

In the Matter of LOEW'S, INCORPORATED and METRO-GOLDWYN-MAYER STUDIO MAINTENANCE GUILD and STUDIO MISCELLANEOUS EMPLOYEES, LOCAL No. 1104, INTERNATIONAL HOD CARRIERS, BUILDING & COMMON LABORERS UNION OF AMERICA, AFL and LOCAL No. 99, BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, AFL

Case No. 21-RE-18.—Decided October 16, 1943

Mr. William R. Walsh, of Culver City, Calif., for the Company.

Mr. David Sokol, of Los Angeles, Calif., for the Hod Carriers.

Mr. John C. Stevenson, of Los Angeles, Calif., for the Building Employees.

Katz, Gallagher & Margolis, by *Mr. Ben Margolis*, of Los Angeles, Calif., for the Guild.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by Loew's, Incorporated, Culver City, California, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before William B. Esterman, Trial Examiner. Said hearing was held at Los Angeles, California, on September 25, 1943. The Company; Metro-Goldwyn-Mayer Studio Maintenance Guild, herein called the Guild; Studio Miscellaneous Employees, Local No. 1104, International Hod Carriers, Building & Common Laborers Union of America, A. F. L., herein called the Hod Carriers; and Local No. 99, Building Service Employees International Union, A. F. L., herein called the Building Employees, appeared, and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Exam-

¹ Studio Utility Employees Union, Local 724, also served with notice, did not appear at the hearing.

iner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Loew's, Incorporated, is engaged in the production and distribution of motion pictures in every State in the United States. It operates through a producing studio located at Culver City, California, and 32 branch offices. From October 1, 1939, to October 1, 1940, the Company produced and released 50 feature-length motion pictures, 70 short subjects, and 104 news reels. A majority of these pictures was produced at the Metro-Goldwyn-Mayer Studios at Culver City, California, the only plant of the Company directly involved in this proceeding. The negatives of the motion pictures are sent to laboratories at the Metro-Goldwyn-Mayer Studios or to laboratories at Fort Lee, New Jersey. Positive prints of the motion pictures are shipped to various exchanges for distribution to exhibitors, who, after using them, return them to the exchanges. During the period noted above, the Company's New York and New Jersey exchanges, both of which are located in New York City, received from laboratories 1,271 prints of feature pictures, 927 prints of short subjects, and 11,652 prints of news reels. The extent of the Company's business at the present time is substantially the same as in 1939 and 1940.

II. THE ORGANIZATION INVOLVED

Metro-Goldwyn-Mayer Studio Maintenance Guild is an unaffiliated labor organization, admitting to membership employees of the Company.

Studio Miscellaneous Employees, Local No. 1104, International Hod Carriers, Building & Common Laborers Union of America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Local No. 99, Building Service Employees International Union, is a labor organization affiliated with the American Federation of Labor admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On December 30, 1937, the Company entered into a 3-year contract with the Guild, covering the building service employees at the Company's Metro-Goldwyn-Mayer studios at Culver City, California.

On November 13, 1940, the contract was amended and extended to December 30, 1943.

In April 1943 the Hod Carriers informed the Company that the Hod Carriers represented a majority of its building service employees and demanded recognition as their bargaining agent. The Company refused to recognize the Hod Carriers without proof of its majority representation. On or about June 3, the Hod Carriers presented to the Company authorization cards signed by employees of the Company for checking against the pay-roll signatures. When the pay-roll check revealed that the Hod Carriers did not represent a majority of the Company's employees, the Company refused to recognize the Hod Carriers and cited its contract with the Guild as a bar to any immediate recognition.² On June 21, the Hod Carriers presented to the Company additional authorization cards and a letter addressed to the Company signed by the secretary and a committeeman of the Guild, advising the Company that on June 20, 1943, the Guild had voted to merge with the Hod Carriers and that by this act and notice to the Company, the contract between the Company and the Guild was, by its provisions, terminated. The cards submitted with this letter indicated that the Hod Carriers represented a substantial majority of the Company's employees. On June 23, the Company formally recognized the Hod Carriers as the sole bargaining representative of its building service employees at the studios. On June 30, the president of the Guild advised the Company by letter that the meeting of June 20 was not a regular meeting of Guild members properly called, but a general meeting of employees of the Company, that the Guild was still in existence as an independent labor organization, and that members of the Guild preferred to defer any decision with respect to outside affiliation until an election should be held by the Board. On July 7, the Company advised the Hod Carriers of the protest raised by the Guild and formally withdrew the recognition accorded to the Hod Carriers on June 23. In the meantime the Building Employees, with which the Company has contracts for employees in other branches of its enterprises, informed the Company that the Building Employees represented its building service employees at the studios. The Building Employees submitted to the Company no proof of its claim of representation.

