

Pacific Northwest Bell Telephone Company,¹ Employer-Petitioner and Communications Workers of America, AFL-CIO² and Order of Repeatermen and Toll Testboardmen, Local Union 1011, affiliated with International Brotherhood of Electrical Workers, AFL-CIO.³ Case 19-UC-110

June 25, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND KENNEDY

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, on September 6, 1973, a hearing was held before Hearing Officer Zane Lumbley on December 10 and 11, 1973, and February 6, 1974, for the purpose of taking testimony with respect to the issues raised by the petition. On February 13, 1974, the Regional Director for Region 19 transferred this case to the National Labor Relations Board. Thereafter, all parties filed briefs.

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

The Board has considered the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

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

The Employer seeks to clarify the craft unit for which ORTT is certified to include only employees who regularly spend more than 51 percent of their time establishing, maintaining, and testing some or all of the following equipment and services: all radio systems used for long-distance lines; telephone and telegraph/teletypewriter private line test board and associated central office equipment and services; ship-to-shore radio equipment; central office program and video service and equipment; mobile radio service control terminals; intertoll circuits and associated miscellaneous toll terminal equipment; L carrier; N carrier; O carrier; ON carrier; PBX repairmen (principally engaged in work on teletypewriter equipment)—Oregon area; PBX repairmen (principally engaged in work on teletypewriter equipment in Seattle)—Washington-Idaho area; work in the circuit layout bureau as noted by the Board in *Pacific Northwest Bell Telephone Company*, 178 NLRB 726, but excluding work on the T carrier. CWA urges the Board to clarify the unit as requested

by the Employer. ORTT contends, however, *inter alia*, that the unit clarification procedure is not the proper one for making substantive modifications in the scope of the existing certifications, and moves, therefore, that the petition be dismissed. For the reasons stated *infra*, the motion to dismiss is granted.

The Employer is a public utility engaged in the business of furnishing telephone, teletypewriter, telegraph, radio, television, and other communication services. For administrative purposes, the Employer is divided into two areas: one known as the Oregon area, comprising that State, and the other known as the Washington and Idaho area, comprising Washington and Northern Idaho.

Bargaining History

In 1944, the Board found that toll maintenance employees of the Washington-Idaho area could bargain either as a separate bargaining group or might remain part of the departmental group with which they were then associated, dependent on the desires of the employees involved.⁴ The Board described the functions and characteristics of the toll maintenance employees as follow (58 NLRB at 1046):

Toll maintenance employees, including telegraph repeatermen, testboard men, transmission men, and toll central office repairmen, test, repair, and maintain equipment used for long distance transmission. More specifically, they set up telegraph and teletypewriter circuits and test and adjust repeater equipment, they deal with customers who purchase teletypewriter and telegraph service from their employer, and they use the Morse telegraph code for communication between toll offices. Their work requires constant communication with toll employees in other areas and outside their employer's territorial boundaries. They make transmission tests, test and monitor radio program circuits and equipment, and locate and clear trouble on such circuits and equipment. Toll maintenance employees operate mobile emergency radio equipment, make necessary patches or switches at the line and amplifier panels, and perform routine maintenance work on toll office equipment. They keep records associated with their work. Toll maintenance employees in the three districts work under district toll superintendents, who do not have jurisdiction over station and central office work.

The job categories under toll and central office employees indicate, respectively, different craft

¹ Herein called the Employer.

² Herein called CWA.

³ Herein called ORTT.

⁴ *Pacific Telephone and Telegraph Company*, 58 NLRB 1042.

skills. Without special training, central office employees cannot perform toll maintenance work, and vice versa. Toll employees regularly perform work in more than one toll maintenance category and a similar situation exists among central office employees. Some employees, especially those assigned to localities where the toll and central office work is light, are combination men and work on both toll and central office facilities. The practice of the Company is to classify its employees as "toll" or "central office" employees, depending upon the type of equipment on which each craftsman regularly spends 51 percent or more of his time.⁵

Following an election, the Board found that a separate unit of toll maintenance employees in the Washington-Idaho area, including PBX teletypewriter repairmen under toll supervision, constituted an appropriate unit and certified ORTT as the bargaining representative of such employees. In 1949, the Board found appropriate a similar unit of toll maintenance employees in the Oregon area.⁶ The Board again referred to the employer practice, which it endorsed, of classifying employees as "toll" or "central office" employees, depending upon the type of equipment on which each craftsman regularly spent 51 percent or more of his time. ORTT was selected as the bargaining representative of the employees in this unit and was certified as the bargaining representative. In 1954, ORTT filed a petition seeking to consolidate, in one unit, the three separate units of toll maintenance employees for which it was then the certified representative. The Board denied the request.⁷ In the following year, the Board reaffirmed the appropriateness of the separate toll maintenance units for which ORTT had been certified.⁸ In 1969, the Employer, as successor in interest to Pacific Telephone & Telegraph Company, filed a motion seeking clarification of the toll maintenance units represented by ORTT and the residual plant department units represented by CWA. The Employer contended that ORTT was claiming to represent certain employees currently represented by CWA, and that the latter was claiming to represent other employees then considered to be in the ORTT units. In granting the Employer's request the Board stated:⁹

In deciding that toll maintenance employees constituted an appropriate unit in 58 NLRB 1042, the Board described the duties of these employees in detail. Basically, it found that they tested,

repaired, and maintained equipment used for long distance transmissions, physically set up telegraph and teletypewriter circuits, dealt with customers who purchased teletypewriter and telegraph service from the employer, made transmission tests, operated mobile emergency radio equipment, and kept records associated with their work. The Board found that the practice of the employer was to classify its employees as "toll" or "central office" depending upon the type of equipment on which each employee regularly spent 51 percent or more of his time. The Board considered as "toll maintenance" only those employees classified by the employer as such, and specifically excluded those employees whose combination work did not entitle them to the classification of "toll maintenance" by their employer.

