

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

**LEWIS TREE SERVICES INC.<sup>1</sup>  
Employer**

**And**

**Case 06-RC-260416**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 1919, AFL-  
CIO<sup>2</sup>  
Petitioner**

**DECISION AND ORDER**

A hearing officer of the Board held a hearing in this matter on May 28, 2020. The only issue presented in this case concerns the scope of the petitioned-for unit.<sup>3</sup> The Petitioner seeks to represent a unit limited to employees of the Employer who perform line clearance tree trimming on the property of public utility company Penelec in its Oil City service area in Pennsylvania.<sup>4</sup> The Employer asserts that the unit must include all the Employer's employees working on Penelec property in Pennsylvania. In either event, the parties have stipulated and agreed that the appropriate unit should include all full-time and regular part-time employees with the titles of crew leader tree, crew team leader, trimmer, top trimmer, grounds person, permission facilitator, trimmer trainee, and equipment operators; while excluding general forepersons, office clerical employees, professional employees, guards and supervisors as defined under the Act, and all other employees.

Having considered the record and relevant Board law, I find that the appropriate unit must include all of the Employer's employees working on Penelec property in Pennsylvania. Because the Petitioner does not wish to proceed to an election for any unit other than the petitioned-for unit, I am dismissing its petition.

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<sup>1</sup> The Employer's name appears as amended in the parties' written stipulation.

<sup>2</sup> The Petitioner's name appears as amended in the parties' written stipulation.

<sup>3</sup> The Petitioner filed the petition in this case under Section 9(c) of the National Labor Relations Act (the Act). I have the authority to hear and decide this matter on behalf of the National Labor Relations Board (the Board) under Section 3(b) of the Act.

<sup>4</sup> Although the parties' written stipulation states that the any appropriate unit would include "employees of the Employer performing line clearance tree trimming on the property of Penelec (a First Energy Company) in the State [sic] of Pennsylvania," the Petitioner amended the petitioned-for unit at hearing to include only the Employer's employees working in Penelec's Oil City service area, and the Employer acknowledges the Petitioner's amendment in its brief.

To give context for my discussion of this matter, I first provide brief background information of the Employer's operations. I then review the relevant Board law applying to disputes concerning bargaining-unit scope. Next, I apply Board law to the facts of this case. Lastly, I state my conclusions and findings.

## **I. BACKGROUND**

The Employer, a New York corporation with its principal place of business in West Henrietta, New York, provides line clearance tree trimming services throughout the United States, including the Commonwealth of Pennsylvania. The Employer's services, which are also referred to as "vegetation management," include tree trimming, brush cutting, brush spraying, maintenance, and permitting work along public utility companies' powerlines. The Employer provides its services according to contracts with public utility companies. These contracts include details such as the services the Employer will perform, how the Employer will bill the public utility companies for its services, and some terms and conditions of employment for the Employer's employees.

In organizing its operations, the Employer maintains seven geographic regions. These regions are further separated into divisions. Relevant to this case is Division 28 of the Employer's sixth region. Division 28 contains all of Pennsylvania, as well as portions of Ohio, New Jersey, and West Virginia. Within Division 28, the Employer has a contract with FirstEnergy Company (FirstEnergy). That contract applies to three of FirstEnergy's operating companies in Pennsylvania: Met-Edison, Penelec, and West Penn Power.

## **II. BOARD LAW**

As noted above, the matter at issue in this case concerns the proper scope of the bargaining unit. The Petitioner seeks to represent the Employer's employees working only on one service area, the Oil City service area, of Penelec property in Pennsylvania. The petitioned-for unit contains 13 employees. However, the Employer asserts that the only appropriate unit must include all of its employees working on all Penelec property in Pennsylvania. The Employer's proposed unit contains 51 employees.

I find that the appropriate analysis for this case is the Board's test as articulated in *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), and as clarified in *Boeing Co.*, 368 NLRB No. 67 (2019). In *PCC Structurals*, the Board reinstated the traditional community-of-interest test as enunciated in *United Operations, Inc.*, 338 NLRB 123 (2002). Under this test, the Board is required in each case to determine

Whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; including inquiring into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id. at 123. Subsequently, in *Boeing*, slip op. at 3, the Board elaborated that *PCC Structurals* requires "a three-step process for determining an appropriate bargaining unit under our traditional community-of-interest test." This three-step process involves the following: (1) the proposed unit

must share an internal community of interest; (2) the interests of employees within the proposed unit and the shared and distinct interests of employees excluded from that unit must be comparatively analyzed and weighed; and (3) consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

The Petitioner, citing to *J&L Plate*, 310 NLRB 429 (1993), argues that the employees working in Penelec's Oil City service area constitute an appropriate unit under the single-facility presumption, and that the Employer bears the burden of rebutting this presumption. However, I find that the single-facility presumption is not appropriate in this case because, as further detailed below, an analysis of the community-of-interest factors does not support finding that the petitioned-for unit constitutes a single facility in the traditional sense as the Employer does not maintain a physical building where the petitioned-for unit employees are dispatched. Rather, the petitioned-for unit employees are assigned to work in what is commonly referred to as the Oil City service area and meet as a group with their general foreman at various locations that are proximate to the work site for that particular day. However, even if the single-facility presumption applied in this case, I would find that, in weighing the relevant community-of-interest factors, the Employer rebutted the presumption.

