

In the Matter of MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, EMPLOYER and PHILIP K. DUNCAN, PETITIONER and MOUNTAIN STATES DIVISION #17, COMMUNICATION WORKERS OF AMERICA, UNION

Case No. 30-RD-10.—Decided May 23, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon an amended petition for decertification, duly filed, a hearing in this case was held at Denver, Colorado, on February 4, 5, and 7, 1949, before William J. Scott, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Reynolds, Murdock, and Gray].

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioner is an employee of the Employer and asserts that the Union is no longer the bargaining representative, as defined in Section 9 (a) of the amended Act, of the Employer's employees designated in the amended petition.¹

The Union is a labor organization recognized by the Employer as the exclusive bargaining representative for the employees, among others, designated in the amended petition.

3. The question concerning representation:

The Union and its predecessors have, for a number of years, been recognized as the exclusive collective bargaining representative of a comprehensive, system-wide unit of employees of the Employer,

¹ The Union moved to dismiss the petition on the ground that the Petitioner is in fact a labor organization, or the representative of a labor organization, and is not in compliance with Section 9 (f), (g), and (h) of the Act. The Petitioner has never attempted to act as the collective bargaining representative of the employees seeking decertification and expressly denies any such intention. There is no evidence in the record to support the Union's contention, and the motion to dismiss on this ground is, therefore, denied. See *Matter of Illinois Bell Telephone Company*, 77 N. L. R. B. 1073.

including the employees covered by the present petition. The Union and the Employer had a contract with an expiration date of May 15, 1948, which was automatically renewable in the absence of 30 days' notice by either party of a desire to modify the agreement. In February 1948, the Union notified the Employer that it desired to amend and modify the agreement. Accordingly, negotiations toward this end were begun and finally resulted in the parties executing a new agreement, on January 10, 1949, expressly superseding the last agreement between the Union and the Employer.² In the meantime, the petition in this case was filed.

The Union contends that its contractual relations with the Employer constitute a bar to this proceeding. However, whether or not the contract under which notice was given expired on May 15, 1948,³ it was expressly superseded by the terms of the January 10, 1949, contract, and cannot, therefore, operate as a bar.⁴ The current contract is clearly no bar because the petition in this case was duly filed before that contract was executed. The Union's motion to dismiss the petition on a contract bar theory is, therefore, denied.

4. The appropriate unit:

The Petitioner requests decertification for all outside plant engineers, protection engineers, right-of-way engineers, estimate engineers, junior engineers, material engineers, office engineers, surveyors, and transitmen, in the Plant Departments of the Employer in the area, except for the State of Montana,⁵ in which the Employer operates.⁶ The Petitioner contends, and the Union denies, that employees in the above categories are professional employees within the meaning of Section 2 (12) of the Act, and that such employees together constitute an appropriate unit separate from the unit covered by the Union's contract with the Employer. The Employer took no position in this matter.

The Employer is engaged in furnishing telephone service in 8 States. It employs approximately 18,000 persons, of whom about

² During the course of the negotiations which preceded the execution of the 1949 agreement, the Union and the Employer agreed that, in view of the pendency of this proceeding, the wage provisions of the new contract would not be applied to the employees seeking decertification therein.

³ We find it unnecessary to determine whether, as contended by the Union, the contract between the Union and the Employer continued in effect after its expiration date and pending the execution of the new agreement.

⁴ *Matter of Radio Corporation of America, etc.*, 81 N. L. R. B. 643.

⁵ The Montana employees of the Employer are not covered by the Union's contract.

⁶ Transmission engineers, and transmission and protection engineers were originally included in the petition for decertification. Since it appeared at the hearing that there was no such category on the Employer's pay roll as transmission engineers, and that the transmission and protection engineers were clearly supervisors, the hearing examiner granted the Petitioner's motion to strike these two classifications from the requested decertification unit.

3,500 are covered by the Union's contract. There are 102 persons in the decertification unit requested by the Petitioner.

