceptable voltage parameters and that consumption does not adversely impact the power supply.

At the beginning of their shifts, transmission operators receive telephone calls from linemen who are located throughout the state. The linemen, who are represented by the Petitioner in the OP & M Unit, work twelve-hour shifts from 6:00 a.m. to 6:00 p.m. and are principally responsible for inspecting and repairing electrical lines. The linemen call the transmission operators and give them a description of weather conditions and of

[2] Senior system operators are also sometimes referred to as Automatic Generation Operators or AGC's.

the work the linemen will be performing that day. In addition, the linemen will let the transmission operators know if there were any problems the previous evening. Linemen call the transmission operators again at the end of their shifts to advise the transmission operators that certain work has been completed and that they are safely back in their areas. After these calls are completed, transmission operators start getting calls from the substation electricians and specialists who will be doing the switching.[3]

A switching situation generally arises when a request is made in the field indicating that linemen want to perform maintenance work on a specific piece of equipment The request will include the time the equipment is to be out of service and how long the procedure will take.[4] The transmission operator will review that request and make a determination regarding whether it is feasible for the work to be performed at the proposed time. There is no manual utilized by transmission operators in determining whether or not to agree to the request, and they generally do not consult with Klaiman regarding the feasibility of a switching request. If the transmission operator concludes that the request is feasible, he will schedule the work and prepare a detailed switching procedure that indicates the steps that must be followed in taking out equipment for maintenance. Generally, another transmission operator will review a switching order to ensure that the switching order prepared by his transmission operator co-worker is error-free. If another transmission operator is not available, the switching order may be reviewed by one of the senior system operators. Switching requests may be denied or

---

[3] Transmission operators generally speak with linemen and substation specialists over the telephone or radio. However, they may also have face to face contact with these employees when the transmission operators are in the field for training purposes.

[4] Distribution operators also write switching orders. The difference between the switching orders written by distribution operators and those prepared by transmission operators is that those prepared by distribution operators involve only one substation at a time while those written by transmission operators may involve more than one location. Unlike the switching orders prepared by distribution operators, which can be re-used when the same piece of equipment is to be switched out again, transmission operators cannot always refer back to previous switching orders.

postponed by a transmission operator if the work cannot be accomplished at the requested time due to a heavy load on the system.

After a switching order is prepared, the transmission operator may be required to notifying other companies or departments that the work is going to be performed. Thereafter, arrangements are made for electricians or electrician specialists to report to the site or sites where they will actually be doing the switching.[5] A field supervisor will make the actual decision as to which field employee will actually do the switching. Once the switching procedure starts, the transmission operator reads the procedure step by step to the field employee over the telephone. The instruction will be read back by the person in the field who will execute the instruction and then report back that they actually took the step.

Transmission operators are also responsible for monitoring the electrical system on a computer system known as SCADA[6] to ensure that the system is running within normal parameters. Also, some transmission substations have alarms in them. Transmission operators are responsible for monitoring those alarms. If there are multiple alarms, the transmission operator will respond depending on how many employees are available to him. Thus, if the transmission operator has field employees available that he can send to more than one place, he will do so. If there is only one field employee available, the transmission operator is required to make a determination as to how critical each alarm is as compared to others, and the transmission operator will respond accordingly. There is no book or written procedure that tells a transmission operator how to make such an evaluation. Field employees may be required to work overtime when they respond to requests from transmission operators.

---

[5] Electricians and electrician specialists are also in the existing Unit.

[6] SCADA stands for supervisory control and data acquisition.

Transmission operators must also ensure that the voltage on the electrical system stays within acceptable parameters and to make adjustments if it is too high or too low. There are several options available to transmission operators for making any necessary adjustments. They could, for instance, opt to operate reactive control devices located at the substations, or they may adjust transformer taps.. A transmission operator can also call a power plant and ask a control operator or specialist, both of which are in the bargaining unit, to change the VARS that the unit is putting out on the system.[7] Transmission operators do not tell the plant operators what changes need to be made to meet VARS requirements, nor do transmission operators give them direction as to which generating unit should be adjusted to get the necessary VARS.