### **III. APPLICATION OF BOARD LAW TO THIS CASE**

In reaching the conclusion that the appropriate unit must include all of the Employer's employees working on Penelec property in Pennsylvania, I apply the Board's three-step process as articulated in *Boeing*. As detailed below, while the petitioned-for unit shares an internal community of interest, those interests are not sufficiently distinct to exclude the Employer's other employees working on Penelec property in Pennsylvania. Finally, I note that the Board has not established any standard for appropriate units in this industry.

#### **A. Step One: Shared Interests within the Petitioned-For Unit**

*Departmental Organization.* The division vice president over the Employer's sixth region, which encompasses the petitioned-for unit, testified that the Employer's organizational structure does not match Penelec's structure.<sup>5</sup> However, the employees in the petitioned-for unit work primarily in the Oil City service area and report to only one supervisor, a general foreman. Thus, in practice, the petitioned-for employees are grouped together for assignment and performance of their work duties, which typically take place in Penelec's Oil City service area. Accordingly, this factor supports finding a shared internal interest.

*Distinct Skills and Training.* While the record is unclear on the skills that each petitioned-for classification possesses, all employees are encouraged to become certified for applying

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<sup>5</sup> The record is somewhat unclear as to whether this top-level manager for the Employer's sixth region is a "regional vice president" or a "division vice president." At hearing, this individual initially titled himself as a divisional regional vice president. However, this same individual later referred to himself as a division vice president at two other times during the hearing. Lastly, Employer Exhibit 2 abbreviates this individual's title as "DVP." Based on this individual referring to himself as a division vice president and the exhibit's matching abbreviation, I refer to him as a division vice president throughout this report.

herbicides. Additionally, all employees in the petitioned-for unit attend the same quarterly “safety culture meetings.” Accordingly, this factor supports finding a shared internal interest.

*Distinct Job Functions and Work.* The Employer argues on brief that the number and variation of positions within the petitioned-for unit are too numerous to find an internal community of interest. However, the record shows that the petitioned-for unit contains only five of the eight classifications which comprise the stipulated unit; and, of the 13 employees in the petitioned-for unit, 10 of the employees belong to only two of these classifications.<sup>6</sup>

The division vice president testified that employees work in either bucket crews or climbing crews. Bucket crews use bucket trucks, which have an aerial device mounted to the truck that allows trimmers to reach higher vegetation around power lines. Bucket crews may consist of a foreman B, crew leader, top trimmer, junior trimmer, trimmer trainee, grounds person, casual labor, flagger, and other classifications. Climbing crews, or off-road crews, are used when a bucket truck cannot reach the destination where the line clearing will occur. Climbing crews may include a foreman A, crew leader, top trimmer, junior trimmer, trimmer trainee, and grounds person. Given the substantial overlap in classifications between the two types of crews, the record suggests the work performed by these crews has significant overlap. Furthermore, because 10 of the 13 petitioned-for employees fall into only two classifications, this suggests that individuals in these two classifications may perform work of other classifications.<sup>7</sup>

Based on the above, this factor supports finding a shared internal interest.

*Functional Integration.* All of the petitioned-for employees are involved in providing the Employer’s service to Penelec’s Oil City service area. While the record is unclear as to the extent to which each job classification is integrated into the process of delivering the Employer’s services, the fact that one supervisor oversees the day-to-day operations of the petitioned-for unit suggests that the services it provides to the Oil City service area are largely independent of employees outside of the petitioned-for unit. Accordingly, this factor supports finding a shared internal interest.

*Contact with Other Employees.* The record shows that employees in the petitioned-for unit work together in crews that consist of two to five employees. Additionally, all the petitioned-for employees meet at a staging area two times per workday: one at the beginning of the day and one at the end. A staging area consists of a location central to where employees perform their work. The location of the staging area may change in order to be as close to employees’ daily work areas as possible. The locations for staging areas are seldomly owned by the Employer or the operating

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<sup>6</sup> Attachment B to Board Exhibit 3 shows that the only classifications present in the petitioned-for unit are crew leader tree (five employees), top trimmer (five employees), grounds person (one employee), permission facilitator (one employee), and crew team leader (one employee). Absent classifications from the petitioned-for employees are trimmers, trimmer trainees, and equipment operators.

