

In the Matter of THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY  
and OFFIE O. PATRICK, AN INDIVIDUAL

*Case No. 21-CA-455.—Decided March 16, 1950*

DECISION

AND

ORDER

On November 2, 1949, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in any unfair labor practices and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the charging party and the General Counsel filed exceptions to the Intermediate Report and supporting briefs. The Respondent filed an original and a reply brief in support of the Intermediate Report.

The Board<sup>1</sup> has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>2</sup>

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondent, the Pacific Telephone and Telegraph Company, Santa Monica, California, be, and it hereby is, dismissed.

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<sup>1</sup> 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 [Chairman Herzog and Members Houston and Reynolds].

<sup>2</sup> On January 24, 1950, the charging party filed with the Board a motion to reopen the hearing for the purpose of adducing testimony which the General Counsel's representatives allegedly withheld. This motion was opposed by the Respondent. As it contains no particulars concerning the testimony in question, and as it is conceded in any event that such testimony was available at the time of the hearing, the motion is hereby denied.

## INTERMEDIATE REPORT

*Mr. George H. O'Brien*, of Los Angeles, Calif., for the General Counsel.  
*Lawler, Felix & Hall*, by *Mr. Leslie C. Tupper*, of Los Angeles, Calif., for the Respondent.

*Offie O. Patrick*, pro se.

## STATEMENT OF THE CASE

Upon a charge duly filed by Offie O. Patrick on May 12, 1949, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued a complaint dated August 10, 1949, against Pacific Telephone and Telegraph Company.<sup>1</sup> The complaint alleged that the Respondent had engaged, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3), and Section 2 (6) and (7) of the Act. Copies of the complaint, the charge, and notice of hearing were duly served on Respondent and Offie O. Patrick.

With respect to the unfair labor practices, the complaint alleged, in substance, that on or about May 10, 1949, Respondent required Offie O. Patrick "to accept either a job demotion or a job transfer because she had engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection." Respondent duly filed its answer to said complaint denying the commission of any unfair labor practice and affirmatively pleading that "due to Offie O. Patrick's continued interference in the personal affairs and work of respondent's employees in the Santa Monica office, respondent, on or about May 10, 1949, told Offie O. Patrick she was being transferred to respondent's office at 433 South Olive Street, Los Angeles, California, at the same job and at the same rate of pay; that at said time Offie O. Patrick informed respondent that she would not work in respondent's Los Angeles office; that thereupon respondent informed Offie O. Patrick that she had the alternative of either transferring to respondent's Los Angeles office or remaining at respondent's Santa Monica office and being demoted to the job of an operator; that said Offie O. Patrick at said time thereupon advised respondent that she would not accept either of the alternatives and has refused since to return to work for respondent." On August 13, 1949, Respondent made a motion to require the General Counsel to file a Bill of Particulars setting out in detail (1) the concerted activities in which Patrick had engaged and (2) whether the concerted activities referred to in the complaint were the same as those referred to in the charge filed by Patrick on May 12, 1949.<sup>2</sup> The undersigned denied the motion with respect to the first request and directed the General Counsel to inform Respondent with respect to the second request. The General Counsel complied with that order and informed Respondent that:

Part of the concerted activity or mutual aid or protection described in Paragraph 3 of the Complaint consists of the fact that Offie O. Patrick, while an employee of Southwestern Bell Telephone Company, did on or about

<sup>1</sup> For convenience, the following contractions or symbols will be observed in later portions of this report: The National Labor Relations Board will be referred to as the Board, its Regional Director as the Director, The Pacific Telephone and Telegraph Company as the Respondent, and the National Labor Relations Act, as amended, Public Law 101, 80th Congress, 1st Sess., as the Act.

<sup>2</sup> The charge of May 12, 1949, pursuant to which the complaint herein was issued, charged that Respondent had discriminated against Patrick in regard to tenure of employment because "she had filed charges and given testimony under the Act."

October 26, 1939, file a charge in the Ft. Worth office of the Board alleging that the Telephone Company had violated Section 8 (2) of the Act; that Respondent was aware of the fact that she had filed this charge and of her concerted activities in Ft. Worth.

