

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**Pharr, Texas**

**MAGIC VALLEY ELECTRIC COOPERATIVE,  
INC.<sup>1</sup>**

**Employer**

**and**

**Case 16-RC-180237**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO, LOCAL  
UNION 66**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Petitioner seeks to represent a unit of approximately 54 lead linemen, linemen, apprentice linemen, groundmen, and operators employed by the Employer in Pharr, Texas; Edinburg, Texas; Mercedes, Texas; and Brownsville, Texas, where the Employer is engaged in the business of operating a cooperative that distributes and sells electricity to its members. The petitioned-for unit consists of employees classified as lead linemen, whom the Employer maintains are supervisors as defined by Section 2(11) of the Act. More specifically, the Employer maintains that the petitioned-for unit includes 15 lead linemen<sup>2</sup> who are 2(11) supervisors under the Act because they assign and responsibly direct other employees in their work and evaluate employees' work performance. Petitioner contends that the Employer's lead linemen are not supervisors under the Act and should be included in the petitioned-for unit. Petitioner is prepared to and agrees to proceed to an election in any unit found appropriate in this matter.

A hearing officer of the Board held a hearing in this matter and the parties were permitted to file post-hearing briefs. As described below, based on the record and relevant Board cases, I find that the unit sought by Petitioner is an appropriate unit for collective bargaining. As explained below, I conclude that the Employer did not meet its burden to demonstrate, by a preponderance of the evidence, that its lead linemen are supervisors within the meaning of Section 2(11) of the Act.

**I. STATEMENT OF FACTS**

**A. The Employer's Operations**

The Employer is a Texas corporation that operates an electric cooperative utility distributing and selling electricity to its members. The Employer maintains a principal office in

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<sup>1</sup> The name of the Employer appears as amended at the hearing to reflect its correct legal name.

<sup>2</sup> Initially, the Employer asserted that linemen on two-person crews were also 2(11) supervisors; however, at the close of the hearing and in its post-hearing brief, the Employer stipulated that those linemen (Pedro Noe Beltran, Rolando Garza, Marcos Hernandez, and John Paul Reyes) were not supervisors under the Act and were properly included in the petitioned-for unit. Accordingly, the only issue for consideration is whether the Employer's lead linemen are 2(11) supervisors under the Act.

Mercedes, Texas with other offices in Edinburg, Texas; Brownsville, Texas; and Pharr, Texas. The Employer services approximately 90,000 members throughout rural south Texas.

The Employer's General Manager is John Herrera. The Employer's operations are divided into eastern and western divisions, with the eastern division encompassing Donna to Brownsville and the western division encompassing Donna to Mission and up to McCook. Both the eastern division manager, Brian Acosta, and the western division manager, Atanacio ("Tachi") Hinojosa, report to Herrera. Operations Superintendent Bernardo ("Bud") Salazar is the eastern division operations superintendent and reports to Acosta, and David Perez is the western division operations superintendent and reports to Hinojosa. Both operations superintendents supervise lead linemen, linemen, equipment operators, apprentices, groundmen, dispatchers, and clerical employees. In addition to operations personnel, division managers oversee customer service employees, call center, engineering, and contract coordinators. Management at the operations superintendent level and above are all paid on a salary basis; lead linemen and linemen are all paid an hourly rate.

## **B. Supervisory Indicia**

### **1. Evidence Regarding Lead Linemen Responsibly Directing Work**

Operations crews consist of construction crews and service crews. The determination of whether linemen and lead linemen serve on construction crews or service crews is made by the operations superintendents. Construction crews generally consist of three to five employees, typically a lead lineman or lineman, apprentices, a groundman, and an operator, depending on the nature of the job. Service crews, or truck crews, are two-man crews consisting of a lead lineman or lineman and an apprentice. Lead linemen (and linemen serving on two-man crews) are responsible for overseeing the personnel on their crews as well as working side-by-side with their crew members.

