

In the Matter of LIFE AND CASUALTY INSURANCE COMPANY OF TENNESSEE  
and INDUSTRIAL AND ORDINARY INSURANCE AGENTS' UNION No. 21354,  
A. F. L.

*Case No. 5-R-1313.—Decided December 7, 1943*

*Messrs. Earle K. Shawe and Anthony E. Molina*, both of Baltimore, Md., for the Board.

*Mr. Sidney F. Keeble*, of Nashville, Tenn., and *Mr. Karl M. Dollak*, of Washington, D. C., for the Company.

*Mr. George L. Russ*, of Washington, D. C., for the Union.

*Mr. Glenn L. Moller*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Industrial and Ordinary Insurance Agents' Union No. 21354, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Life and Casualty Insurance Company of Tennessee, at its district office in Washington, D. C., herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert F. Koretz and Charles W. Schneider, Trial Examiners.<sup>1</sup> Said hearing was held at Washington, D. C., on October 22, 25, 26, and 27, 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. At the conclusion of the hearing, the Company moved that the petition be dismissed on the ground that the Company is not subject to the Act. For the reasons appearing hereinafter, the motion is denied. The Trial Examiners' 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.

<sup>1</sup> Trial Examiner Koretz presided at the hearing on October 22, 1943. Trial Examiner Schneider presided at the remainder of the sessions.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Life and Casualty Insurance Company of Tennessee is a Tennessee corporation with its home office located at Nashville, Tennessee. The Company issues life, health, and accident insurance policies. In 1943, the Company ranked 9th, among companies having home offices in the United States, with respect to the amount of industrial insurance in force, 90th with respect to the amount of ordinary insurance in force, and 71st with respect to the amount of its assets. The Company does business in 12 States and the District of Columbia, doing a substantial business in each State in which it operates. The Company employs approximately 1,250 agents, exclusive of managers and superintendents, and has 72 district offices.

As of December 31, 1942, the net value of the policy obligations of the Company was \$28,784,378.88. During the year 1942, the Company had a gross income from premium investments and miscellaneous sources of \$14,188,134.13, and it made disbursements, during the same period, of \$9,147,423.61. As of December 31, 1942, the Company's gross assets totaled \$37,809,759. As of the same date, the Company had in force 1,443, 949 life insurance policies having a total face value of \$247,482,978. The Company's investments on December 31, 1942, included, among others, obligations of the United States Government in the amount of \$2,290,000; real estate and mortgage loans in 12 States; obligations of various State Governments and the Province of Alberta, Canada, valued at \$1,099,587; obligations of numerous municipalities, valued at \$4,661,663; railway bonds, valued at \$366,050; public utility bonds, valued at \$841,344; and miscellaneous bonds of numerous large manufacturing companies, valued at \$781,501. The bulk of the Company's cash is kept on deposit in banks in Nashville, Tennessee, although substantial deposits are maintained in two large New York banks. The district offices maintain accounts in banks in their respective cities, said accounts being maintained for their convenience in depositing collections and, on occasion, in making payments. These collections are reported to the home office each week and, in the main, are forwarded from the local banks to the home office.

As of October 11, 1943, there were in force 27,592 life insurance policies on the lives of persons living in Virginia and the District of Columbia within the area serviced by the district office at Washington, D. C. Premium collections on these policies average approximately \$6,000 weekly. The pay roll of the Washington, D. C., office is approximately \$1,500 weekly. Approximately 20 industrial agents are

attached to, and work out of, the Washington, D. C., office. Four of these have territory lying at least partially in Virginia.

We find, contrary to the contention of the Company, that the Company's widespread financial and investment activities have a direct and substantial effect upon commerce between the several States and that the Company's various activities themselves constitute commerce within the meaning of the National Labor Relations Act.<sup>2</sup>

## II. THE ORGANIZATION INVOLVED

Industrial and Ordinary Insurance Agents' Union No. 21354, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about June 4, 1943, the Union requested recognition as the exclusive bargaining representative of the Company's industrial agents attached to its district office in Washington, D. C. On June 25, 1943, the Company replied, refusing to extend such recognition on the ground that the Company was not subject to the Act.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter 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.

## IV. THE APPROPRIATE UNIT

The Union contends that all agents attached to the Company's district office in Washington, D. C., writing both ordinary and industrial insurance, and accident and health insurance, excluding managers, superintendents, clerks, cashiers, office employees, and all other supervisory employees, constitute an appropriate bargaining unit. The Company contends that the agents are not employees within the meaning of the Act and cannot, therefore, constitute an appropriate bargaining unit, and that, if the Board finds that the agents are employees, the unit should be company-wide in scope.

<sup>2</sup> *Matter of Polish National Alliance, etc.*, 136 Fed. (2d) 175, enf'g 42 N. L. R. B. 1375; *Matter of John Hancock Mutual Life Insurance Company*, 43 N. L. R. B. 766; *Matter of Washington Branch of Sun Life Insurance Company of America*, 15 N. L. R. B. 817; see also *Matter of Bank of America Association*, 130 Fed. (2d) 624, enf'g 14 N. L. R. B. 207 and 26 N. L. R. B. 198, cert. den'd. 318 U. S. 791 and 318 U. S. 792; *Matter of Associated Press v. N. L. R. B.*, 301 U. S. 103, aff'g 85 Fed. (2d) 56, enf'g 1 N. L. R. B. 788.

<sup>3</sup> The Field Examiner reported that the Union submitted 14 authorization cards bearing apparently genuine signatures of persons listed on the Company's pay roll of July 26, 1943, which contained the names of 19 employees in the appropriate unit.

