

**Pacific Telephone and Telegraph Company<sup>1</sup> and Order of Repeatermen and Toll Testboardmen, Local 1011, International Brotherhood of Electrical Workers, AFL-CIO,<sup>2</sup> Petitioner, and Communications Workers of America, AFL-CIO.** Case 21-UC-108

September 1, 1978

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

Upon a petition duly filed on October 17, 1977, under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Steven J. Sorensen, at San Diego, California, on December 7 and 8, 1977. On January 20, 1978, the Regional Director for Region 21 transferred this case to the National Labor Relations Board. Thereafter, the Employer and the Petitioner (hereafter ORTT) submitted briefs to the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer, a public utility, is a California corporation engaged in the operation of telephone and telegraphic systems throughout the State of California. During the 12-month period preceding the hearing, it purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

2. It is not disputed, and we find, that ORTT and CWA each represent, in separate units, certain employees of the Employer. Accordingly, we further find that CWA and ORTT are labor organizations within the meaning of Section 2(5) of the Act.

3. The Employer is engaged in the operation of telephone and telegraph services throughout the

State of California. In providing this service, the Employer operates numerous facilities devoted exclusively to the processing of customers' calls over its message network. This includes both local and long-distance calls. The craft responsibilities for maintaining the telephone trunks or circuits, and for circuit order work (establishing, eliminating, and rearranging trunks) for the Employer in these facilities, historically have been divided between the units of employees represented by ORTT and by CWA. Employees represented by ORTT have had the responsibility for trunks that are intertoll, or long-distance in nature, and employees in the CWA unit have had the responsibility for trunks that are toll-connecting, or local in nature.

In originally certifying ORTT to represent the Employer's toll-transmission employees, or employees responsible for long-distance communications services, the Board defined those employees as individuals who "spend at least 51 percent of their time in such work."<sup>4</sup> CWA has been certified to represent the Employer's other employees. Over the last 40 years, however, many of the Employer's technological innovations have blurred the distinction between equipment providing long-distance and local services. Correspondingly, the functions of employees maintaining that equipment have also been blurred. In a 1954 representation decision,<sup>5</sup> the Board noted that historically the line of cleavage between employees represented by CWA and by ORTT was determined by whether the majority of an employee's time was spent on local or long-distance services. "Thus, only employees who spend more than 50 percent of their time testing, maintaining, and repairing equipment used for long-distance telephone transmission were classified as 'toll maintenance' employees."<sup>6</sup> ORTT and CWA have each had a series of collective-bargaining agreements with the Employer, which reflect this division of craft responsibility.

In the instant case, ORTT seeks to clarify its existing unit of all the Employer's toll maintenance employees to include the "craft employees assigned to the Company's No. 4-ESS San Diego-07 office . . . ." ORTT's petition was prompted by the Employer's intent to introduce No. 4-ESS machinery into its San Diego-07 office and to assign all work on this equipment to employees represented by CWA.<sup>7</sup>

<sup>4</sup> *Pacific Telephone and Telegraph Company*, 23 NLRB 280, 284 (1940).

<sup>5</sup> *Pacific Telephone and Telegraph Company*, 107 NLRB 1615, 1617 (1954).

<sup>6</sup> 107 NLRB at 1617.

<sup>7</sup> In preparation for the introduction of the new No. 4-ESS machine at its San Diego office, the Employer trained approximately 28 employees in 16- to 18-week courses. Most of these employees came from the CWA unit, but a number of the employees came from the ORTT unit. At the time of the hearing, all of these employees were engaged full time in testing and integrating the new equipment into the Employer's operations. The Employer currently recognizes the CWA as the collective-bargaining representative of those employees.

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> *Sioux Valley Empire Electric Association*, 122 NLRB 92 (1958); *Communications Workers of America, Local 9511 (Pacific Telephone and Telegraph Company)*, 188 NLRB 433 (1971).

Other Bell System-operated companies have already installed similar equipment, and the No. 4-ESS machine at San Diego is the first of such equipment that the Employer intends to introduce into its operations.

The No. 4-ESS equipment is designed to perform all switching services and will replace all existing switching machines. The device will service both toll-connect and intertoll trunks, and all circuit order work and equipment and testing work will be merged with the maintenance of the No. 4-ESS machine. This new equipment is designed to handle four times the work at a faster speed, with less maintenance, and at a lower cost than the equipment it is replacing.

The equipment being replaced by the No. 4-ESS machine, however, has been maintained by employees in both the ORTT and the CWA units. The switching work and the circuit order testing and maintenance work concerning toll-connecting trunks have historically been done by employees represented by CWA. The circuit order testing and maintenance work concerned with the intertoll trunks in the past has been done by employees represented by ORTT. The difficulty which the installation of this new equipment causes arises, therefore, from the fact that it eliminates jobs in both the CWA and the ORTT units and combines local and long-distance job functions. The parties concede that it is not practicable to make a distinction between long-distance and local work on the No. 4-ESS machine in day-to-day work assignments and that a bifurcation of craft-employee representation along such lines would not be feasible.

