

In the Matter of EDWARD C. FIEDLER, CHARLES F. SAMSON, ROGER D. MELLICK, J. WRIGHT BROWN, KENNETH BOARDMAN, HAROLD W. CARHART, C. MAURY JONES, CLARKSON RUNYON, JR., ARCHIE M. REID, LOUIS LEE STANTON, ROBERT A. HAUGHEY, VAN R. HALSEY, WALTER I. CLAYTON, DEWEES W. DILWORTH, F. K. M. HUNTER, STUART SCOTT, JR., ALBERT FRANCKE, DAVID A. LOWRY, WALTER B. LEVERING, EDWARD J. STRAY, JOHN B. MAHER AND JOSEPH J. O'BRIEN, GENERAL PARTNERS, AND JOHN T. WINKHAUS, LIMITED PARTNER, DOING BUSINESS AS CARLISLE & JACQUELIN, A PARTNERSHIP and NEW YORK STOCK EXCHANGE & FINANCIAL EMPLOYEES INDEPENDENT ASSOCIATION

*Case No. 2-R-4153.—Decided November 25, 1943*

*Dorsey, Adams & Walker*, by *Mr. William J. Walker*, of New York City, for the Company.

*Delson, Levin & Gordon*, by *Messrs. S. Harry Eilenberg and I. Cyrus Gordon*, of New York City, for the Union.

*Mrs. Augusta Spaulding*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by New York Stock Exchange & Financial Employees Independent Association, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Edward C. Fiedler, Charles F. Samson, Roger D. Mellick, J. Wright Brown, Kenneth Boardman, Harold W. Carhart, C. Maury Jones, Clarkson Runyon, Jr., Archie M. Reid, Louis Lee Stanton, Robert A. Haughey, Van R. Halsey, Walter I. Clayton, Dewees W. Dilworth, F. K. M. Hunter, Stuart Scott, Jr., Albert Francke, David A. Lowry, Walter B. Levering, Edward J. Stray, John B. Maher, Joseph J. O'Brien, and John T. Winkhaus, partners doing business under the name of Carlisle & Jacquelin, New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John J. Cuneo, Trial Examiner. Said hearing was held at New York

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City on October 4, 5, 8, and 11, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the Company moved to dismiss this proceeding on the ground that the unit proposed by the Union was inappropriate for bargaining. For reasons which appear in Section IV, below, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup> 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

Edward C. Fiedler, Charles F. Samson, Roger D. Mellick, J. Wright Brown, Kenneth Boardman, Harold W. Carhart, C. Maury Jones, Clarkson Runyon, Jr., Archie M. Reid, Louis Lee Stanton, Robert A. Haughey, Van R. Halsey, Walter I. Clayton, Dewees W. Dilworth, F. K. M. Hunter, Stuart Scott, Jr., Albert Francke, David A. Lowry, Walter B. Levering, Edward J. Stray, John B. Maher, Joseph J. O'Brien, and John T. Winkhaus are partners doing business under the name of Carlisle & Jacquelin. The Company is an odd lot dealer in listed securities traded on the floor of the New York Stock Exchange, herein called the Exchange. The Company has no branch offices and no telephone or telegraph wires of any kind outside New York City. The Company receives orders for execution on the floor of the Exchange from other New York City stock brokerage houses. These orders come from all sections of the United States and approximately 60 percent of them originate outside the State of New York. Such orders are transmitted by telephone, telegraph, cable, wireless, and mail to representatives on the floor of the Exchange, who refer them to the Company for execution.

During 1942 the Company traded in more than 16,000,000 shares of stock, involving more than 700 issues of listed securities traded on the Exchange, the total value of which exceeded \$30,000,000. A substantial percentage of such listed stocks were issued by railroads engaged in the business of transporting freight and passengers among the several States, by corporations engaged in communicating intelligence among the several States, and by corporations engaged in manufacturing or other industries which, in the course and conduct of their business,

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<sup>1</sup> On November 10, 1943, the parties entered into a stipulation for the correction of the transcript of the record made at the hearing. In accordance with their stipulation, the record is hereby deemed, and is, corrected, and the stipulation is hereby made, and is, part of the official record in this proceeding.

received quantities of raw materials from States other than the one in which they were located, and shipped from the State of their location substantial quantities of products to foreign nations or other States of the United States.

In the course of its business, the Company maintains and uses 400 direct telephone wires to the New York City offices of stock exchange firms and to the floor of the Exchange. The Company receives in its office the ticker communication service of New York Quotation Company, which operates and supplies this ticker service to Western Union Telegraph Company, which in turn transmits its reports throughout the United States. Information furnished by New York Quotation Company through its ticker service originates in the trading room of the Exchange.

The Company admits that it is engaged in commerce, within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

New York Stock Exchange & Financial Employees Independent Association is an unaffiliated labor organization, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On July 14, 1943, the Union advised the Company that the Union claimed to represent a majority of the Company's telephone clerks<sup>2</sup> and requested a bargaining conference. On July 16, 1943, the Company notified the Union that the Company would not recognize the Union as the sole bargaining representative of these employees unless the Union were certified by the Board. On July 28, 1943, the Union filed the original, and on September 22, 1943, the amended, petition in this proceeding.