The Washington, D. C., office of the Company is one of 72 district offices through which the Company conducts its business. The Washington district office services a geographic area consisting of the District of Columbia and 7 counties in the State of Virginia. The office is in charge of a district manager, under whom are 4 superintendents. The parties agreed that the manager and superintendents are supervisory employees and should be excluded from any unit herein found appropriate. In conformance with the stipulation of the parties, we shall exclude them from the unit.

The Company's business is predominantly in the field of so-called industrial or weekly premium life insurance and the premiums on such insurance are collected by the Company's agents. The area serviced by the Washington office is divided into 24 debits and each agent is assigned to a debit.<sup>4</sup> At the present time there are 4 debits at the Washington office which are "open", meaning that there are no agents servicing them. These open debits are serviced either by the superintendent under whose supervision they come, or by a special representative from the home office. When an industrial agent is hired by the Company, he signs an application agreeing to devote all of his time to the conduct of the Company's business. He agrees to deposit with the Company a cash bond equal to the amount of money which he collects each week. When an industrial agent is hired, he is assigned to a debit by the manager, and, although there is no formal prohibition against attempting to sell industrial insurance outside the area covered by the agent's debit, he is expected to confine his activities to the area to which he has been assigned. The industrial agents are required to report to the office every morning except Saturday and Sunday, with the exception of two of the agents who live and operate in Virginia and who are too far from the office to report there conveniently.

The primary function of the industrial agent is to collect the weekly premiums on existing insurance which is assigned to him by the Company for collection and servicing. After he has spent whatever time is necessary to make these collections, he is then free to solicit new business, industrial, ordinary, and in some instances health and accident insurance. The industrial agent receives a vacation with pay each year, his superintendent usually servicing his debit while he is on vacation. In the event of disagreement among the agents as to when each shall take his vacation, the matter is decided by the manager. If an agent finds it necessary to remain away from his work because of illness, or for some other reason, such time off must be approved by the manager, and the agent is paid during such time off.

<sup>4</sup>The term debit, in its technical sense, means the list of accounts which is turned over to the agent for collection. These accounts are, however, located within a particular geographic area with the result that the area itself is commonly referred to as a debit.

When the agent is away, the manager arranges for a substitute. The agent has no choice in the selection of his substitute. The industrial agent is not allowed to hire a substitute nor to advertise. The Company furnishes all advertising material which the agent uses. Either the Company or the agent may terminate their relationship at any time, and when this occurs, the agent ceases to receive commissions on new insurance sold by him while in the employ of the Company. Such commissions, which constitute what is known as the agent's collection salary, are paid to the agent's successor on the debit. The compensation of the Company's industrial agents is based upon a complicated system of commissions upon collections and new insurance written, less old business lapsed. Thus, if an agent made no collections and sold no insurance during a week, he would receive no compensation. If such a condition exists, however, for more than 1 or 2 weeks, the Company terminates the agent's employment and makes other arrangements to service that debit.

The Company contends that the fact that the agents are paid on a commission rather than on a straight salary basis, the fact that they are free to use their own judgment as to whom they shall solicit for new business, the fact that the agents are free to use their own judgment as to the type of insurance which they shall recommend to a prospective customer, and the fact that they are free to use their time in whatever manner they see fit, providing that they perform the duties required of them, make them independent contractors, rather than employees. We have previously held that industrial insurance agents are employees within the meaning of the Act, and the evidence in the instant case further strengthens our conclusion that such agents are subject to the Company's control in substantial measure particularly with reference to the matters which are usually the subjects of collective bargaining.<sup>5</sup> We find that the Company's industrial agents are employees of the Company within the meaning of the Act.

The Company has one agent attached to the Washington office who sells only ordinary life insurance. The Company contends that he should be included in the unit. This agent is a former superintendent, who is now engaged in another business of his own. He has no debit or assigned territory. He has no supervision and is under no obligation to report to the office at any regular time, coming to the office only to bring in applications or to pick up policies which have been issued by the home office. He is not responsible for the servicing of any of the Company's business, his only obligation being to write a reasonable amount of new insurance for the Company. The Union does not admit to membership ordinary agents and wishes to exclude

<sup>5</sup> *Matter of Supreme Liberty Life Insurance Company*, 32 N. L. R. B. 94; *Matter of Life Insurance Company of Virginia*, 29 N. L. R. B. 246; *Matter of John Hancock Mutual Life Insurance Company*, 26 N. L. R. B. 1024.

this individual from the unit. We shall exclude him from the appropriate unit.

The Company contends that only a unit consisting of all its agents in all its offices is appropriate. The Union readily admits that a company-wide unit would be appropriate but points out that it has, thus far, attempted to organize only the agents of the Company who are attached to the Washington district office, and that it may take years to organize the entire company. There is no evidence of any interchange of employees between the Company's district offices. The personnel relations of the Company are conducted through the local manager who acts pursuant to instructions from the home office. The Company's various district offices, as previously indicated, are scattered throughout some 12 States. The industrial agents in the single district office herein involved constitute a clearly distinguishable and definable group. We find that the unit sought by the Union is presently appropriate for the purposes of collective bargaining. Our finding in this respect, however, does not preclude a later determination that a larger, more inclusive unit is appropriate.

We find that all agents of the Company attached to its Washington, D. C., district office, writing both ordinary and industrial insurance, and accident and health insurance, excluding all managers, superintendents, clerks, cashiers, office employees, and all other supervisory employees 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 the employees in the appropriate unit who were employed during the payroll 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 3, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Life and Casualty Insurance Company of Tennessee, Washington, D. C., 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 Fifth 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 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 Industrial and Ordinary Insurance Agents' Union No. 21354, affiliated with the American Federation of Labor for the purposes of collective bargaining.

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