

In the Matter of PACIFIC TELEPHONE AND TELEGRAPH COMPANY and
LOCAL 101, AMERICAN COMMUNICATIONS ASSOCIATION, C. I. O.

Case No. 19-R-1297.—Decided October 16, 1944

Mr. Joseph D. Holmes, for the Board.

McMicken, Rupp & Schweppe, by *Mr. J. Gordon Gose*, of Seattle,
Wash., for the Company.

Mr. A. J. Isserman, of Los Angeles, Calif., for the C. I. O.

Hill, Newman & Cook, by *Mr. Matthew Hill*, and *Mr. DeWitt Tuttle*,
of Seattle, Wash., for the A. C. E. (Plant).

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 101, American Communications Association, affiliated with the Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Pacific Telephone and Telegraph Company, Seattle, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before J. J. Fitzgerald, Trial Examiner. Said hearing was held at Seattle, Washington, on July 13, 14, 17, 18, and 19, 1944. The Board, the Company, the C. I. O., and Associated Communications Employees (Plant), herein called A. C. E. (Plant), appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the hearing, the Company and the A. C. E. (Plant) moved that the petition be dismissed on the ground that the unit proposed therein was not appropriate for bargaining purposes. For reasons which appear in Section IV, below, the motions are denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Pacific Telephone and Telegraph Company, with Southern California Telephone Company and Bell Telephone Company of Nevada, its wholly owned subsidiaries, is engaged in receiving and transmitting intrastate and interstate communications in Washington, Idaho, Oregon, Nevada, and California. For administrative purposes the territory served by the Company and its subsidiaries is divided into the four geographical areas descriptively known as (1) the Washington-Idaho area; (2) the Oregon area, both of which are served by the Company; (3) the Northern California-Nevada area, which is served by the Company, and Bell Telephone Company of Nevada; and (4) the Southern California area, which is served by Southern California Telephone Company.

The Company and its subsidiaries maintain a system of wire network in the territory served. As of December 31, 1943, they owned and operated approximately 2,568,432 telephones and 32,688 miles of toll lines, 8,305,966 miles of wire, excluding drop and block wire, and 832 central offices. As of the same date, the Company and its subsidiaries employed 43,174 persons, of whom 6,387 persons were located in the Washington-Idaho area, which is the only area of the Company directly involved in the instant proceeding.

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

II. THE ORGANIZATIONS INVOLVED

Local 101, American Communications Association, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Associated Communications Employees (Plant) is a labor organization affiliated with the National Federation of Telephone Workers, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 18, 1944, the C. I. O. asked the Company for recognition as bargaining representative of toll maintenance employees in the Washington-Idaho area. On February 2, 1944, the Company refused to recognize the C. I. O., alleging that the A. C. E. (Plant) was the exclusive bargaining representative of these employees.

On May 16, 1941, the Company entered into a wages and hours agreement with the A. C. E. (Plant), covering employees in the plant

department in the area, and effective until 90 days' written notice to terminate should be given subsequent to May 16, 1942. On June 17, 1941, the same parties entered into a supplementary agreement. On December 15, 1941, the Company, in a formal document, recognized the A. C. E. (Plant) as the exclusive bargaining representative of all non-supervisory employees in the plant department of the Washington-Idaho area. On February 9 and April 30, 1942, and on November 2, 1943, the Company and the A. C. E. (Plant) executed additional agreements, each supplementary to the master agreement, respecting wages and working conditions of plant employees. The February 9, 1942, agreement contained no provision for termination independent of the original wage contract. The April 30, 1942, agreement was made effective as of March 1, 1942, and for a period of 1 year thereafter. The November 2, 1943, agreement was made effective as of September 1, 1943, and subject to termination by 90 days' notice subsequent to September 1, 1944. On May 26, 1944, the same parties entered into a new agreement, effective as of September 1, 1943, and subject to termination upon 90 days' notice subsequent to August 31, 1944.