Construction crew shifts are typically 7:00 a.m. to 4:00 p.m., and service crew shifts are typically 8:00 a.m. to 5:00 p.m., with break and lunch times taken at variable times depending upon that day's jobs. A typical day for a construction crew begins with the operations superintendent reviewing the staking sheets for new jobs and assigning those jobs to crews depending upon the location. Staking sheets are documents prepared by the Employer's engineers that show a job's location and include directions from the engineers on how the job is to be built or performed, including what materials are needed. Operations superintendents do not accompany crews in the field; they go into the field to perform spot checks approximately four to five times annually. Once in the field, individual tasks necessary to perform the build to the engineers' specifications are assigned to crew members by the lead lineman or lineman. This is done at a "tailboard" meeting among crew members where tasks, safety issues, and potential job hazards are discussed. In addition, the lead lineman determines in what order the day's jobs (anywhere from 3-10 per crew) will be performed.

Service crews receive their daily job orders, approximately five to twenty per day, from the dispatcher (or sometimes the operations superintendent). The lead lineman or lineman on a service crew determines the order the jobs are performed, based on location and/or urgency.<sup>3</sup>

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<sup>3</sup> As lead lineman Jesus ("Jesse") Alanis testified, lead linemen have received training regarding the priority of work, with outages receiving the highest priority and new customers receiving second priority.

Service crews also receive staking sheets, or sketches, of the jobs they are assigned to perform that show a drawing of the completed job and the location of the job; as lead lineman Jesus ("Jesse") Alanis testified, the staking sheets are essentially work orders that tell the crew how the job is to be completed. If the job cannot be completed as directed in the staking sheet, the lead linemen must contact the engineers to obtain approval before making changes, such as moving the location of a pole. The lead lineman or lineman also conducts tailboard meetings with the crew on service crews to review the day's assignments and discuss safety issues. Lead linemen on service crews, like construction crews, work side-by-side with the other crew members.

Certain tasks can only be performed by certain crew members. Because linemen are certified, they can perform more tasks than apprentices. For example, an apprentice 1 cannot perform "hot work," referring to work on energized electrical lines; an Apprentice 1 can otherwise perform all of the job duties of a lineman but cannot touch primary (7200+ voltage) with his hands. An Apprentice 2 can perform all of the job duties of a lineman with appropriate supervision; an Apprentice 3 can also perform all of the job duties of a lineman and requires only minimal supervision to do so. Tasks can only be assigned to apprentices in accordance with the skills set forth in the apprentice book for each level. Lead linemen are responsible for documenting an apprentice's skills proficiency in the apprentice book before an apprentice may be advanced.

Salazar testified that lead linemen have the authority to shut a job down if it is not being performed correctly but no specific examples were provided in which a lead lineman has done so. Lead linemen are responsible for safety on a jobsite and have the authority to direct employees to correct their actions if they are not being performed correctly or safely. If an accident occurs on the job-site, the lead lineman is responsible for reporting the accident and completing an incident report, which is forwarded to the operations superintendents and then the division managers.

Lead linemen have authority to authorize crews to work overtime in order to complete a job and may do so without obtaining approval from the operations superintendents, up to a few hours. Alanis testified that he is required to obtain approval before working overtime beyond five hours unless it is an outage or emergency situation. Lead linemen do not have offices and do not attend management meetings. Management training for lead linemen, in the form of leadership programs, is voluntary. However, the Employer provides "foreman training" to all linemen.<sup>4</sup>

## **2. Evidence Regarding Lead Linemen Rewarding/Promoting Employees**

Lead linemen perform annual evaluations for all members of their crew; operations superintendents receive blank evaluation forms from Human Resources for all operations personnel, and each lead lineman is given the forms to complete for their individual crew members. In addition, the division managers pull information on crew members (i.e., incident reports) and provide that information to the operations superintendents to be used during the evaluation process. The lead linemen then return the completed forms to their operations superintendent, who reviews the forms to ensure that they are complete before inputting the information into the Employer's computer system. If the operations superintendent disagrees

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With regard to job locations, service crews generally choose the farthest location and move inward or vice versa.

