

In the Matter of QUIGLEY PUBLISHING Co., INC. and NEWSPAPER GUILD
OF NEW YORK, AFFILIATED WITH AMERICAN NEWSPAPER GUILD, CIO

Case No. 2-R-4321.—Decided January 21, 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 Union.*

Mr. William Feldesman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a first amended petition duly filed by Newspaper Guild of New York, affiliated with American Newspaper Guild, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Quigley Publishing Co., 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 December 6, 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 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

Quigley Publishing Co., Inc., is a Delaware corporation engaged in the publication of periodicals relating to the production, distribution, and exhibition of motion pictures and related subjects. Its main office is located in New York City. A subsidiary wholly owned by it is situated in London, England. Among its publications are "Motion

Picture Daily," a daily, "Motion Picture Herald," a weekly, "Better Theatres," issued every fourth week in conjunction with "Motion Picture Herald," "International Motion Picture Almanac," an annual, and "Fame," also an annual. These publications are printed in the City of New York. The circulation of "Motion Picture Daily" is about 5,000, that of "Motion Picture Herald" approximately 15,000, and several thousand copies of each annual publication are sold. All the publications are purchased solely through subscriptions. Subscribers to the publications are located in various parts of the United States of America, Canada, and England. At least 12,000 copies of "Motion Picture Herald" are forwarded from the State of New York to subscribers located outside its boundaries. The Company's income derived from circulation outside the State of New York exceeds \$10,000 annually, and its receipts from advertising, most of which is national, exceed \$500,000 each year. The Company admits that it is engaged in commerce, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Newspaper Guild of New York, affiliated with American Newspaper Guild, in turn 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 October 6, 1943, the Union requested recognition from the Company as the exclusive collective bargaining representative of certain of the Company's employees. In answer to this request, the Company asserted that it would accord such recognition if the Union were first certified by the Board.

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 all commercial department and editorial department employees of the Company engaged at its New York City establishment, including all editorial, reportorial, advertising, circula-

¹ The Regional Director reported that the Union submitted 18 authorization cards bearing apparently genuine original signatures of persons listed on the Company's pay roll of October 23, 1943, containing the names of 46 employees in the unit alleged to be appropriate in the petition.

tion, production, office, and clerical employees, addressograph operators, subscription clerks, office boys, stenographers, telephone operators, bookkeepers, and photographers, and excluding the Company's officers, chief editors, circulation manager, contributing editors, outside contributors (space writers), the subscription solicitor at the New York City office, confidential secretaries, outside subscription solicitors, and supervisory employees, constitute an appropriate unit. On the other hand, the Company urges that all its employees, including those working outside New York City, and excluding outside contributors (space writers), outside subscription solicitors, and only two of its officers, Martin Quigley, president, and Colvin Brown, vice president and treasurer, comprise a unit appropriate for collective bargaining purposes.

Employees outside New York City

It appears that the Company, in addition to its New York City office, has representatives in Boston, Massachusetts, Washington, D. C., and Chicago, Illinois, and that it owns and operates a branch at Hollywood, California. There is no evidence of a history of collective bargaining affecting any of the Company's employees. In organizing the employees of the Company, the Union confined its activities to the employees of the New York City office. It is apparent that the Union seeks, in effect, a one-plant unit. In view of the limited extent of organization of the Company's employees and the geographical segregation of the New York City employees, we shall exclude all employees outside New York City.²

Company officers

Maurice Kann³ is in charge of the Hollywood branch and holds the office of vice president of the Company. Martin Quigley, Jr., son of the president of the Company, is also a vice president. Theodore J. Sullivan, the Company's comptroller, a supervisory employee with authority to recommend the discipline and discharge of employees, is the Company's secretary. Rose Hornstein, Vice President and Treasurer Colvin Brown's private secretary, is the Company's assistant treasurer, empowered to co-sign checks. While the Company argues that these persons are nominal office holders having no effective managerial duties, their titles, functions, and relations to the Company identify them closely with management. Consequently, they will be excluded from the unit.