System emergencies, such as when there is a break in service due to a vehicle hitting a pole or lightning hitting a transmission line, require the transmission operator to put the system back together. A transmission operator could rebuild the system in such a situation by using either his computer system or seeking out field employees to repair the problem. In the event field employees are utilized to rebuild or repair the system, overtime may be required. A transmission operator could also make the decision in such an emergency situation to shed power and purposely disconnect customers from the system, because having too much load is making the system unstable or unsafe. Finally, transmission operators can request than an employee stop working on a project if they determine that there are unsafe conditions that pose a safety risk to the field employee.

C. Senior System Operators

Senior system operators perform the same functions as transmission operators

[7] A VAR is a component of the AC electric system that contributes to electric and magnetic fields, which are required for motors and transformers to operate. Controlling VAR is essential to voltage control.

and also use the SCADA computer system in the course of their work. Additionally, they are responsible for efficiently and safely operating the electrical generation system and making certain that there are adequate generation resources for load and reserve requirements. Electric power comes into Colorado primarily from the Employer's power plants. However, electricity also enters the State through connected power lines in neighboring states. The use on the electrical system is called the "load", and the input into the system is called "generation".

A senior system operator is responsible for making a determination as to what is the load on the system and to provide sufficient generation to meet the anticipated load. A load forecasting computer program gives this initial load prediction. Thereafter, the senior system operator will adjust the initial load prediction and in doing so, will take into account such factors as different weather patterns, the amount of daylight present, and scheduled events, such as a Broncos game, that may impact load. Senior system operators do not rely on any manuals to predict the load. Rather, they rely on their knowledge, training, and experience in making their predictions. They are required to constantly monitor the system and to make any necessary adjustments throughout the day depending on load requirements.

Senior system operators must monitor and maintain the frequency of the electrical current in the system to ensure that it does not malfunction.[8] This is accomplished by balancing the generation and the load in the control area and facilitating the interchange of power between one control area and the next. In addition to the Employer's area of control, the areas involved in this procedure may also include the electrical facilities of other electrical utilities.

When a senior system operator determines that additional generation is needed,

[8] As noted above, voltage, which is different from frequency, is monitored by transmission operators.

he must decide from what source he wants the additional generation to come. There are no written procedures that utilized by senior system operators in making such determinations, other than some rough cost guidelines. In an emergency situation such as when there is a loss of generation, senior system operators can purchase power from neighboring utilities.[9] This has only happened to this Employer on two occasions in the past three years. Klaiman testified that the Employer is willing to pay any price to receive the power, so it will pay the going rate and forego any negotiating. Senior system operators do not have the authority to sell power.[10] In non-emergency situations, all purchasing decisions are made by realtime traders and not by the senior system operators. Realtime traders, unlike senior system operators, can negotiate prices and try to obtain the best price.

In order to maintain an adequate load, senior system operators are in frequent communication with numerous generation plants. In such communication, they instruct plant control specialists and plant operators, who are OP & M Unit employees, to increase or decrease generation to maintain an adequate frequency. The senior system operators would then be in contact with those employees to make certain that generation was increased or decreased.[11]

---

[9] The Employer is part of a reserve-sharing group of ten utilities in the Rocky Mountain Region. This group insures itself for losses of generation so that an individual utility company does not have to cover that loss of generation all by itself. Thus, if generation is lost by any of the members of this group, an activation occurs that allows that member utility to purchase power from the other members of the reserve-sharing group.

[10] Approximately three years ago, the Federal Energy Regulatory Commission (FERC), regulated that utilities had to separate the reliability function from the market function. Thus, the senior system operator's authority to sell and purchase electricity and to negotiate prices was virtually removed. However, the FERC does allow employees in the reliability function to purchase electric power in emergency situations.

[11] Although most contacts with plant control specialists and operators are over the telephone or radio, a senior system operator will have face to face contact with these bargaining unit employees on occasion.

From time to time, field employees call and ask senior system operators for maintenance outages when maintenance and/or testing activities need to be scheduled in the power plants. A senior system operator would receive such a request and make a judgment as to whether the request can be accommodated at the requested time. A senior system operator is authorized to deny a request for a maintenance outage. Field employees may be required to work overtime in order to complete requests made by senior system operators.

The Employer maintains power plants that burn either coal or gas for fuel. Senior system operators are involved decisions as to which fuel is to be burned at a particular time. Thus, if there is a mechanical problem at a plant and supplies of one fuel are low, the senior system operator may have a plant switch to the other type. A change in fuel may also be directed in the event there is an emissions problem at a plant that can be remedied by the type of fuel use.