The record indicates that toll maintenance employees perform the same duties now as in 1944 with a few minor exceptions. There has been no showing that the test used for determining which employees should be included in the toll maintenance unit in 1944 is no longer valid.

In the most recent case involving these parties,¹⁰ the Board declined to accrete by way of a motion for clarification certain new operations to the existing units for which ORTT and CWA are currently the bargaining representatives. The Board in its decision implicitly recognized the continuing viability of the 51-percent rule.

At the present time, ORTT has a collective-bargaining contract with the Employer which will expire on July 21, 1974, covering "toll maintenance employees in the Plant Departments in the Oregon area and in the Washington-Idaho Area . . . CWA presently is party to a collective-bargaining contract with the Employer which will terminate on July 17, 1974, and which covers a multidepartment unit which includes both craft and noncraft classifications.

The Present Dispute

In the present petition, the Employer seeks to restructure the historical certification of the "toll maintenance" unit so as to define the unit in terms of particular types of equipment operated rather than in the traditional distinction recognized in the previous certifications between long distance and local communication services. The present petition owes its

⁵ This is the source of the so-called 51-percent rule.

⁶ *Pacific Telephone and Telegraph Company*, 85 NLRB 713.

⁷ *The Pacific Telephone and Telegraph Company*, 107 NLRB 1615, 108 NLRB 862.

⁸ *The Pacific Telephone and Telegraph Company*, 113 NLRB 478.

⁹ *Pacific Northwest Bell Telephone Company*, 178 NLRB 726, 727.

¹⁰ *Pacific Northwest Bell Telephone Company*, 207 NLRB No. 9.

origin to a dispute as to who shall operate the T carrier.

A "carrier" is defined as "an arrangement whereby additional talking paths can be derived from a single physical circuit or pair of physical circuits through the introduction of higher frequencies and electronic components." In other words, a carrier is the equipment which permits several messages to be transmitted simultaneously through the same wire, cable, or radio facility. The Employer has been using different types of carriers for many years. As these were incorporated into the system, it was customary to designate them by capital letters assigned *seriatim*. Where a carrier was used for toll circuitry it was maintained by employees in the ORTT; where used for making local calls, employees represented by CWA maintained them. The T carrier is a comparatively new carrier which uses the most advanced techniques of solid state technology. T carriers were initially used for local trunk calls and were maintained solely by CWA members. Development of T carrier design, however, has increased its scope of application to include trunks and circuits up to 50 miles in length, and it is presently in use on some of the shorter toll routes. According to an employer witness, the T carrier "has been extended into other toll-connecting and probably inter toll applications." A more advanced type of T carrier has been perfected by Bell Laboratories for use up to 500 miles. This is not yet in use, however. The record shows that members of CWA have been assigned to work on about 95 percent of the T carriers, with the remaining 5 percent assigned to ORTT members, depending on the application of the 51-percent rule.

Conclusion

In its petition for clarification, the Employer-Petitioner seeks to have the Board determine, *inter alia*, that all work on T carriers belongs to employees who are represented by CWA. Thus, it is clear that the Employer-Petitioner is asking the Board to assign certain work to employees in the CWA-represented unit rather than to employees in the ORTT unit who

are presently doing some of the work and who may be expected to do more such work if, as is anticipated, the T carrier is used more extensively for toll transmission. However, work assignment disputes are not properly matters for consideration and resolution in unit clarification procedures. In the *Gas Service Company* case,¹¹ the Board said:

Work assignment disputes are not properly matters for consideration and resolution in a representation proceeding. As the Board has said, its sole function in representation proceedings is to ascertain and certify the name of the bargaining representative, if any, that has been designated by the employees in the appropriate unit. It is not the Board's responsibility in representation proceedings to decide whether employees in the bargaining unit are entitled to do any particular work or whether an employer has properly reassigned work from employees in the bargaining unit to other employees.

Moreover, under the guise of clarification the Employer seeks not the resolution of an ambiguity in the existing certified and contract bargaining unit which has been in existence for more than 30 years, but a radical change in that unit so as in effect to eliminate the 51-percent rule which during all that time has been the dividing line between the ORTT and CWA bargaining units. That is not an appropriate subject for a motion for clarification. Finally if the Board were to grant the Employer's request, it would be sanctioning an important modification of an existing contract provision during the life of that contract, thus disrupting an established bargaining relationship.¹²

For all the above reasons, we find that a question of representation does not exist and we shall therefore dismiss the petition.¹³

ORDER

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

the T carrier. In his view, there is sufficient lack of clarity of the certification in view of new technology that the Board should not dismiss this petition and instead should attempt to clarify its certification. Because his colleagues have declined to do so herein, the Chairman sees no point in expressing his views on the merits, but merely notes his dissent from the dismissal.

¹¹ *The Gas Service Company*, 140 NLRB 445, 447. Accord: *Ingersoll Products Division (Chicago Workers) of the Borg-Warner Corporation*, 150 NLRB 912.

¹² See *Monongahela Power Company*, 198 NLRB No. 177.

¹³ Chairman Miller is of the view that the facts show a recent history of considerable confusion as to the feasibility of applying the 51-percent test to