<sup>4</sup> Foreman training would be completed prior to a lineman becoming a lead lineman.

with the evaluation or recommendation of the lead lineman, he will call the lead lineman in to discuss the evaluation. As an example, Salazar testified about an evaluation that was completed by lead lineman Juan Sanchez for employee Joshua Nieto; Sanchez originally rated Nieto a "5" (which is the highest possible rating) on safety, but upon review, Salazar called Sanchez in to remind him that Nieto had an accident in which property was damaged, and Sanchez subsequently lowered Nieto's safety rating to a "3." Similarly, when lead lineman Joe Lopez completed an evaluation for employee Marcos Basaldu, Salazar disagreed with Lopez's rating of "4" with regard to vacation time; after conferring with Salazar, Lopez lowered the rating to "3." In the case of the lead linemen who report to David Perez, they meet with Perez and orally provide him the ratings for their crew members, which Perez inputs into the computer system. Similar to Salazar, if Perez disagrees with a lead lineman's rating, he will discuss the matter with the lead lineman at that time, prior to the numbers being input into the computer. However, Perez has at times informed his lead linemen that a suggested rating "has to change." In most cases (9 times out of 10), Perez accepts the rating suggested by the lead linemen. Perez's lead linemen do not participate in meetings between Perez and the crew members to discuss their evaluations; Salazar's lead linemen participate in individual review meetings, which are conducted with operations employees jointly by Salazar and the reviewing lead lineman.

The Employer provided examples of approximately 10 performance evaluations completed by lead linemen, which consist of approximately 50 categories/items in which the evaluator must rate the employee on a scale of 1 to 5; in about half of the evaluations, the reviewer made only the numerical rating in each category and did not provide additional comments. Lead linemen do not receive any training on how to complete evaluations or determine ratings for crew members.

Merit increases are determined by the division managers; lead linemen do not make recommendations as to merit increases, although evaluations do play a part in determining appropriate merit increases. Evaluations are also used to determine promotions to lead lineman positions.

Any employee who does not receive a 3.0 rating on a performance evaluation is automatically placed on a 90-day performance improvement plan. Lead linemen are expected to implement those plans and monitor and document an employee's progress during that 90-day period. Division Manager Tachi Hinojosa testified that at least one lead lineman, Oscar Aleman, has been disciplined for failing to document the progress of an apprentice, Robert Ybarra, who was placed on a performance improvement plan. The expected documentation consisted of recording if the employee came to work early or late and simple documentation as to whether the employee was progressing or not progressing.

Apprentices are classified as level 1, 2, or 3 apprentices depending upon their level of training. Apprentices receive training through TEEEX (Texas A&M Engineering Extension Service) every three to four months and by working on the job. Apprentices spend a minimum of one year at each level of apprenticeship before advancing to the next level. For promotion or advancement to the next apprenticeship level, evaluations are not considered; advancement is determined by whether the employee has completed the skill requirements for each level as set forth in the apprentice book. Lead linemen are responsible for signing off on an apprentice's documentation in the apprentice book showing they have demonstrated proficiency in the required skills.

There is no history of collective bargaining between the Employer and the Petitioner and there is no contract bar to the processing of the petition in this matter.

## II. ANALYSIS

### A. Board Law

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

Any individual having 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.

To meet the definition of a supervisor set forth in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. *Oakwood Healthcare*, 348 NLRB 686, 687 (2006). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). Thus, the exercise of “supervisory authority” in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Chrome Deposit Corp.*, 323 NLRB 961, 963 (1997); *Feralloy West Corp. and Pohang Steel America*, 277 NLRB 1083, 1084 (1985); see also *Oakwood Healthcare*, 348 NLRB at 687.

Possession of authority consistent with any of the indicia of Section 2(11) of the Act is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Pepsi-Cola Co.*, 327 NLRB 1062, 1064 (1999); *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 n.8 (2001). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See *Michigan Masonic Home*, 332 NLRB 1409, 1410 (2000). The Board requires actual evidence of supervisory authority. Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper authority absent independent evidence of the possession of the described authority. See *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006) (testimony utterly lacking in specificity does not satisfy burden of establishing supervisory status); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006) (purely conclusory evidence is not sufficient to establish supervisory status).

