

In the Matter of CAPITAL CITY TELEPHONE COMPANY and LOCAL B-2,  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL

Case No. 17-R-833.—Decided June 5, 1944

*Mr. R. W. Hedrick*, of Jefferson City, Mo., for the Company.

*Mr. Henry C. Kuehner*, of St. Louis, Mo., for the Union.

*Mrs. Margaret L. Fassig*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by Local B-2, International Brotherhood of Electrical Workers, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Capital City Telephone Company at Jefferson City, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Jefferson City, Missouri, on April 24, 1944. The Company and the Union appeared and participated. All parties 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

Capital City Telephone Company, a Missouri corporation, organized in December, 1925, is engaged in the business of selling and furnishing telephone service to business firms and residents of Jefferson City, Missouri, and also to a limited number of users in Calloway and Cole Counties, Missouri. The Company in the conduct of its business

has a telephone exchange at Jefferson City, Missouri, and necessary telephone lines and connections in Jefferson City and to the limited number of users outside of Jefferson City but in Cole and Calloway Counties, Missouri.

The Company in the course and conduct of its business at its exchange in Jefferson City during the year 1943 sold telephone service of a value of approximately \$240,000 to business firms and resident users of its service in Jefferson City and in Cole and Calloway Counties, of which approximately \$8,000 was derived from interstate tolls. The Company has toll connections with the Southwestern Bell Telephone Company which furnishes services throughout the midwestern area of the United States, and for the year 1943 31½ percent of the revenues of the Company were obtained by toll services between Jefferson City and other cities and towns outside the State of Missouri. Also, the Company furnishes telephone service to the Missouri State Capitol offices, all Federal Government offices in Jefferson City, and to the Missouri Pacific Railroad Company and other companies which are admittedly engaged in interstate commerce.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Local B-2, International Brotherhood of Electrical Workers, affiliated with the AFL, is a labor organization admitting to membership employees of the Company.

## III. THE ALLEGED APPROPRIATE UNIT; THE ALLEGED QUESTION CONCERNING REPRESENTATION

The Union contends that G. K. Fitzgerald, the Company's assistant plant superintendent and engineer, and W. C. Brown, its wire chief, should be included in a unit consisting of the Company's seven service maintenance employees now represented by the Union under a collective bargaining contract with the Company. The Company contends that the employees in question should not be added to the present bargaining unit because they are directly in charge of operations, have certain duties wherein they use judgment and discretion, and are supervisory employees with powers to make recommendations affecting the status of other employees.

The head of operations and maintenance of the Company's telephone service is the Plant Superintendent, Clark Silvey, who is directly responsible to the president of the Company. Directly under Mr. Silvey in authority is Fitzgerald, and the third in general authority in the operation of the plant is Brown, the wire chief. Working under

these men are seven employees, six of whom work outside of the exchange, engaged in the service and maintenance of the telephone lines. The seventh employee is the switchboard man who works at the exchange. These seven men constitute the present unit to which the Union would add Brown and Fitzgerald.

Fitzgerald is in full charge of the plant in the absence of the plant superintendent, which is estimated to be about 25 percent of the time. The rest of his duties are widely diversified in that he functions as plant engineer, alternates with Brown in the operation of the test-board, installs equipment in and about the plant, and works on the switchboard at the plant part of the time.

Brown, as wire chief, directs all changes, rearrangements, installations, moves, and take-outs necessary to the rendering of telephone service, by assigning jobs to the men who work on the outside, and who clear with him as they complete their assignment. He has direct supervision of such work, and reports any irregularities as to the length of the time it takes certain men to do certain jobs, to Silvey, the plant superintendent.

Both Fitzgerald and Brown are officers of the Company and are paid on a straight salary basis. They are not docked for any time off from work, and do not receive overtime pay for any extra time worked, whereas the men in the present bargaining unit are hourly paid employees.

The Board of Directors of the Company has provided that in the absence of Silvey, the plant superintendent and engineer, his job is filled by Fitzgerald, and if Fitzgerald is also away at the same time, the job is filled by Brown, and during such times Fitzgerald or Brown have complete authority to conduct the work. Fitzgerald and Brown alternate in being available every other Sunday and on holidays, in case they are needed at the plant, and if any emergency arises they are in charge of the plant, each on his respective Sunday, and authorized to do whatever is needful to restore service. They also alternate in working on Saturdays, and as Silvey leaves at noon, during Saturday afternoons each alternates in being in charge of the plant.

The president of the Company testified that both Fitzgerald and Brown have authority to recommend employment or discharge of men should the occasion arise. The record shows only one man has been discharged in the last 6 years, and neither Fitzgerald nor Brown has had occasion to recommend that anybody be hired or discharged. The record also indicates that neither has had occasion to reprimand any of the outside men. In this connection Fitzgerald testified that "they are all pretty good workers," but he did not disclaim the authority to reprimand or discipline them should the occasion arise. We

believe that the mere fact that neither Fitzgerald nor Brown has had occasion to exercise their supervisory powers in the making of recommendations, does not negate the testimony of the president of the Company that they are vested with such authority. We are of the opinion and find that G. K. Fitzgerald and W. C. Brown are supervisory employees within the meaning of our usual definition of that term, and accordingly we shall dismiss the Union's petition seeking their inclusion in the existing bargaining unit.

### ORDER

Upon the basis of the foregoing findings of fact and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of the Capital City Telephone Company, Jefferson City, Missouri, filed by Local B-2, International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, be, and it hereby is, dismissed.

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