

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

DELMARVA POWER & LIGHT COMPANY¹

Employer-Petitioner

and

Case 19-UC-586
(formerly Case 4-UC-312)

LOCAL UNION 1238, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS

Union

SUPPLEMENTAL DECISION AND ORDER

On February 1, 1995, the then-Regional Director issued a Decision and Order in the above-referenced matter in which he found electric system operators not to be supervisors. Thereafter, the Employer-Petitioner filed a Request for Review with the Board. On July 26, 1999, the Board issued an Order remanding this matter to the Regional Director for further consideration consistent with the Board's decision in *Mississippi Power & Light Co.*, 328 NLRB No. 146. Both parties declined to reopen the record, but both submitted briefs. The Union contends that the electric system operators are not statutory supervisors. The Employer contends that the electric system operators are distinguishable from the distribution dispatchers and system dispatchers at issue in *Mississippi Power & Light*, and that they are statutory supervisors. In this regard, the Employer contends that its electric system operators exercise significant independent judgment in prioritizing work, assigning field employees to specific tasks, and assigning employees to work overtime.

The electric system operators work in the control room in the northern division general operations building located in Christiana, Delaware. Also working in the control room are the power supply controllers, who are acknowledged supervisors. Both groups are on duty 24 hours a day, seven days a week. In addition, a supervisor of the power system is on duty in the control room 16 hours a day, Monday through Friday, and 10 hours on Saturday and Sunday. The supervisor of the power system is the highest authority normally present in the control room. The power supply controllers and the electric system operators sit at computer consoles, the former being on the transmission and generation side of the room, the latter on the distribution side. Their computer consoles enable them to electronically monitor and operate the Employer's energy control system.

Normally, there are two electric system operators in the control room, except during the 11:00 p.m. to 7:00 a.m. shift and on weekends, when there is only one. There are a total of seven electric system operators. In addition, there are normally two power supply controllers present, one on transmission and one on generation.

¹ On brief, the Employer asserts that it is now named Conectiv Energy, Inc.

Using their computers, the electric system operators monitor the Employer's distribution system. They also deal with planned and unplanned outages. A planned outage occurs when it is necessary to de-energize an electrical line for maintenance or construction purposes. The de-energizing process involves switching activities which may require personnel in the field to go to specific locations and manually perform the switching, although many such operations can be performed remotely by the operators. Unplanned outages can occur at any time as a result of accidents, storms, and the like. The process of restoring electrical service to customers affected by an unplanned outage may require personnel to perform certain tasks in the field. In both planned and unplanned outage situations, electric system operators give instructions to field personnel as to where they are to go and what they are to do when they get there. All of these instructions in essence involve disconnecting or connecting distribution lines by means of switching devices, in order to isolate some portion of the system, or to re-direct power where needed by an alternate inter-connection of lines.

De-energizing and re-energizing electrical lines is done by a step-by-step process planned in advance and meticulously carried out to ensure the safety of the field personnel involved. To this end, electric system operators prepare blocking permits and switching orders. A blocking permit is a document which identifies the various steps required to de-energize sections of line. Switching orders are parallel documents which also list the necessary steps for de-energizing, and which are given to the field personnel, while the electric system operator retains the blocking permit. During the actual de-energizing process, the electric system operator and the field person are in radio or telephone contact. For planned outages, electric system operators receive written work orders, which they then translate into blocking permits and switching orders. The underlying work orders are prepared by the work coordinator, who is a power supply controller. The work orders specify the time the switching is to be performed. For an unplanned outage, electric system operators prepare blocking permits, but it may be necessary to communicate switching orders orally to field personnel.

The field personnel involved are "troublemen" and "roving operators." Troublemen perform switching operations on the distribution lines; roving operators perform switching functions in substations. A substation is a structure which houses equipment used to reduce voltages from the transmission to the lower distribution level, and also provides switching points to re-direct the flow of electricity. Troublemen and roving operators report directly to Jerry Elliott, the manager of system operations, for all purposes except their daily work assignments. They receive their daily assignments from the power supply controllers and electric system operators.

