

IN the Matter of ILLINOIS BELL TELEPHONE COMPANY, EMPLOYER *and*
WILLIAM T. McNEILL, PETITIONER *and* INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, AFL, LOCAL B. A. 315, LOCAL B. A.
336, AND LOCAL B. A. 399, UNION

Case No. 13-RD-1.—Decided June 8, 1948

DECISION

AND

DIRECTION OF ELECTION

Upon an amended petition for decertification duly filed, hearing in this case was held at Chicago, Illinois, on October 27, 28, 29, 30, and 31, and November 3 and 4, 1947, before Herman J. DeKoven, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE PARTIES INVOLVED

The Petitioner, an attorney representing certain employees of the Employer, asserts that the Union is no longer the representative, as defined in Section 9 (a) of the amended Act, of these of the Employer's employees designated in the petition.¹

The Union, a labor organization affiliated with the American Federation of Labor, is recognized by the Employer as the exclusive

¹The Union moved to dismiss the petition on the ground that the Petitioner is in fact a labor organization known as the Associated Telephone Engineers and as such may not file a petition for decertification under the terms of the Labor Management Relations Act of 1947, and further contends that such labor organization has not met with the requirements of Section 9 (f), (g), and (h). We find no merit in either contention. Section 9 (c) (1) (A) includes a "labor organization" as a proper party to file a decertification petition. The record discloses that the Associated Telephone Engineers was dissolved as an association and does not seek to represent any employees for the purposes of collective bargaining.

bargaining representative of the employees designated in the petition, among others.

III. THE QUESTION CONCERNING REPRESENTATION

The Union contends that its contract with the Employer, executed on August 21, 1947, is a bar to the petition for decertification.

The Union has been recognized by the Employer as the exclusive bargaining representative of all the Employer's non-supervisory employees in the Plant Department, including the plant engineers and right-of-way agents involved in the instant petition, pursuant to a collective bargaining agreement executed on July 1, 1944, as subsequently amended and extended. That contract was to expire on April 24, 1947. On April 22, 1947, the parties extended the contract to June 30, 1947, and on June 30 the contract was further extended to September 1, 1947, or until a new contract was executed, whichever event occurred first.

On June 11, 1947, the Petitioner notified the Employer in writing that the engineers and right-of-way agents whom he represented did not wish to be included in the same bargaining unit with the other employees in the Plant Department and would not consider themselves bound by any agreement which purported to include them. On July 7, 1947, the Petitioner wrote to the Employer, saying that the engineers and right-of-way agents were professional employees within the meaning of Sections 2 (12) and 9 (b) of the Act, and that unless the Union and the Employer excluded them from the contract unit, the matter should be presented to the National Labor Relations Board. On August 8, 1947, the Employer advised the Petitioner that a new contract had been provisionally signed for submission to the Union membership for ratification, and that a supplemental agreement had been entered into by the Employer and the Union which would enable the engineers to seek a determination by the National Labor Relations Board of the question raised by the Petitioner.

The supplemental agreement reads as follows:

It has been called to the attention of the Committee representing the Union, who are currently in the course of negotiations with representatives of the Illinois Bell Telephone Company concerning the terms and provisions which a new agreement between the Company and the Union shall contain, that certain Engineers in the Plant Department who are covered in an agreement currently in effect between the Company and the Union, feel that in the near future, because of the types of work and duties which they perform for the Company, they will become ineligible to be

represented by the Union as their bargaining agent and desire to have that question settled by the NLRB.

The representatives of the Union on said committee do not agree with the views of those employees, but state that, despite the fact that those Engineers are included under the agreement being negotiated, nevertheless the Union will not object to the prompt presentation by said Engineers of the question of representation to the NLRB for prompt decision, but will present and urge its opposing views before the NLRB on the question of representation; and that if it is determined that those Engineers are properly represented by the Union, they will continue to be covered by said agreement as therein provided, while, if it is determined that they are ineligible to be represented by the Union, they shall forthwith be removed from the operation of and no longer be covered by said agreement.

