

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

IN THE MATTER OF ARBITRATION	§	
	§	
BETWEEN	§	
	§	
CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC	§	CASE NO. 16-RC-229214
	§	
AND	§	
	§	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS , LOCAL UNION 66	§	

**PETITIONER’S BRIEF IN OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW
OF REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION & IN
SUPPORT OF REGIONAL DIRECTOR’S DECISION**

Pursuant to section 102.67 of the National Labor Relations Board’s Rules and Regulations, the Petitioner, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 66 (“Petitioner” or “Union”), files this brief in opposition to CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC’s (“Employer”) Request for Review of Regional Director’s Decision and Direction of Election.

PROCEDURAL HISTORY

On October 15, 2018, the Union filed an *Armour-Globe* petition in which it sought to include 37 Service Area Assistants (“SAAs”) to the current bargaining unit of approximately 1,473 construction, maintenance, and operations employees. Following a comprehensive two-day hearing before Hearing Officer Humberto Alex Hernandez in which eight witnesses testified and over 30 exhibits were admitted, Regional Director Timothy L. Watson ordered an *Armour-Globe* election to determine whether the SAAs wished to be included in the existing bargaining unit.

Specifically, in his Decision, Regional Director Watson found that the SAAs share a community of interest with the construction, maintenance and operations employees in the established bargaining unit, and that they constitute a distinct segment of the Employer's employees which is an appropriate voting group. Decision and Direction of Election at 11.

On November 8, 2018, the ordered election took place, ultimately resulting in a majority 16 affirmative ballots. On November 14, 2018 the Company filed a Motion to Stay Certification with the Board. Two days later, the Regional Director issued a Certification of Representative. On November 26, 2018, the Company filed a Request for Review of the Regional Director's Decision and Direction of Election.

On April 29, 2019, the Board ordered that the Request for Review was granted in part and denied in part. Specifically, the Board ordered that the Request for Review was granted as to the discrete issue of "whether the petitioned-for Employer's Service Area Assistants (SAAs) share a sufficient community of interest with the current bargaining unit to warrant inclusion of SAAs in that unit." Order dated April 29, 2019. The Board denied the Request for Review in all other aspects. *Id.*

ARGUMENT & ANALYSIS

Issue: Whether the petitioned-for Employer's Service Area Assistants (SAAs) share a sufficient community of interest with the current bargaining unit to warrant inclusion of SAAs in that unit?

The only issue before the Board is whether SAAs share a sufficient community of interest with the current bargaining unit. As stated, the Regional Director answered this question in the affirmative. This finding should be upheld based on the totality of the record.

1. Legal Standard

In determining whether a community of interest exists, the Board examines factors such as mutuality of interests in wages, hours, and other working conditions, commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Grace Industries, LLC*, 358 NLRB 502, 505 (2012). The evidence presented at the hearing illustrated a multitude of typical community of interest factors that established that SAAs share a sufficient community of interest with the existing bargaining unit. The Regional Director's finding on this issue should be upheld.

2. SAAs are Plant Clericals

It is undisputed that SAAs perform some clerical duties. As such, the Regional Director first considered SAAs' status as either office clerical or plant clerical employees. Decision and Direction of Election at 8-10. The former have typically been excluded from production and maintenance units, while the latter are customarily included because they share a community of interest with the unit. *Id.* Office clericals handle billing, payroll, phone and mail. *Id.* Among plant clerical duties are timecard collection and the ordering of office supplies. *Id.* As referenced in the Regional Director's Decision, "the test generally is whether the employees' duties are related to the production process (plant clericals) or related to general office operations (office clericals)." *Id.* Under this test, the record established that SAAs are plant clericals and should be included in the existing unit. *Id.* at 10.

The Majority of SAAs' Duties are in Support of the Bargaining Unit Employees

Mindy Villarreal and Tae Willaims, both SAAs, each testified that 90% of their time is dedicated to interacting with and/or working with bargaining unit employees. *Transcript of Proceedings at 266:21-24; 387:14-17; see also 253:7-10* ("I work for them, I literally do."). As the Regional Director concluded, SAAs' tasks are unquestionably related to the production

process, as opposed to general office operations. As noted above, typical office clerical duties are billing, payroll, phone and mail. While SAAs do handle the mail for their bargaining unit colleagues, their tasks are far more expansive and production-oriented than that of a true office clerical. Jacob Bunch, Director of the Norther Region of Distribution Operations, articulated this distinction at the hearing when describing his administrative assistant:

Q: Okay and where is your — where is your – you said you have an Assistant that reports to you?

A: Yes, she is primarily at Greenspoint, but she will also travel between the three locations.

Q: All right, and what does she do?