The burden of proving supervisory status is on the party asserting that such status exists, here, the Employer. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Oakwood Healthcare*, 348 NLRB at 687. For a party to satisfy the burden of proving supervisory status, it must do so by “a preponderance of the credible evidence.” *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003); *Paramount Parks, Inc. d/b/a Star Trek: The Experience*, 334 NLRB 246, 251 (2001). To meet this burden, the party asserting supervisory status must provide sufficient detailed evidence of the circumstances surrounding the alleged supervisor’s decision-making process in order to demonstrate that the alleged supervisor was exercising the degree of discretion or independent judgment that is necessary to establish supervisory status. Any lack of evidence in the record is construed against the party asserting

supervisory status. See *Dean & Deluca New York, Inc.*, 338 NLRB at 1048; *Williamette Industries, Inc.*, 336 NLRB 743 (2001); *Michigan Masonic Home*, 332 NLRB at 1409; *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 n. 8 (1999). Moreover, “[w]henver the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *G4S Regulated Security Solutions*, 362 NLRB No. 134, slip op. at 2 (2015); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989); *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 793 (2003). Consequently, mere inferences or conclusory statements without detailed specific evidence of independent judgment are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Moreover, when dealing with issues concerning supervisory status, the Board cautions against construing supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect. *Oakwood*, 348 NLRB at 688 (quoting *Chevron Shipping Co.*, 317 NLRB 379, 380-381 (1995)). In *Oakwood*, the Board observed that the term supervisor was not intended to include “straw bosses, lead men, and set-up men,” who are protected by the Act even though they perform “minor supervisory duties.” (citing *NLRB v. Bell Aerospace Company*, 416 U.S. 267, 280-281 (1974)). 348 NLRB at 688. The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees who merely give assignment or direction of a routine or clerical nature in overseeing the work of others, and who are not part of management, from those supervisors truly vested with genuine management prerogatives. *George C. Foss Co.*, 270 NLRB 232, 234 (1984).

To exercise independent judgment, an individual must, at minimum, act or effectively recommend action free of the control of others and form an opinion or evaluation by discerning and comparing data. A judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or the provisions of a collective bargaining agreement. *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). Independent judgment requires that the decision rise above the merely routine or clerical. *Oakwood*, 348 NLRB at 692.

## **B. Application of Supervisory Indicia to the Facts of this Case**

In the instant case, the Employer does not contend that lead linemen have the authority to hire, transfer, suspend, lay off, recall, discharge, or discipline employees, or to adjust their grievances. Rather, the Employer contends that lead linemen are statutory supervisors because of their authority to assign and/or responsibly direct the work of crew members and, indirectly by evaluating their job performance, to reward and/or promote employees. As such, I will limit my analysis to an examination of the evidence as to these two indicia of supervisory status.

### **1. The preponderance of the evidence does not establish that lead linemen assign or responsibly direct employees.**

In *Oakwood*, the Board explained that “assignment” means designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving an employee significant overall duties as opposed to ad hoc instructions that the employee perform a discrete task. 348 NLRB at 689. The Board has also interpreted the meaning of the phrase “responsibly to direct,” which was “not meant to include minor supervisory functions performed by lead employees.” *Id.* at 690. Rather, “responsibly to

direct” requires “authority to direct the work and authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.* at 692. Evidence of actual accountability must be present to establish responsible direction. *Alstyle Apparel*, 351 NLRB 1287 (2007).

Here, it is undisputed that the operations superintendents assign crews; the lead linemen have no input as to which employees will work them on their crew. In addition, the operations superintendents assign the jobs to crews. Once on the job, the lead linemen and the crew discuss the job, its hazards, and who will perform what tasks. However, the staking sheets provide detailed instructions on how the job is to be performed, and tasks, many of which are routine or repetitive, are “checked off” as they are completed. As the hearing testimony reflects, if changes must be made to the instructions on the staking sheet, a lead lineman must contact the Employer’s engineers prior to proceeding. In addition, certain tasks or jobs can only be performed by certain crew members, and the same or similar tasks are performed on a regular basis. As such, there is little, if any, judgment or discretion that goes into a lead lineman’s “assignment” of tasks to crew members. Because the oversight by lead linemen does not constitute the designation of significant overall duties to an employee, I conclude that the Employer’s lead linemen do not “assign” work within the meaning of Section 2(11) of the Act. See *Alternate Concepts*, 358 NLRB 292 (2012) (Board, reversing the Regional Director, determined that crew dispatchers and line controllers do not have the authority to “assign” or “responsibly direct” employees using independent judgment, finding that any assignment or direction authority they exercised was either routine or significantly limited by the employer’s standard operating procedures and troubleshooting manuals, as well as by the collective bargaining agreement covering operators); *Shaw, Inc.*, 350 NLRB 354 (2007) (Board found that foremen who received crew assignments from upper management and worked side-by-side with crewmembers each day did not exercise supervisory authority when they designated which crewmembers would perform particular functions and rotated laborers among various unskilled tasks to “vary their work and equalize their burdens”).