Outside plant engineers—These engineers do all engineering work outside the central offices. They design and plan the construction, extension, rearrangement, and removal of pole lines, cable lines, and underground conduits. They handle right-of-way problems if there is no available right-of-way engineer. The outside plant engineers are required to exercise a great deal of independent discretion, and they must learn to get along with a minimum of supervision. They must have a knowledge of civil, mechanical, and electrical engineering, mathematics, and economics. They must know thoroughly the Employer's engineering, construction, and accounting practices. These engineers are not required to have college training; some come up through the various crafts, usually having reached supervisory status therein. However, of the 66 engineers in this category, 27 have college degrees (23 of these have engineering degrees), and 24 have had some college training.

Protection engineers—The job of the protection engineer is to designate and specify methods to be used on telephone circuits to prevent injury to equipment and personnel. This is a rather technical engineering job, and there are but two protection engineers on the Employer's pay roll. Where there is no protection engineer, the work he would normally do is absorbed by the outside plant engineer. Since the Employer operates mobile radio equipment, the protection engineer, in addition to his general engineering qualifications, is required to have a good knowledge of radio engineering. Both protection engineers hold electrical engineering degrees.

Right-of-way engineers—These employees are closely associated with the outside plant engineers, and, in general, must be similarly qualified. Their primary function is to conduct right-of-way negotiations with public officials and private property owners; they must have a general knowledge of outside telephone plants, engineering, construction and installation practices, right-of-way policies, and the fundamentals of real estate law, and, finally, city, State, and Federal requirements affecting the construction of telephone plants and the plants of other companies. There are five such engineers involved, two of whom have had some college training.

Equipment engineers—These employees must have a technical knowledge of intricate communication systems and be able to prepare detailed specifications for installing or making changes in such systems. Their job is to specify the type of equipment to be used on the various projects; they must work closely with other engineers of the Employer and also with such outside persons as builders, archi-

pects, etc. Although neither of the two equipment engineers on the Employer's pay roll has a college degree, they have an equivalent amount of practical experience.⁷

Estimate engineers—Estimate engineers have usually had outside plant engineering experience. They review the plans prepared by the outside plant engineers, and then prepare detailed cost estimates therefrom as well as a report on what the project covers, why it is necessary, and what it will accomplish. They also prepare completion reports, in which they analyze expenditures actually made, conditions encountered, and a general history of the project from a cost standpoint. Of the three estimate engineers, one has a college degree, one had 3 years of college engineering, and one is a high school graduate. The latter has had 38 years' service with the Employer, including extensive supervisory duties.

Junior engineers—These employees do work similar to the outside plant and protection engineers, but usually on the less involved jobs. Since their experience is more limited, they require closer supervision than the other engineers. They are selected for these jobs because they have engineering degrees or because they have had broad experience in the various telephone crafts. The employer expects that, in time they will be promoted to the full-fledged engineering jobs.⁸ Nine of the 18 junior engineers have college engineering degrees, 4 have had some college training, and the other 5 are high school graduates.

Material engineer—The job of this employee is to determine the kind and amount of material necessary to complete the work prescribed by the outside plant engineers. He must be thoroughly qualified to interpret construction and engineering drawings, and to understand accounting procedures. Material engineers are usually selected from among the outside plant engineers. There is only one such engineer now; the number depends on the amount of work to be done. The outside plant engineer or the estimate engineer does the job of the material engineer at locations where there is no employee in this category.

It is clear from the record that the work of the engineers in the above seven categories is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, cannot be standardized in relation to a given period of time, and re-

⁷ The record discloses that the two men now filling these jobs have an average employment service of 32 years, having come up through the crafts. They finally filled supervisory craft positions before they were promoted to their present jobs. The general plant personnel supervisor testified at the hearing that persons occupying the position of equipment engineer would be superior to those supervising craft operations, and that the Employer, while not requiring an engineering degree for this job, would consider the long and specialized experience obtained with the Employer as at least the equivalent of the academic training.