Pursuant to notice, a hearing was held at Los Angeles, California, September 7, 8, 9, 1949, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by Counsel; Offie O. Patrick appeared in person. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded to all parties. A motion by the General Counsel to conform the pleadings to the proof with respect to matters not of substance was granted without objection. Counsel for the Respondent presented oral argument at the close of the testimony, and written briefs were received thereafter from the General Counsel and the Respondent.

Upon the entire record in the case and his observation of the witnesses, the undersigned makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

Respondent is a California corporation, a subsidiary of the American Telephone and Telegraph Company, engaged as a public utility in the business of receiving and transmitting by telephone and telegraph intrastate and interstate communications. Respondent conceded that it is engaged in commerce within the meaning of Section 2 (6) and (7) of Act, and the undersigned so finds.

##### II. THE UNFAIR LABOR PRACTICES

###### A. *Background*

Offie O. Patrick began work for the Southwestern Bell Telephone Company<sup>3</sup> at Fort Worth, Texas, on January 13, 1925, and continued in that employment until January 1943, at which time she requested a transfer to the office of the Respondent<sup>4</sup> at Santa Monica, California. She made this request in order to provide a home in Santa Monica for her mother, so as to be closer to two brothers who were then in the Navy and stationed in California, and because she thought "the Santa Monica climate [would be] beneficial to the allergic difficulty she had in frontal sinuses." She commenced work at Respondent's Santa Monica office on February 21, 1943, as a senior operator. In September of that year, a vacancy occurred in the position of "service observer." Although a number of applicants were interviewed and considered for this position, Patrick received the assignment on the recommendation of her superiors.

Considerable responsibility attaches to the position of service observer. It is her duty to observe long distance telephone calls for the purpose of checking the service rendered by the long distance operator to the customer. It is also of great value to the Company in training student operators and to aid it in determining whether or not there is need for new or additional equipment. The observer is provided with a blank on which she reports or checks on 46 items

<sup>3</sup> Also a subsidiary of the American Telephone and Telegraph Company.

<sup>4</sup> Then known as the Southern California Telephone Company.

of service, beginning with the appearance of the long-distance signal on the switchboard until the lines are cleared after the close of the conversation. Among the most important items so checked are the manner and conduct of the operator with the customer. The observer then grades the operator "plus," "minus," or "neutral." Because of the nature of the work, and the effect that the observer's report has on the standing of operators, Respondent has always insisted that observers conduct themselves in such a manner as to engender and retain the respect and confidence of the operators. This was especially true in the Santa Monica office where Patrick was the only observer steadily employed, and the operators therefore knew who, if anyone, criticized their work. In the Los Angeles office there are 32 service observers, and long distance operators never know which observer monitors the call. Repeated instructions, both oral and written, were issued to all observers emphasizing that "congenial relations by the observing and operating people" were necessary and expected and that "observers should guard against developing a fault-finding complex . . . and avoid entering into contentious discussions." [Emphasis supplied.]

On May 6, 1949, Patrick was directed to appear in Los Angeles on May 10 at the office of Nels Hasselblad, respondent's traffic inspection supervisor. On the latter day, she was informed by Hasselblad that because he "had continued to receive complaints from the operating people as to her becoming involved as to matters that did not pertain to the observing job and also personal matters . . . it would be necessary that [she be transferred] to the toll service observing Bureau in Los Angeles." Because Patrick was suffering from an allergy which she thought would be aggravated by the smog in Los Angeles, Patrick advised Hasselblad that such a change would be "impossible." Hasselblad then offered her a position as a toll operator in Santa Monica, which, however, would entail a salary reduction of \$8 per week. Patrick declined both transfers. Two days later, she filed the charge which instituted the present proceeding.

### B. *The alleged discrimination*

On October 26, 1939, while employed at Fort Worth, Texas, by the Southern Bell Telephone Company, Patrick filed an unfair labor practice charge against that Company charging that on October 27, 1937, it had dominated and interfered with the operation and administration of the Southwestern Telephone Workers Union.<sup>5</sup> The filing of this charge, the General Counsel alleges, constituted "part of the concerted activity or mutual aid or protection, in which Patrick was legally engaged and because of which respondent required her" on May 10, 1949, to accept either a job demotion or job transfer, in violation of Section 8 (a) (1) and (3) of the Act.

