

**A.D.T. Company, Inc. and A.D.T. Company,
Petitioners, and Local Union No. 3, International
Brotherhood of Electrical Workers, AFL-CIO.
Case 2-UC-30**

June 30, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND JENKINS

Upon a petition of A.D.T. Company, Inc., and A.D.T. Company, duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on various dates in January, February, and March 1969, before Hearing Officer Haywood E. Banks. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 2 issued an Order transferring the case to the Board for decision. Thereafter, briefs were timely filed by the Employers and the Union, which have been duly considered.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

1. The Employers are engaged in commerce within the meaning of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.¹

2. The labor organization involved claims to represent certain employees of the Employers.

3. A. D. T. Company, Inc., and A. D. T. Company, are wholly owned subsidiaries of the American District Telephone Company and are engaged in the installation and servicing of security systems, primarily for commercial, mercantile and industrial subscribers such as banks, department stores, and factories in the States of New York and New Jersey. The operations of the two companies are conducted in the same manner. Protective devices are installed and maintained by employees in the Employers' plant department. When the devices are activated, a signal is transmitted to the Employers' operating department employees, who

monitor and respond to these alarms.

Since about 1937, the Employers have recognized the Union as the bargaining representative of their plant and operating department employees in the New York district (covering locations in New York and New Jersey) and have executed a series of separate but identical collective-bargaining agreements covering units identically described for both Employers as follows:

(a) plant department employees, excepting accountants, bookkeepers, clerks, stenographers, other office employees and employees above the rank of foreman, and

(b) operating department employees below the rank of manager and excluding accountants, bookkeepers, clerks and other office employees.

Apparently, the parties have treated all plant and operating employees of both Employers as a single-bargaining unit, even though separate contracts have been utilized. The most recent such agreements expired on December 14, 1968, at which time the Employers' operating department employees went on strike, seeking increased economic benefits.

The Employers' present unit clarification petition requests that 5 classifications occupied by 94 individuals be excluded from the Employers' plant and operating department unit currently represented by the Union.² The Employers contend that they are not required to bargain with the Union concerning the terms and conditions of employment of the persons in these classifications because they are supervisors within the meaning of Section 2(11) of the Act, and therefore excludable from the bargaining unit. The Union contends that none of the persons in the classifications which the Employers seek to exclude from the bargaining unit in fact perform the duties of supervisors.³ Three of the classifications in issue are in the Employers' plant department, namely, district inspector, foremen, and plant supervisor, while the remaining two, service supervisor and relief service supervisor, are in their operating department.

The record shows that the two *district inspectors* in question act as management representatives directly assisting District Service Manager Burns, who is responsible for the proper functioning of approximately 300 plant department employees performing installation, inspection, and maintenance work from plants in New York and New Jersey. Burns' testimony shows that he relies heavily upon the district inspectors' recommendations whenever

¹At the hearing, the Employers withdrew a request in the unit clarification petition that guard operators be excluded from the unit as "guards" within the meaning of Sec. 9(b) of the Act.

²Sec. 2(11) of the Act provides as follows: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment"

³We find no merit in the Union's contention that we lack jurisdiction to clarify bargaining units established by agreement of the parties and not certified by the Board, for the reasons fully set forth in our decision in *Brotherhood of Locomotive Firemen and Enginemen*, 145 NLRB 1521, 1522-24. Accordingly, we hereby deny the Union's motion, made at the outset of the hearing herein, to dismiss the present unit clarification petition on the ground that the Board has no authority to entertain or act upon the petition.

he is called upon to promote plant department employees to positions as plant supervisors or plant foremen, since they have the duty of visiting plant offices more frequently than he, and, therefore, the opportunity to gauge more accurately the capabilities and competency of plant personnel. In addition, Burns' testimony plainly indicates that district inspectors have a prime responsibility of solving intricate repair and installation problems which arise in the field activities of the several plant offices, and, in this connection, they issue, to plant department personnel doing installation and maintenance work, orders pertaining to proper performance of that work. The district inspectors earn \$5,255 per hour, substantially more than other employees considered hereafter, and, according to a letter issued to plant foremen by Burns, they carry Burns' "authority" when in the field. On the above evidence, essentially uncontested we find the two district inspectors to be supervisors within the meaning of Section 2(11) of the Act, since they possess and exercise both the authority responsibly to direct other employees and effectively to recommend their promotion.

The classification of *plant foreman* is also in dispute. The Union essentially contends that the seven individuals employed in this capacity, who have immediate and sole charge of widely separated plant offices, are mere conduits who transmit orders from the District Service Manager in New York City to all plant department employees. The record is abundantly clear that, contrary to this contention, such individuals function as true supervisors. It shows that foremen, as the highest ranking management representatives in plant offices, normally direct the work of numerous plant personnel in a manner which requires the use of independent judgment. They have primary responsibility for the proper installation, repair, and inspection of security systems maintained by the plant office to which they are assigned. They periodically determine which plant supervisors (a category discussed below) and plant employees should be assigned to particular groups of work projects, and they decide the general priority of each project in the interest of maintaining efficient protective service. They are the highest ranking and best paid employees in the plant offices, receiving from \$5.12 to \$5.255 per hour, depending upon the size of the work force in the office they direct, which ranges from 23 to 60 employees. Foremen hire and evaluate their own clerical personnel, have recommended promotion and discharge, have disciplined plant personnel in such matters as tardiness, attendance, and work performance, and possess contractual authority to adjust employee grievances. On the basis of the foregoing, as noted previously, we find that the foremen are employed as supervisors under Section 2(11) of the Act.