<sup>7</sup> The record is clear that top trimmers perform the same work as trimmer trainees and trimmers. Additionally, the record shows that junior trimmers may advance their careers to eventually become crew leaders, implying that at least some crew leaders have the skills and experience of the trimmer classifications.

companies. Instead, staging areas may consist of large fields; parking lots of big stores, such as Walmart or Home Depot; or fairgrounds.

Based on employees' daily meetings and their work together in small crews, this factor supports finding a shared internal interest.

*Interchange.* Although the record is unclear on the frequency with which internal interchange occurs, for the reasons discussed above concerning employees' job functions and work, the record suggests that interchange likely occurs within the petitioned-for unit. Accordingly, this factor supports finding a shared internal interest.

*Terms and Conditions of Employment.* All petitioned-for employees are subject to the same schedule of wages and disciplinary process. All the Employer's employees also receive the same benefits. Accordingly, this factor supports finding a shared internal interest.

*Supervision.* All petitioned-for employees report to the same general foreman. The general foreman is responsible for grouping employees into crews, assigning work, overseeing work, inspecting work, and ensuring that the work meets FirstEnergy's specifications. The general foreman also ensures that employees follow the Employer's safety policies. Accordingly, this factor supports finding a shared internal interest.

Based on my review of the above factors, I find that the petitioned-for unit shares an internal community of interest.

## **B. Step Two: Shared Interests with Excluded Employees**

*Departmental Organization.* As noted above, all the Employer's employees working on Penelec property in Pennsylvania are in the same division and region: Division 28 of the Employer's sixth region. Division 28 includes not only the Employer's work on Penelec property but also the Employer's work on Met-Edison and West Penn Power properties.

Within the Employer's sixth region, the top-level manager is the division vice president. The division vice president oversees two divisions: Division 28 and Division 45. Within Division 28, a division or area manager would typically report to the division vice president; however, Division 28 is currently without a division or area manager. Instead, the senior supervisor and supervisor in District 28, who usually report to the division or area manager, currently report directly to the division vice president. The general foremen each report to either the senior supervisor or the supervisor. Here, the Employer has three foremen who oversee all the employees working on Penelec property in Pennsylvania. These three foremen report to one supervisor.

While the record shows that the petitioned-for unit reports to one general foreman and works only in Penelec's Oil City service area, the Employer's other employees working on Penelec property are not organized in this fashion. Penelec has five service areas in Pennsylvania: Oil City, Towanda, Lewistown, Altoona, and Clearfield. Although the record is unclear on the exact supervisory structure for the Employer's employees in the remaining four service areas, the Employer only has two other general foremen for those areas. This implies that there is not a one-to-one ratio of general foremen to Penelec's service areas.

Because the petitioned-for unit does not align with the Employer's departmental organization, this factor weighs in favor of the larger unit.

*Distinct Skills and Training.* Within each of the job classifications, employees performing line clearance tree trimming throughout Pennsylvania on Penelec property share identical skills. Regarding the above-mentioned certification for applying herbicides, the Employer's recommendation to its employees that they become certified is not unique to the petitioned-for unit—the Employer recommends this certification for all its employees. Also, the Employer arranges the above-mentioned quarterly safety culture meetings based on geographic area. As a result, the petitioned-for unit does not attend these meetings alone; instead, the Employer brings together employees from multiple Penelec areas, including Oil City, Warren, and Meadville.<sup>8</sup>

Based on the above, this factor weighs in favor of the larger unit.

*Distinct Job Functions and Work.* Within their individual job classifications, employees performing line clearance tree trimming throughout Pennsylvania on Penelec property share identical functions and working conditions. Accordingly, this factor weighs in favor of the larger unit.

*Functional Integration.* In providing its services to Penelec throughout Pennsylvania, the record shows some evidence of functional integration. When work falls behind the planned timeline in any area of Penelec's system, Penelec may direct the Employer to move employees from an area that is ahead of schedule to one that is behind. Similarly, when storms create additional line clearance work, Penelec may request that the Employer move employees from certain areas to perform the additional work. In sum, all of the Employer's employees working on Penelec property are integrated to the extent that Penelec may request employees from specific areas move to other areas in order to ensure that work occurs on time and that Penelec's own services are not interrupted by storms. Although the frequency of such transfers is unclear, such functional integration, which flows from Penelec's direction or requests to the Employer rather than the Employer's own internal decisions, weighs in favor of the larger unit. I discuss specific examples of interchange in the appropriate section below.

*Contact with Other Employees.* The petitioned-for unit has no regular contact with other employees on a daily basis. Indeed, the Employer compares and contrasts for employees the progress of work in the Oil City service area with work in other service areas. Additionally, the distance between the five Penelec service areas may involve driving distances of up to four hours, i.e. Oil City to Towanda.