When there is an illness or some other vacancy, a senior system operator will fill in for the transmission operators. If there is disagreement between a transmission operator and a senior system operator concerning an operating decision, the senior system operator has the final say. In Klaiman's absence, a senior system operator may cover his phones, however the substituting senior system operator does not perform any other supervisory responsibilities on behalf of Klaiman in that circumstance.

D. Work Location, Wages, Benefits and Contact with Bargaining Unit Employees

Transmission employees work at Lookout Center in Golden, Colorado. This is the same facility at which the gas controllers in Case 27-RC-7994 are employed. The distribution operators in Case 27-RC-7984 were also employed at Lookout Center until the spring of 1999. Approximately 125 to 150 individuals work at that location.

Employees working at Lookout Center can enter the facility only with a special clearance identification. One electrician specialist, who is part of the OP & M Unit, works at Lookout Center on an as needed basis.

Like gas system controllers, transmission operators are rated at Grade Level 86. Under this pay scale, transmission operators earn between $29.09 and $31.77 an hour. The senior system operators are rated at Grade Level 87 and earn between $32.10 and $34.48 an hour.

Transmission employees are generally on duty 24 hours a day, 7 days a week. They typically work 12-hour shifts from 6:00 a.m. to 6:00 p.m. and from 6:00 p.m. to 6:00 a.m. However, there are some daytime training and relief shifts that may only involve eight hours. Gas system controllers are also on duty 24 hours a day, 7 days a week. They work 12 hours shifts three days a week and then every other week they work and eight-hour shift on a Sunday. The 12-hour shifts of the gas system controllers extend from 5:00 a.m. to 5:00 p.m. and then 5:00 p.m. to 5:00 a.m. Other OP & M Unit employees are generally required under the current collective bargaining agreement to work eight hours shifts. However, there are some OP & M Unit employees in job classifications requiring 24-hour coverage who work either 10 or 12 hour shifts.

Transmission employees talk to field personnel principally by means of a telephone or radio. Face to face contact only occurs when transmission employees go on field trips and meet the field personnel. Transmission employees normally do not take breaks or eat lunch with OP & M Unit employees.

The benefits received by transmission employees and OP & M Unit employees are somewhat different. All benefits for OP & M Unit employees are governed by the collective bargaining agreement negotiated by the Employer and the Petitioner. Transmission employees receive the same benefits as currently received by gas system controllers.

A majority of the transmission employees were formerly bargaining unit employees. There have been transmission employees who have transferred back into the bargaining unit.

## ANALYSIS AND CONCLUSION

As stated above, the Employer contends that the transmission employees are statutory supervisors and that they should be excluded from any collective bargaining unit for that reason. Additionally, the Employer argues that the senior system operators are managerial employees and notes that the Petitioner previously stipulated to the managerial employee status of the senior system operators due to their authority to bind the Employer by purchasing power from outside providers. In contrast, the Petitioner takes the position that the transmission employees, like the distribution dispatchers and the system dispatchers in *Mississippi Power and Light,* are not supervisors within the meaning of Section 2(11) of the Act. Further, the Petitioner argues that the transmission employees, including the senior system operators, are not managerial employees. The Petitioner further argues that the transmission employees in question have a sufficient community of interest with the OP & M Unit employees to permit a vote as to whether the petitioned-for employees want to be represented by the Petitioner in the existing unit.

Section 2(11) of the Act defines the term "supervisor" as:

> Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

An individual who possesses any of the supervisory indicia listed above will be deemed to be a supervisor only if the authority is exercised with independent judgement on behalf of the employer and not in a routine manner. See *Panaro & Grimes,d/b/a Azusa Ranch Market*, 321 NLRB 811 (1996), citing *Chicago Metallic Corp.*, 273 NLRB 1677 (1985), and *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). An individual who exercises some "supervisory authority only in a routine, clerical, perfunctory or sporadic manner" will not be found to be a supervisor. Leadmen and other "minor supervisors" are not necessarily statutory supervisors. *George C. Foss Co.*, 270 NLRB 232, 234 (1984), enf. 752 F. 2d 1407 (9th Cir. 1985). In determining whether an individual is a supervisor, the Board has a duty not to construe supervisory status too broadly, because the employee who is found to be a supervisor is denied rights that are protected under the Act. *Hydro Conduit Corp.,* 254 NLRB 433 (1981). The burden of proving that an individual is a supervisor rests on the party alleging such status. See *Adco Electric*, 307 NLRB 1113 (1992); *Tucson Gas & Electric Company*, 241 NLRB 181 (1979); and *California Beverage Co.*, 283 NLRB 328 (1987).