In support of its petition, ORTT contends that the majority of the work associated with the No. 4-ESS machine is long-distance in nature and such work should be placed within its bargaining unit. If granted, the petition would add the approximately 28 employees assigned to the San Diego No. 4-ESS machine to the approximately 2,000 toll maintenance employees presently represented by ORTT. The Employer and CWA oppose ORTT's petition and contend that the work associated with the No. 4-ESS machine is predominantly local in nature and the parties' collective-bargaining agreements and history dictate that the employees assigned to such equipment should be represented by CWA.

It is apparent that ORTT is seeking to have the Board determine that all the work on the No. 4-ESS machine belongs to employees in its unit rather than to the employees presently doing the work, who are represented by CWA.<sup>8</sup> Such a request is indicative of a work-assignment dispute, and the Board has long held that such disputes are not properly matters for

consideration and resolution in unit-clarification proceedings.

[W]ork assignments disputes are not properly matters for consideration and resolution in a representation proceeding. As the Board has said, its sole function in representation proceedings is to ascertain and certify the name of the bargaining representative, if any, that has been designated by the employees in the appropriate unit. It is not the Board's responsibility in representation proceedings to decide whether employees in the bargaining unit are entitled to do any particular work or whether an employer has properly reassigned work from employees in the bargaining unit to other employees.<sup>9</sup> [Citations omitted.]

In *Pacific Northwest Bell Telephone Company*, 211 NLRB 1021 (1974), a case analogous to the instant case and involving the same unions, the Board dismissed a petition for unit clarification filed by the employer which sought to have work on certain new equipment assigned to employees in one of its units. The Board there found that the petition sought:

. . . not the resolution of an ambiguity in the existing certified and contract bargaining unit which has been in existence for more than 30 years, but a radical change in that unit so as in effect to eliminate the 51-percent rule which during all that time has been the dividing line between the ORTT and CWA bargaining units. That is not an appropriate subject for a motion for clarification.<sup>10</sup>

<sup>8</sup> The following is a portion of the record testimony wherein the Employer's attorney questioned the Employer's labor relations director at Tr. p. 61:

Q. (Resumed by Mr. Gaus) One final question, Mr. Randolph: has the ORTT claimed the company is violating its contract with the ORTT by assigning work at the San Diego 07 Number 4ESS Office—by assigning some of that work—to craft employees represented by the CWA?

A. Yes.

Q. Has the ORTT requested arbitration of this issue?

A. Yes.

Q. Does the company stand ready to submit this issue to arbitration?

A. Yes.

Q. Does the company intend to offer CWA the opportunity to intervene as a party in this arbitration?

A. Yes.

<sup>9</sup> *The Gas Service Company*, 140 NLRB 445, 447 (1963).

<sup>10</sup> *Pacific Northwest Bell Telephone Company*, 211 NLRB 1021, 1023 (1974). At the time of the original ORTT certification in *Pacific Telephone and Telegraph Company*, 23 NLRB 280 (1940), Pacific Telephone and Telegraph Company, the Employer herein, operated in Oregon, Washington, and Idaho, as well as California. In 1961, Pacific Northwest Bell Company was organized as a subsidiary of American Telephone & Telegraph Company to operate in Oregon, Washington, and Idaho and became a successor to

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We find that as in *Pacific Northwest Bell Telephone Company, supra*, the Petitioner here, in effect, is seeking to have work on particular equipment (the No. 4-ESS machine) assigned to employees in its unit. Such an attempt is contrary to the purpose of the unit clarification procedure and is not an appropriate subject for a petition for clarification. Accordingly, we find that the unit clarification petition does not raise a representational matter, and therefore we shall dismiss the petition.<sup>11</sup>

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the Employer in those States. ORTT had been certified to represent Pacific Telephone and Telegraph Company's toll maintenance employees in Oregon, Washington, and Idaho and after 1961 continued to represent those same employees with the successor, Pacific Northwest Bell.

<sup>11</sup> In addition to filing the instant petition, ORTT also filed a grievance pursuant to its collective-bargaining agreement with the Employer concerning the latter's assignment of work on the No. 4-ESS machine to CWA-

## ORDER

It is hereby ordered that the petition for clarification filed herein be, and it hereby is, dismissed.

represented employees. CWA was permitted to, and did, in fact, join that grievance procedure. The Employer and CWA contend that the instant dispute should be deferred to past arbitration decisions which they claim dictate that the work on the No. 4-ESS machine be assigned to CWA-represented employees. In the alternative, the Employer and CWA contend that the Board should defer the resolution of the issues in the instant matter to the parties' presently pending grievance-arbitration procedure. Inasmuch as we have found that the issues herein are not properly before the Board in this proceeding, we find it unnecessary to consider these contentions. In any event, were we to consider this proceeding a representational matter, we would not defer to the arbitration procedure. For, as we have recently held: "The determination of questions of representation, accretion, and appropriate unit do not depend on contract interpretations but involve the application of statutory policy standards, and criteria. These are matters for decision of the Board rather than an arbitrator's." *Marion Power Shovel Company, Inc.*, 230 NLRB 576 (1977); *Williams Transportation Company*, 233 NLRB 837 (1977).