

In the Matter of WESTERN ELECTRIC COMPANY, INCORPORATED,
EMPLOYER and COMMUNICATION WORKERS OF AMERICA, CIO, IN-
STALLATION DIVISION #6, PETITIONER

Case No. 2-UA-3661.—Decided June 30, 1949

DECISION
AND
DIRECTION AND ELECTION¹

Upon a petition for a union-shop election duly filed, a hearing was held before Daniel J. Sullivan, a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.^{1a}

2. The Petitioner is the exclusive bargaining representative of employees of the Employer as provided in Section 9 (a) of the Act.²

3. The petition alleges that more than 30 percent of the employees in the unit represented by the Petitioner, as hereinafter described, desire to authorize the Petitioner to make an agreement with the Employer requiring membership in the Petitioner as a condition of employment in such unit, which allegation was supported by documentary evidence submitted by the Petitioner. No question affecting commerce

¹ The request of the Employer and the Petitioner for oral argument is denied, as the records and briefs of the parties, in our opinion, adequately present the issues and the positions of the parties

^{1a} The Employer is a subsidiary of the American Telephone & Telegraph Company. It manufactures and installs communications equipment, which is furnished mainly to the Bell Telephone System.

² On December 13, 1944, the Petitioner, at that time affiliated with National Federation of Telephone Workers, was certified by the Board in Case No 2-R-5003 (not reported) as the representative of all employees of the field organization of the Employer's Installation Division, excluding comptometer operators, planning engineers, file clerks, general clerks, janitors, job clerks, office clerks, mail clerks, record clerks, report clerks, secretarial stenographers, secretaries, statistical clerks, stenographers, telephone operators, typists, and all supervisors.

We find that the Petitioner is in compliance with Section 9 (f), (g) and (h) of the amended Act. See *Matter of Chesapeake and Potomac Telephone Company of Virginia*, 82 N. L. R. B. 810.

84 N. L. R. B., No. 111.

exists concerning the representation of these employees.³ Accordingly, we find that the Petitioner has satisfied the preliminary requirements for a union-shop authorization election as set forth in Section 9 (e) (1) of the amended Act.

4. The appropriate unit

The Petitioner seeks a union-shop election in a unit which is described in the petition as including "all hourly rated, nonsupervisory communication equipment workers in the field organization of the Installation Division of the Company,"⁴ and as excluding employees in such States where union security is prohibited by State Statute.⁵

The Employer contends that the petition should be dismissed because it is barred by the current contract between the parties,⁶ and for other reasons discussed below.

The employees in the current contract unit perform their work in 45 States and the District of Columbia.⁷ In 13 of these States⁸ the union shop appears to be prohibited; in 2 of these States (Colorado and Wisconsin), the State law requires that union-shop contracts be authorized by a specified percentage of the employees voting in a referendum conducted by State authorities.⁹ Employees are frequently transferred from one job location to another in the same, or in a different, State.⁹ At the hearing an official of the Employer estimated that during 1948, there would be 50,000 such transfers.¹⁰ This mobility

³ On May 20, 1947, the parties executed a collective bargaining contract, which was to continue in effect until May 31, 1949. On September 28, 1948, this contract was extended with modifications to November 30, 1950. The Employer urges these contracts as a bar to this proceeding. This contention is rejected for reasons stated in *Matter of Utah Wholesale Grocery Co.*, 79 N. L. R. B. 1435.

⁴ This definition of the unit follows the language of the current contract.

⁵ See footnote 3, above.

⁶ No work is done in Maine, New Hampshire, or Vermont.

⁷ Arizona, Arkansas, Florida, Georgia, Iowa, Nebraska, Nevada, North Carolina, North Dakota, South Dakota, Tennessee, Texas, and Virginia. (The status of the Nevada law is currently being litigated. Pending the outcome of this litigation, no union-shop election will be ordered there.) [On October 13, 1949, the Board issued an Order amending the original Decision and Direction of Election in this matter, permitting employees in the State of Nevada to vote.]

⁸ In contrast to the federal requirement that union-shop contracts be authorized by at least a majority of the employees eligible to vote in the union-shop elections (Section 8 (a) (3) (H) of the amended Act), the *Colorado* law requires that a union-shop contract be authorized by at least three-fourths of the employees of the employer executing the contract. (Colorado Labor Peace Act, 1943, Sec. 6 (c).) The *Wisconsin* law requires that union-shop contracts be approved by two-thirds of the employees voting in a union-shop election, provided that this represents a majority of the employees in the appropriate unit. (Wisconsin Employment Peace Act, as amended, Sec. 111.06 (1) (c).)

⁹ Sec. XII, subdiv. 1, of the 1947 agreement recites:

The Company and the union agree that the character of installation work makes it necessary to move from job location to job location.

¹⁰ There was no evidence as to what proportion would be interstate transfers.

of employment is reflected in detailed provisions of the 1947 contract, as extended, for various types of wage adjustments to be made in case of the transfer of an employee from one part of the country to another, and for giving the Petitioner notice of such transfers.