On August 21, the contract was executed by all parties and on August 22, 1947, the Petitioner filed his original petition herein on behalf of the plant engineers in the Chicago area. On October 14, 1947, the Petitioner amended his petition to include the plant engineers and right-of-way agents in all three divisions of the Plant Department.

In relation to the above facts, the Union urges that its contract of August 21, 1947, is a bar to the instant decertification petition under the rule established by the Board in *Matter of General Electric X-Ray Corporation*,² because the petition was filed after the contract was executed and more than 10 days after the Petitioner's claim was made. We find no merit in this contention. The supplemental agreement entered into by the Union and the Employer acknowledges the claim made by the Petitioner, and states that, although the Union is not in agreement with the position taken by the engineers, it will not object to the presentation by the engineers of the question of representation to the National Labor Relations Board. This supplemental agreement, therefore, prevents the contract from being a bar to the instant decertification proceeding.³

We find that a 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 amended Act.

² 67 N. L. R. B. 997.

³ The Union further contends that under the rule established by the Board in *Matter of Hyster Company*, 72 N. L. R. B. 937, the contract must be a bar to the amended petition which materially enlarged the unit. This contention is also without merit, because the *Hyster* case involved a substantial variance between an amended petition filed after the execution of the contract in question and an original petition which was filed before the contract was executed. In the instant case both petitions were filed after the execution of the contract and the scope and character of the unit contained in the amended petition was specifically contemplated by the claim.

IV. THE APPROPRIATE UNIT

The Union has not been certified by the Board, but since 1941 it has represented, under a series of collective bargaining agreements, *all* the non-supervisory employees in the Employer's Plant Department. The unit covered by the contract is State-wide in scope and presently contains approximately 9,000 employees, including the 271 plant engineers and 15 right-of-way agents here in question.

The Petitioner requests that a decertification election be held only among engineers and right-of-way agents, contending that these employees are professional employees and together constitute an appropriate unit separate from the established contract unit. The Union denies that the engineers and right-of-way agents are professional employees and contends that they do not constitute an appropriate unit. The Employer takes no position.

Section 9 (c) of the amended Act, under which the present decertification and other representation petitions are filed, provides that elections be held to determine the bargaining representatives as defined in Section 9 (a) of the amended Act. The bargaining representative defined in Section 9 (a) is one selected by a majority of the employees in a unit appropriate for such purposes. Section 9 (b) vests in the Board the discretion to determine the appropriate bargaining unit; however, it limits this discretion insofar as professional employees are concerned. Thus, the Board may not "decide that any unit is appropriate for such purposes [of collective bargaining] if such unit includes both professional employees and employees who are not professional employees unless a majority of such employees vote for inclusion in such unit." In effect, this provision prescribes, generally, the propriety of professional units and requires, at least upon request, a separate election among such professional employees before they are included in a larger unit with non-professional employees.

The Act does not specifically provide for decertification of part of a recognized bargaining unit; however, it makes no distinction between certification and decertification proceedings insofar as appropriate units are concerned. 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 established contract unit. This, in turn, requires the Board to determine whether the employees in question are professional employees within the mean-

ing of Section 2 (12) of the amended Act.⁴ If they are professional employees, they may constitute an appropriate bargaining unit within the meaning of Section 9 (b) of the Act and, accordingly, may be severed as stated above. We turn then to a determination of the professional status of the engineers and right-of-way agents.

The Employer's organization is divided into five major departments: Plant Department, Commercial Department, Traffic Department, Engineering Department, and Accounting Department. The functions of the Plant Department are to maintain telephone equipment located in the Employer's central office; to maintain company-owned buildings; and to install, construct, and maintain telephone equipment facilities on or in connection with subscribers' premises. The bargaining unit covered by the contract contains many different classifications of construction, repair, maintenance, and clerical employees, as well as plant engineers and right-of-way agents.

