

In the Matter of MIDDLE STATES UTILITIES COMPANY OF MISSOURI,
CLINTON COUNTY TELEPHONE COMPANY AND ANDREW COUNTY MU-
TUAL TELEPHONE COMPANY, EMPLOYERS *and* UTILITY WORKERS
UNION OF AMERICA, CIO, LOCAL 305, PETITIONER

Case No. 17-UA-598.—Decided January 31, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Kansas City, Missouri, on June 16, 1948, before Margaret L. Fassig, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Separate motions to dismiss the petition were filed on behalf of the three operating companies and were referred to the Board for decision. These motions are denied for reasons hereinafter stated under Sections I and IV.

Upon the entire record in this case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

The Employers are Missouri corporations engaged in the operation of telephone plants, exchanges, and systems in the State of Missouri. All of the common stock of Middle States Utilities Company of Missouri and Clinton County Telephone Company, and 91 percent of the common stock of Andrew County Mutual Telephone Company, is owned by Middle States Utilities, Inc., a Delaware corporation. The Employers furnish telephone service and connections to approximately 12,900 stations and 11,800 subscribers through 36 telephone exchanges located in the State of Missouri.

Before 1947, the companies operated direct lines which crossed the Iowa-Missouri State border and connected with the lines of Middle States Utilities Company of Iowa, which is also controlled by Middle States Utilities, Inc. After destruction of the interstate lines by sleet storms in January 1947, they were abandoned and the companies secured reclassification by the Federal Communications Commission

as "connecting carriers" engaging in interstate commerce solely through physical connections with other carriers neither directly nor indirectly controlled by them.¹ Since that time, telephone calls to parts of Missouri not served by the companies and calls to points located in other States have been made through connections with the ones of Southwestern Bell Telephone Company.

The gross revenue of the three companies for the year ending December 31, 1947, from all telephone service rendered, amounted to approximately \$380,000. In the same year, gross revenue from messages sent paid, or received collect, over Bell Telephone lines was approximately \$76,000, of which \$20,000 was revenue derived from interstate messages. The companies serve subscribers who are engaged in interstate commerce, including railroads, oil companies, public utilities, and chain stores. They purchase supplies and materials amounting to \$130,000 yearly, from warehouses and suppliers located in Kansas City, Missouri. These supplies include hardware, line materials, telephones, cords, batteries, paper, and stationery. No record is kept of the source of these supplies although it appears that an indeterminate percentage of them is manufactured in other States.²

Accordingly, and contrary to the contention of the Employers, we find that the Employers are engaged in commerce within the meaning of the National Labor Relations Act.³

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization claiming to represent employees of the Employers.

¹The Employers contend that the action of the Federal Communications Commission reclassifying them and relieving the companies of regulation by the Commission except as to communications over the lines of interstate carriers, is a conclusive showing that the Employers are not engaged in interstate commerce within the meaning of the Act. They also contend that inasmuch as the companies are subject to the Public Utility Labor Law of Missouri, the Board should not exert jurisdiction. We find these contentions to be without merit. Without ruling on the applicability of the Federal Communications Commission's findings to these proceedings, it is noted that the reclassification was not a finding by that agency that the Employers did not engage in interstate commerce. Neither does the existence of the Public Utilities Labor Law of Missouri constitute a bar to our jurisdiction herein. Section 10 (a) of the Act, which is relied upon by the Employers, only allows the Board to *cede* jurisdiction to State agencies in certain cases.

²The Employers contend that the facts herein are distinguishable from those in cases involving telephone companies we have found engaged in commerce within the meaning of the Act, because of the lack of evidence as to the percentage and value of materials and supplies manufactured in other States and shipped to the Employers in interstate commerce. As the Court stated in *National Labor Relations Board v. Central Missouri Telephone Company*, 115 F. (2d) 563, it is sufficient basis for such a finding if there has been participation in interstate transmission of messages through connections with other lines and it is not necessary for the Board to base its finding that the Employer is engaged in commerce upon the percentage or value of purchases of materials shipped in interstate commerce.