Further, even assuming that lead linemen could fairly be said to be directing the work of the one to four men on their crews when they decide which tasks they will take and in what sequence, there is insufficient record evidence that that direction is either responsible or requires the use of independent judgment. The record does not establish that the direction given by lead linemen is responsible because the Employer did not present reliable evidence that lead linemen are held accountable for the work of the men on their crews. Although there was testimony that lead linemen may be disciplined if mistakes are made or performance is deficient, that conclusory testimony, absent evidence of specific instances where discipline has actually been issued,<sup>5</sup> does not establish responsible direction. See *WSI Savannah River Site*, 363 NLRB No. 113 (2016) (Board found that the record did not establish that direction was “responsible” where there was only one example establishing that alleged supervisors were accountable for the performance of their subordinates and it was not clear whether that discipline was issued for inadequate performance by subordinates or for alleged supervisor’s own deficient performance).

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<sup>5</sup> The examples offered in this case, which include discipline allegedly issued to a lead lineman for failure to properly monitor and/or document an apprentice’s progress towards a performance improvement plan, a warning issued to a lead lineman for damage caused by the work performed by “him and his crew,” and a single example of a lead lineman being disciplined for a safety violation by his crew member, do not definitively establish accountability for lead linemen with regard to the actual performance of their apprentices or other crew members.

See also *Brusco Tug & Barge, Inc.*, 362 NLRB No. 28 (2015), incorporating by reference 359 NLRB No. 43 (2012) (employer offered nothing beyond conclusory assertions of mates' accountability for the deckhands' work and did not delineate for what or how the mates are actually held accountable). As set forth above, "mere inferences or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority." *G4S Regulated Security Solutions*, 362 NLRB No. 134, slip op. at 2 (2015); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006).

**2. The preponderance of the evidence does not establish that lead linemen assign or responsibly direct employees or reward or promote employees.**

The Employer also asserts that the lead linemen possess the supervisory authority to reward and/or promote employees insofar as the lead linemen are responsible for evaluating the performance of their crewmembers, and those performance evaluations are considered by the Employer in determining merit increases and promotions.

Both operations superintendents testified that their lead linemen perform the evaluations of their own crew members, and that those evaluations are used to determine merit increases and promotions. However, it is undisputed that the operations superintendents meet and confer with the lead linemen *before* those evaluations are finalized. More importantly, the evidence establishes that the recommendations of the lead linemen are *not* always followed. The record reflects numerous examples in which an operations superintendent disagreed with the rating given by a lead lineman, and after discussion with the lead lineman, the rating was changed before it was accepted and input into the Employer's computer system. In addition, information regarding an individual crew member's disciplinary issues or safety incidents is provided to the operations superintendents, not to the lead linemen, for consideration in the evaluation process.

Further, the evaluations call for a numerical rating (on a scale of 1 to 5) in approximately 50 different categories, and although there is space for comments, in about half of the evaluations offered into evidence, no comments or feedback were provided by the lead lineman completing the evaluation. Thus, the completion of performance reviews by lead linemen does not reflect the exercise of any independent judgment on the part of the lead lineman; rather, it is merely routine or clerical in nature.