A statement prepared by the Regional Director and introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit herein found appropriate.<sup>3</sup>

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.

<sup>2</sup> Telephone clerks are, in the record, sometimes called telephone booth clerks.

<sup>3</sup> The Union submitted 23 authorization cards, 2 of which were dated August 12, 1943, and the remaining undated, all of which appear to bear genuine original signatures of employees on the Company's pay roll of August 17, 1943. An affidavit filed by the secretary of the Union states that the Union began its organizational activities among the Company's employees on April 21, 1943, and that the undated cards were signed between April 21, 1943, and August 13, 1943.

There are approximately 31 employees in the appropriate unit.

## IV. THE APPROPRIATE UNIT

The Union contends that telephone clerks employed by the Company who work at booths on the floor in the trading room of the Exchange, excluding supervisory employees, constitute an appropriate bargaining unit. The Company contends that the restricted unit proposed by the Union is inappropriate for bargaining and that all its employees, excluding supervisory and confidential employees, constitute a single appropriate bargaining unit.

The Company is an odd lot dealer in listed securities traded upon the floor of the Exchange. It maintains its office at 120 Broadway, New York City. The majority of the Company's employees are office clerical employees whose work is performed on the Company's premises in the 12 or 14 separate office clerical departments, among which the Company divides its work. Certain departments and the employees working in them are characterized in the record as "back office" departments and employees, respectively. Back office employees do the work of checking, tallying, and recording the purchases and sale orders received by the Company and the subsequent execution of these orders in the purchase and sales of stocks effected by brokers acting for the Company on the trading floor of the Exchange. They also handle all communications with the Company's customers with respect to their orders and accounts. They are in charge of the Company's permanent records. Each of these back office departments is housed in a separate room or division of the Company's office space. There are transfers of employees among the several departments of the Company's operations. These are of permanent, rather than of temporary, nature.

The telephone department is one of the Company's clerical departments. It is distinguished from the back office departments, however, in that it is confined to telephone clerks and bag boys who spend by far the greater part of their working hours on the floor of the Exchange rather than on the premises of their employer. Telephone clerks serve as clerical aids, or "bookkeepers," to brokers who buy and sell for the Company on the floor of the Exchange. They keep track of the accumulation of "limited" orders for purchase and sale during the day and the Company's position with respect to stocks while stocks are being traded on the floor. In performing this service, telephone clerks keep what is called a "bible," in which they arrange the buy and sell orders on which fixed prices are set. Brokers usually keep in their own possession orders "at the market" in what are known as brokers' handbooks. They also keep track of all pending orders. The bibles and handbooks are the special care of telephone clerks. They contain confidential material and no other employees of the Company have access to them.

Telephone clerks report to the Company's office at 9 o'clock, as do other employees of the Company. In a room set aside for the telephone department, they arrange their bibles and check the material in the bibles with the brokers' handbooks. At 9:25 they leave the Company's office and proceed to the floor of the Exchange. The market opens at 9:30. Telephone clerks work standing at trading posts about the Exchange floor from 9:30 until after the close of the market, or about 3:20 p. m. They are in constant touch and communication with the brokers who are trading for the Company on the Exchange floor and with clerks in the Company's private office. Private telephone wires afford opportunity for ready communication with the Company's private office and calls are constantly made by or to the telephone clerks during the day. At 30-minute intervals messengers or bag boys carry executed order slips for the purchase and sale of stocks directly from the telephone clerks to the tally department on the Company's premises. When the market closes at 3 p. m., or shortly thereafter, the telephone clerks leave the Exchange, return to the Company's office, and place their bibles and the brokers' handbooks in the Company's safe. This completes their normal working day.<sup>4</sup>

Each day after the close of the market, there are 2 to 3 hours' work regularly assigned to be performed by the telephone clerks. To perform this work they are divided into "cut-out" crews, on which they serve in rotation. A cut-out crew consists of four to six telephone clerks. Clerks on the cut-out crew strip the bibles of unexecuted or dead orders and write up and sort new orders that have come in after the close of the market day. These clerks also make certain spot checks from time to time as an additional correction upon their work.<sup>5</sup>

Telephone clerks and bag boys are subject to the rules, requirements, and restrictions imposed by the Exchange upon employees of members operating on the Exchange floor. Their work on the floor brings them into daily direct contact with employees of the Exchange and with telephone clerks and bag boys of other financial houses dealing through the Exchange. They are required to undergo yearly medical examinations not required generally of the Company's employees. They wear special identification buttons and carry admission cards which admit them to the floor of the Exchange. Bag boys and telephone clerks are the only employees of the Company who are subject to these conditions.

The Company contends that employees in the telephone department do not constitute a separate appropriate bargaining unit because the

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<sup>4</sup> At the end of each month all telephone clerks perform some duties after the close of the market connected with cleaning out their bibles.

