

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

CONNEXUS ENERGY

Employer

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 160, AFL-CIO

Petitioner

Case 18-RC-16449

DECISION AND DIRECTION OF ELECTION

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

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

Upon the entire record in this proceeding, I find:

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.¹

¹ The Employer, Connexus Energy, a corporation, is engaged in the construction and maintenance of a rural electric power network and the delivery of electrical power to customers. The Employer annually derives revenues in excess of \$1 million, and annually purchases and receives at its Minnesota facilities goods and supplies valued in excess of \$50,000 directly from suppliers located outside Minnesota.

3. The labor organization involved claims to represent certain employees of the Employer.

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. Petitioner, in its petition, seeks to represent a unit of lineworkers (which includes powerline technicians, crew leaders, and apprentice line technicians), equipment operators, material handlers (also referred to as warehouse workers), schedulers, and system operators. At the beginning of the hearing, Petitioner agreed that an appropriate unit would also include new service inspectors, service locators, power quality technicians, and AM/FM/GIS technicians. The Employer agrees that all of the classifications listed to this point should be included in an appropriate bargaining unit. However, the Employer contends that any appropriate unit must also include electronic technicians, load management/metering technicians, metering line technicians, electrical equipment technicians, and load management electrician/metering technicians.

The Employer is a customer-owned electric utility that furnishes electric service to approximately 100,000 customers in the northern suburbs of Minneapolis and St. Paul, Minnesota. This includes providing construction services (e.g., building overhead line and burying underground cable and installing meters) and maintaining the system so that customers receive electricity.

The Employer is organized into divisions. All of the agreed-upon and disputed classifications fall into one of two divisions—Business Resources or Electric Operations.

Mike Bash, Vice President - Business Resources & Chief Financial Officer, oversees the Business Resources Division. The relevant employees in that division are material handlers, electronic technicians, load management/metering technicians, and metering line technicians. The four material handlers employed by the Employer work in the Supply Chain Department in that division, and they report to Joyce McQuillan, supply chain manager. The other employees in the Business Resources Division—the two electronic technicians, three load management/metering technicians, and two metering line technicians—fall within the Data Acquisition Department, which is managed by Sue Wehr. All of the remaining classifications are part of the Electric Operations Division. With respect to that division, the electrical equipment technician position is part of the Fleet Maintenance Department; the manager of that department, John Jones, falls under the authority of Mike Rajala, Vice President - Corporate Development. John Gasal, Vice President - Power Supply, oversees the managers of the Planning and Operations Departments, Larry Nelson and Dick Watson, respectively. The three schedulers employed by the Employer report to Nelson, and the seven system operators, one power quality technician, and three AM/FM/GIS technicians² report to Watson. Larry Peterson, Vice President - Corporate Services, has ultimate authority over the remaining, relevant classifications in the Electric Operations Division. Gene Lund and Jim Larson are construction and maintenance

² To be precise, the Employer currently employs two AM/FM/GIS technicians and one AM/FM/GIS technician/easements administrator. All three of these employees are responsible for developing the Employer's computerized mapping system, which depicts the locations of power lines, poles, transformers, and other equipment. This work is performed on computers stationed at the Employer's facility, so these employees do not work in the field. The AM/FM/GIS technician/easements administrator has additional responsibilities relative to mapping easements. The maps, of course, are used by the Employer's employees who work in the field.

managers in that division. The employees that report to Lund and Larson include the new service inspector, two service locators, four equipment operators, 14 crew leaders, 24 powerline technicians, and nine apprentice line technicians employed by the Employer. Finally, the load management electrician/metering technician works in the Facilities Department, which is managed by Robin Doege. With respect to each agreed-upon or disputed classification, the responsibility for hiring and disciplining employees lies with the relevant, respective manager.

As noted above, the Employer contends, contrary to Petitioner, that any appropriate unit must include the electronic technicians, load management/metering technicians, metering line technicians, electrical equipment technicians, and load management electrician/metering technicians. The ***electrical equipment technician*** classification falls within the Fleet Maintenance Department of the Electric Operations Division. The employee holding this position primarily tests, overhauls, and repairs electrical apparatus such as transformers, OCRs, and voltage regulators. Most of this work is done at the Employer's facility, but sometimes the electrical equipment technician works in the field at a substation, for example. The equipment that he works on is installed, handled, and used by the lineworkers.³ In addition to the interaction with the lineworkers that results from working on the equipment that they use, the electrical equipment technician, on a regular basis, provides training to the powerline technicians

³ The term "lineworkers" refers to powerline technicians, crew leaders, and apprentice line technicians. These employees are responsible for building and maintaining the Employer's electric distribution system. Thus, these employees work in small crews out in the field, performing duties such as installing overhead power lines and underground cable right up to the meter box. They also maintain and repair power lines, cable, and other equipment out in the field as necessary. A crew leader, as the title suggests, would be in charge of a crew, and the apprentice line technicians are working to become power line technicians.

and apprentice line technicians on equipment testing and repair and on the usage of the apparatus that lineworkers use and install. The hourly wage range for any employee in the electrical equipment technician classification is \$19.62 - \$29.42. The employee currently holding the position earns between \$26.16 and \$29.42. Although the electrical equipment technician is not frequently exposed to the same degree of risk as lineworkers or metering line technicians, he is apparently exposed to that risk on occasion.