The Decision and Direction of Election in Case 27-RC-6934 specifically excluded transmission operators, because it was determined that they were supervisors within the meaning of Section 2(11) of the Act based on the Board's holding in *Big Rivers*, supra. That decision was recently overruled by the Board in *Mississippi Power and Light*, supra. In addition, in Case 27-RC-6934, the evidence indicated that senior system operators had broad authorization to purchase additional needed power from other generating companies. Based on that evidence, the parties stipulated that the senior system operators

were managerial employees, and the Regional Director excluded them from the voting group.

I conclude that the facts in the instant matter are similar to those presented in *Mississippi Power and Light*, and that, like the distribution operators and system dispatchers in *Mississippi Power and Light*, the transmission employees at issue are not supervisors within the meaning of Section 2(11) of the Act. I further conclude that the authority of the senior system operators to make purchases of electrical power on behalf of the Petitioner have largely been reduced to limited situations, thus, they are not managerial employees.

In the instant case, the record evidence is uncontroverted that transmission employees do not have the authority to hire, schedule, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust grievances of employees or effectively to recommend such action. However, the Employer argues that transmission employees are supervisors under Section 2(11) of the Act, because they assertedly assign and responsibly direct other employees using independent judgement. In support of its argument, the Employer contends that *Mississippi Power and Light* is distinguishable from the present case in that the transmission employees herein exercise greater authority to direct field personnel than the distribution dispatchers and system dispatchers in *Mississippi Power and Light.*[12]

In *Mississippi Power and Light* distribution dispatchers and the system dispatchers directed field employees as to switching sequences to follow in emergencies.

[12] Additionally, the Employer argues that transmission employees can reward or effectively recommend that an employee be given a non significant monetary bonus pursuant to a service excellence program. However, the evidence is undisputed that this program has not been in place for several years.

Transmission employees in the instant matter perform the same duties. In *Mississippi Power and Light*, the distribution dispatcher's role in assigning field employees included calling in additional troublemen or line crews for major problems; dispatching crews to trouble spots; setting priorities on the order of work and assigning themselves overtime. Again, much of this is the same for the transmission employees in the instant matter. Consistent with the authority of the transmission employees herein, the distribution dispatchers and system dispatchers in *Mississippi Power and Light* also designed their own switching orders and then communicated with the field employees in their implementation. The Board in *Mississippi Power and Light* concluded that the judgment exercised by the dispatchers in selecting or designing switching sequences was a function of the dispatch work, based on their training, knowledge, and experience and did not constitute the exercise of independent supervisory judgment. Similarly, in *Mississippi Power and Light*, the Board found that the dispatcher's communication with field employees regarding the implementation of switching sequences did not entail the exercise of statutory independent judgment, but rather the almost routine or clerical relay of complex schemata. *Id.* at 15. I find that the transmission employees in the instant matter similarly do not exercise independent judgement in regard to directing the work of OP & M Unit employees sufficient to warrant a finding that the transmission employees are supervisors within the meaning of the Act.

I further conclude that senior system operators are not managerial employees under the Act. Although the Act makes no specific provision for "managerial employees", under Board policy this category of personnel has been excluded from the protection of the Act. See *Ladies Garment Workers v. NLRB*, 339 F.2d 116, 123 (2d Cir.