The interstate character of the employees' work is reflected, also, in the structure of the Employer's field organization. The main office of the Employer is in New York City. The Installation Division is headed up by a general manager in New York City, who reports to the president of the Employer. The field organization of that Division, to which the employees in this case are attached, is divided into an eastern, western, and central zone, each under a zone manager. These zones, in turn, are divided into 15 areas, each of which has an area manager; and the areas are composed of districts, each under a district superintendent. Every district has a number of "area supervisors," each of whom is assigned to a part of the district. Reporting to these "area supervisors," the job supervisors exercise immediate control over the installation employees at the individual job sites, where the employee reports for work, receives his instructions from the job supervisor, and receives his pay.

All of the zones, and some of the areas, districts, and subdistricts,¹¹ comprise more than one State. Thus, a transfer from one job site to another within any of these organizational units may be an interstate transfer.

The determination of the appropriate unit under Section 9 (e) of the amended Act in this case, where some of the employees are employed in States regulating or prohibiting the union shop, involves a construction of Section 14 (b) of the amended Act. It reads:

"Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

In *Matter of Giant Food Shopping Center, Inc.*,¹² a majority of the Board held that in view of the provisions of Section 14 (b) it would not be appropriate in a union-shop election to include in the voting unit employees in a State which *prohibited* the union shop. However, in *Matter of Northland Greyhound Lines, Inc.*,¹³ the Board, again construing Section 14 (b), held in effect that it would be appropriate to include in a union-shop voting unit employees subject to State laws which did not prohibit, but merely *regulated*, the union shop.

¹¹ This term does not appear in the record, but is used here to designate that portion of a district supervised by an "area supervisor."

¹² 77 N. L. R. B. 791.

¹³ 80 N. L. R. B. 288.

In defining the appropriate unit in this case, we perceive no reason for departing from the result reached in the *Northland Greyhound* case.¹⁴ Accordingly, we find appropriate a unit including only those members of the contract unit who are subject to State laws which do not prohibit the union shop.

Under the foregoing definition of the appropriate unit, the inclusion or exclusion of a particular employée depends on whether or not he is "subject to" the laws of a State prohibiting the union shop. The determination of this question of the applicable State law presents some difficulty in view of the multi-State scope of the unit and the mobility of the employees.

A somewhat similar problem arose in the *Northland Greyhound* case. There a union-shop election was directed among bus drivers and other employees who were continually required to cross State lines, performing part of their work in States which prohibit union-shop contracts. In that case, the Board held, in effect, that only those employees whose *headquarters* were in States not prohibiting the union shop would be included in the appropriate unit. In reaching this conclusion, the Board said:

In resolving the question as to the applicable State law, such factors as the residences of the employees, the places where they were hired, their headquarters, the proportions of working time spent in the various States, and (with regard to the drivers) their routes have been given consideration. In view of all the circumstances involved, we are persuaded that *the headquarters of the employees provide the best criteria because they represent the focal points of the employment relationship. The headquarters are where the employees report to work, receive their instructions, and are paid their salaries.* [Emphasis supplied.]

[Applying the foregoing definition, the "headquarters" of the employees in the present case would appear to be at their job site, as that is where they report for work, receive their instructions, and are paid their wages.] Accordingly, in the absence of any persuasive reason for

¹⁴ Contrary to the views of our dissenting colleagues, in our opinion, this result is not inconsistent with the recent case of *Algoma Plywood Co v Wisconsin Employment Relations Board*, 69 S. Ct. 586, 1949, where the Supreme Court held that the laws of Wisconsin regulating union-security agreements had not been superseded by the National Labor Relations Act, as amended. There is no necessary conflict, in our opinion, between that holding and the view which we adopt herein that the States and the Federal Government have concurrent jurisdiction to regulate the union shop, each being supreme in its own sphere.

It follows from this view that any certification which we may issue on the basis of the election directed below is to be construed as certifying only that federal requirements have been met by the Petitioner for purposes of enforcement of the National Labor Relations Act. The question of compliance by the Petitioner with State Laws regulating the union shop is a question of State law to be determined by State authorities in a State proceeding.

reaching a different result, we shall consider each employee in this case to be subject to the law of the State in which his job site is located on the eligibility date.¹⁵

Conclusion

We find that all hourly rated communications equipment workers in the field organization of the Employer's Installation Division, excluding all supervisors and all employees whose job sites are located in States which prohibit union-shop agreements,¹⁶ constitute a unit appropriate for the purposes of Section 9 (e) (1) of the Act.