A: She is kind of a jack-of-all administrative trades for the Region, so she handles a lot of expense reporting not only for myself, but for the Centers, at large, so you know, everything from uniform purchases to EasyTag payments to janitorial, you know, things, pest control. You name it. Whatever costs are forwarded through our operating region, she handles that. She takes care of the budget. It is just a variety of administrative tasks associated with running the region.

Q: **All right, is she an SAA?**

A: **She is not.**

Id. at 164:8-23 (emphasis added).

Typical office, or administrative tasks, are handled by administrative assistants, *not* SAAs. As Mr. Bunch reported, **there are administrative assistants at each service center** who handle office clerical work. *Id.* at 171:18-23.

In contrast, SAAs do none of the tasks Mr. Bunch described of his administrative assistant. To the contrary, their work fits discretely within the qualifications of plant clericals: they handle bargaining unit employees' time entry ("The first thing I learned was the timesheets for the guys."), they order supplies ("We order anything from pens. If they need clips for their

desk, if they need filing stuff to file away their documents, I order that. We also order Gatorade for the guys...we order tailboard sheets. We order safety equipment tags, markers, highlighters, tablets, binders, folders for them.”). *Id.* at 246:23-247:5; 254:24-255:8; *See also id.* at 248:23-250:24; 313:15-314:9; 370:24-371:24 (timesheet tasks); 253:11-13; 255:13-258:6; 261:6-262:8; 365:15-21 (ordering supplies). Unlike office clericals, SAAs do not answer the phone and have no interaction with customers at all. *Id.* at 305:1-7. As it relates to payroll, SAAs merely distribute checks to bargaining unit employees. *Id.* at 250:18-24. They have no budget tasks.

Instead, as the Regional Director found, “the vast majority of the (DO) SAA employees’ duties are directly related to and in support of the duties performed by the construction, maintenance and operation employees in the existing bargaining unit.” Decision at Direction of Election at 9. The record established that all of the clerical work that SAAs do is in support of bargaining unit employees. Indeed, the Union also presented two head linemen, David Hawkes and Lloyd Bradley, both of whom directly stated that without SAAs, they could not do, and certainly could not complete their jobs. *Id.* at 310:13-24; 345:3-11; 347:17-24; 386:10-11 (“Can work orders be completely closed without an SAA? No.”)

Moreover, it was evident from Ms. Villarreal and Ms. Williams’ testimony that the support they offer bargaining unit employees is more than just clerical. SAAs’ role in the work order process alone exemplifies the plant and production centered nature of their work. Ms.

Williams offered a recent example:

Q: Can you walk us through an example that you’ve recently had – I don’t know if it’s called like-for-like, but what sounds to me like a lineman is out in the field. He sees something that needs to be dealt with but he doesn’t have a work order for it. Can you walk us through an example so we understand it a little bit better?

A: Sure. Say I have someone that’s going out doing a day-to-day job. They

may run across an emergency situation where they need something changed out. There's no work order for it, he may need to change out a transformer. He's not changing it – let's say he has a 25 KVA 1909 transformer. That's overhead, so he may want to change that out. My thing is, in order to do a like-for-like, I need to make sure that he's not changing it from a 25 to a 50. When I get ready to do that work order for him and he says he needs a like-for-like for this transformer –

Q: How does he contact you?

A: He'll contact me via phone. Most likely, it's going to be via phone if he wants the work order done right then. I'll build a work order from scratch. That's creating the notification because there's not one already created or generated in the system.

Q: Sure.

A: Once I have that information, I get the GLN number from him and with that GLN number, that allows me to create the map for him because he's out there in the field so he doesn't really have time to make that map. I will need that map generated right then in order for me to release that order to him in the field.

Once I have created a map for him and put all the necessary components into that order as far as work hours, man hours, how many men going to be on the job. The SAP number for that transformer has to be put in there because we have to what is called a 1099 to show what is being removed. We put in the components to show what's going to be installed.

Once we're able to release that order, we have to input that GPT number into the system. We're able to use his employee number and we're able to go into the user status field and assign it to a view and put it in mobile data so that he'll be able to instantly see that order drop on his screen. Side note on that is, if this is a journeyman that's being upgraded to a head lineman for the day calling me for that same thing, he doesn't have an assigned GPT number for me to drop an order on him in mobile. If I'm building a like-for-like order for him, I'm going to have to call our distribution controllers so that they can – and I'll give them that work order number and they're able to drop that on him because he doesn't have an assigned GPT number.

Q: Okay, I understand. What portion of that, if any, involves communication with warehousemen or material handlers?

A: The only time I would have to contact them is after I build the order. If that lineman doesn't take that work order that I assigned to them, I go over to the warehouse to make sure that they charge out that material on there. That's when I have to have a conversation.

Q: The example that you just gave me, how often does that happen in what you do?

A: That's a daily thing.

Q: How often are you having to go down and talk to warehousemen or email them or call them?

A: Daily.

