

IN THE MATTER OF CINCINNATI DAILY NEWSPAPER PUBLISHERS ASSOCIATION and CINCINNATI MAILERS' UNION No. 17 AN AFFILIATE OF THE INTERNATIONAL MAILERS' UNION OF NORTH AMERICA ¹

Case No. 9-R-1294.—Decided March 18, 1944

Mr. Thomas E. Shroyer, for the Board.

Frost & Jacobs, by *Mr. Cornelius J. Petzhold*, of Cincinnati, Ohio, for the Association.

Mr. Edward J. Fillenwarth, of Indianapolis, Ind., for the I. M. U. *Messrs. C. M. Baker* and *Thomas A. Holland*, of Indianapolis, Ind., for the I. T. U.

Mr. Irving Rogosin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Cincinnati Mailers' Union No. 17, an affiliate of the International Mailers' Union of North America, herein called the I. M. U., alleging that a question of affecting commerce had arisen concerning the representation of employees of members of Cincinnati Daily Newspaper Publishers Association, Cincinnati, Ohio, herein called the Association, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert F. Koretz, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on January 10, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of International Typographical Union, an unaffiliated labor organization, herein called the I. T. U., to intervene. The Association, the I. M. U., and the I. T. U., appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to

¹ During the course of the hearing, the Trial Examiner granted a motion of the petitioner to amend the petition and all other formal papers by adding after the name Cincinnati Mailers' Union No. 17 the words, "an affiliate of the International Mailers' Union of North America," and by substituting the same for the words, "an affiliate of the International Typographical Union" appearing in the body of the petition, after the name of the local

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 COMPANIES

Cincinnati Daily Newspaper Publishers Association is a voluntary association comprised of three apparently independently owned newspapers in Cincinnati, Ohio, namely: The Cincinnati Enquirer, The Cincinnati Times-Star, and The Cincinnati Post. The Association has been in existence for over 20 years for the purpose of representing these newspapers in collective bargaining with unions organized on a craft basis.²

All three newspapers have a daily circulation in excess of 125,000, including circulation outside the State of Ohio, use interstate news services and carry national advertising. Together they employ a total of approximately 70 employees in the unit hereinafter found to be appropriate.

The Association admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Cincinnati Mailers' Union No. 17,³ an affiliate of the International Mailers' Union of North America, is a labor organization admitting to membership employees of members of the Association.

² While the record does not disclose that the newspapers here involved are competitors, this fact is more than likely. It is not altogether clear to what extent the Association has authority to bind the newspapers in collective bargaining. In actual practice, both the Association, and the newspapers individually, were signatories to agreements entered into with the I T U Local, and no contract was executed until all the newspaper companies were in complete accord. In view of the long established practice of collective bargaining on this multiple-employer basis, the adherence of the employees as well as the companies to this method of collective bargaining, and the further fact that the issue was not raised by any of the parties at the hearing, we are not constrained to question the propriety of the multiple-employer unit. See *Matter of Rayonier Incorporated, Grays Harbor Division*, 52 N L R B 1269 and cases cited therein.

³ There are 2 local organizations, each bearing the identical name, Cincinnati Mailers' Union No 17. They have the same officers, substantially the same membership, use the same meeting place, but conduct their meetings separately. Meetings of the one local follow those of the other almost immediately. The I M U which was formed as a consequence of a convention of mailers held in June 1943, has chartered about 25 local unions including the petitioner, herein called the I M U Local, to distinguish it from the local of the same name, affiliated with the I T U, herein called the I T U Local. The apparent reason for the retention of membership in the I T U Local was to preserve certain pension, mortuary and insurance benefits accruing by reason of affiliation with the I T U, international. While the I T U contended at the hearing that the I M U was, in effect, a "secessionist movement" and an attempt on the part of the local to evade its

International Typographical Union, unaffiliated, is a labor organization admitting to membership employees of members of the Association.

III. THE QUESTION CONCERNING REPRESENTATION

On July 13, 1943, the Association entered into a closed-shop contract with Cincinnati Mailers' Union No. 17, a subordinate union of the I. T. U., herein called the I. T. U. Local. This contract was to run from December 8, 1942, to December 7, 1943, and from year to year thereafter, unless either party wished to propose a new contract or amendment thereto, in which case it was required to give notice not less than 60 days prior to December 7, accompanied by the proposed new contract or written amendment. Upon the giving of the required notice, the proposed contract or amendment was to be referred to a Standing Committee comprised of representatives of the Association and the employees, and in the event of failure of the Standing Committee to reach unanimous agreement among themselves, the parties were to proceed to arbitration in accordance with the provisions of the contract. Meanwhile, the contract was to remain in full force and effect until a new contract was executed, either by agreement, or as the result of arbitration.

On October 4, 1943, more than 60 days prior to the original expiration date of the contract, the I. T. U. Local wrote to the Association submitting a proposal for a new contract.⁴ The proposed contract recited the names of the parties as the Association and the I. M. U. Local. During November, conferences were held between representatives of the Association and the local union, in the course of which it became evident that the local union representatives sought to have the contract executed on behalf of the I. M. U. Local, rather than the I. T. U. The Association questioned the status of the I. M. U. Local as the exclusive bargaining representative, and on November 20, 1943, wrote the President of the Cincinnati Mailers' Union No. 17, that it would require certification by the Board before it would consummate a contract with an organization other than the I. T. U. Thereafter, on or about November 22, 1943, all but one of the employees covered by the original contract signed a petition designating the I. M. U.

responsibility under the I T U contract, there was no serious contention that the I M U, or its local, is not a labor organization within the meaning of the act. See *Matter of Atlas Powder Company, Zapon Division*, 43 N L R B 757. Moreover, minutes of the proceedings of the convention which resulted in the formation of I M U, introduced in evidence, as well as testimony adduced at the hearing, sufficiently establish the status of both the I M U and the I M U Local as labor organizations.