The Company and the A. C. E. (Plant) contend that these contracts constitute a bar to a determination of representatives at this time. We do not agree. The basic contract of May 16, 1941, has been in effect for more than 1 year and is presently terminable on notice of 90 days. Other agreements are supplementary and subject to this basic agreement. The agreement of November 2, 1943, is subject to termination upon notice of 90 days subsequent to September 1, 1944, which date has now passed. The agreement of May 26, 1944, was entered into subsequent to the institution of the instant proceeding. Whether or not the provisions of this contract are binding upon the employees concerned until the termination of the 90-day period subsequent to September 1, 1944, neither the basic agreement of May 16, 1941, as extended, nor the agreement of November 3, 1943, precludes a present investigation and determination of representatives for the purpose of negotiating a new contract covering the employees concerned in this proceeding at the conclusion of the present contract term.¹

A statement prepared by a Field Examiner and introduced into evidence at the hearing indicates that the C. I. O. represents a substantial number of employees in the unit proposed as an appropriate bargaining unit.²

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.

¹ *Matter of Dan Manufacturing Company*, 41 N. L. R. B. 1056, and cases cited therein; cf. *Matter of M. P. Moller, Inc.*, 56 N. L. R. B. 16

² The C. I. O. submitted 68 authorization cards, of which 67 bear apparently genuine signatures of toll maintenance employees listed on the Company's pay roll of April 28, 1944. There are approximately 110 employees in the proposed bargaining unit.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The C. I. O. contends that toll maintenance employees, apart from other employees in the Company's Washington-Idaho area, constitute an appropriate bargaining unit. The Company and the A. C. E. (Plant) contend that toll maintenance employees should not be separated from other plant employees in the area for bargaining purposes and that the unit proposed by the C. I. O. is not an appropriate bargaining unit.

As noted in Section I, above, the Company with its subsidiaries maintains telephone and telegraph service in Washington, Idaho, Oregon, Nevada, and California. Since 1930, it has divided the territory served into four geographical areas: (1) the Washington-Idaho area, (2) the Oregon area, (3) the Northern California-Nevada area, and (4) the Southern California area. The instant proceeding directly concerns employees in the Washington-Idaho area, which is subdivided into three administrative districts. The Company divides its operations functionally in six departments: (1) administrative, (2) accounting, (3) commercial, (4) engineering, (5) traffic, and (6) plant³ departments. The plant department of the Washington-Idaho area, the only department of the area directly involved in this proceeding, is in charge of a general plant manager, under whom are three district managers in charge of plant work in the three several districts in the area.

The maintenance and repair of the Company's buildings and properties—as distinct from the installation, maintenance, and repair of its telephone equipment—is a function of the plant department and is in each district in charge of a supervisor of buildings, supplies, and motor vehicles, who reports directly to the plant manager. The construction of outside plant⁴ facilities is in charge of the construction section of the plant department, and construction superintendents in the three districts report to the general plant manager through their respective district plant managers concerning the work of linemen, cablemen, etc., over whom they have supervision. Other employees in the plant department under district plant managers are (1) station installers and station repairmen, (2) central office maintenance employees, and (3) toll maintenance employees. Station installers and station repairmen, including exchange PBX installers and repairmen who care for complicated exchange equipment set up in large factories, hotels, etc., install and maintain telephone equipment on the premises of the subscriber. Central office and toll employees, how-

³ The term "plant" means telephone equipment and characterizes the department that installs, maintains, and repairs telephone equipment, and the employees engaged in such work

⁴ Outside plant facilities include the construction and maintenance of wires and cables and other telephone equipment between the central office and the subscriber's premises.

ever, work on the Company's properties. Central office maintenance employees, including deskmen, switchmen, framemen, central office repairmen, and powermen,⁵ test, maintain, and repair "exchange"⁶ equipment on the Company's property. Toll maintenance employees, including telegraph repeatermen, testboard men, transmission men, and toll central office repairmen,⁷ test, repair, and maintain equipment used for long distance transmission. More specifically, they set up telegraph and teletypewriter circuits and test and adjust repeater equipment, they deal with customers who purchase teletypewriter and telegraph service from their employer, and they use the Morse telegraph code for communication between toll offices. Their work requires constant communication with toll employees in other areas and outside their employer's territorial boundaries. They make transmission tests, test and monitor radio program circuits and equipment, and locate and clear trouble on such circuits and equipment. Toll maintenance employees operate mobile emergency radio equipment, make necessary patches or switches at the line and amplifier panels, and perform routine maintenance work on toll office equipment. They keep records associated with their work. Toll maintenance employees in the three districts work under district toll superintendents, who do not have jurisdiction over station and central office work.