Troublemen work two shifts, covering the hours 7:00 a.m. to 11:00 p.m. During the day shift, there are normally four troublemen and one or two roving operators on duty. After 11:00 p.m., there is one troubleman on call. For planned outages, the electric system operator on the evening shift prepares blocking permits and switching orders for the next day, based on the work orders. The electric system operator on the night shift then reviews those documents for correctness. The power supply controller will also have switching jobs that will need to be done the next day. The night shift electric system operator and the power supply controller discuss all the switching that needs to be done the next day; the power supply controller identifies which jobs he wants done first and who he wants to do them; the electric system operator then assigns the rest of the switching orders to troublemen based on geographic considerations. The electric system operator writes the names of the troublemen on the switching orders and takes them to the troublemen's room. Switching orders are also left for the roving operators, who decide between themselves who will do which job.

A former electric system operator who is now a power supply controller testified that some troublemen are better than others at certain tasks, and that when he was an electric system operator up until about three years prior to the hearing, he would try to assign work accordingly. He did not testify to

any specific examples. He also said that it is his experience that all the troublemen know their work very well. Two witnesses who are currently electric system operators testified that there is no distinction between the skills and abilities of the various troublemen. One said that he assigns switching orders to troublemen without regard for their skills and experience, that he was trained to do it that way and has trained other electric system operators to do it that way. In the event of an unplanned outage, an electric system operator can direct any available troubleman to the scene, and the nearest is usually chosen.

On some occasions, both for planned and unplanned outages, a troubleman is assigned a switching operation which extends beyond the end of his shift. On those occasions, the electric system operator informs the power supply controller that the troubleman will have to work overtime to complete the project. The power supply controller can tell the electric system operator to have the troubleman stop at the end of his shift, and send someone else out or delay completion of the task, but in most cases the controller permits the troubleman to complete the job on overtime. On a planned outage, the electric system operator is aware in advance that the troubleman will have to work overtime to complete the switching order; in other words, the overtime has been pre-authorized by the controller. There is no evidence that electric system operators make any distinctions among troublemen when assigning switching orders or unplanned outage situations that will require overtime. Further, there is no evidence that the electric system operator, in preparing switching orders based on work orders, has any authority to schedule work in any manner other than that requested on the work order; that is, to schedule the work to begin at an earlier time to avoid overtime.

When an unplanned outage occurs during the night shift, the electric system operator receiving the report must evaluate the situation to determine whether it is necessary to call in a troubleman (who would do so on overtime) or let the problem wait for the day shift. A witness who is currently an electric system operator testified that if a customer calls in and reports no power, the system operator decides whether it can wait. If he thinks the problem cannot wait, he reports the call to the power supply controller and gets permission to call in the on-call troubleman. The actual call is generally made by the power supply controller. If a troubleman other than the scheduled on-call person is required, there is an established call-out list which, by the terms of the collective bargaining agreement, must be followed. There is no specific evidence in the record as to circumstances in which an electric system operator would or would not decide it was necessary to call in a troubleman.

The Employer has written policies regarding the dispatch of troublemen and roving operators and the priorities in the event of emergencies and unplanned outages. These policies direct electric system operators to dispatch troublemen and roving operators during regular shift hours in a manner that will minimize travel time and response time whenever possible, and to continue to utilize any and all personnel to accomplish the most efficient coverage of work in any area during emergency situations. Further, there is a list of specific priorities for immediate dispatch of field personnel, as follows:

- Person injured by electrical contact (primary or secondary)
- Wires down and arcing
- Wires down (primary or secondary)
- Wires on fire or arcing
- Wires on vehicle
- Pole down or in immediate danger
- Structure fire - assistance requested
- Dig in (primary or secondary)
- Life Support system facilities (Priority #1)
- Person in unsafe position and/or immediate danger
- Tree or limb on primary wire - power off
- Emergency switching for Delmarva or customer
- Part off (partial current) - multiple customers 10

Part off (partial current) - industrial/commercial 30
Circuit lockout - customers out of service
Neighborhood outage - more than single house
Critical major customer out-of-service (includes part offs). Examples: sewage,
water, fire, hospital, police, industries having severe environmental impact,
radio, power plants, and substation services
Fire Board assistance requested

Elliott, who has over-all responsibility for the physical operation of the power system, testified that electric system operators are given priorities regarding critical facilities; hospitals, for example, are given first priority. He said that the main guidelines are to restore service to as many customers as possible. He gave as an example that if Zone A has a hospital, it gets restored first; Zone B with 30,000 customers would be restored before Zone C with 500 customers. Elliott testified that at times a roving operator may be engaged in a function assigned by the power supply controller, and an event occurs which requires the immediate use of that roving operator. The electric system operator would then discuss the situation with the power supply controller and they would decide together whether to send the roving operator to a different location. Elliott also testified that if an electric system operator tells a roving operator to go to a location, and the roving operator says he can't do that because he is tied up where he is, the electric system operator can decide which task is more important and tell the roving operator which one to do first.