⁸ See *Matter of E. W. Bliss Company, etc.*, 81 N. L. R. B. 428.

quires the type of knowledge usually acquired in scientific courses in institutions of higher learning. We find that these engineers are professional-employees within the meaning of the Act and may constitute a unit appropriate for the purposes of collective bargaining, and, therefore, may properly be the subject of a decertification petition.⁹

Office engineers—Although the Petitioner requested the inclusion of office engineers in the decertification unit, this matter was not fully developed at the hearing when it was discovered that office engineers were not represented by the Union nor covered by the Union's contract. As this is a decertification proceeding, we are not required to consider, as would be the case where the certification of a bargaining representative was sought in a representation proceeding, the propriety of including office engineers with the other engineers in an appropriate professional unit. It is sufficient, for the purposes of this case, that office engineers are not covered by the Union's contract, and that there is no need, therefore, for decertification as to them. In our opinion it would be anomalous to permit office engineers to vote in an election the purpose of which is to determine whether the Union shall continue to represent a group of employees, of which the office engineers have never been a part, for purposes of collective bargaining.¹⁰

Accordingly, we shall direct an election by secret ballot to be held among the outside plant, protection, right-of-way, equipment, estimate, junior, and material engineers, and the surveyor and transitmen,¹¹ in the Plant Departments of the Employer in the area covered by the Employer's operations other than the State of Montana. If the employees in this voting group do not select the Union, the Union will be decertified as to them; if, on the other hand, they select the Union, they will be taken to have indicated their desire to be included with

⁹ *Matter of Northwestern Bell Telephone Company*, 79 N. L. R. B. 549; *Matter of Southern Bell Telephone and Telegraph Company, Inc.*, 78 N. L. R. B. 814; and *Matter of Illinois Bell Telephone Company*, *supra*.

¹⁰ As the dissenting opinion points out, it is true that the Board generally makes no distinction between certification and decertification proceedings insofar as appropriate units are concerned. In the present case, however, the fact that there is no need to decertify office engineers is the dominant consideration. This proceeding will not lead to the certification of the engineering group; we can deal with the inclusion of office engineers in an appropriate professional unit when that question is presented to us.

¹¹ The surveyor has an electrical engineering degree, and does surveying jobs for the Employer from time to time. The two transitmen have had some college training; they do work closely allied to that of the surveyor. Although the record indicates that these employees spend considerable time in non-professional work, they also do a substantial amount of work that is professional in character. Furthermore, both the surveyor and the transitmen perform duties which are an integral part of the professional activities of the other engineers in this group. The surveyor and transitmen are, therefore, included in the voting group of professional employees established in this proceeding. *Matter of Westinghouse Electric Corporation, Lamp Division*, 80 N. L. R. B. 591.

the non-professional employees in the system-wide unit of the Employer now represented by the Union.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Mountain States Telephone and Telegraph Company, Denver, Colorado, 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 Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the voting group described in paragraph numbered 4, 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 employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by Mountain States Division #17, Communication Workers of America, for the purposes of collective bargaining.

MEMBER MURDOCK, dissenting in part :

The majority is directing a decertification election in a unit of engineers who are currently included in a comprehensive system-wide unit of the Employer's employees; but they are excluding *office engineers* from the unit in which the election is directed. The latter clearly belong in any unit of professional engineering employees if one is to be carved out of the more comprehensive unit. The reason stated by the majority for the exclusion of the office engineers is the fact that they have not been included under the contract covering the comprehensive unit. The argument that, accordingly, they have no interest in a vote to decertify the present representative, is not without some appeal. But the inescapable fact remains that we must find a unit appropriate before we can direct an election either in a certification or a decertification proceeding; and a unit of less than *all* the Employer's engineers is not an appropriate unit.

The suggestion of the majority that the appropriate unit for decertification purposes may be different from that appropriate for certification purposes is contrary to established Board law. In the

first decision in which the Board permitted severance of professional employees by means of a decertification petition,¹² it pointed out that the Act "makes no distinction between certification and decertification proceedings insofar as appropriate units are concerned." Accordingly, the Board there said: "In determining the propriety of the proposed unit in the present decertification case, we shall, therefore, apply the same principles of severance as must be applied to certification cases involving professional employees. The question is, therefore, whether, under ordinary representation principles, we would permit the employees in the proposed unit to be severed from the existing contract unit."

Since under ordinary representation principles we would not permit less than all the engineers to be severed from the existing contract unit, I would include the office engineers in order to make appropriate the unit which our direction of election permits to be carved out. Whatever logical difficulties inhere in that course I find easier to surmount than to accept the majority's alternative of proceeding to an election in a unit which is not appropriate.

¹² *Illinois Bell Telephone Company*, 77 N. L. R. B. 1073.