

In the Matter of METROPOLITAN LIFE INSURANCE COMPANY and UNITED
OFFICE & PROFESSIONAL WORKERS OF AMERICA, CIO, LOCAL No. 40

Case No. 14-R-748.—Decided January 13, 1944

Mr. Charles A. Horsky, of Washington, D. C., and Fordyce, White, Mayne, Williams & Hartman, by Mr. N. W. Hartman, of St. Louis, Mo., for the Company.

Meyers & Meyers, by Mr. Ben Meyers, of Chicago, Ill., and Mr. Laney T. Funderburk, of St. Louis, Mo., 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 United Office & Professional Workers of America, CIO, Local No. 40, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Metropolitan Life Insurance Company, at its District Offices in the cities of St. Louis and Clayton, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles K. Hackler, Trial Examiner. Said hearing was held at St. Louis, Missouri, on November 9 and 10, 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. The Trial Examiner'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. The Company requested permission to present oral argument before the Board. Said request is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Metropolitan Life Insurance Company is a New York corporation with its home office in New York City. It is a mutual life insurance 54 N. L. R. B., No. 84.

corporation engaged in the business of selling and servicing life, health, and accident insurance in every State in the United States and in the Dominion of Canada. On December 31, 1942, the Company had approximately 40,300,000 policies of insurance in force, with a total face value of approximately \$26,800,000,000. These policies were held by some 29,700,000 policyholders residing in every State of the United States and in Canada. On December 31, 1942, the Company's assets totaled a little less than \$6,000,000,000, consisting of cash, Government bonds, stocks, mortgages on real estate, real estate and bonds, real estate and policy loans, and notes. All securities purchased by the Company are delivered to its home office in New York City, except those on deposit with various governmental agencies. The Company owns the real estate in New York upon which its home office is located; and other real estate used in the administration of its business in the States of California and Virginia, and in Ontario, Canada. All other real estate owned by the Company is acquired through mortgage foreclosures or conveyances in lieu of such foreclosures. On December 31, 1942, the Company owned, through such transactions, real estate valued at \$258,775,748. During the 5-year period from 1938 to 1942, the Company annually invested in various kinds of securities, approximately \$635,500,000.

On December 31, 1942, the Company operated its business through 9 Agency Divisions and 758 District Offices and had 28,378 employees, exclusive of agents, of whom there were 17,853 selling insurance and otherwise dealing with policyholders.

During the calendar year 1942, the Company purchased for its operating requirements, furniture, fixtures, and mechanical equipment valued at \$991,456. Most of this equipment was shipped to the Company from points within the State of New York, and approximately 34 percent of such goods originating in New York was shipped to and used in States other than the State of New York. During the same period the Company purchased stationery supplies valued at \$1,502,092. Approximately 25 percent of these supplies was shipped from the State of New York to offices of the Company located in other States and in Canada. During the same period the Company spent \$2,595,628 for postage, telephone, telegraph, and express services, and spent \$2,558,724 for traveling expenses.

We find that the Company's wide-spread 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.

II. THE ORGANIZATION INVOLVED

United Office & Professional Workers of America, Local No. 40, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about August 14, 1943, the Union requested recognition by the Company as the exclusive bargaining representative of the Company's industrial insurance agents attached to the district offices in the City of St. Louis and the city of Clayton, Missouri. The Company refused to grant such recognition on the grounds that the unit is inappropriate and that it questioned the Union's claim to represent a majority of the agents in question.

A statement of the Regional Director, 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 that the appropriate unit should consist of all regular industrial agents, office account agents, and detached agents of the Company who are attached to its 13 District Offices in the City of St. Louis, Missouri, and its District Office in the adjoining suburban city of Clayton, excluding inspectors, independent agents, retired agents, canvassing agents, district managers, assistant managers, clerks, cashiers, secretaries, supervisors of accounts and all other supervisors. The Company differs with the Union as to canvassing agents, who the Company contends should be included in the unit, and as to the scope of the unit. The Company urges that no unit less than State-wide in scope should be found appropriate.