In *Mississippi Power & Light*, the employer contended that its distribution dispatchers and system dispatchers were supervisors in that they assigned and responsibly directed employees. The Board rejected the employer's contentions in this regard. Here, the Employer contends that its electric system operators are distinguishable from the employees at issue in *Mississippi Power & Light*. In effect, it appears to concede that its design and implementation of switching orders is not really different from that found non-supervisory in *Mississippi*. (See "Conclusion" of Supplemental Brief). However, it argues that the operators are still supervisors because they exercise independent judgment in prioritizing work and assigning it to employees, and in assigning overtime.

Section 2(11) provides that a supervisor is an individual having authority, in the interest of the Employer, to, among other things, assign employees, "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." Thus we must here look not only at whether the electric system operators are distinguishable from the disputed employees in the *Mississippi* case, but also at whether they assign employees, and if so, whether in doing so they are *required* to use independent judgment.

In the *Mississippi* case, with respect to the assignment of work, the Board found the duties of the disputed employees to be as follows:

The distribution dispatchers' role in assigning field employees includes calling in additional troublemen or line crews for major problems; dispatching crews to trouble spots; setting priorities on the order of work; and holding meter readers and themselves overtime....[T]roublemen (at least one is always on duty) generally receive their assignments from the dispatcher. When a dispatcher receives a report of a customer's problem, the dispatcher sends an on-duty troubleman to the problem area. Once in the area, the troubleman reports the extent of the problem to the dispatcher and requests whatever additional help the troubleman believes is needed....[T]he weight of the evidence shows that the decision of whether to call out employees and how many to call out is a collaborative decision between the troubleman and the dispatcher and is generally, if not always, based on the troubleman's assessment of the problem and the number of employees requested by the troubleman. Indeed, the

bargaining agreement effectively requires the distribution dispatchers to seek additional help when requested. Thus, we find that, as set forth above, the distribution dispatchers' role in calling out additional employees does not require the use of supervisory independent judgment.

***12** Although calling off-duty employees to work entails the payment of overtime, because the dispatchers have only a limited role in deciding when to call out employees, the dispatchers' role in selecting employees for overtime is similarly limited. In addition, the determination of whom to call out is governed by well-established procedures. During the regular hours of a field crew's work, the field employees' supervisor decides which employees to call. During off hours, there is a designated on-call crew. The call out is usually performed by the on-call supervisor. Only when the dispatcher cannot reach the on-call supervisor or the on-call crew, will the dispatcher need to personally select the crew to be called. In these circumstances, the dispatcher operates pursuant to the established protocol of calling out employees to equalize overtime based on a predetermined list. The established practice is followed whether the call out is made by the day supervisor, the on-call supervisor, or the dispatcher.

Meter readers' assignments are made by their immediate supervisors. If the meter readers cannot complete the reconnections during their regular hours, the distribution dispatchers can hold them overtime to complete assignments. The distribution dispatchers authorize such overtime only when they are aware of reconnections to which the Employer gives a high priority. There is no evidence that they can compel overtime.

In addition, distribution dispatchers who have too much to handle, e.g., after storms causing multiple outages, can hold themselves over for the next shift, call in other distribution dispatchers, or call in distribution dispatchers from the next shift. As the Employer has well-established policies and guidelines for such assignments, the dispatchers do not exercise independent judgment in selecting employees for overtime.

Distribution dispatchers have a limited role in setting priorities for work. If, for example, a problem can be corrected temporarily by coiling a line on the top of a pole, the dispatcher may postpone further correction of the problem until a regularly scheduled crew can complete the repair. During multiple outages, distribution dispatchers may give the line crews priorities regarding which customers to restore first. Giving priority to certain customers, however, is done pursuant to the Employer's critical customers list which is conveyed to the dispatcher with the repair request. When a crew reports that a repair has been completed, the dispatcher may need to send them to another outage based on the critical customers list, to the next customer by the order of when the outage problem was reported to the dispatcher, or on a geographic basis, i.e., a dispatcher will send a crew to the nearest problem rather than across town. We find that the distribution dispatchers' role in assigning priorities is governed by preexisting rules, and what judgments they do make are based on commonsense considerations not unique to supervisors.