The job categories under toll and central office employees indicate, respectively, different craft skills.⁸ Without special training, central office employees cannot perform toll maintenance work, and vice versa. Toll employees regularly perform work in more than one toll maintenance category and a similar situation exists among central office employees. Some employees, especially those assigned to localities where the toll and central office work is light, are combination men and work on both toll and central office facilities.⁹ The practice of the Company is to classify its employees as "toll" or "central office" employees, depending upon the type of equipment on which each craftsman regularly spends 51 percent or more of his time. The record does not disclose how many combination central office-toll employees are employed in the area. In the Washington-Idaho area, there are approximately 1,450 employees in the plant department, of whom

⁵ Powermen generally maintain equipment to furnish power for the operation of both toll and central office equipment

⁶ "Exchange" equipment indicates equipment for local, as distinct from "long distance," calls

⁷ Radiomen is a job category listed under toll maintenance employees. The Company presently hires no radiomen. "Ship to shore" and "shore to ship" services are operated by remote control and serviced by transmission men

⁸ The work of deskmen and testboard men is, however, comparable. These employees similarly operate test switchboards for the testing of central office and toll equipment, respectively. They make the tests by communicating with employees in other toll or central offices, on outside plant, or on the premises of the Company's subscribers.

⁹ This results in some overlapping of supervisory jurisdiction over toll and central office maintenance employees.

approximately 100 employees are classified as toll maintenance employees. The C. I. O. would include in its proposed craft unit employees classified by the Company as toll maintenance employees and would exclude combination "central office-toll" employees not so classified. We shall consider as "toll maintenance" employees only those classified by the Company as such, and we shall deem excluded from any unit found appropriate as result of this proceeding employees whose combination work does not entitle them to this classification by their employer.

Prior to 1919, employees of the Company's plant department were organized by the I. B. E. W. on a system-wide basis. Subsequent to 1919, toll maintenance employees on a system-wide basis joined a toll craft organization called Association of Pacific Telephone and Telegraph Repeatermen and Toll Testboard Men, commonly called the Repeatermen's Association.¹⁰ The Company entered into collective bargaining agreements with the Repeatermen's Association covering its members until 1931. At this time the operations of the Company and its wholly owned subsidiaries were reorganized on a four-area geographical basis. The Repeatermen's Association as a system-wide organization consequently disbanded, and bargaining for the Company's employees, including toll employees, thereafter continued in units corresponding to the respective administrative areas of the Company's operations. From 1931 to 1937, the Company bargained with its toll employees in the Washington-Idaho area through an area-wide repeatermen's organization as part of an employee representative plan. At that time, a majority of employees in this repeatermen's organization decided to join the A. C. E. (Plant), the intervenor in this proceeding, an organization which included other plant employees in the same area.¹¹ Since 1937, the Company has recognized the A. C. E. (Plant) as the exclusive bargaining representative of its plant employees, including toll maintenance employees, in the Washington-Idaho area, and has entered into written agreements with that organization.

In 1939, toll maintenance employees in the Northern California-Nevada area and in the Southern California area formed Order of Repeatermen and Toll Testboard Men, an unaffiliated organization, popularly called the O. R. T. T. This organization attempted to extend its membership to include toll maintenance employees in the Oregon and Washington-Idaho areas, but with little success. The Company, upon request, refused to recognize the O. R. T. T. as the

¹⁰ The term "repeatermen" is commonly used to include toll maintenance employees as a group, although only one classification of toll maintenance employees is strictly termed a "repeaterman."

¹¹ Employees of the Company in the accounting, commercial, and traffic departments also bargain with their employer through affiliated organizations known as the A. C. E. (Accounting), A. C. E. (Commercial), and A. C. E. (Traffic), respectively.

exclusive bargaining representative of the toll maintenance employees in a company-wide four-area unit and, as a result, the O. R. T. T. on August 8, 1939, filed a petition for investigation and certification of representatives with the Board, alleging that toll employees in the four geographical areas constituted a single bargaining unit. On April 27, 1940, the Board issued a Decision and Certification of Representatives, in which it found that toll maintenance employees in the Northern California-Nevada and the Southern California areas constituted an appropriate unit and certified the O. R. T. T. as their exclusive bargaining representative.¹² Toll employees of the Oregon and Washington-Idaho areas were excluded from this craft unit of toll employees. Each member of the Board wrote a separate opinion concerning their exclusion. Chairman Madden held that the O. R. T. T. had not shown a substantial membership among the toll maintenance employees in the Oregon area or in the Washington-Idaho area sufficient to justify either a certification upon the record or elections among such employees. Mr. Edwin Smith held that since bargaining for the Company's toll employees in the Oregon and Washington-Idaho areas, respectively, between 1937 and 1940 had been on a plant departmental basis, and not on a craft basis, toll maintenance employees in the Oregon and Washington-Idaho areas should not be separated for bargaining purposes from the broad departmental units then existing. Mr. Leiserson expressed the opinion that the Board was not authorized to take toll maintenance employees, presently an integral part of broader bargaining groups in the Oregon and Washington-Idaho areas, and transfer them into another bargaining unit, and further pointed out that only a small minority of employees in these two areas had as yet signified any interest in the O. R. T. T.