⁴This letter, on the letterhead of "Cincinnati Mailers' Union No. 17" and signed by the Acting Secretary, made no reference to affiliation with either the I T U or the I M U. The person acting as President of both the I T U. and the I M. U. Locals testified that this notice was sent on behalf of the I. T. U. Local.

Local as their bargaining agent.⁵ On November 22, 1943, the petition was filed in this proceeding.

The I. T. U. contends that the contract covering the period from December 8, 1942, to December 7, 1943, is still in effect and constitutes a bar to these proceedings. While conceding that the notice of October 4, 1943, proposing a new contract was in accordance with the then existing contract, the I. T. U. contends that the failure of the I. T. U. Local to refer the proposed new contract to the Standing Committee and, thereafter, to arbitration leaves the contract in effect by virtue of the provision: "This contract shall continue in full force and effect until a new contract is made, either by agreement or arbitration." The Association takes no position on this issue.

It is conceded that the notice of October 4, 1943, was seasonably given and prevented the automatic renewal provision in the contract from taking effect. Assuming, without agreeing, in favor of the I. T. U., that the contract continued in effect by virtue of the provision, above quoted, it is clear that it would continue to operate for a period of indefinite duration, and hence would be no bar to this proceeding. We find that the contract is no bar to this proceeding.

A statement of the Board agent introduced into evidence at the hearing indicates that the I. M. U. Local represents a substantial number of employees in the unit hereinafter found appropriate.⁶

We find that a question affecting commerce has arisen concerning the representation of employees of members of the Association within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The I. M. U. Local contends that the appropriate unit consists of all mailers working at The Cincinnati Enquirer, The Cincinnati Times-Star, and The Cincinnati Post, including foremen, assistant foremen, apprentices, and journeymen.⁷ This is the unit embraced in the last contract between the I. T. U. and the Association and in previous contracts. The I. T. U. contends that all union mailers in the city of Cincinnati constitute an appropriate unit, but offered no evidence in support of its contention. The Association took no position with respect to the unit. All parties agree that foremen and assistant fore-

⁵ A foreman was the only employee who declined to sign the petition, because of his supervisory position. Seventy-one employees, including 6 apprentices, signed the petition.

⁶ The Field Examiner reported that the I. M. U. Local submitted evidence in support of its allegation that it represents 65 employees in the allegedly appropriate unit. This evidence consisted of "Secretary's Monthly Itemized Report" for the month of October 1943; 65 of the names appearing on this report appeared on a list of 69 employees, the total number within the appropriate unit on December 8, 1943.

⁷ "Mailers" were defined, in part, as all employees performing the following work: stamping, counting, wrapping, inserting, pasting, "tieg," marking, spreading wrappers, tagging, sacking, correcting and proving mailing galley sheets, cutting and pasting mail lists, and routing.

men should be included within the unit, although such employees have authority to hire and discharge, or effectively recommend such action, on the ground that they have been traditionally included within the bargaining unit in the industry⁸ and have been covered by collective bargaining contracts since 1904. The most recent contract provided that "each office shall have a foreman who shall be a member in good standing of the Union." The appropriateness of the unit contended for by the I. M. U. Local is demonstrated by a long and apparently successful history of collective bargaining.⁹

We find that all mailers employed by the members of the Association, including foremen, assistant foremen, apprentices, and journeymen, 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.

In addition to about 60 regular employees or "situation holders," there are approximately 12 "substitute" or "extra" employees who are frequently called, by "situation holders" to replace them on their days off or other absences from work, or by the newspapers themselves, when the increase in the volume of work at any of the 3 newspapers warrants it.¹⁰ No problem is presented as to the eligibility to vote of such of these "substitute" or "extra" employees, as are regularly employed as "situation holders." The 12 "substitute" or "extra" employees are union members, and the only persons other than the "situation holders" working for these newspapers as mailers. They spend about half their time and about half as much time as the "situation holders," at such work.¹¹ The I. T. U. urges that these employees be eligible to vote, the I. M. U. Local raises no objection to their eligibility. The Association, while indicating its preference for restricting eligibility to "situation holders," by reason of the fact that at least some of the 12 "substitute" or "extra" employees are regularly employed elsewhere

⁸ See *Matter of W. F. Hall Printing Company*, 51 N L R. B 640; *Matter of Service Printers, Incorporated*, 54 N L R B 1082.

⁹ The record discloses that mailers have been recognized in the industry as a craft for nearly 50 years.

¹⁰ Some "substitute" or "extra" employees are frequently regular "situation holders" on one or the other newspapers.

¹¹ The substantial amount of time worked by these employees is explained by the fact that regular employees work a 5-day week pursuant to the contract, while two of the newspapers operate on a 6-day basis, and the third, on a 7-day basis.

by commercial printers, makes no strenuous objection to their being permitted to vote.

In view of the fact that these approximately 12 "substitute" or "extra" employees are included within the unit, work a considerable portion of their time for one or more of the 3 newspapers involved, and are governed by the terms of the contract, we find that they constitute part-time employees regularly employed by members of the Association and that they should, therefore, be eligible to vote in the election.¹²

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 Cincinnati Daily Newspaper Publishers Association, Cincinnati, Ohio, as representative of its member employers 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 Ninth 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 any 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 they desire to be represented by Cincinnati Mailers' Union No. 17, an affiliate of the International Mailers' Union of North America, or by International Typographical Union, unaffiliated, for the purposes of collective bargaining, or by neither.

¹² See, *Matter of Wagner Folding Box Corporation*, 49 N. L. R. B. 346; *Matter of New Idea, Inc.*, 49 N. L. R. B. 619