Id. at 375:24-378:16; *see also* 372:23-375:23. 263:12-266:24...

This example alone demonstrates not only the complexity of SAAs' role in the work order process, but also the complete functional integration of SAAs with the bargaining unit - linemen, warehousemen, distribution controllers¹, network testers, and cable splicers, among others. *Id.*; *see also* 247:13-16.

In order to accomplish these and other tasks jointly, SAAs are in constant contact with bargaining unit employees, be it by email, phone, text, or in person. *See e.g.* 262:6-8; 265:13-266:9; 298:9-25; 307:2-311:7; 323:326:16; 336:3-338:23; 345:3-11.

Further highlighting their essential role in the production process, Mr. Bradley recounted that often, SAAs know codes and other information related to his job that he himself doesn't know. *Id.* at 308:9-309:10; *see also* 323:24-326:16. As stated above, without this information, linemen like Mr. Bradley cannot complete their work. *Id.* at 310:13-24; 345:3-11; 347:17-24; 386:10-11.

¹ Distribution controllers' job revolves around clerical paperwork. Similar to SAAs, they sit at a desk in the service center. *Transcript of Proceedings* at 331:19-332:4. Both SAAs and distribution controllers take part in the work order process (among others) for the bargaining unit employees who are out in the field. *Id.* at 379:14-16. Distribution controllers are part of the bargaining unit. *Id.*

Similarly, SAAs provide linemen with the tags they need out in the field. *Id.* at 262:9-13. SAAs know these tags and their purpose - it's not just office supply ordering, though that task is also an indicator of plant clerical status. *See e.g.* 365:22-368:8; 255:13-258:2; 261:6-262:13.

3. Traditional Community of Interest Factors Establish That SAAs Share a Community of Interest with the Existing Bargaining Unit

As noted in the Regional Director's Decision, other typical community of interest factors establish that SAAs share a sufficient community of interest with the existing bargaining unit. Decision and Direction of Election at 10. Included among that list are: shared break room (*Id.* at 282:1-3; 400:12-15); shared restroom (*Id.* at 370:19-21); shared parking lot (*Id.* at 370:10-18); shared auditorium (*Id.* at 281:15-282:1). SAAs and bargaining unit employees attend the same ethics training (*Id.* at 378:17-22; 282:4-10); sexual harassment training (*Id.*); alert driving training (*Id.* at 400:18-19); first aid and CPR training (*Id.* at 400:21), as well as quarterly security meetings (*Id.* at 253:14-254:4; 258:7-259:18). SAAs and bargaining unit employees are subject to the same security procedures (*Id.* at 281:9-11) and disciplinary program (*Id.* at 401:9-12), and have the same labor relations personnel (*Id.* at 281:12-14; 400:6-11). On Fridays, SAAs wear the same business casual attire as bargaining unit employees. *Id.* at 283:3-14. SAAs of course share the service center with bargaining unit employees, many of whom have a desk in the service center just like SAAs. *See e.g. Id.* at 318:8-16; 331:19-332:4; 394:11-3; 404:12-19. SAAs also share the same holidays (*Id.* at 398:2-24; 280:18-24), retirement (*Id.* at 281:4-8), and vacation (*Id.* at 398:7-24; 280:24-281:3) as the existing bargaining unit. While SAAs are currently on salary, they receive the same overtime as bargaining unit employees: time and a half (*Id.* at 280:13-17; 397:7-16). SAAs generally work a 9/80 schedule, which coincides with many

bargaining unit employees' schedules, including linement: "They are there before I get there. If I

don't work over, if I get off on time, they're there after I leave." *Id.* at 343:17-23. Even when SAAs not physically at the plant working the same hours, they make themselves available to bargaining unit employees at all times of day on their personal cell phones. *Id.* at 325:17-326:16.

Finally, given their shared functionality, space, and terms and conditions of employment, it is no surprise that SAAs share the same expectations and overall goal as bargaining unit employees:

Q: The jobs that you – the work orders that you just described, what's the common goal there in getting this work done?

A: Get it done on time. We are very strict on that, we want to get it done before the 30-day period. We just make sure all of it is complete and done.

Q: When you say we, who are you talking about?

A: The bargaining unit guys.

Id. at 266:10-17; *see also Id.* at 253:14-24.

CONCLUSION

The above-listed examples are only a sampling of the various community of interest factors that SAAs share with the existing bargaining unit. Application of these factors to the record facts in this case establishes that SAAs share a sufficient community of interest with the existing bargaining unit. The Regional Director's finding that the (DO) SAAs share a community of interest with the construction, maintenance, and operation employees in the established bargaining unit should be upheld.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Union's foregoing brief was sent to counsel for the Company, John Harper, III, Littler Mendelston, PC, 1301 McKinney Street, Ste. 1900, Houston, TX, 77010, via email on this, the 13th day of May, 2019.

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