

In the Matter of NEW YORK TELEPHONE COMPANY and UNION OF
TELEPHONE WORKERS

Case No. 2-R-4027.—Decided October 30, 1943

Mr. Walter Gordon Merritt, of New York City, for the Company.

Mr. George A. Brenner, of New York City, for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Union of Telephone Workers, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of New York Telephone Company, New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Vincent M. Rotolo, Trial Examiner. Said hearing was held at New York City on September 30, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

New York Telephone Company, a New York corporation with its principal office in New York City, together with 23 other associate companies and the American Telephone and Telegraph Company; are popularly known as The Bell System which furnishes nationwide communication service through the coordination of plant equip-

ment and services of the associate and other telephone companies. The telephone plant of the American Telephone and Telegraph Company consists mainly of toll lines and toll switchboards forming a communications network, connecting the communications system of its operating telephone subsidiaries and other telephone companies.

The New York Telephone Company, with which we are concerned herein, is engaged in the business of furnishing local and long distance telephone communication service throughout the State of New York and in Greenwich, Connecticut, where it operates and owns approximately 477 exchange offices. In the operation of its system, the Company maintains connections with the facilities of some 330 exchanges in New York State owned by other companies. Some of its wires and jointly owned toll lines extend into the State of Connecticut. In addition to furnishing local service, the Company, as an integral part of The Bell System, furnishes its subscribers with long distance telephone service to all parts of the United States and to many foreign countries. Association between the Company and the other associate companies of The Bell System with which it is connected is governed in general by standard operating agreements designed to make uniform the communication services afforded by the Company, whether by its own system or in conjunction with others.

During the year 1942 the Company purchased equipment and materials valued in excess of \$14,000,000, of which more than 75 percent was shipped to the Company from points outside the State of New York. During the same year the Company's operating revenues amounted to approximately \$236,000,000, of which about \$10,000,000, or at least 5 percent of such operating revenues was received from furnishing interstate services. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Union of Telephone Workers is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the bargaining representative of its employees engaged in certain classifications which the Union wishes to include within the unit which it alleges to be appropriate.

Statements of the Regional Director and the Trial Examiner, introduced into evidence at the hearing, indicate that the Union represents

a substantial number of employees within the unit hereinafter found to be appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Union seeks to represent a unit comprised of all cashiers, clerks, coaches, coin box sealers, coin telephone collectors, counting clerks, directory clerks, directory listing canvassers, file index clerks, general clerks, instructors, junior clerks, key custodians, mail clerks, mail senior clerks, messengers, mileage clerks, observers, order reviewers, PBX operators, public telephone clerks, "query" clerks, record machine operators, remittance clerks, results clerks, service order clerks, service order typists, stenographers, tellers, treatment clerks, typists, representatives, customer service representatives, special representatives, and district clerks, employed in the Downstate Area Commercial Department, excluding supervisory employees, commercial representatives, general commercial representatives, and collection attorneys. The Company disputes the inclusion within the unit of the following classifications: (a) cashiers having two or more assistants, (b) district clerks, (c) customer service representatives (non-scheduled), and (d) special customer service representatives, and concedes that the remaining classifications properly belong within the bargaining unit.²

¹ The Regional Director reported that the Union submitted 1,860 application cards, all of which bear apparently genuine original signatures; of these 1,831 are the names of persons appearing upon the Company's pay roll dated June 30, 1943, which contains the names of 2,576 employees in the unit sought by the Union.

The Trial Examiner reported that he made a check of the cards against the pay roll of July 31, 1943, and that as of July 31, 1943, the Company had 2,618 employees in the unit originally sought by the Union herein; that the Union submitted evidence indicating that it represents 1,938 employees whose names appear upon the Company's pay roll of July 31, 1943; that said pay roll contained the names of 57 cashiers, 31 of which had no assistants, 8 had 1 assistant, and 18 had 2 or more assistants and that the Union represents none of the employees in the last group; that the names of 17 district clerks appeared upon the afore-mentioned pay roll and that the Union represents 6 of these employees; that the names of 31 customer service representatives (non-scheduled) appear upon the afore-mentioned pay roll, and that the Union represents 17 of these employees; that the names of 28 special representatives appear upon the afore-mentioned pay roll and that the Union represents 9 of these employees.