Twenty-four *plant supervisors*, who are immediately responsible for the proper execution of

construction, inspection, and repair work performed by 258 plant employees, constitute the final disputed classification in the Employers' plant departments. The Union contends, in essence, that the plant employees performing such field work must necessarily operate with minimal supervision due to geographical considerations, and that the direction they receive concerning their work performance is too negligible to warrant a finding that the plant supervisors, who furnish such direction, are supervisors within the meaning of Section 2(11). Contrary to the Union's position, the record shows that each plant supervisor has initial responsibility for, and is in immediate charge of, several groups of either construction, inspection, or repair employees, with the duty of assigning and responsibly directing them on work projects for which the plant supervisors are held immediately accountable. During the week, they travel from job to job, overseeing the progress of the projects under their control. While they also perform manual work, it appears that their primary responsibility is to supervise the work of the 6-12 men assigned to them. One plant supervisor testified at the hearing that he had ordered a member of his crew to perform his job properly, and this would appear to support the testimony of Service Manager Burns that the power to reprimand and recommend discipline is inherent in their positions. We find, therefore, that the plant supervisors are supervisors within the meaning of Section 2(11).

The final two classifications of employees in dispute, *service supervisors* and *relief service supervisors*, are employed in the Employers' operating departments, which are engaged in monitoring and responding to alarms received from the protective systems installed and maintained by the plant department. This service is rendered from nine central stations and a number of substations, where, respectively, operators monitoring the signals and guard operators responding to them are stationed. In a typical central station, service supervisors work five 8-hour shifts each week, with regular guard operators, serving as relief service supervisors and performing the same duties as service supervisors while so assigned, relieving them for two 8-hour shifts each week. The stations operate on three 8-hour shifts, 7 days a week. As many as 23 guard operators may work out of or under the control of larger central stations, while as few as 7 may be assigned to the smaller central stations. Relief service supervisors function as guard operators when not assigned to relieve the service supervisors.

The Employers contend that service supervisors and relief service supervisors have the usual attributes of supervisors under Section 2(11) of the Act. Heavy emphasis is placed on the contention that these employees responsibly direct the activities of guard operators as the urgent necessities of incoming alarms require, particularly since they are

normally the sole individuals in charge of central operating stations at night and during the early morning hours, when day-time station managers are not present. The Union contends that the daily duties and decisions of service supervisors and relief service supervisors are essentially routine and governed by detailed company policy. The Union asserts further that the record shows that any unusual situations, which might in fact require the use of independent judgment, are usually referred to the central station managers who are present during the day and normally available, at home, to make decisions at night. The Union argues, in other words, that the service supervisors and relief service supervisors in reality act only as dispatchers of guard operators and mere conduits through which decisive judgments of station managers are transmitted.

While the question before us is, on the present record, a close one, we find merit in the Union's contention, and conclude that the 34 service supervisors and 22 relief service supervisors are not supervisors under Section 2(11) of the Act, but rather are employees properly included in the unit represented by the Union. The record contains no clear evidence that these employees have, as a matter of course, hired, fired, transferred, or suspended employees, or effectively recommended such actions. An analysis of all the testimony indicates that in the central stations these employees perform the same manual and clerical duties as guard operators, except that they also keep some records and dispatch the guards to answer alarms in accordance with established company procedures. The testimony further shows that the guards themselves frequently perform dispatching duties and communicate with subscribers, and that most of the time, the guards are not in the station with the service supervisors. Where situations arise which are more involved and are considered to require more discerning judgment, they are usually referred to the central station manager for resolution at any time of the day or night. It appears that, depending upon the shift and the station, the ratio of service supervisors to guards may be as low as one to two.

For instance, at the White Plains Central Station, the evening shift on Monday, Tuesday, and Wednesday consists of one service supervisor and two guards.

In our opinion, the present record shows that service supervisors and relief service supervisors routinely dispatch guard operators and make recurrent decisions in accordance with well-defined guidelines, but fails to show that such authority as they exercise requires the use of independent judgment. It further appears that these "supervisors" have no real authority over the few operators working with them on their shifts, and do not regularly exercise any of the functions normally associated with supervisory status. In view of the foregoing, we find that service supervisors are not employed as supervisors within the meaning of Section 2(11) of the Act, and further find that guard-operators are similarly not employed as supervisors during such times as they are performing the duties of service supervisors in a relief capacity.

In view of our findings and conclusions with respect to the five classifications in dispute, we shall grant the Employer-Petitioners' request that we exclude from the collective-bargaining unit recognized by the Employers herein the categories of district inspectors, foremen and plant supervisors, and we shall deny the request that we exclude from the same unit the categories of service supervisors and relief service supervisors.

ORDER

It is hereby ordered that the collective-bargaining units of plant and operating department employees of A.D.T. Company, Inc., and A.D.T. Company represented by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, be, and they hereby are, clarified by specifically including therein operating department employees performing the duties of service supervisor and relief service supervisor, and by specifically excluding therefrom, plant department employees performing the duties of district inspector, foreman, and plant supervisor.