As noted above, the petitioned-for unit gathers with other employees on a quarterly basis for safety meetings. Additionally, the employees also gather annually for a kickoff meeting with Penelec. Aside from these gatherings, the record lacks evidence of other regular contact between the petitioned-for unit and the Employer's other employees working on Penelec property.

Based on the above, this factor weighs in favor of the petitioned-for unit.

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<sup>8</sup> The record is unclear as to which Penelec service areas Warren and Meadville belong.

*Interchange.* The record contains some evidence as to interchange. As noted above, employees from within the petitioned-for unit may transfer to other areas within Penelec's system. In about early May 2020, three employees from the petitioned-for unit transferred to Penelec's Towanda service area. The record is unclear as to the frequency and duration of such transfers. The record also shows some evidence that, within the past two and a half years, a "spraying crew" from the Oil City service area, presumably tasked with applying herbicides, temporarily worked outside of the Oil City area, in Warren. Lastly, the record contains some evidence that, on one occasion in 2019, an "extended amount of budget" from Penelec allowed for several general foremen and their crews to work at an unspecified location on Penelec property. Based on this small amount of interchange, this factor weighs in favor of the petitioned-for unit.

*Terms and Conditions of Employment.* The identical wage system, disciplinary process, and benefits that the petitioned-for unit shares are likewise shared by all employees working on Penelec property in Pennsylvania. Accordingly, this factor weighs in favor of the larger unit.

*Supervision.* Although the petitioned-for employees report to the same general foreman, the general foreman has limited authority. As noted above, the general foreman is responsible for grouping employees into crews, assigning work, overseeing work, inspecting work, and ensuring that the work meets FirstEnergy's specifications. The general foreman also ensures that employees follow the Employer's safety policies. In performing these duties, the general foreman may issue verbal or written warnings, but discipline beyond warnings, including suspensions and terminations, require the participation of the general foreman's supervisor and human resources. The record is unclear exactly whether the general foreman is responsible for promoting employees within the petitioned-for unit.<sup>9</sup>

While the general foreman oversees day-to-day operations, the general foreman does not control the number of employees that work underneath him. Instead, the number of employees under each general foreman is dependent on discussions between the division vice president and Penelec. Once Penelec provides the Employer with a budget, the division vice president works with Penelec to determine how many crews will be necessary to complete the necessary work within budget.

In balancing the general foreman's day-to-day supervision of employees with the general foreman's overall authority, this factor weighs slightly in favor of the petitioned-for unit.

Based on my review of the above factors, I find that the interests of the petitioned-for employees are not sufficiently distinct from the interests of the other employees working on Penelec property in Pennsylvania.

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<sup>9</sup> The division vice president of the Employer's sixth region testified that the general foreman has the authority to promote employees. However, the same division vice president later testified that, if a vacancy occurred within a crew, an employee wanting to advance to that vacant position would have to apply through the Employer's online application process. The record is unclear as to who reviews applications submitted through the online process.

### **C. Step Three: Consideration of Board Decisions for Appropriate Units in Particular Industries**

Although both parties presented evidence as to previously certified units for bargaining within this industry, the Board has not issued any applicable guidelines. Consequently, my findings and conclusions are based solely on the above balancing of the community-of-interest factors specific to this case.

### **IV. FINDINGS & CONCLUSION**

Having carefully considered the record evidence and applying the Board's holdings in *PCC Structurals* and *Boeing*, I find that the petitioned-for unit is inappropriate and that the appropriate unit must include all of the Employer's employees working on Penelec property in Pennsylvania. Here, the majority of factors weigh in favor of the larger unit: the Employer's departmental organization; the employees' identical skills and training; the employees' identical job functions and work; and the employees' identical terms and conditions of employment. While the other factors—contact with other employees, interchange, and separate supervision—weigh against the larger unit, these distinctions are minor in light of the shared similarities.

At hearing, the Petitioner expressed an unwillingness to proceed to an election in any unit extending beyond the petitioned-for unit. Accordingly, I shall dismiss the petition.

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

1. The hearing officer's rulings made at 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>10</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.
4. No 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.

### **V. ORDER**

The petition is hereby dismissed.

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<sup>10</sup> The parties stipulated that, during the twelve-month period immediately preceding the hearing, the Employer provided services valued in excess of \$50,000 directly to customers located outside of the Commonwealth of Pennsylvania.

## VI. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **July 21, 2020**.

A request for review must be E-Filed through the Agency's website. 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. Responsibility for the receipt and usability of the request for review rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. A request for review must be E-Filed through the Agency's website. 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. A party filing a request for review must serve a copy of the request on the other parties. A certificate of service must be filed with the Board together with the request for review.

Dated: July 7, 2020

/s/ Nancy Wilson

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