The Company and the Intervenor contend that the decision thus expressed is conclusive on the unit issue for toll maintenance employees in the Washington-Idaho area, and point out that an additional 3 years of bargaining on a plant departmental basis in this area makes it now even less desirable to separate toll maintenance employees from other plant employees in the departmental unit. The C. I. O. does not agree.

We have frequently stated that what employees constitute an appropriate bargaining unit depends upon all the circumstances existing at a given time. It seems clear that toll maintenance employees in the area are clearly identifiable as a specially skilled group of craftsmen. At the time of the prior representation proceeding, toll employees in the Washington-Idaho area had not evinced sufficient interest in the O. R. T. T. to require the Board to make a decisive

¹² 23 N. L. R. B. 280.

finding whether the bargaining history upon an area departmental basis precluded these employees from inclusion in a craft unit with other toll maintenance employees of the Company on a multiple area basis. The preliminary showing herein by the C. I. O. of a substantial interest among employees in its proposed craft unit makes it presently necessary for us to determine this issue. It is clear that, since the prior representation proceeding, the additional years of bargaining between the Company and toll employees in this area on a departmental, rather than a craft, basis indicate the appropriateness of the departmental unit including toll maintenance employees so established and presently claimed by the Company and the A. C. E. (Plant). We have held in certain not infrequent cases that a history of bargaining on an industrial basis precludes the later severance of craft employees in a separate bargaining unit, if such craft employees have become completely merged and fused with other skilled and unskilled employees in the larger single bargaining group.¹³ The Company and the A. C. E. (Plant) urge that this policy is applicable to the situation presently before us involving the Company's toll maintenance employees. We do not agree.

American Telephone and Telegraph Company, herein called the American, is a corporation which, with its subsidiaries and affiliates, supplies intrastate and interstate telephone and telegraph service on a national basis. The "long lines" department of the American, comprised of toll maintenance employees, is a separate operating department, providing interstate long distance telephone facilities necessary to connect independent and affiliated telephone companies in the United States, except on the Pacific Coast. On the Pacific Coast, the operation of the long lines work is not managed directly by the American, but is in charge of the Company herein concerned, which performs such work for the Pacific Coast through the toll employees in the four areas of the Company's operation. The Company is, however, affiliated and controlled by the American, which owns a majority of its stock.¹⁴

Since 1940, the American has bargained with Federation of Long Lines Telephone Workers, a labor organization affiliated with the National Federation of Telephone Workers, for non-supervisory employees of its long lines department.¹⁵ Toll maintenance employees

¹³ *Matter of Harnuschfeger Corporation*, 55 N. L. R. B. 909.

¹⁴ Toll employees of the Company do some work for the long lines department of the American, but the record does not indicate how substantial this work may be. Employees of the Company sometimes refer to its "long lines department." As noted above, in the Company's administrative set-up, the toll employees do not constitute a "department," but subsections of districts in the plant department, presided over by supervisors who report to district managers, who in turn report to the general manager of the plant department. Supervision over the Company's toll employees is thus fused with supervision of other plant employees at the level of district supervision. Such fusion promotes the effectiveness of the Company's utility services.

¹⁵ *Matter of American Telephone and Telegraph Company*, 55 N. L. R. B. 327.

of the Company, as noted above, bargained on a company-wide basis from 1919 until 1931, when the Company for its own administrative purposes divided its territory into the four present territorial areas. This change in administrative supervision induced a breakdown of the Repeatermen's Association, through which the prior bargaining for toll employees on a company-wide basis had been accomplished. Toll maintenance employees in the Washington-Idaho area nevertheless continued to bargain with their employer as a craft group on the area basis until 1937, when they joined the A. C. E. (Plant). Since then, as locals of this departmental association, they have preserved craft identity, even though they have not negotiated bargaining agreements with their employer as an autonomous group of craftsmen. Toll maintenance employees in the Oregon area likewise bargain as part of a plant departmental unit, although with greater independence as craft locals of the bargaining representative. Toll employees in the Company's Northern California-Nevada and Southern California areas have bargained on craft basis since 1940.