The two **electronic technicians** employed by the Employer, as noted above, are in the Business Resource Division, and they report to Data Acquisition Manager Sue Wehr. The electronic technicians primarily work in a meter shop inside the Employer's facility, where they test, calibrate, and repair meters that are installed at customer locations. The electronic technicians' work area is very near to the warehouse where the material handlers work, resulting in some interaction between employees in these two classifications.⁴ Approximately 5 to 10 percent of an electronic technician's time is spent in the field, connecting, disconnecting, and rewiring meters. The electronic technicians are exposed to serious safety risks when working in the field, but when working in the facility, the degree of risk is reduced. The electronic technicians are in the same pay range (\$19.62 - \$29.42 per hour) as the electrical equipment technician; apparently both electronic technicians currently earn between \$22.89 and \$26.15.

Similar to the electronic technicians, the two **metering line technicians** report to Sue Wehr, as they work in the Data Acquisition Department in the Business Resources

⁴ The four material handlers work inside the Employer's facility. They are responsible for inventory and warehouse management. As part of their duties, material handlers pull the materials that will be needed by a construction and maintenance crew and place those materials adjacent to the proper vehicle.

Division. The metering line technicians install, test, and repair the more technical meters used by some of the Employer's large customers, and they apparently also work with off-peak meters and less technical meters. This work is not part of the construction process, but is instead considered part of maintenance. The vast majority of the metering line technicians' duties are performed in the field. The metering line technicians are exposed to live electricity, including single and three phase lines, similar to lineworkers. The daily work of the metering line technicians is assigned by the schedulers, who also assign work to lineworkers. The pay range for metering line technicians is higher than the pay range for the electrical equipment technician and electronic technicians. Metering line technicians earn an hourly wage between \$22.58 and \$31.59. This same pay range applies to the power quality technician⁵ and the seven system operators⁶, which classifications the parties have agreed to include in the unit.

The three ***load management/metering technicians***, similar to the electronic technicians and metering line technicians, report to Wehr, the manager of the Data Acquisition Department in the Business Resources Division. The load management/metering technicians perform duties comparable to those performed by metering line technicians. The difference primarily lies in the type of meter that the classifications generally handle. Load management/metering technicians work in the

⁵ The power quality technician primarily works in the field, visiting and inspecting sites where there is a risk of power outage caused by equipment that is in need of maintenance or repair. The power quality technician's work is, therefore, related to the maintenance of the system, not its construction.

⁶ The system operators work in the Employer's facility, monitoring the operation of the distribution system. They give system operation orders to lineworkers, as needed, to ensure that electricity is properly routed through the system.

field, installing, testing, and repairing specialized off-peak meters, which allow customers to receive lower rates as a result of operating (or not operating) appliances during certain time periods during the day. Employees in this classification also work on other meters, including some meters that metering line technicians (and powerline technicians) handle. Load management/metering technicians are exposed to the same safety risks as electronic technicians and metering line technicians, although load management/metering technicians often work on radio controls for the load management systems which are fairly low voltage applications. The load management/metering technicians are in the same pay range as the electrical equipment technician and electronic technicians.

One employee holds the position of ***load management electrician/metering technician***, which is part of the Electric Operations Division, unlike any of the disputed classifications discussed so far. The load management electrician/metering technician is responsible for load management equipment (as are the load management/metering technicians), and he is also the Employer's building electrician. The position requires a masters electrician license in addition to line metering skills equivalent to a load management/metering technician. The load management electrician/metering technician occasionally interacts with the lineworkers when, for example, a highly technical electrical issue presents itself to the lineworkers. This classification falls within the same pay range as the electrical equipment technician, electronic technicians, and load management/metering technicians. The current load management electrician/metering technician earns an hourly wage between \$22.89 and \$29.42.