² The employees outside New York City are as follows: Maurice Kann, Mildred Early, Thaha Bell, Jack Cartwright, Gray Crane, Milton Grossman, Hugh Quigley, and William Weaver, all of the Hollywood branch; George M. A. Fecke, Boston representative; Bertram F. Lutz, Washington representative; and Oscar Lundy, Chicago representative.

³ Kann has been referred to in footnote 2, *supra*.

Chief editors

Sherwin Kane is the editor of "Motion Picture Daily." He supervises employees whose work is related to the publication of this periodical. Kane works in a private office. On frequent occasions he reports to President Quigley regarding the qualifications of applicants for employment whom he has interviewed. Terry Ramsaye edits "Motion Picture Herald." He, too, has a private office. Those who perform work in respect to the publication of "Motion Picture Herald" are directed and supervised by him. Moreover, in at least two instances, Ramsaye, on behalf of the Company, interviewed and engaged applicants seeking work. George Schutz is the editor of "Better Theatres." His functions parallel those of Kane. In addition, he is responsible with Ramsaye for the material contained in "International Motion Picture Almanac." From the foregoing, it is clear that each of these editors possesses sufficient supervisory authority to warrant his exclusion.

Circulation manager

David Harris, employed in the circulation department, supervises the activities of four employees. His recommendations concerning the work of those under his supervision are sought by President Quigley and Vice President and Treasurer Brown. He is responsible for the functioning of the circulation department. His duties align him with management to a degree requiring his exclusion.

Contributing editors

Ben Schlanger, Charles Schultz, and John Sefing are specialists in subjects pertaining to the construction and operation of theatres. They are steady contributors to the columns of "Better Theatres" and each receives a by-line. They do no work at the New York City office, each having employment other than his arrangement with the Company. Other contributors⁴ who "send in material on speculation" are conceded by the Company to be properly excludable. Significantly, the Company does not deduct withholding taxes from the earnings of Schlanger, Schultz, and Sefing, nor does it make social security tax contributions in their behalf. These contributors have no fixed hours and work on their contributions at their own convenience. The mere fact that they write consistently for "Better Theatres" and consequently receive regular earnings does not justify their inclusion, for they have no apparent interests in common with employees working in the New York City establishment and it is questionable if they are "employees" within the meaning of the Act.

⁴ Outside contributors (space writers).

The subscription solicitor at the New York City office

Although he is not frequently present at the New York City office, Al Lewis, subscription solicitor, calls and has a desk there. He works under the direction of Circulation Manager Harris or Vice-President and Treasurer Brown. There are other subscription salesmen⁵ whose inclusion is not sought by the Union and the Company who, unlike Lewis, do not "work out of" the New York City office. Lewis has no employment other than the work he performs for the Company. We shall include him.

Confidential secretaries

Leo J. Brady, presently in the United States Army, was assistant secretary of the Company and President Quigley's private secretary until the time of his induction. Brady resigned his office when he entered the Army. Marietta Barrett succeeded Brady as President Quigley's private secretary. Barrett's functions are similar to those of Assistant Treasurer Rose Hornstein, Vice-President and Treasurer Colvin Brown's private secretary, except that Barrett does not hold office and does not cosign checks of the Company. Barrett is regarded by the employees as bearing a confidential relationship to President Quigley. Brady's duties conformed exactly to Hornstein's. Because of the foregoing facts, we shall exclude Barrett and Brady from the unit.

We find that all commercial department and editorial department employees of the Company engaged at its New York City establishment, including all editorial, reportorial, advertising, circulation, production, office, and clerical employees, addressograph operators, subscription clerks, office boys, stenographers, telephone operators, bookkeepers, photographers, and the subscription solicitor at the New York City office, and excluding all the Company's officers, the chief editors, the circulation manager, contributing editors, outside contributors (space writers), confidential secretaries, outside subscription solicitors, and 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-

⁵ Outside subscription salesmen

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 of 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 Quigley Publishing Co., 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 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 American Newspaper Guild, CIO, for the purposes of collective bargaining.