

Cincinnati Bell, Inc., Employer-Petitioner and Communications Workers of America, AFL-CIO. Case 9-UC-117

January 31, 1977

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS
FANNING AND JENKINS

Upon a petition of Cincinnati Bell, Inc., for clarification of unit duly filed on July 23, 1976, under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on September 2, 1976, before Hearing Officer Donald Q. Crain. On October 20, 1976, the Regional Director for Region 9 issued an order transferring the case to the Board. Thereafter, briefs were filed by the Petitioner and the Union.

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 reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings 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 Union involved herein is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

3. The Employer-Petitioner, an Ohio corporation, is a telecommunications utility engaged in providing telephone service in Ohio, Kentucky, and Indiana. The Employer proposes to clarify the bargaining unit to exclude outside plant engineering supervisors. The history of collective bargaining between the Employer and the Union dates back to 1940. For many years the unit has remained the same as that described in the present contract, effective from August 11, 1974, until August 6, 1977. The unit described in the current collective-bargaining agreement is: "All non-managerial employees of the Employer whose titles are included in the list of job titles in Appendix E attached to the Contract." Appendix E, the unit description, does not specifically exclude supervisors as defined in the Act.

The record discloses that the individuals in dispute were formerly engineering assistants, a job classification which was included in the bargaining unit. In December 1974, some of the engineering assistants

were promoted out of the bargaining unit and into the engineering associates classification, a classification not listed in Appendix E, and therefore not included in the unit. Thereafter, the Employer changed the title engineering associate to outside plant engineering supervisor and, within a year, promoted the remaining engineering assistants into this classification.

The parties disagree as to whether approximately 33 persons, designated outside plant engineering supervisors by the Employer, should be excluded from the unit. The Employer maintains that these people are supervisors within the meaning of Section 2(11) of the Act and, therefore, that the unit should be clarified to exclude them. The Union contends that these employees have been covered by the collective-bargaining agreement for years, and that to clarify the unit at this time would disrupt the established bargaining relationship. It asserts therefore that this petition should be dismissed.¹ In support of its position, the Union relies on *Northwest Publications, Inc., d/b/a San Jose Mercury and San Jose News*, 197 NLRB 213 (1972).² In that case, the employer sought to clarify the unit to exclude supervisors, but the Board dismissed the petition. The Board found that supervisors were not specifically excluded from the unit, that the alleged supervisors had previously been covered by the collective-bargaining agreement, and that the employer did not file the petition until shortly after the execution of a new agreement. We find the facts herein are different from those in *Northwest Publications, supra*, and consequently we reach a different result.

In that case the jobs in dispute had existed for many years and there had been no change since the execution of the last agreement. In the instant case there has been a change in job classifications and duties since the last agreement. In the past, employees were promoted out of the unit and into the engineering associate classification, whereas now they are promoted from the unit into the new classification. The outside plant engineering supervisor classification was created because institution of new methods changed some of the duties of the engineering associate classification. The fact that the old classification, from which the new one was developed, was not part of the unit indicates that supervisors, though not specifically excluded from the unit, have regularly been excluded in practice.

The Union asserts that the petition should be dismissed by the Board and the dispute should be resolved by arbitration, since there is an arbitration clause in the collective-bargaining agreement, purporting to cover all disputes. We reject this conten-

¹ At the hearing, the Union agreed that if the outside plant engineering supervisors are found to be supervisors within the meaning of the Act, they should be excluded from the unit described in the contract.

² The Board reaffirmed its decision in a subsequent case involving the same employer. *Northwest Publications, Inc., d/b/a San Jose Mercury and San Jose News*, 200 NLRB 105 (1972).

tion. The issue of whether individuals are supervisors within the meaning of Section 2(11) is a matter uniquely suited to a Board determination.

The record reveals that each outside plant engineering supervisor is responsible for the work of a designated area. They are in charge of designing telephone networks, scheduling projects, and obtaining approval of capital expenditures. In performing this work, they must secure rights-of-way, prepare plans which conform to the architect's requirement, and schedule and assign work. In addition, they evaluate the performance of those employees who work under them, discipline them, assign overtime, and recommend them for promotions. They are salaried, while the other employees working under them are paid an hourly wage. It appears that they are the only individuals with authority at the jobsite. In view of the foregoing, we find that these employees are supervisors within the meaning of Section 2(11) of

the Act. Accordingly, since the classification of outside plant engineering supervisor is not listed in the contract unit description, supervisors have regularly been excluded by practice, and the Union stipulated that these employees should be excluded if the Board finds them to be supervisors, we shall clarify the unit to exclude outside plant engineering supervisors.

ORDER

It is hereby ordered that the collective-bargaining unit of "All nonmanagerial employees of the Employer whose titles are included in the list of job titles in Appendix E attached to the Contract" of Cincinnati Bell, Inc., represented by Communications Workers of America, AFL-CIO, be, and it hereby is, clarified by excluding from the unit the outside plant engineering supervisors.