

In the Matter of MEIER & FRANK COMPANY, INC. and BUILDING SERVICE EMPLOYEES UNION, LOCAL NO. 49, A. F. L.

Case No. 19-R-1230.—Decided February 28, 1944

Mr. Abe Eugene Rosenberg, of Portland, Oreg., for the Company.

Mr. Herbert B. Galton, of Portland, Oreg., for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Building Service Employees Union, Local No. 49, A. F. L. herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Meier & Frank Company, Inc., Portland, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Portland, Oregon, on December 22, 1943. The Company and the Union appeared and participated. All parties 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

Meier & Frank Company, Inc., an Oregon corporation, operates a large department store and a warehouse in Portland, Oregon. At the retail store practically all types of merchandise are sold. The Company obtains about 50 percent of the merchandise it buys for resale, from points outside the State of Oregon. Its annual sales amount to

\$25,000,000, 1 percent of which represents mail order sales to points outside the State of Oregon. In addition to the mail order business, the Company maintains a regular delivery service within the City of Vancouver, Washington.

The Company denies the Board's jurisdiction generally, and specifically as concerns its elevator operators. Both phases of its objection have been the subject of judicial review wherein the Board's jurisdiction was affirmed.¹ We find, therefore, that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Building Service Employees Union, Local No. 49, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its elevator operators unless the Board finds that elevator operators constitute an appropriate unit and certifies the Union in the unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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

On March 5, 1943, the Company, by stipulation signed in settlement of a charge filed by the Union against it, recognized the Union as bargaining representative for the janitors, janitresses, and watchmen, excluding maids and elevator operators, in its retail store. The Union now requests a separate unit of passenger elevator operators. The Company insists that elevator operators should be represented in a unit composed of all maintenance employees at the store.

There are 20 passenger elevators and 8 freight elevators in the store. The passenger elevators are divided into banks of 5 each. The

¹ See *N. L. R. B. v. J. L. Hudson Co.*, 135 F. (2d) 380. See also *N. L. R. B. v. Virginia Electric Power Company*, 115 F. (2d) 414, *aff'd.* in this point, 314 U. S. 469; *Butler Bros. v. N. L. R. B.*, 134 F. (2d) 981.

² The Field Examiner reported that the Union submitted 31 authorization cards all of which bore apparently genuine original signatures; that the names of 28 persons appearing on the cards were listed on the Company's pay roll of November 8, 1943, which contained the names of approximately 50 employees in the appropriate unit; and that the cards were dated in September, October, and November 1943.

operation of each bank is controlled by a dispatcher. The operators of the passenger elevators must have a general knowledge of every department in the store. They are often transferred to the sales force if they so desire. For these reasons the qualifications of persons chosen for positions as elevator operators, and the training given them differ greatly from the characteristics and training necessary to qualify one for other maintenance jobs in the store. These factors, together with the specialized character of their work mark elevator operators, including freight elevator operators,³ as a distinct occupational group separable from other maintenance employees, appropriate for purposes of collective bargaining.

We find that all elevator operators in the Company's retail store including dispatchers⁴ but excluding all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action⁵ 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 Meier & Frank Company, Inc., Portland, Oregon, 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 Nineteenth 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,

³ We do not subscribe to the Union's attempted distinction between freight and passenger elevator operators

⁴ All parties agreed that dispatchers are not supervisory employees

⁵ Miss Ball, supervisor of elevator operators, falls within this description and is, therefore, excluded.

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 the 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 Building Service Employees Union, Local No. 49, A. F. L., for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.

[See *infra*, 55 N. L. R. B. 1148 for Supplemental Decision and Certification of Representatives.]