³See *Matter of Elyria Telephone Company*, 58 N. L. R. B. 402; *Matter of Newark Telephone Company*, 59 N. L. R. B. 1408, 1410.

III. THE QUESTION CONCERNING A UNION-SHOP AUTHORIZATION ELECTION

In 1944, the Petitioner was certified by the Board as the collective bargaining representative of a unit composed of the employees of the three companies concerned herein and also including the personnel of Middle States Utilities Company of Iowa.⁴ Contractual relationships between the Employers and the Petitioner have been continuous since 1945. By contract dated August 6, 1947, the employees of the Iowa company were separated from the original unit.⁵ Following the termination of a contract in February 1948, several interim, monthly agreements were made, culminating in the present contract, which was signed on April 29, 1948, for a period of 1 year with provision for automatic renewal in the absence of 60 days' prior notice. Under this contract the Employers recognize the Petitioner subject to certain stated conditions,⁶ as the exclusive bargaining representative of employees within a unit composed of the employees of all three companies.

The Employers contend, in support of motions to dismiss the petition, that the bargaining unit covered by the contract is no longer appropriate, and that there should be three separate units, each confined to the employees of a single company. Despite their contract, the Employers also apparently contend that the Petitioner's asserted status as statutory bargaining agent is open to question if three separate units, rather than one, are regarded as appropriate. However, for the reasons indicated in Section IV, below, we find that the three-company unit advocated by the Petitioner remains the appropriate unit for collective bargaining purposes within the meaning of Section 9 (b) of the Act, and that the three separate units recommended by the Employers are inappropriate.⁷ Accordingly, we find, further, that there exists no question concerning the representation of the Employers' employees in the appropriate unit.⁸ The preliminary requirements for a union-shop authorization election, set forth in Section 9 (e) (1) of the Act, are therefore satisfied in this case.

⁴ 58 N. L. R. B. 482.

⁵ The Petitioner testified that the separation of Middle States Utilities Company of Iowa employees from the unit was due to differences in the laws of Iowa and Missouri affecting negotiations.

⁶ The stated conditions concern the Board's jurisdiction and the bargaining unit. The Employers reserve the right to contend, in this case, or "by any appropriate proceedings" that the employees of the three companies should not be in a single bargaining unit and that the separate companies or any one of these are not under the Board's jurisdiction.

⁷ The Employers offered evidence, which the hearing officer rejected, to show that the employees of the Andrew County Company do not desire the Petitioner as their bargaining representative. We have sustained the hearing officer's ruling. The proffered evidence is immaterial, especially in view of our findings above.

⁸ The Employers concede that the Petitioner is the statutory bargaining agent of their employees in "the unit as it now stands."

IV. THE APPROPRIATE UNIT

The Petitioner seeks a union-shop election in a unit composed of all employees of the Employers, including cashiers, wire chiefs, and the cable splicer, but excluding those persons employed on an agency basis, construction foremen,⁹ and managerial, supervisory, and confidential employees including the general manager, the commercial manager, the plant manager, the president of the Employers, the secretary-treasurer of the Employers, the traveling auditor, book-keeper, secretary to the general manager, stenographer to the commercial manager, stenographer to the plant manager, chief operators, combination cashier-chief operators and all other supervisors within the meaning of the Act. This unit is the same as that covered by the current contract, but the Employers contend that the employees of each of the three companies should comprise a separate unit.

As noted under Section I, *supra*, the operating companies have common ownership through the stock holdings of Middle States Utilities, Inc., despite their separate corporate structures. The exchanges operated by the companies extend through the upper tiers of counties in the State of Missouri, in areas that are largely agricultural. As a result there is considerable geographical separation between the extreme eastern and extreme western exchanges. However, there are connections between all the exchanges in the Andrew and Clinton County systems, and many, though not all, of the exchanges of the Middle States Utilities Company of Missouri are interconnected. There is a toll line connection between the latter company and the Clinton County system. The companies have connections, also, with other independent telephone systems and with Southwestern Bell Telephone Company.

