

IN THE MATTER OF WID'S FILMS AND FILM FOLK, INC. and NEWSPAPER GUILD OF NEW YORK (AFFILIATED WITH AMERICAN NEWSPAPER GUILD, CIO)

Case No. 2-R-4320.—Decided January 20, 1944

*Phillips, Nizer, Benjamin & Krim*, by Mr. Eugene M. Kline, of New York City, for the Company.

*Isserman, Isserman & Kapelsohn*, by Mr. Sol D. Kapelsohn, of Newark, N. J., for the Guild.

*Miss Marcia Hertzmark*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon an amended petition duly filed by Newspaper Guild of New York (Affiliated with American Newspaper Guild, CIO), herein called the Guild, alleging that a question affecting commerce had arisen concerning the representation of employees of Wid's Films and Film Folk, Inc., New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jack Davis, Trial Examiner. Said hearing was held at New York City on November 30, 1943. The Company and the Guild 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.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Wid's Films and Film Folk, Inc., is a New York corporation with its principal office in New York City and offices in Los Angeles, California.

fornia, and Chicago, Illinois. It is engaged in the publication of a daily newspaper called *Film Daily* and an annual publication called *Film Daily Year Book*. The circulation of *Film Daily* is approximately 5,000, about 90 percent of which is to subscribers outside the State of New York. The Company's revenue from advertising exceeds \$50,000 per year and is obtained for the most part from national advertisers.

The Company admits, and we find, that it is engaged in commerce within the meaning of the Act.

#### II. THE ORGANIZATION INVOLVED

Newspaper Guild of New York, (Affiliated with American Newspaper Guild, CIO), is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On or about October 8, 1943, the Guild requested recognition as the exclusive bargaining representative of certain employees of the Company. The Company refused such recognition on the ground that the unit sought was inappropriate, and demanded certification by the Board.

A statement of the Regional Director introduced into evidence indicates that the Guild represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</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 National Labor Relations Act.

#### IV. THE APPROPRIATE UNIT

The Guild requests a unit of commercial and editorial department employees in the Company's New York office, excluding officers and executives of the Company. More specifically, it desires the inclusion of editorial and reportorial employees, the associate editor, circulation employees, the telephone operator, night make-up man, mail room employees, the bookkeeper, secretaries, and advertising solicitors, and the exclusion of the publisher, general manager, editor, a part-time office boy and other part-time employees. The Company takes the position that the editor should be included within the unit, but that if

<sup>1</sup> The Regional Director's report stated that the Guild submitted 6 authorization cards and 1 membership card, all bearing names of persons whose names appear on the pay roll of the Company within the alleged appropriate unit. The authorization cards bear apparently genuine original signatures. The membership card is not signed. There are 14 persons in the unit alleged by the Guild to be appropriate.

he is excluded the associate editor should also be excluded; and that 3 employees in the Company's Los Angeles office, a free-lance reporter and advertising solicitor in Chicago, and the part-time office boy should be included within the unit. The parties agreed to the exclusion of part-time delivery boys.

The editor has complete charge of the editorial department and issues all necessary orders to employees of that department. He conducts interviews of prospective employees and, although he does not have authority to hire or discharge, he may recommend such action. Since the editor is clearly a supervisory employee, we shall exclude him from the unit.

The associate editor acts as assistant to the editor and in the absence of the editor, exercises all the functions and authority of the editor. However, when the editor is not absent, the duties and authority of the associate editor appear to differ in no essential respect from the duties and authority of the other employees in the unit. Although, he has, on occasion, been consulted by the general manager as to the hiring of an employee and although he serves as a supervisor during the editor's occasional absences, these functions are exercised so infrequently that we cannot regard him as being primarily a supervisory employee. We shall, therefore, include the associate editor in the unit.

The Los Angeles office of the Company consists of Ralph Wilk, an advertising solicitor and reporter, who, under contract with the Company, is paid a guaranteed salary out of which he may employ as many or as few assistants as he desires; Harry Marks, an advertising solicitor and reporter; and Ethel Rosen, an office worker, both of whom are employed by Wilk. The Company also employs one Joe Esler in Chicago as a free-lance reporter and advertising solicitor. Esler is paid on a percentage basis, and he apparently works for a number of employers in addition to the Company. It is evident that the relationship of these four individuals to the Company is wholly different from that of the employees of the New York office. For this reason, and because of their remote geographical location, we are of the opinion that there can be no community of interest between them and the employees in New York. We shall exclude them from the unit.

The part-time office boy, whom the Guild desires to exclude, is a permanent employee who works about 4 hours daily. His duties include running errands, sending out the mail, delivering copy, and other duties commonly associated with the position of office boy. We see no reason for excluding him from a unit which consists of various office employees as well as editorial and reportorial employees. We shall include him within the unit.

We find that all commercial and editorial department employees in the Company's New York office, including the associate editor and

the office boy, but excluding the editor, officers, and executives of the Company and any 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 the employees 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 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 Wid's Films and Film Folk, 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 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 who have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Newspaper Guild of New York, (Affiliated with the American Newspaper Guild, CIO) for the purposes of collective bargaining.