

In the Matter of AMERICAN DISTRICT TELEGRAPH COMPANY OF PENNSYLVANIA, EMPLOYER *and* OPERATING DEPARTMENT EMPLOYEES ASSOCIATION OF PITTSBURGH, PETITIONER

Case No. 6-RC-487.—Decided May 25, 1950

DECISION

AND

ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph C. Thackery, 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Styles].

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

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

2. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Petitioner claims to represent employees in the operating department of the Employer's Pittsburgh, Pennsylvania, office. The Employer contends that, on the basis of Board precedent,² the Petitioner is incapable of representing such employees, for the reason that the Petitioner was organized, and is presently controlled, by supervisors.

The Petitioner was organized, about September 1949, by Albert Charlier, Lester McMaster, and Gibeon Salsgiver. Charlier, Mc-

¹ For the reasons stated in earlier decisions involving other wholly owned subsidiaries of the same parent corporation, we find without merit the Employer's contention that its operations at its Pittsburgh, Pennsylvania, office do not affect commerce within the meaning of the Act. See *American District Telegraph Company*, 84 NLRB 162, and cases cited therein.

² See *Alaska Salmon Industry, Inc.*, 78 NLRB 185, and cases cited therein. Cf. *Allen B. Dumont Laboratories, Inc.*, 88 NLRB 1296.

89 NLRB No. 214.

Master, and William McCloskey solicited memberships in the Petitioner. McCloskey is the Petitioner's president, Charlier its vice president, and Salsgiver its treasurer. McCloskey and Charlier also serve on the Petitioner's negotiating committee. The Employer contends that McCloskey and McMaster, who are titled "service supervisors," and Charlier and Salsgiver, who are titled "relief service supervisor guard-operators," are supervisors as defined in the Act, and that their activities on behalf of the Petitioner bring this case within the principle applied in the *Alaska Salmon* case.³ We agree with the Employer that, if these four individuals are supervisors as defined in the Act, their activities on behalf of the Petitioner were and are such as to render the Petitioner incapable of acting as the representative of the Employer's employees. We turn, accordingly, to a consideration of their supervisory status.

The Employer's operating department, under the over-all supervision of the manager,⁴ functions 24 hours a day, 7 days a week, on three shifts. The total complement of the department consists of three service supervisors, three relief service supervisor guard-operators, six guard-operators, and two operators. One service supervisor works on each shift, 5 days each week. Each relief service supervisor guard-operator works 2 days each week as a service supervisor, and 3 days each week as a guard-operator. When working as a service supervisor, a relief service supervisor guard-operator has the same duties, authorities, and responsibilities as a service supervisor. From one to three employees, other than service supervisors, work on each shift.

Each service supervisor is responsible for the proper performance of the Employer's services by his shift. Except when the manager is in the office, no one superior in authority to the service supervisor is on duty.⁵ Although the Employer's operations are largely routine, and the employees are generally sufficiently experienced to be able to perform their duties without detailed supervision, the service supervisors have certain duties and responsibilities which require the exercise of independent judgment. These include, among others, (1) determining whether a situation requires that an investigation be

³ *Ibid.*

⁴ The manager is normally present in the office only on Mondays through Fridays, during the 8 a. m. to 4 p. m. shift, and the first hour of the 4 p. m. to midnight shift; however, he is not always present during these periods. He is normally not present at night, or on week ends or holidays, the most critical periods in the Employer's operations, when its subscribers' premises are normally closed. He does, however, occasionally visit the office at such times, and is generally available at such times, if needed, for consultation.

⁵ See footnote 4, *supra*. Thus, for more than two-thirds of each week, no one is on duty at the Employer's office who has authority superior to that of a service supervisor.

made; (2) determining the order of priority for investigations, in the event more concurrent investigations are required than there are guards available; and (3) determining the course of action to be followed in situations which do not conform to the established routine.⁶

Although the matter is not entirely free from doubt, we conclude, on the basis of the foregoing and on the entire record, that the service supervisors⁷ have authority responsibly to direct the work of their subordinates; accordingly, we find that they are supervisors as defined in the Act.⁸ As noted above, the relief service supervisor guard-operators⁹ regularly exercise the same authorities as the service supervisors for 2 days out of each week. We find that as a minimum they are supervisors during such time¹⁰ and that the participation of the relief service supervisors, Charlier and Salsgiver, in the organization and operation of the Petitioner, together with that of the service supervisors involved, was such as to bring this case within the *Alaska Salmon* rule.

As the Petitioner was organized by supervisors, as memberships in the Petitioner were solicited by supervisors, and as three of its four officers and two of the three members of its negotiating committee are supervisors,¹¹ we find that the Petitioner is incapable of serving as the bargaining representative of the employees of the Employer. We shall, therefore, dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

⁶ The record establishes that although the manager can usually be reached for consultation, emergency situations arise which require immediate decision and action, which cannot be delayed until the manager can be consulted.

⁷ Including McMaster and McCloskey.

⁸ There is conflicting evidence as to whether the service supervisors also possess the authority effectively to recommend personnel action. In view of the above, however, it is unnecessary for us to make any findings in this regard.

⁹ Including Charlier and Salsgiver.

¹⁰ Cf. *The Texas Company, Salem Gasoline Plant*, 85 NLRB 1211.

¹¹ The Petitioner's secretary, who is also a member of its negotiating committee, is not a supervisor.