We cannot ignore the obvious integration and coordination of toll maintenance work performed by toll maintenance employees in the four areas of the Company and similarly skilled craftsmen in the long lines department of the American, nor can we limit the collective bargaining history of toll maintenance employees pertinent to the issue before us to the immediate and recent bargaining between the Company and the A. C. E. (Plant). In view of the past bargaining relations between the Company and its toll maintenance employees between the years 1919 and 1931, in view of the bargaining relations between the Company and its toll maintenance employees in all areas since that time, and in view of the functional coordination and over-all control of toll maintenance employees of the Company and toll maintenance employees of the long lines department of the American, we are of the opinion that the bargaining of toll maintenance employees in the Washington-Idaho area on a plant departmental basis since 1937 is not conclusive of the appropriateness of the inclusion of toll maintenance employees in the Washington-Idaho area in a plant departmental unit. We believe that toll maintenance employees in the Washington-Idaho area may properly bargain either as a separate bargaining group or may remain part of the departmental unit with which they are now associated. We shall make no finding with respect to the unit appropriate for these toll employees until we hold an election among them to determine whether they desire to be represented by the C. I. O. If a majority of toll maintenance employees of the Company in the Washington-Idaho area select the C. I. O. as their bargaining representative, we shall conclude that these employees desire to bargain on a craft basis through the C. I. O. as do toll main-

tenance employees presently in the Company's Northern California-Nevada and Southern California areas. If a majority of these employees do not select the C. I. O. as their bargaining representative, we will dismiss the petition filed herein.

The Company employs PBX repairmen who work on private branch exchange equipment and are generally classed as central office exchange employees. In addition to these employees, the Company also employs approximately 10 PBX repairmen who spend their working time on repair and maintenance of teletypewriters. The C. I. O. would include in its proposed bargaining unit of toll maintenance employees PBX repairmen in this latter group. PBX repairmen who spend their time on the repair and maintenance of teletypewriters perform their work on the premises of the subscriber or on the Company's property, but do not work in central office spaces where toll maintenance employees service toll equipment. They test teletypewriters through the testboard men in the toll center, just as do linemen and cablemen who work on outside toll plant equipment. Employees who maintain the circuit over which teletypewriter messages are sent are toll employees who monitor the equipment in the toll office to see that the circuit is conditioned for the service. PBX repairmen who service teletypewriters are not classed as toll maintenance employees by the Company. They are, however, subject to toll supervision and, so far as the record discloses, are the only employees not classed as toll maintenance employees who are subject to this supervision. PBX repairmen who work principally on teletypewriters in the Oregon area are included in the contract for toll maintenance employees in that area. Such PBX repairmen were included in former contracts between the Company and the Repeatermen's Association when that organization was the bargaining representative for toll employee members in the Company's employ. Although PBX teletypewriter repairmen are not classed as toll maintenance employees by the Company and are not generally competent to interchange work with employees in that classification, we shall include in the voting group of toll maintenance employees all PBX teletypewriter repairmen who work under toll supervision.

Since the A. C. E. (Plant) is the recognized bargaining representative of all employees in the plant department, we shall provide that the A. C. E. (Plant) shall participate with the C. I. O. in the election which we shall now direct. Those eligible to vote in the election shall be all toll maintenance employees of the Company in the Washington-Idaho area, including PBX teletypewriter repairmen under toll supervision, but excluding supervisory employees within our usual definition of that term, who were employed during the pay-roll period immediately preceding the date of this Decision and Direction of Election, 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 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Pacific Telephone and Telegraph Company, Seattle, Washington, 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 Nineteenth 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 all toll maintenance employees in the Washington-Idaho area who were employed during the pay-roll period immediately preceding the date of this Direction, including PBX teletypewriter repairmen under toll supervision and employees who did not work during the 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 all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, and any employees 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 they desire to be represented by Local 101, American Communications Association, C. I. O., or by Associated Communications Employees (Plant), for the purposes of collective bargaining, or by neither.