Based on the foregoing and the record as a whole, I conclude that the appropriate unit should include not only the agreed-upon classifications, but also the remaining five classifications in dispute. In reaching this conclusion, I rely particularly on the Board's admonition that it will not approve fractured units, i.e, combinations of employees that have no rational basis. Seaboard Marine, Ltd., 327 NLRB No. 108 (1999). It would be especially improper to split the unit in the manner desired by Petitioner inasmuch as, in the public utilities field, the Board has considered broad, system-wide units to be optimal. See Natural Gas Pipeline of America, 223 NLRB 1439, 1440 (1976); Michigan Wisconsin Pipe Line Co., 164 NLRB 359, 360 (1967).

That Petitioner seeks a fractured unit becomes evident when one considers how Petitioner seeks to include and exclude positions regardless of whether major factors are shared or not shared. For example, Petitioner seeks to include certain employees who work in the field (e.g., lineworkers, equipment operators, and service locators) but exclude others who share that primary working condition (e.g., load management/metering technicians and metering line technicians). On the flip side, Petitioner seeks to include certain classifications of employees who work in the Employer's facility (e.g., warehouse workers, schedulers, system operators, and AM/FM/GIS technicians) but exclude others (e.g., electronic technicians, the electrical equipment technician, and the load management electrician/metering technician). A comparable situation exists relative to the various classifications' exposure to safety risks. Thus, while Petitioner seeks to include some employees who, at least occasionally, are exposed to serious safety risks (e.g., lineworkers), it seeks to exclude others who share that same working condition (e.g., metering line technicians, and load

management/metering technicians). At the same time, Petitioner desires to represent certain employees who are exposed to much less risk (e.g., material handlers and the new service inspector).

In support of its position with respect to each of the classifications Petitioner argues should be excluded, Petitioner relies heavily on that the respective classification falls within a division or department separate from some or all of the agreed-upon classifications. At the same time, except for material handlers, Petitioner ignores that the other ten agreed-upon classifications are split into three different departments within the Electric Operations Division (under two different vice presidents), each with a separate manager who hires, supervises, disciplines, and terminates the employees in his or her own department. This factor greatly undermines Petitioner's argument that the disputed classifications should be excluded from the unit on the basis that they are separately supervised or fall within a different department or division. Petitioner's arguments relative to the organizational chart (primarily separate supervision) become even more unpersuasive when its desire to include the material handler classification is considered. By including this classification, which falls in the Supply Department of the Business Resources Division, Petitioner has further effectively conceded that there can be a community of interest among the Employer's employees despite distinct lines of direct and upper-level supervision.

In light of the Board's preference for broad units in the utility industry and disfavor with fractured units, I find that the **electrical equipment technician** shares a community of interest with employees in the unit and should be included in the unit. For the reasons outlined above, Petitioner's argument that this classification should be

excluded on the basis that it falls within a separate department (with a distinct line of direct and upper-level supervision) from all of the agreed-upon classifications is unpersuasive. Although most of the electrical equipment technician's work is performed at the Employer's facility rather than out in the field, this factor is not significant inasmuch as the employees in four of the agreed-upon classifications (material handlers, schedulers, system operators, and AM/FM/GIS technicians) primarily work in the Employer's facility. That the electrical equipment technician tests, overhauls, and repairs apparatus installed and used by the lineworkers and that he has regular interaction with those lineworkers supports inclusion in the unit. Insofar as the pay range for electrical equipment technicians (\$19.62 - \$29.42) falls below some agreed upon classifications but above others, this factor also supports inclusion.⁷ Although the electrical equipment technician is not regularly exposed to the safety risks faced by the lineworkers, there is occasional exposure to serious risk, which is more than what is faced by several agreed-upon classifications, including material handlers, schedulers, system operators, and the new service inspector⁸ who, as noted above, all work primarily in the Employer's facility.

I conclude that the ***electronic technicians*** should be included in the unit. Again I rely upon the necessity of avoiding fractured units and the desirability of broad units in

⁷ Although the pay range for electrical equipment technicians is lower than the pay ranges for power line technicians (\$20.89 - \$31.59) and system operators (\$22.58 - \$31.59), for example, it is higher than the pay range for equipment operators and locators (\$15.19 - \$24.31), whom the parties have agreed to include in the unit. Equipment operators, as the title suggests, work in the field operating field equipment. The two service locators work out in the field at customer sites, locating power lines and marking their presence so that they are avoided when digging.

⁸ The new service inspector is responsible for visiting construction sites to make sure that they are construction-ready for the installation of new service. He works in the field, but is not exposed to safety threats from energized equipment or power lines.

the utilities industry. I do not find it significant that the electronic technicians are part of the Business Resources Division inasmuch as the material handlers (whom Petitioner seeks to represent) fall within that same division, albeit in a different department. That the electronic technicians work on meters which are installed by employees in other classifications supports their inclusion in the unit, as does the interaction between the electronic technicians and material handlers. The pay range for electronic technicians is the same as for electrical equipment technicians, a factor which supports inclusion, as noted in connection with that classification. Therefore, I conclude that electronic technicians share a community of interest with unit employees.