The system dispatchers are even more circumscribed than the distribution dispatchers in their authority to assign employees. Their role in calling in additional employees is to relay the requests to either the Jackson District's dispatchers or to the on-call supervisors.

[Footnotes omitted.]

The Board concluded that the role played by the distribution dispatchers and system dispatchers in assigning work entailed following established protocol and not the exercise of supervisory independent judgment.

Here, the electric system operator on the night shift assigns switching orders for planned outages to troublemen after conferring with the power supply controller and further on the basis of geographic proximity. The evidence does not establish that the electric system operators make such assignments on the basis of their opinion as to the relative skills and experience of the various troublemen. While a former electric system operator testified generically (i.e. without elaboration) that he took such factors into consideration, at the time of the hearing he had not occupied the job of electric system operator for about three years, and, further, he testified that in his experience all the troublemen knew their work very well. Two current electric system operators testified that they make no distinctions among the troublemen with respect to skills or experience. Further, the Employer has a written policy requiring that electric system operators dispatch troublemen and roving operators during regular shift hours in a manner that will minimize travel time and response time whenever possible. During unplanned outages or other emergency situations, the Employer has stated priorities for the electric system operators to follow. There is no evidence that electric system operators determine priorities without reference to the Employer's established policy, or that during those situations they dispatch troublemen on any basis other than availability and proximity. Indeed, Elliott testified that, "They look at availability, they look at individuals as far as who might be closer to the position of the damage."

Overtime for troublemen and roving operators can occur when they have been assigned a switching order which requires that they remain after their shift ends to complete. The electric system operator informs the power supply controller that field personnel will be working overtime. The power supply controller has authority to countermand the overtime, but usually clears it. Such overtime is the necessary by-product of the work order earlier generated by the work coordinator. When deciding whether a troubleman must be called in on overtime during the night shift, the electric system operator follows established Employer policies regarding priorities, and consults with the power supply controller.

Thus, the record fails to establish that electric system operators are required to exercise independent judgment in assigning employees, but rather such decisions as they make are circumscribed by Employer policy or otherwise routine. Specifically, assignments made by the electric system operator on night shift for scheduled work are made according to work orders prepared by a power supply controller; the electric system operator has no discretion as to the time of day such work will be performed and is required by Employer policy to make such assignments on the basis of geographic proximity, and the individual skills and experience of the various troublemen are not taken into consideration.² With respect to unplanned outages and emergencies, electric system operators follow established policy with respect to priorities and also with respect to dispatching the troublemen and/or roving operators on the basis of proximity. The record fails to establish that electric system operators must use independent judgment in the event of conflicting priorities, inasmuch as there is no specific evidence in that regard. Conclusionary testimony, without more, is insufficient to establish that

² The general testimony by a former electric system operator that *he took* such factors into consideration during his tenure is not determinative. *International Center for Integrative Studies/The Door*, 297 NLRB 601 (1990). It is difficult to understand why such consideration would take place, or why it could happen frequently, given the Employer assignment constraints - for example, dispatching the closest individual - and the specific instructions given to the switchers. Further, it would seem obvious that no individual would be entrusted with accomplishing these instructions - with their lethal potential in the event of error - if not *totally* qualified. There are no formal or informal gradations of skills shown in the record, such as "Operator I" or "Operator II," or "capable of minor, but not major, tasks."

independent judgment is required.³ The “assignment” of field employees to work overtime is a routine matter not requiring independent judgment, in that in so assigning, the electric system operator is following established policy, and, further, requires the approval of the power supply controller. Indeed, on the basis of the record as a whole, it can be said that the completion of the task at hand or response to an unplanned outage or emergency outweighs overtime considerations in almost all instances, a circumstance which supports a conclusion that the assignment of overtime is a routine matter.

Thus, I find that the electric system operators here are not significantly distinguishable from the distribution dispatchers and system dispatchers found non-supervisory in *Mississippi Power & Light*. Development of the switching plans may be difficult and critical, but selection of the individuals appears, in simple terms, a “no-brainer.” Similarly, for the decisions to work overtime. I therefore conclude on the basis of the entire record, that the electric system operators are not supervisors within the meaning of Section 2(11) of the Act. In doing so, I note it is the burden of party asserting supervisory status (here, the Employer) to establish same. Accordingly, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

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 October 13, 1999.

DATED at Seattle, Washington, this 29th day of September, 1999.

/s/ PAUL EGGERT

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³ *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).