Midstate Telephone Co., Inc., Petitioner, *and* Local No. 1189, International Brotherhood of Electrical Workers, AFL-CIO,[1] Case 3-RM-424

October 13, 1969

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Douglas D. Walldorff, Hearing Officer. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 3, this case was transferred to the National Labor Relations Board for decision. Briefs were thereafter filed by the Employer-Petitioner and by the Intervenor, Communications Workers of America, AFL-CIO.[2]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the 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 Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain 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 Employer is a telephone utility servicing a number of locations in the suburban area surrounding the city of Syracuse, New York. As presently constituted, the Employer is the corporate product of a merger, effective March 31, 1969, between three separate, but commonly owned, telephone companies — Midstate Telephone Co., Inc. (hereinafter called "Old Midstate"), Oswego Telephone Corporation (hereinafter called Oswego), and Finger Lakes Telphone Corporation (hereinafter called Finger Lakes). The Employer is a wholly owned subsidiary of Mid-Continent Telephone Corporation, as were all three of the prior-existing, separate companies.

Since 1948, the IBEW had been the certified representative of a unit comprising all of Oswego's plant, traffic, accounting, and commercial department employees. There are approximately 67 employees in this unit and the latest collective-bargaining agreement covering them was a 3-year contract expiring May 31, 1969.

Prior to 1968, there was no collective-bargaining history at Old Midstate or Finger Lakes. However, in *Midstate Telephone Co., Inc.*, Cases 3-RC-4415 and 4428,[3] the Regional Director for Region 3 issued a Decision and Direction of Election in which he directed elections in two separate appropriate units consisting, respectively, of Old Midstate employees and Finger Lakes employees. Thereafter, Old Midstate and Finger Lakes filed a request for review of the Decision and Direction of Election on the ground that the units were inappropriate in view of the pending merger with Oswego. On June 25, 1968, the Board denied the request for review. On July 25, 1968, pursuant to the results of Board-conducted representation elections, the Regional Director certified the CWA as collective-bargaining representative for the unit of Old Midstate employees and the IBEW as representative for the unit of Finger Lakes employees.

Subsequently, the IBEW and Finger Lakes executed a 1-year collective-bargaining agreement, expiring December 31, 1969. The CWA and Old Midstate met for a number of bargaining sessions, but had not reached agreement on a contract when the above-mentioned merger was consummated on March 31, 1969. Shortly thereafter, on April 2, 1969, the Employer filed the instant petition. It also gave notification terminating bargaining negotiations with the CWA on the ground of the filing of the petition. In fact, no bargaining had taken place since sometime prior to the date the merger became effective — which was approximately 8 months after the CWA's certification.

In its petition, the Employer seeks a single unit encompassing all employees in the previously certified Old Midstate, Oswego, and Finger Lakes units. It asserted that the March 31, 1969, merger rendered the three existing separate units inappropriate and that only an overall unit is now appropriate.

The CWA contends that the petition should be dismissed on the grounds that the filing was untimely as it occurred almost 4 months prior to the expiration of CWA's certification year for the Old Midstate unit; that it is barred by the IBEW-Finger Lakes contract; that none of the administrative changes instituted by the Employer as a result of the merger have impaired the appropriateness of the three separate units; and that no labor organization has sought or is seeking to represent the more comprehensive unit requested by the Employer.

[1] Hereinafter referred to as the IBEW

[2] Hereinafter referred to as the CWA

[3] Issued June 11, 1968 (not published in NLRB volumes)

The IBEW states that it has maintained and is maintaining a continuing demand to represent the employees in the Oswego and Finger Lakes units; that while it does not oppose the petition, it would not, because of the AFL-CIO no-raid pact, claim or petition for the requested overall unit; and that by not opposing the petition it is, in particular, not asserting its contracts with either Oswego or Finger Lakes as a bar thereto. Neither the IBEW nor the CWA has ever presented the Employer with a request for recognition in the proposed overall unit.

Since the merger became effective, the operations of the formerly separate companies have been combined in a centralized administrative system[4] under which each of the Employer's operating departments — inside plant, outside plant, commercial, and traffic[5] — is headed by a department manager who has employerwide responsibility for all departmental operations. Below the level of the managers the operations of most departments are sub-divided between the service areas located north and south of the city of Syracuse, which are denominated Zones 1 and 2, respectively. Zone 1 contains all the Oswego and part of the Old Midstate operations, while Zone 2 comprises the remainder of the Old Midstate and all of the Finger Lakes operations.

However, despite all the above-mentioned administrative integration, day-to-day operations on the employee level have remained substantially unchanged from those extant at the time the separate units were certified. The employees are performing the same work, at the same geographical locations, and under the same immediate direction and supervision as before. There have been no permanent transfers of employees from one unit to another, and all the parties agree that interchange has been minimal. The wage rates paid employees in the separate units are somewhat different, and insurance, vacations, and other fringe benefits vary substantially.

On these facts, and for the reasons set forth in *Centr-O-Cast & Engineering Co.*, 100 NLRB 1507, as modified by *Mar-Jac Poultry Co.*, 136 NLRB 785, we hold that a certified union is entitled to at least 1 year of uninterrupted bargaining, absent unusual circumstances. We find that the record in this case reveals the existence of no unusual circumstances. No facts warrant either an exception to the certification-bar rule, or a finding that the unit covered by the CWA's recent certification has become inappropriate. No significant changes were shown to have occurred in that unit, and the Employer's prospective plans to make such changes have already been considered by us and rejected as grounds for granting review of the Regional Director's finding that the unit covered by the CWA's certification was appropriate. Accordingly, we shall dismiss the petition.

In view of our proposed action, we find it unnecessary to consider the CWA's argument that the petition must be dismissed because no claim for recognition in the overall unit has been presented to the Employer, within the meaning of Section 9(c)(1)(B) of the Act.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

[4] Testimony at the hearing indicated that the administrative centralization was effected gradually over a period of time commencing, in anticipation of the merger, during the latter part of 1968

[5] The Oswego unit is the only one which had traffic employees and, therefore, the Employer's traffic department does not administratively cover any employees in the Old Midstate or Finger Lakes units