1964); *Ford Motor Co.*, 66 NLRB 1317 (1946); *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320 (1948). Additionally, the Supreme Court has held that Congress intended to exclude managerial employees. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 289 (1974). "Managerial employees" are now narrowly defined as employees in executive positions who have authority to formulate, determine, or effectuate employer policies with respect to employee relations matters or whom other employees could reasonably believe to have such authority. *North Arkansas Electric Cooperative, Inc.*, 185 NLRB 550 (1970). In *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), the Supreme Court described managerial employees as follows:

> Managerial employees are defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." These employees are "much higher in the managerial structure" than those explicitly mentioned by Congress which "regard [them] as so clearly outside the Act that no specific exclusionary provision was found necessary." Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy. Id. at 682-683

As noted above, senior system operators were previously stipulated to be managerial employees in Case 27-RC-6934, because these employees had the broad authority to bind the Employer by purchasing electrical power from vendors. Record evidence indicates that this responsibility was changed as a result of the changes formulated by the FERC so that senior system operators can now only purchase electrical power in emergency situations. Although, the Employer contends that all of the reasons

for finding managerial status in 1989 still exist today, however the record is not supportive of the Employer's position.

Purchasing power in emergency situations is the aspect of the senior system operator's duties that provides the primary basis for the Employer's contention that these individuals are managerial employees. The evidence shows that such purchases occur only sporadically and in a routine fashion. As a matter of fact, it is uncontroverted that senior system operators can only make such purchases in emergency situations and that they have only made two such purchases of electrical power in the last three years. I find that such routine purchasing duties fail to show that the senior system operators are, in fact, managers. See *Concepts & Designs*, 318 NLRB 948, 956-957 (1995).

Although transmission employees may approve employees to work overtime, it is undisputed that this approval is based upon prior authorization by the Employer's management in order to complete work necessary to ensure that there is no disruption of service for the Employer's customers. Such approval of overtime does not involve the use of independent judgment within the meaning of Section 2(11) of the Act. Further, the transmission employees do not schedule the work of other employees, and they are required to contact specific employees in isolated areas to perform certain work functions. Moreover, altering work by ceasing work or working overtime on limited occasions does not establish Section 2(11) supervisory status. *JC Brock Corp.*, 314 NLRB 157, 158 (1994). See also, *Chevron Shipping Company*, 317 NLRB 379, 381 (1995) and *First Western Bldg. Services,* 309 NLRB 591, 602 (1992).

The compensation received by the Employer's gas system controllers, as compared to at least some of the OP & M Unit employees, is roughly equivalent.

Additionally, pay rates are clearly a secondary indicia of supervisory status. As such, absent evidence of primary indicia, the fact that a transmission employee is generally paid more than most bargaining unit employees would be insufficient to warrant a finding that such individuals are true supervisors under Section 2(11) of the Act. Finally, in this regard I note that, unlike the transmission employees at issue, most of the Employer's managers and supervisors are salaried.

In summary, I conclude that the transmission operators, senior transmission operators and senior system operators are not supervisors within the meaning of Section 2(11) of the Act. I further find that senior system operators are not managers under the Act. I also conclude that the transmission operators, senior transmission operators and senior system operators, herein sought by the Petitioner, possess no significant group homogeneity apart from the represented operating, maintenance and production employees, which would warrant their establishment in a separate appropriate unit. Rather, I find that the unrepresented transmission operators, senior transmission operators and senior system operators share a sufficiently strong community of interest with the operating, production and maintenance employees to entitle them to be represented by the Petitioner in the currently established collective-bargaining unit, if they so desire. This community of interest is demonstrated by similar work functions, employee contacts, and regularity and substantiality of working hours per week.

Accordingly, I direct an election in the following group for this purpose:

> All full time and regular part time transmission operators, senior transmission operators, and senior system operators, excluding professional employees, confidential employees, guards, supervisors as defined in the Act, and all other employees.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be deemed to have indicated their desire to be included in the existing operating, production, and maintenance employees unit currently represented by Petitioner, and it may bargain for those employees as part of that unit. If a majority of ballots are cast against representation, the employees will be deemed to have indicated the desire to remain unrepresented, In that event, a certification of results of election will be issued. See *The Globe Machine and Stamping Co.,* supra.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.[13] Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the

[13] Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 111

## LIST OF VOTERS

In order to ensure 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 in 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 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the *full* names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-5433 on or before **January 28, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, not shall the filing of a request for review operated to stay the requirement here imposed.

## 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 Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **February 4, 2000**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when

scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 21st day of January 2000.

B. Allan Benson, Regional Director
National Labor Relations Board
Region 27
700 North Tower, Dominion Plaza
600 Seventeenth Street
Denver, Colorado 80202-5433

177 8520 2400
177 8520 3200
177 8520 4700