The General Counsel further argues that the following "union activity" in which Patrick participated after coming to Santa Monica also motivated the Respondent in its alleged discriminatory treatment of her.

Patrick joined the Federation of Women Telephone Workers (FWTW) of Southern California in the summer of 1943, and withdrew therefrom in the fall of the same year. She rejoined in November 1946, when the union included 27 service observers, became chairman of the observers group, and withdrew again in the fall of 1947. The evidence fails to show that she held membership in any union thereafter.

<sup>5</sup> At the hearing, the General Counsel informed the Examiner that Patrick withdrew the charge, without prejudice, on July 11, 1941.

In the spring of 1947, the National Federation of Telephone Workers engaged in a Nation-wide strike. The Federation of Women Telephone Workers of Southern California, not being affiliated with the national organization, did not join the strike but its members observed the picket line and at least 80 percent of the nonsupervisory traffic department employees<sup>6</sup> did likewise. Patrick enthusiastically supported the strike and with many other employees spent most of her time on the picket line which was thrown around the Santa Monica office. Hasselblad saw her engaged in this activity on one occasion. When the strike ended, Patrick returned to her service observing job. Following the strike, Respondent instructed its management people to make every effort to make the employees who had remained away from work during the strike "to feel at home." There are approximately 27,000 employees in Respondent's Southern California area and about 11,200 in the traffic department; about 10,000 of the latter are covered by the Federations' collective bargaining agreement. Since the strike in 1947, there has been no complaint or grievance or other charge that Respondent has discriminated against any employee in the traffic department because of union activity in connection with the strike or otherwise, other than in this case.

There are several unions representing Respondent's employees in the Southern California area. The Communication Workers of America (CWA) represent the employees of the accounting department, the exchange maintenance forces, the installers, and construction department employees. The toll maintenance employees are represented by the Order of Repeatermen and Toll Test Workmen (ORTTW). The Federation of Women Telephone Workers of Southern California, unaffiliated, represent all of Respondent's operating employees in that area, including service observers. On May 6, 1949, it was publicly announced by the national CWA that, as a result of a Nation-wide poll, its membership had voted affiliation with the CIO. A similar announcement was made the same day by the president of Local 31, Pacific Division 61, CWA. Because that union presented no evidence to Respondent showing that the majority of the employees in that unit had voted for CIO affiliation, and because available statistics showed that nationally more than two-thirds of the telephone employees represented by CWA either voted against affiliation with CIO or did not vote at all, the Respondent filed petitions with the Board asking it to hold elections in the units involved.

Although Patrick was not a member of any union after the fall of 1947, she devoted some of her time and energy thereafter "to putting the traffic department into the C. I. O." The record does not disclose what these activities were.

It was because of the foregoing circumstances, the General Counsel argues in his brief, "that Mr. Hasselblad, knowing that the Bell system was anticipating a test of strength with the C. W. A.-C. I. O., knowing that Miss Patrick's sympathies lay with the C. I. O., knowing that her fellow employees in Santa Monica had confidence in her leadership, and knowing that Miss Patrick would decline a permanent transfer away from Santa Monica, seized upon the only excuses he could find, flimsy though they were, to insure Miss Patrick's retirement from the Bell system," and that thereby "the Santa Monica office at least would be freed from the influence of its most militant, strong union advocate."

### C. Respondent's defense

Respondent introduced credible and, for the most part, uncontradicted evidence that since early 1944, and continuing through March or April 1949, its

<sup>6</sup> The total number of employees in the Santa Monica office was 325.

supervisory personnel had received various complaints concerning Patrick's conduct. Among these complaints were the following, all committed in violation of Respondent's rules and instructions and most of which occurred on more than one occasion: (1) Giving orders to operators, (2) discussing observations with the operators, (3) interfering with a supervisor who was instructing an operator, (4) meddling into the personal affairs of the operators<sup>7</sup> and (5) needlessly going into the operating room.

