

In the Matter of ARDLEE SERVICE, INC. and UNITED OFFICE & PROFESSIONAL WORKERS OF AMERICA, LOCAL 16, CIO

Case No. 2-R-4202.—Decided October 21, 1943

Mr. Daniel Arvan, of New York City, for the Company.
Boudin, Cohn & Glickstein by Mr. I. Philip Sipser, of New York City, for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Office & Professional Workers, Local 16, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ardlee Service, Inc., New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Daniel Baker, Trial Examiner. Said hearing was held at New York City on September 9, 1943. The Company and the Union appeared and participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

Ardlee Service, Inc., is a New York corporation engaged in the business of duplicating, lithographing and mailing duplicated and related material in behalf of clients to individuals situated throughout the United States. Annually, the Company uses paper, its principal raw material, in excess of \$10,000 in value, more than 15 percent of which is delivered to its place of business from points outside the

State of New York. Its annual volume of business is in excess of \$50,000. More than 10 percent of its finished products is mailed and delivered to points outside the State of New York. Fifty percent of its work is war work for the United States Government.

For the purposes of this proceeding, the Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Office & Professional Workers of America, Local 16, affiliated with the Congress of Industrial Organizations is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the Company's office and clerical employees until it has been certified by the Board in an appropriate unit.

A statement of the Regional Director supplemented by a statement of the Trial Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 Union contends for a unit of office and clerical employees, consisting of a bookkeeper, an order clerk, a billing clerk, a general clerical employee, a switchboard operator and a secretary-stenographer.² The Company contends that the order clerk should be excluded as an administrative and supervisory employee and that its salesmen should be included in the unit.

The order clerk's "supervisory" authority consists of taking a job to the person who is to do it and giving directions for its completion. She has no discretion in formulating the instructions but merely carries out a routine operation. She works in the office, is

¹The Regional Director reported that the Union submitted six application-for-membership cards, all of which bore apparently genuine original signatures. The Trial Examiner stated that the five persons appearing on the cards correspond with names listed by the Company at the hearing as office and clerical employees employed in a non-supervisory capacity. The sixth card was apparently signed by Ethel Livingston who, the Union alleges, was discriminatorily discharged for union activities. This charge is now pending before the Board in Case No. 2-C-5219

²No secretary-stenographer worked in the Company's office at the time of the hearing. The one claimed by the Union is Ethel Livingston See footnote 1.

subject to the same working conditions as the other clerical employees in the office, and her interests are similar to theirs. Her salary is no greater than that of the girls who, the Company admits, belong in the unit. The fact that she is classified as administrative under the Fair Labor Standards Act, as asserted by the Company, is immaterial here because all factors relating to her duties support her inclusion in the unit.³

The salesmen work under the supervision of the sales manager; the clerical workers work under the supervision of the office manager. The salesmen do not sign in and out of the office as do the office workers, nor do they have regular hours, but may use their own discretion as to how to budget their time. They have desks in the office at which they prepare reports, lay-outs for advertising, and other matter pertaining to their orders. The Union has made no attempt to organize them. We find that the interests of salesmen and office workers are divergent and shall exclude salesmen from the unit.

We find that all office and clerical employees of the Company including the order clerk but excluding the office manager, credit manager, inside contact man, salesmen, executives⁴ and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or 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 shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot. The Company contends that employees who have worked for it for less than a year should not be eligible to vote in the election. The employees in question are permanent employees with substantial expectation of indeterminate tenure with the Company. Their interests are vitally involved in the designation of a bargaining representative. We find no merit in the Company's contention, and we shall provide that the employees eligible to vote in the election shall be all those in the appropriate unit, who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein; subject to the limitation and additions set forth in the Direction.

The Union urges that Ethel Livingston, who it alleges has been discriminatorily discharged, be permitted to cast a separate sealed ballot to be opened and counted only in the event the election turns upon

³ See *Matter of Worthington Creamery & Produce Co.*, 52 N. L. R. B. 121.

⁴ This is the unit petitioned for. Only the categories contested have been discussed herein.

that vote, and that should the election be decided by her ballot, that the final disposition of the representation proceedings be deferred until the Board has decided in Case No. 2-C-5219 whether or not her discharge was in violation of Section 8 (3) of the Act. The request is hereby granted, but our decision permitting Ethel Livingston to vote is not to be interpreted as in any way passing upon the legality or illegality of her discharge.⁵

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 Ardlee Service, Inc., New York City, 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 Second 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 the employees 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 Ethel Livingston and 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Office & Professional Workers of America, Local 16, CIO, for the purposes of collective bargaining.

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

⁵ See *Matter of Kilburn Mfg. Co., Inc.*, 45 N. L. R. B. 322; *Matter of Rudolph Wuritzer Co.*, 32 N. L. R. B. 163.