² Section 10 of the contract provides:

In the event any court, board or other governmental or administrative agency or tribunal, pursuant to law determines or orders that this agreement, or any part thereof, shall or should be disestablished or terminated or that the employees, or some of them, are or are entitled to be represented by some one other than the Guild, or if the Guild affiliates or merges or consolidates with any other employees' association or organization, this agreement may be terminated forthwith by either party. Such termination shall be effected by the service of a notice of termination by the party so terminating upon the other.

On July 11, the Guild called a meeting for the purposes of hearing talks by representatives of the Hod Carriers and the Building Employees. At the meeting there was a heated discussion by employees with respect to their retaining or abandoning the Guild. Two votes were informally taken. The first vote called for a decision whether the Company's employees should retain the Guild as their bargaining agent or whether they would join an affiliated labor organization. This vote resulted in a 22 to 38 vote in favor of joining an affiliated organization. A second vote was called to ascertain the employees' choice between the Hod Carriers and Building Employees. This vote resulted in 34 votes cast for the Hod Carriers and 26 votes cast for the Building Employees. Subsequent to this meeting, its legality and the efficacy of the voting done were questioned. The meeting was not called with the formality of notice prescribed by the bylaws of the Guild and non-members of the Guild as well as members participated in the voting.³ The president of the Guild, by letter, advised the Company of the situation and on August 3, the Company filed the petition in the instant proceeding.

The Company contends that there is no bona fide jurisdictional dispute between the Hod Carriers and the Building Employees; that the Guild is torn by conflicting factions among its employees; that the Guild has not functioned as an active labor organization since March 1943; that its contract with the Guild is therefore no bar to a determination of representatives at this time; and that an election is necessary to resolve the question concerning the representation of its employees. The Guild contends that it is an existing labor organization and that its contract with the Company, expiring December 30, 1943, is a valid and existing contract and constitutes a bar to a determination of representatives at this time. On the one hand, the Hod Carriers contends that 3 years is an unreasonable time for the duration of a contract between the Company and its employees and that the contract between the Company and the Guild is for this reason no bar to a determination of representatives. On the other hand, the Hod Carriers contends that the Guild has by its own action ceased to exist as an unaffiliated labor organization; that its members have signed cards either for the Hod Carriers or for the Building Employees or for both; that a jurisdictional dispute, therefore, exists between two labor organizations affiliated with the same parent organization, both of which claim to represent the same employees of the Company; and that for this reason the Board should dismiss the petition of the Company filed herein. The Building Employees expressed no positive position with respect to the several issues thus raised.

³ The bylaws of the Guild require that all members be notified in writing at least one week in advance of assembly meetings.

The original contract between the Company and the Guild had run for a 3-year period in 1940 when it was formally amended and renewed for an additional 3-year period terminating December 30, 1943. At this time the renewed contract has run its full course except for a period less than 90 days. We find it unnecessary to make any finding with respect to the reasonableness of the 3-year term or the effect of the provision for an earlier termination. We find that, in any event, the contract between the Company and the Guild is about to expire and that it does not therefore constitute a bar to a determination of representatives for the purposes of negotiating a new contract to succeed the contract now in force.⁴