Excluding agency operations, there are approximately 195 employees in the 3 companies, of whom 164 are in the proposed unit. Of these, 126 are employed by Middle States Utilities Company of Missouri; 20 by Andrew County Mutual; and 18 by the Clinton County Telephone Company. The president and secretary-treasurer of Middle States Utilities Company of Missouri serve in the same capacities for the other companies. The general manager, plant superintendent, commercial superintendent, assistant general manager, and the auditor are employed jointly by all 3 companies. The general manager has final control over the discharge of employees of each of the companies although hirings are initiated at the local level. There is some interchange of personnel among the companies and in the

⁹The petition originally requested the inclusion of the construction foremen in the unit. However, the Petitioner, at the hearing, agreed to the exclusion of the foremen as supervisors within the meaning of the Act.

cases of the journeyman, the switchboard man, and the cable splicer, the employee is carried on the pay roll of 1 company while his services are utilized by all 3. There is also interchange of supplies and materials and this interchange is more common between these companies than between the companies and other telephone systems.

The Employers base their contention that three units rather than one are appropriate on the grounds that the companies have become decentralized under present ownership; that the working conditions at the three companies differ; that there is a geographical separation of the employees leading to localized interests and that the smaller company employees could be outvoted by those of the larger. We find no merit in these contentions. Although there have been attempts at decentralization during the past few years, there remains a substantial integration of ownership, control, and management, as well as integration of operation in the form of interchange of supplies and personnel. Job classifications are similar for the three plants, and while there are differences in the physical conditions at the various exchanges, the record shows these differences are minor and do not negate the mutuality of interests among the employees of the three companies as demonstrated by the bargaining history. The important differences between the companies appear to be that they vary in their financial expectations and that their rates are subject to some variations according to size. However, in our opinion, diversity of financial need, different requirements as to improvements, repairs and maintenance, and unequal attraction to capital do not outweigh the integration of the companies and the similarity of skills and working conditions throughout the proposed unit, existing now and at the time of our previous unit determination.

In view of the Employers' common ownership, control, management, and operation, the mutuality of interest among all their employees, and the history of successful bargaining on the basis of a single unit, we are convinced that there is no warrant for altering the presently established three-company bargaining pattern.¹⁰ Absent extraordinary circumstances that are not here present,¹¹ it follows that the same unit is the appropriate one for purposes of a union-shop referendum.

We find that the following employees of the Employers herein constitute a unit appropriate for the purposes of Section 9 (e) (1) of the Act: all employees, including cashiers, wire chiefs, and the cable splicer, but excluding those persons employed on an agency basis, construction foremen, and managerial, supervisory, and con-

¹⁰ See *Matter of Rosslyn Gas Company*, 69 N. L. R. B. 843.

¹¹ See *Matter of Giant Food Shopping Center*, 77 N. L. R. B. 791; *Matter of Benjamin Eastwood Company*, 77 N. L. R. B. 1383.

fidential employees, including the general manager, the commercial manager, the plant manager, the president of the Employers, the secretary-treasurer of the Employers, the traveling auditor, the book-keeper, the secretary to the general manager, the stenographer to the commercial manager, the stenographer to the plant manager, chief operators, combination chief operators-cashiers, and all other supervisors as defined in the Act.

DIRECTION OF ELECTION

As part of the investigation to determine whether or not a union-shop agreement with Middle States Utilities Company of Missouri, Clinton County Telephone Company and Andrew County Mutual Telephone Company, Plattsburg, Missouri, is authorized, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventeenth Region, and subject to Section 203.61 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in Section IV, above, 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, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding those employees on strike who are not entitled to reinstatement, to determine whether or not they desire Utility Workers Union of America, CIO, Local 305, to make an agreement with Middle States Utilities Company of Missouri, Clinton County Telephone Company, and Andrew County Mutual Telephone Company, Plattsburg, Missouri, requiring membership in the aforesaid labor organization as a condition of employment in such unit.