In light of the Board's preference for broad units in the utility industry and disfavor with fractured units, I find that the ***metering line technicians*** also share a community of interest with unit employees and should be included in the unit. As with the electronic technicians, Petitioner's argument that the metering technicians should be excluded because they work in the Data Acquisition Department of the Business Resources Division is not persuasive inasmuch as the agreed-upon unit already cuts across departmental and divisional boundaries. Although the primary duties of metering line technicians differ from those of powerline technicians, other factors support that the positions are sufficiently similar to warrant the metering line technicians' inclusion in the unit. First, the wage range for metering line technicians (\$22.58 to \$31.59) overlaps with the wage for powerline technicians (\$20.89 - \$31.59) to a great degree, and it is identical to the pay range for two agreed-upon classifications, power quality technicians and system operators. Second, according to testimony at the hearing, the two classifications are roughly equal in terms of the degree of skill required. In fact, one of

the current metering line technicians was transferred into that position from a lineworker position. Third, although their primary duties differ, there is at least some overlap in the duties of metering line technicians and lineworkers. For example, lineworkers are expected to possess the ability to disconnect, troubleshoot, rewire, and connect meters, even though this work lies principally with the metering line technicians. In the reverse direction, metering line technicians occasionally remedy customers' interference or reception problems by repairing problems with the power lines. Fourth, similar to powerline technicians, metering line technicians drive a bucket truck and spend most of their time in the field, and the metering line technicians' daily work is scheduled by the schedulers who also schedule for the lineworkers. Fifth, metering line technicians and lineworkers are exposed to comparative levels of risk stemming from exposure to electricity.

Relying upon the necessity of avoiding fractured units and the desirability of broad units in the utilities industry, I also find that the **load management/metering technicians** should be included in the unit. Again I do not find it significant that the employees in this position report to a different manager than any employee employed in an agreed-upon classification. In fact, inasmuch as the load management/metering technicians report to the same manager (Data Acquisition) as the electronic technicians and metering line technicians—classifications which I have determined belong in the unit—this factor actually supports inclusion in the unit. As noted above, load management/metering technicians perform work similar to metering line technicians. Although primary responsibility for the specialized off-peak meters lies with the load management/metering technicians, the metering line technicians are also trained to

work on those meters, and the two classifications—along with the powerline technicians—share duties over other meters. Similar to the metering line technicians and lineworkers, the load management/metering technicians work primarily in the field. When working on meters, load management/metering technicians are, of course, exposed to the same risks as metering line technicians and lineworkers when employees in those classifications are working on meters. The load management/metering technicians fall in the same pay range as the electrical equipment technician, which is below some agreed-upon classifications but above others, so this factor also supports inclusion in the unit. Thus, I conclude that load management/metering technicians share a community of interest with unit employees.

Finally, in agreement with the Employer, I find that the ***load management electrician/metering technician*** should be included in the unit. Again, I rely upon the Board's admonition that it will not approve fractured units and the rule that broad units are favored in the utilities industry. Although the person holding this position performs different duties from the agreed-upon and other disputed positions inasmuch as he is a licensed, master electrician who performs wiring and other work traditionally performed by electricians, he also works with the load management equipment (similar to the load management/metering technicians), which supports that he should be included in the unit. The load management electrician/metering technician occasionally interacts with the powerline technicians when, for example, a highly technical electrical issue presents itself to the powerline technicians. And this classification shares the same pay range with the electrical equipment technician and load management/metering technicians, which, of course, supports inclusion in the bargaining unit.

6. 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 powerline technicians, crew leaders, apprentice line technicians, equipment operators, material handlers, schedulers, system operators, new service inspectors, service locators, power quality technicians, AM/FM/GIS technicians, AM/FM/GIS technicians/easements, electronic technicians, load management/metering technicians, metering line technicians, electrical equipment technicians, and load management electricians/metering technicians employed by the Employer; excluding office clerical employees, meter readers, managers, guards and supervisors as defined by the Act, and all other employees.

DIRECTION OF ELECTION⁹

An election by secret ballot will 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 be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, 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 their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged

⁹ Under the provisions 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 **May 18, 1999**.

in a strike who have been discharged for cause since the 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.¹⁰

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local 160, AFL-CIO.

Signed at Minneapolis, Minnesota, this 4th day of May, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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¹⁰ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 234 Federal Courts Building, 110 South Fourth Street, Minneapolis, MN 55401, on or before **May 11, 1999**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.