In making this finding, we reject the contention made by the Employer that the establishment of such a unit would be inconsistent with the principle of self-determination underlying the union-shop authorization provisions in the amended Act and that the petition should therefore be dismissed. The Employer cites the possibility that an employee deemed ineligible to vote in the election because he is momentarily in a State outlawing the union shop, may, after the election, be transferred to a State which permits the union shop, and thereupon become subject to the terms of a union-shop contract, although he had no chance to vote on the authorization of the contract. However, such an employee would be in the same position as any citizen of a State who finds himself bound by laws passed before his arrival there. So far as we are aware, it has not been suggested that such a result violated democratic principles. Nor has it been held that such principles are violated by the practice of the Board, in conventional representation cases, of directing an election among the employees then in a plant to determine their bargaining representative, notwithstanding the probability that the results of the election will bind many employees who will be hired after the election and so will not have had any opportunity to vote therein.¹⁷

¹⁵ A possible alternative view, suggested by certain of the Petitioner's contentions, is that all the employees be deemed to be subject to the law of New York. While the record indicates that any employee may carry his grievances to the officers of the Employer in New York City, that the general manager of the Installation Division has his office there, and that the employees are subject to frequent transfer from one job site to another, those elements alone are not, in view of all the circumstances, sufficient to constitute New York City the focal point of the employment relationship.

¹⁶ As of the date of the record before us, these states were: Arizona, Arkansas, Florida, Georgia, Iowa, Nevada, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Texas, and Virginia.

¹⁷ In such cases the Board has held that it is sufficient that the election is directed among employees who will be representative of the entire employment in the unit. This rule has recently been applied to union-shop elections. *Matter of Tree Fruits Labor Relations Committee, Inc.*, 83 N. L. R. B. 93. The Employer does not contend that the present distribution of employees as between prohibitory and nonprohibitory States is abnormal; there is no evidence in the record that the present complement of employees in the non-prohibitory States, who alone will be eligible to vote in the union-shop election, is not representative of the total expected employment in those States.

DIRECTION OF ELECTION

Pursuant to Section 9 (e) (1) of the National Labor Relations Act, as amended, an election by secret ballot shall be conducted as early as possible, but not later than one hundred eighty (180) days¹⁸ from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, and subject to Section 203.61 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees of Western Electric Company, Incorporated, New York, New York, included in the unit found appropriate 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 this 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 authorize Communication Workers of America, CIO, Installation Division #6, to make an agreement with Western Electric Company, Incorporated, New York, New York, requiring membership in the aforesaid labor organization as a condition of employment in such unit.

MEMBER MURDOCK, dissenting:

I cannot join in the decision of my colleagues to include in the voting unit employees in States which regulate, but do not prohibit union-security agreements. I think this decision is contrary to the holding of the Supreme Court in the recent case of *Algoma Plywood Co. v. Wisconsin Employment Relations Board*.¹⁹

In *Matter of Northland Greyhound Lines, Inc.*,²⁰ this Board construed Section 14 (b) of the Act to provide that State laws which prohibit contracts making union membership a condition of employment should be given paramount effect, but State laws which merely regulate such contract should not be given precedence over national regulation. We, therefore, adopted a policy in elections conducted pursuant to Section 9 (e), of excluding from voting units employees in States prohibiting union-security agreements and of including employees in States regulating such agreements. As I read the *Algoma* case, however, the Supreme Court there rejected such a con-

¹⁸ The time for holding the election has been extended in this case from 30 days, as in the ordinary case, to 60 days because of the probable administrative difficulties involved in holding an election in a unit as large and as widely dispersed as the one in this case.

¹⁹ 69 S. Ct. 586.

²⁰ 80 N. L. R. B. 288.

struction of Section 14 (b) and abolished the distinction between State prohibitory and State regulatory legislation on the subject of union-security contracts. I think we must, therefore, abandon the policy we adopted in the *Northland Greyhound* case.²¹

The majority concludes that there is no necessary conflict between the *Algoma* decision and the view which it adopts that the States and the Federal Government have concurrent jurisdiction to regulate the union shop. I think such a conclusion is based upon an erroneous interpretation of the *Algoma* opinion. In that case, the Supreme Court ruled that the application of a union-security agreement which did not conform to the requirements of a State regulatory statute was unlawful, despite the contention that the State law was contrary to the Federal law. The language and clear intent of that decision, to my mind, is that under Section 14 (b) States are left free in the matter of union-security agreements to pursue a policy more restrictive than that outlined in the Act, and that where States do adopt a more restrictive policy, State statutes prevail over the Federal statute. I conclude, therefore, that we cannot authorize the execution of a union-security contract in States which have adopted a more restrictive policy and that the conduct of an election among employees in these States would be futile. Accordingly, I note my dissent from the majority's inclusion of such employees in the voting unit.

²¹ I thought the policy we announced in the *Northland Greyhound* case was a sound one, and I should welcome an occasion for the Board to present its position on the subject to the Supreme Court. The Board was not a party to the *Algoma* case and had no opportunity to submit its view on the distribution of authority concerning union-security agreements between the States and the National Government. I consider the Board bound, however, by the *Algoma* decision, which, in my opinion, requires a change in our policy so long as that decision stands.