There are four categories of plant engineers, known as student engineers, assistant engineers, engineers, and senior engineers. The Petitioner introduced into evidence three job orders or construction plans prepared by plant engineers. Testimony relative to the most complicated of the three indicated that such a project would take several months to complete, would require a knowledge of higher mathematics (such as calculus, trigonometry, analytical and descriptive geometry), physics, accounting, some civil engineering, electrical engineering, technical drawing, economics (preparation of cost estimates), and English composition (for the preparation of the formal presentation of the plan). While the engineers who prepared the plan might not have had degrees in engineering from institutions of higher learning, the project drew on a number of fields of knowledge taught in such institutions. Usually employees from all four categories of plant engineers participate in the completion of such a complicated project. In addition to the knowledge required to perform this job, the Employer has compiled manuals of telephone practices which are reference books for the use of the engineers. Because telephone engineering is seldom taught in institutions of higher learning, much of the

⁴ Section 2 (12) defines professional employees as ". . . (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performances, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, mental, manual, or physical processes . . ."

knowledge required for the performance of a plant engineering job must be secured from these manuals prepared by the telephone company.

The work of the student engineers is the simplest and involves some mental work of a routine nature. Nonetheless, the work of all four categories of engineers is frequently of a composite nature and all four classes may be simultaneously engaged on a single large project. While some of the student engineers have been recruited from the skilled craft groups, the record reveals that such men have had some scientific or technical education and are considered to possess a high type of technical skill and aptitude which would enable them to progress to the higher classifications of plant engineers.

The record discloses that the work of right-of-way agents allies these men more closely to the plant engineers than to any of the other employees in the Plant Department. Their duties are quite different, however, from those of the plant engineers. The right-of-way agents conduct negotiations with public officials or owners of private property to secure permits for right-of-way privileges. They settle complaints in connection with the maintenance of right-of-way; settle claims arising out of construction work; check property titles, ownership, and encumbrances to determine the nature of the owner's interest; and record property permits with the Company. In connection with their work, they must have a general knowledge of outside telephone plants, engineering, and construction and installation practices, an understanding of the Company's policies regarding right-of-way, and the ability to understand fundamentals of real estate law. Approximately 40 percent of the Employer's 15 right-of-way agents are either college graduates or have had college training. Their salary range is commensurate with that of the engineers and assistant engineers. In most instances the right-of-way agents are under the same supervision as the plant engineers.

In the entire Plant Department more than 60 percent of the plant engineers and right-of-way agents are college graduates or have had some college education.⁵ Only approximately 5 percent of the other non-supervisory employees of the Plant Department have had any college education. In the Chicago area, 62 percent of the plant engineers are licensed under the State of Illinois Professional Engineers Act as Registered Professional Engineers. In the State area, approximately 42 percent are licensed under the Act. The Employer does not require them to be licensed.

⁵ The parties agreed that the work of the plant engineers and right-of-way agents required approximately 50 percent of the type of knowledge referred to in subsection (iv), set forth in footnote 4, above.

On the basis of the entire record in this case, we find that the four categories of plant engineers and the right-of-way agents meet the requirements, and therefore are professional employees within the meaning of Section 2 (12) of the amended Act. Accordingly, we find that student engineers, assistant engineers, engineers, senior engineers, and right-of-way agents in the Employer's Plant Department, excluding supervisors and all other employees in the Department, may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

Accordingly, we shall direct that an election by secret ballot be held among the plant engineers and right-of-way agents in the Employer's Plant Department. 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 in a unit with all the non-supervisory employees in the Employer's Plant Department now represented by the Union.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Illinois Bell Telephone Company, Chicago, Illinois, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, among the employees in the voting group described 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 employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by International Brotherhood of Electrical Workers, AFL, Local B. A. 315, Local B. A. 336, and Local B. A. 399, for the purposes of collective bargaining.