The Trial Examiner further reported that the parties stipulated, in substance, that the cards presented by the Union in support of its claims of representation are authentic. It thus appears, and the Company admits, that the Union represents a majority of the employees in the Downstate Area Commercial Department. The Union desires certification without an election. However, since no question concerning representation exists with respect to the departmental unit in general, we find it unnecessary to issue certification with respect thereto.

² The unit, as conceded by the Company, includes those employees formerly represented by the three predecessors of the Union who represented employees under substantially similar contracts with the Company covering the Long Island, Manhattan, and the Bronx-

Cashiers—The Company concedes that cashiers having no or one assistant are properly included within the unit which the Union seeks to represent, but contends that those cashiers having more than one assistant should be excluded on the ground that they are supervisors. As noted above, the Union contends that all cashiers should be included within the unit. The record reveals that the cashiers perform work similar to that performed by their assistants in inverse ratio to the number of assistants assigned to them. Thus cashiers having one assistant perform approximately 50 percent of the routine work and the remainder of their time is spent in supervising; cashiers having two assistants spend approximately one-third of their time performing routine duties and the balance of their time is spent in duties primarily supervisory in nature; and so on. Those cashiers having assistants can effectively make recommendations with respect to their assistants and effect changes in their status. We are of the opinion and find that those cashiers having more than one assistant are sufficiently clothed with the indicia of supervision to warrant their exclusion from the unit, whereas those cashiers having one or no assistants do not occupy such status. Accordingly, we find that the former group does not properly fall within the unit for which the Union is the admittedly majority bargaining representative; however, we further find that the cashiers having one or no assistants should be included within the afore-mentioned unit, and that the Union may properly bargain for them as part of such unit.

District clerks—These employees occupy positions comparable to those of confidential secretaries; they take dictation from the district managers or office managers on a variety of matters pertaining to officer performance, including confidential letters, memoranda, reports, personnel, labor relations, and wage matters. They maintain district files, which include wage progression and personnel data, and review incoming mail addressed to the district manager, routing to him matters needing his attention and referring the balance to the proper parties. We are of the opinion that these employees are engaged in a confidential capacity, and find that they do not properly fall within the unit for which the Union is the admitted majority bargaining representative.³

Customer service representatives (non-scheduled) and special representatives—The Company contends that, because of the nature of their duties, these employees cannot be placed in any definite category and their value to the Company can be rated only upon an individual basis. Thus, it argues, in effect, that they constitute a group which does not

Westchester-Connecticut Areas. In March 1943, the three autonomous labor organizations dissolved and their former membership formed the Union herein. No other labor organization has attempted to organize these employees.

³ *Matter of Creamery Package Company*, 34 N. L. R. B 108

lend itself to the principle of collective bargaining. The Union, on the other hand, contends that they properly fall within the broad departmental unit which it seeks to represent. The record discloses that these employees are assigned to the more substantial customers' accounts, and conduct all matters pertaining to their servicing, including assistance in the planning of installations, the handling of complaints and adjustments, and other related problems. It does not appear, however, that the foregoing duties give rise to interests sufficiently distinguishable from those of the other employees in the department to warrant the outright exclusion of the servicing employees from the departmental bargaining unit. Nor does it appear that they necessarily fall within such unit; they may with propriety either be included or excluded. While the record reveals that a number of these employees have expressed a desire not to be represented by the Union, a substantial number have also indicated a contrary desire. Under these circumstances, we find that our determination of the bargaining unit status of the employees in question should depend in part upon their own desires to be expressed in the election hereinafter directed at which time they will have an opportunity to vote for or against the Union. We shall consequently defer our final determination pending the results of such election. If these employees select the Union as their bargaining representative, it may bargain for them as well as for those employees in the departmental unit regarding which no question concerning representation exists.

We shall accordingly direct that an election be conducted among those employees of the Company engaged as customer service representatives (non-scheduled) and special representatives who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with New York Telephone Company, New York City, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the

employees of the Company engaged as customer service representatives (non-scheduled) and special representatives, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Union of Telephone Workers for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.