The Company has divided the Nation, for administrative purposes, into territorial divisions. Territorial Division E includes the States of Arkansas, Iowa, Kansas, Missouri, Nebraska, and Oklahoma, and contains 51 District Offices, 27 of which are in the State of Missouri. Each territorial division is under the supervision of a Superintendent of Agencies, located in the Home Office. Each District Office is under

¹The Regional Director reported that the Union submitted 189 authorization cards bearing apparently genuine original signatures of persons purporting to be in the employ of the Company in the appropriate unit. The Company submitted no pay roll, but presented evidence at the hearing that there were, on September 30, 1943, 361 employees within the appropriate unit.

the supervision of a District Manager, who reports and is responsible to the Superintendent of Agencies for his division.

The Union admits that, like the Company, it would prefer a State-wide unit, but points out that it has no members among the Company's agents outside the unit for which it is petitioning and that present manpower and transportation difficulties make further extension of union organization in the State extremely problematical for the foreseeable future. The Company contends that the Union could easily organize the remaining agents in the State because it has members in other parts of the State among agents of the Prudential Insurance Company. It appears, however, that the Union has represented Prudential agents in Kansas City, Missouri, since 1940, and, although the Company has four District Offices in that city, the Union has no members there among the agents of the Company. In view of the past progress of organization and the present limitations upon transportation and manpower, organization of the Company's agents on a State-wide basis does not appear to us to be imminent. No other labor organization is seeking to represent the Company's agents in a State-wide unit.

The Company, although urging the propriety of a State-wide unit, contends that the unit here sought is inappropriate because it fails to conform to any administrative division of the Company's operations. However, the evidence reveals that this would also be true of a State-wide unit, since the Company has no administrative division based on State lines. Experience has shown that it is feasible for an insurance company to bargain collectively on the basis of units which are State-wide in scope, even though such units do not correspond to any organizational unit of the company.² Thus, the Company here involved, which only a year ago contended that it could not bargain on a State-wide basis, is now seeking such a unit.³ The Company offers no argument against the unit here sought which would not apply with equal cogency to a State-wide unit. Upon the basis of the limited extent of self-organization among the employees involved, we have found appropriate, in a substantial number of cases, units such as the one here sought by the Union.⁴ We believe that these considerations are controlling in the instant case and that a unit confined to the Company's District Offices in the St. Louis metropolitan area is presently appropriate.

The only other issue in dispute concerns a category of employees known as canvassing agents, which the Union seeks to exclude from

² *Matter of Prudential Insurance Company of America*, 47 N. L. R. B. 1103, 49 N. L. R. B. 450, 50 N. L. R. B. 689; *Matter of Metropolitan Life Insurance Company*, 43 N. L. R. B. 962.

³ *Matter of Metropolitan Life Insurance Company*, 43 N. L. R. B. 962.

⁴ *Matter of Prudential Insurance Company of America*, 46 N. L. R. B. 430, and cases cited therein; also cf. *Matter of Prudential Insurance Company of America*, 50 N. L. R. B. 689.

the unit, but which the Company would include. Canvassing agents, none of whom was employed at the time of the hearing, are engaged in selling the same types of insurance as regular industrial agents, but do not have established debits. Such agents will be employed under the following circumstances: (1) when a disabled former agent returns and no existing debit is available, he will be made a canvassing agent, attempting to sell new business, until an established debit becomes available, when he will be assigned to it; (2) when former agents, now on military leave, return and the Company has no available open debits to which to assign them; and (3) when a new employee is hired and there is no available debit to which to assign him. It appears that most, if not all, of the matters likely to become the subjects of collective bargaining on behalf of the Company's agents are of as great concern to the canvassing agents as to the regular agents. We shall include canvassing agents in the appropriate unit.

We find that all regular industrial agents, office account agents, canvassing agents, and detached agents of the Company attached to its 13 District Offices in the City of St. Louis, and in its District Office in the adjoining city of Clayton, Missouri, excluding inspectors, independent agents, retired agents, district managers, assistant managers, clerks, cashiers, secretaries, supervisors of accounts, and all other supervisors, 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 Metropolitan Life Insurance Company, St. Louis, Missouri, and 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 Fourteenth 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 United Office & Professional Workers of America, Local No. 40, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

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