Although the Employer's witnesses provided testimony that merit increases and promotions are determined by employees' evaluation ratings, again, those ratings are largely influenced by upper management and are not at the sole discretion of the lead linemen performing the evaluations. Further, no documentary evidence was provided to support the conclusory statement that merit increases are determined by evaluations. In addition, the ample testimony in the record that apprentices are promoted/advanced without consideration of their evaluations was not disputed. Numerous witnesses confirmed that apprentices are advanced, or promoted, based solely on completion of skills that are set forth in the apprentice book and "signed off" on by not only the lead lineman but also by the operations superintendent, division manager, and ultimately the general manager, who has the final determination as to advancement. In fact, the record evidence contains examples of more than one situation in which a lead lineman's recommendation with regard to an apprentice was not followed by upper management. Because there is insufficient evidence to support that lead linemen exercise

independent judgment, free from the control of others, with regard to the evaluation of employees, or that lead linemen have any input into the decision to award merit increases or promotions to employees, I find that the Employer has failed to meet its burden to establish by a preponderance of the evidence that lead linemen have the authority to reward and/or promote employees, either directly or indirectly, as provided in Section 2(11) of the Act.

**3. Secondary indicia of supervisory status do not support the conclusion that the Employer's lead linemen are 2(11) supervisors.**

In its post-hearing brief, the Employer additionally asserts that the fact lead linemen are paid more than linemen, use iPads (which are not provided to other employees), and are considered by the Employer to be supervisors supports the argument that they are 2(11) supervisors. I disagree. Absent any primary indicia of supervisory status, as explained above, those factors alone, even if accurate, do not establish supervisory status. See, e.g., *Tri-County Electric Cooperative*, 237 NLRB 968 (1978) (pay differential alone is insufficient to warrant supervisory determination).

It is also significant that the Employer has conceded that its linemen, who often act in the same capacity as the lead linemen when there is otherwise no lead lineman on a crew, are not 2(11) supervisors. I find the inconsistency of that position to undermine the Employer's argument that its lead linemen are supervisors as defined in Section 2(11) of the Act. Accordingly, based on the record evidence, I conclude that the Employer's lead linemen's assignment and direction of work to merely of a routine or clerical nature in overseeing the work of others and are not truly vested with genuine management prerogatives. Therefore, I find that the Employer's lead linemen are not supervisors within the meaning of Section 2(11) of the Act.

### III CONCLUSION

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

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
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 herein.<sup>6</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.<sup>7</sup>

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<sup>6</sup> I find, based on the stipulations of the parties, that the Employer, Magic Valley Electric Cooperative, Inc., a Texas corporation, with an office and place of business in Mercedes, Texas, is engaged in the business of operating a rural electric cooperative. During the preceding 12 months, a representative period, the Employer, in conducting its business operations, derived gross revenues in excess of \$500,000 and has provided services valued in excess of \$50,000 to customers within the state who purchased goods valued in excess of \$50,000 from points outside the State of Texas.

<sup>7</sup> The parties stipulated, and I find, that 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.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time lead linemen, linemen, apprentice linemen, groundmen, and operators employed by the Employer in Pharr, Edinburg, Mercedes, and Brownsville, Texas, excluding all other employees, clerical employees, guards, and supervisors, as defined in the National Labor Relations Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL UNION 66.

#### **A. Election Details**

The election will be held on December 1, 2016 as follows:

- from 7:00 a.m. to 9:00 a.m. at Breakroom at the Employer's facility located at 2910 West Monte Cristo Road, Edinburg, Texas;
- from 7:00 a.m. to 9:00 a.m. at Breakroom at the Employer's facility located at 1 ¼ Mile West Highway 83, Mercedes, Texas; and
- from 7:30 a.m. to 8:30 a.m. at Warehouse Breakroom at the Employer's facility located at 1825 N. Indiana Road, Brownsville, Texas.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by November 21, 2016.<sup>8</sup> The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

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<sup>8</sup> At hearing, the Petitioner waived the right to receive the voting list ten days prior to the election.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

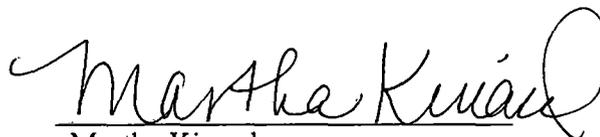
**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

**DATED** at Fort Worth, Texas, this 17<sup>th</sup> day of November, 2016.



Martha Kinard  
Regional Director  
National Labor Relations Board  
Region 16  
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Fort Worth, Texas 76102-6107