The Hod Carriers and the Building Employees, both of which are affiliated with the American Federation of Labor, each claims to represent the Company's building service employees. We do not ordinarily entertain a petition for investigation and determination of representatives upon the petition of a labor organization when a competing organization affiliated with the same parent body claims to represent the same employees. The Company, and not a labor organization, filed the petition herein. The Guild is not affiliated with the American Federation of Labor. If it is a competing labor organization, we cannot, by dismissing the petition, remit to a single parent organization of affiliated unions the resolution of their respective jurisdiction over the employees concerned. The Hod Carriers contends that the Guild has ceased to exist as a labor organization. The Company cites the defection of Guild members and the uncertainty of its existence in support of the Company's need for an adjudication by the Board. The Guild has a constitution and by-laws setting forth in usual terms its aims and purposes as a labor organization of the Company's employees. It has served as their bargaining representative since 1937. On two occasions in the past it entered into bargaining contracts with the Company, one of which has not yet expired. In March 1943, the Guild conferred with the Company with respect to a wage increase for janitors. On March 29, by letter, the Guild reported to the Company its formally considered position with respect to the amount of the raise sought. About this time, and before any action was taken by the Company with respect to the increase, the Hod Carriers made its demand upon the Company. The Company did not thereafter grant the increase requested by the Guild. On June 23, the Company withdrew its recognition of the Guild. There is no evidence to indicate that the Guild lacks officers, members, or funds to prevent its effective representation as bargaining representative of the Company's employees.

⁴ Cf. *Matter of Rosedale Knitting Company*, 23 N. L. R. B. 527; *Matter of Chrysler Motor Parts Corporation*, 38 N. L. R. B. 1378.

The Guild was represented at the hearing and participated in this proceeding. We find that the Guild has not ceased to exist as a labor organization representing the Company's employees. The record, however, clearly discloses a present difference of preference among the Company's employees for a bargaining representative. Under these circumstances, we find that the jurisdictional dispute between the Hod Carriers and the Building Employees does not constitute a bar to our determination of the question concerning the representation of the Company's employees.⁵

A statement of the Field Examiner introduced into evidence at the hearing indicates that the Guild, the Hod Carriers, and the Building Employees each represents a substantial interest among employees in the unit herein found appropriate.⁶

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The parties agree, and we find, that all janitors, matrons, and streetsweepers employed by the Company in and about its studios should be included in the bargaining unit and that the department head, the assistant department head, night foremen, and day foremen should be excluded therefrom. In accordance with our usual custom, and our definition of the term, we shall also exclude all other supervisory employees from the bargaining unit.

We find that all janitors, matrons, and streetsweepers employed by the Company in and about its Metro-Goldwyn-Mayer Studios at Culver City, California, excluding the department head, the assistant department head, night foremen, day foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or

⁵ *Matter of Weyerhaeuser Timber Company*, 42 N L R B. 499

⁶ The Guild submitted 5 petitions bearing in all the names of 36 employees of the Company on the pay roll of August 7, 1943. All petitions were dated August 1943 and reaffirmed the designation of the Guild as the collective bargaining agent of employees whose names they bore.

The Hod Carriers submitted 75 application cards bearing apparently genuine signatures of employees on the Company's pay roll of August 7, 1943. Of the cards, 5 were undated, and the remaining dated in 1943.

The Building Employees submitted 23 cards bearing apparently genuine signatures of employees on the pay roll of August 7, 1943. Of the cards, 5 were undated, and the remaining dated in 1943.

Eight of the names appearing on the applications of the Hod Carriers appeared also on the cards submitted by the Building Employees and by the Guild. Thirteen names appearing on the cards submitted by the Hod Carriers were the names of employees appearing on the petitions submitted by the Guild, but not on the cards submitted by the Building Employees. Seven of the names appearing on the cards submitted by the Hod Carriers appeared on the cards submitted by the Building Employees, but not on the petitions of the Guild. Eight of the names appearing on the petitions submitted by the Guild appeared on the cards submitted by the Building Employees, but not on the cards submitted by the Hod Carriers.

There are approximately 96 employees in the appropriate bargaining unit.

effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning the representation of the Company's employees can best be determined by an election by secret ballot.

Those eligible to vote in the election shall be all employees of the Company in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Loew's, Incorporated, Culver City, California, 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 Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among all employees of the Company in the unit found appropriate 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, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding employees who have since quit or been discharged for cause, to determine whether they desire to be represented by Metro-Goldwyn-Mayer Studio Maintenance Guild, or by Studio Miscellaneous Employees, Local No. 1104, International Hod Carriers, Building & Common Laborers Union of America, A. F. L., or by Local No. 99, Building Service Employees International Union, A. F. L., for the purposes of collective bargaining, or by none.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.