<sup>5</sup> To supplement their wages, telephone clerks volunteer to work before and after regular office hours for additional money. During this time they do routine clerical work on the Company's premises. This work lies outside their regular duties as telephone clerks.

work which they perform constitutes only one link in the chain of operations necessary for the execution of its financial business. Whether the telephone clerks could carry out the Company's financial operations without the recording, checking, and other services supplied by the back office employees is not conclusive in determining the appropriateness of a bargaining unit limited to telephone clerks. In setting up a departmental unit, we do not require that employees within the department complete a separate finished segment of their employer's business, independent of the assistance of other departments. Employees in the telephone department clearly form a homogeneous and identifiable group among the Company's employees. They are directly subject to the direction of departmental supervisors. Their working conditions are clearly different from the Company's regular office employees who perform their work seated at desks or tables on the Company's premises. For these reasons, and on the basis of the entire record herein, we find that a unit limited to employees in the Company's telephone department who perform their services for the Company largely on the floor of the Exchange, constitutes an appropriate bargaining unit apart from other employees of the Company.<sup>6</sup>

The Union would limit the bargaining unit to telephone clerks in the telephone department and would exclude bag boys from the bargaining unit. The Company normally requires the services of one bag boy. At the time of the hearing the Company employed two bag boys, one of whom was employed for training and replacement because of the frequent turn-over among employees in this category and the great desirability of having a trained boy available for immediate service. Bag boys spend at least one-half of their working time on the floor of the Exchange. Like telephone clerks, they come into daily contact with floor employees of members of the Exchange.

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<sup>6</sup> On August 28, 1942, the Board found that employees of the Exchange who work on the floor of the Exchange constituted an appropriate bargaining unit and on September 30, 1942, certified the Union as their sole bargaining representative *Matter of New York Stock Exchange*, 43 N. L. R. B. 766; 44 N. L. R. B. 714. At the time of this decision the Union was known as New York Stock Exchange Independent Employees Association and limited its membership to floor employees of the Exchange. The Union subsequently extended its membership to include generally all employees of members of the Exchange and accordingly changed its name as appears in the instant proceeding. The Union is now engaged in organizing employees of financial concerns which operate in the Wall Street area in New York City. It is limiting its present organizational drive to telephone clerks of employer members of the Exchange. The Union has not yet actively sought to organize the back office employees of the Company, although it invited them to a general mass meeting and contemplates their organization in the future. Our finding herein that a unit limited to employees in the Company's telephone department constitutes an appropriate bargaining unit is predicated upon the present state of organization among the Company's employees and such finding will not preclude a further investigation into the matter of the appropriate unit or units for employees of the Company, and possible revision of the unit found appropriate herein, upon the subsequent filing of a later petition for certification of representatives involving these employees *Matter of Minneapolis-Honeywell Regulator Company*, 51 N. L. R. B. 890.

We shall include bag boys with telephone clerks in the departmental unit.

The Company and the Union agree, and we find, that the co-heads of the telephone department should be excluded from the bargaining unit. The Company employs three persons, generally called supervisors, who, prior to January 1943, were regularly assigned to sections on the floor of the Exchange for the purposes of supervising, relieving, and advising telephone clerks in the performance of their work. All their time was spent in a supervisory capacity. Beginning in or about January 1943, due to the manpower shortage, these three supervisors were required to perform the regular duties of telephone clerks. So far as the record discloses, however, there has been no significant change in the relative status of these supervisors. They have assumed the regular duties of telephone clerks without being relieved of their former duties as supervisors. They are intermediary between the co-heads of the department and the regular telephone clerks. They are still considered supervisors by other telephone clerks. They are paid substantially more wages than other clerks in the department. Since it appears that supervisors have not been divested entirely of their supervisory capacity, although they operate bibles and perform the regular duties of telephone clerks, we shall exclude them from the bargaining unit. We shall also exclude from the bargaining unit all other employees of the Company within our definition of supervisory employees.

We find that all telephone clerks and bag boys employed by the Company who work on the floor of the New York Stock Exchange, excluding co-heads and supervisors of the telephone department 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 among 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 Rela-

tions 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 purpose of collective bargaining with Edward C. Fiedler, Charles F. Samson, Roger D. Mellick, J. Wright Brown, Kenneth Boardman, Harold W. Carhart, C. Maury Jones, Clarkson Runyon, Jr., Archie M. Reid, Louis Lee Stanton, Robert A. Haughey, Van R. Halsey, Walter I. Clayton, Dewees W. Dilworth, F. K. M. Hunter, Stuart Scott, Jr., Albert Francke, David A. Lowry, Walter B. Levering, Edward J. Stray, John B. Maher, Joseph J. O'Brien, and John T. Winkhaus, partners doing business under the name of Carlisle & Jacquelin, 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 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 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 New York Stock Exchange & Financial Employees Independent Association, for the purposes of collective bargaining.