#### D. Concluding findings

It is fundamental that "the Act does not interfere with the normal exercise of the right of the employer to . . . discharge" its employees<sup>8</sup> or to transfer them from one office to another as it may deem appropriate, except only that "the employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation."<sup>9</sup> The burden of proving that such a discharge or disadvantageous transfer was affected in order to interfere with, or coerce, its employees in the exercise of rights guaranteed by the Act rests on the General Counsel. If that burden has not been sustained, the proceeding must be dismissed.

With respect to the claim of the General Counsel that the alleged discriminatory action was taken by Respondent in retaliation of Patrick's filing of the unfair labor practice charge against Southwestern Bell Telephone Company, in 1939, little need be said. Its remoteness, coupled with the admitted friendly relationship that existed between Patrick and both the Southwestern Company and Respondent,<sup>10</sup> completely dispel any suggestion that the filing of the 1939 charge motivated the 1949 alleged discriminatory action. Accordingly, the undersigned finds that the filing of the 1939 charge was not a motivating or contributing factor in the suggested transfer of Patrick to the Los Angeles office.

Likewise the Examiner finds that the General Counsel has not sustained the burden of proving that the alleged discriminatory action was taken because of Patrick's union activities since February 1943. These activities consisted of (1) membership in FWTW for approximately 3 months in 1943 and for 9 or 10 months ending in the fall of 1947; (2) chairmanship of the observers' unit therein in 1947; (3) the picket line activity; (4) a nondescript effort to "put the traffic department into the C. I. O." None of those activities provoked any threat or intimidation by Respondent. Nor does the General Counsel claim that Respondent ever engaged in any other conduct either towards Patrick, or any other employee, indicating an intent to interfere with, coerce, or restrain any of its employees in the exercise of their rights to engage in union activities.

Upon the entire record, the undersigned finds that Patrick was not required "to accept either a job demotion or a job transfer because she had engaged in concerted activities for the purposes of collective bargaining and other mutual

<sup>7</sup> On one occasion in March or April 1949, Patrick engaged in a heated discussion involving the marital affairs of an operator; during the same period, she engaged in a quarrel with another operator over the value of services rendered by a doctor that Patrick had recommended. General Counsel in his brief admitted that "during all of this period Miss Patrick did, in all probability, talk too much and she probably did talk about matters that were no concern of hers."

<sup>8</sup> *N. L. R. B. v. Jones and Laughlin Steel Corporation*, 301 U. S. 1, 45.

<sup>9</sup> *Ibid.*

<sup>10</sup> Compliance with Patrick's request in 1943 to be transferred to California for personal reasons; individual wage increases granted; the promotion to service observer; the offer of more responsible positions.

aid and protection" and that Respondent has not been guilty of any violation of Section 8 (a) (1) or (3) of the Act.<sup>11</sup>

Upon the foregoing findings of fact and upon the entire record in the case the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. The Respondent has not engaged in any unfair labor practices within the meaning of Section 8 (a) (1) or (3) of the Act.

#### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the complaint against the Respondent, Pacific Telephone and Telegraph Company, be dismissed in its entirety.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained, shall, as provided in Section 203.48 of said Rules

<sup>11</sup> Having found that Respondent was not guilty of any discriminatory conduct, the Examiner finds it unnecessary to discuss or make any finding on the effect that a transfer to Los Angeles might have on Patrick's sinus condition. "The [Act] gives the Board no supervisory powers over the conduct of a business by its own management." *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. 2d 340, 348 (C. A. 8). While some of Respondent's supervisory personnel were undoubtedly aware of Patrick's sinus condition, Hasselblad and his supervisor with whom the transfer was discussed, had no knowledge that it would seriously affect her health to be transferred to Los Angeles. Nor does the record show "that any purpose by the respondent to interfere with [Patrick's union activity] would be achieved by such transfer." *M. E. Blatt Co.*, 47 NLRB 1052, 1075. Indeed, the Los Angeles office, employing many more employees than the Santa Monica office, would have provided a more expansive field for Patrick's union activities.

and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 2d day of November 1949.

DAVID LONDON,  
*Trial Examiner.*