

In the Matter of EDWARD C. FIEDLER, CHARLES F. SAMSON, ROGER D. MELLICK, J. WRIGHT BROWN, KENNETH BOARDMAN, HAROLD W. CARHART, C. MAURY JONES, CLARKSON RUNYON, JR., ARCHIE M. REID, LOUIS LEE STANTON, ROBERT A. HAUGHEY, VAN R. HALSEY, WALTER I. CLAYTON, DEWEES W. DILWORTH, F. K. M. HUNTER, STUART SCOTT, JR., ALBERT FRANCKE, DAVID A. LOWRY, WALTER B. LEVERING, EDWARD J. STRAY, JOHN B. MAHER AND JOSEPH J. O'BRIEN, GENERAL PARTNERS, AND JOHN T. WINKHAUS, LIMITED PARTNER, DOING BUSINESS AS CARLISLE & JACQUELIN A PARTNERSHIP *and* NEW YORK STOCK EXCHANGE & FINANCIAL EMPLOYEES INDEPENDENT ASSOCIATION

*Case No. 2-R-4153*

SUPPLEMENTAL DECISION  
AND  
CERTIFICATION OF REPRESENTATIVES

*March 22, 1944*

On November 25, 1943, the National Labor Relations Board issued a Decision and Direction of Election in this proceeding.<sup>1</sup>

On December 11, 1943, representatives of New York Stock Exchange & Financial Employees Independent Association, herein called the Union, and representatives of the partnership doing business as Carlisle & Jacquelin, herein called the Company, conferred in the Regional Director's office with respect to the election which was scheduled to be held among the Company's employees. During the course of the conference, the Company and the Union disagreed concerning the meaning of our finding of an appropriate unit for the Company's employees in its bearing upon the Union's authority to bargain on their behalf in the event it should win the election and be certified by the Board as their exclusive bargaining representative. On December 13, 1943, as a result of this disagreement, the Company filed with the Board a request for clarification of the Board's finding with respect to the appropriate unit. On December 15, 1943, the Union filed its opposition to the granting of the Company's request.

Pursuant to the Direction of Election, an election by secret ballot was conducted on December 18, 1943, under the direction and super-

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<sup>1</sup> 53 N. L. R. B. 902.

55 N. L. R. B., No. 120.

vision of the Regional Director for the Second Region (New York City). On the same day the Regional Director prepared and served upon the parties a Tally of Ballots. The Tally of Ballots discloses that each of the 30 eligible voters cast a ballot; that of this number 1 ballot was void; and that, of 29 valid votes cast, 22 were cast for, and 7 against, the Union. There were no challenged ballots. Neither the Union nor the Company filed objections to the Tally of Ballots or to the conduct of the election. Since a majority of employees in the appropriate unit has selected the Union as their bargaining representative, we will grant the Company's request and review our findings so far as they bear upon the issue which has arisen between the parties.

As we noted in our original decision, the Company's employees are divided into two groups: (1) employees in the telephone department who perform their work on the floor of the New York Stock Exchange and (2) office employees who perform their work on the Company's premises at 120 Broadway, New York City. Telephone clerks and bag boys are included in the first group, and office and clerical employees in the several administrative divisions of the Company's so-called "back office" are included in the second group. At the hearing in this proceeding the Union contended that telephone clerks, apart from other employees of the Company, constituted an appropriate separate bargaining unit. In support of its contention, the Union relied, *inter alia*, upon the dissimilar working conditions of telephone clerks and the special skill and experience necessary for the performance of their work. The Company took the position that the only appropriate bargaining unit included employees in both groups. In support of its contention, the Company urged, *inter alia*, that, to supplement their regular wages, telephone clerks performed ordinary clerical work on the Company's premises, on an overtime and voluntary basis, and that during this time they functioned under substantially the same working conditions as back office employees.

The Union is admittedly engaged in the general organization of employees of the several financial concerns in the Wall Street district on a broad basis, including employees of the Company, but, at the time of the hearing, it did not claim to represent a majority of employees of the Company in any identifiable group larger than the telephone department, and the record indicated that the remaining employees of the Company had not, as yet, been organized for the purpose of collective bargaining by any labor organization. We found that telephone clerks regularly perform work requiring special skill under working conditions notably dissimilar from those of the back office employees. We found that bag boys, who work with telephone clerks on the floor of the Exchange, are also employees of the telephone department, and should be grouped with the telephone

clerks for bargaining purposes. We were persuaded that the overtime office work performed by telephone clerks on the Company's premises lies outside the scope of their regular employment as telephone clerks and that their performance of this overtime office work does not substantially impair the distinct character of their employment in the telephone department, or render them, as a functional group, indistinguishable from the regular back office employees. Accordingly, since we were satisfied that the telephone clerks and bag boys are a homogeneous and identifiable group, separable as such from other employees of the Company, and since organization for the purpose of collective bargaining has not yet extended to the other employees of the Company with whom the telephone department employees might conceivably be combined in an ideal bargaining unit, we found that the telephone clerks and bag boys who work on the floor of the New York Stock Exchange constitute at the present time a separate unit appropriate for collective bargaining, within the meaning of Section 9 (b) of the Act.

The Union, having won the election, will now be certified by the Board as the statutory bargaining representative of the employees in the aforesaid appropriate unit. The present dispute between the parties concerns the scope of the Union's authority as such representative. The Company contends that the Union has no authority to negotiate concerning the back office work performed by the employees in the appropriate unit outside their regular working hours, and outside the scope of their regular employment as telephone clerks. The Union asserts that it is entitled to represent these individuals in collective bargaining with respect to all phases of their relationship with the Company as their employer, including matters pertaining to their overtime work in the back office.

The issue thus presented may be resolved in the light of the provisions of Section 9 of the Act, wherein the scope of a statutory bargaining agent's authority is defined and the general policy respecting the composition and function of appropriate bargaining units is set forth. The statutory bargaining agent is authorized to act as the exclusive representative of all the employees in a given appropriate unit "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." The source of its authority, found in Section 7 of the Act as implemented in Sections 8 (5) and 9 (a), is the right of employees to bargain collectively through their chosen majority representative, *provided* that the employee group within which such majority determination is made constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b). The latter requirement, that employees must comprise an appropriate unit before

an obligation arises on the part of the employer to bargain collectively with their majority representative, necessarily operates as a limitation upon the scope of the right to bargain collectively and, hence, upon the scope of the authority which employees may confer upon their collective bargaining agent. This limitation can arise, as here, where the employees perform part of their duties in a group which might well become a separate bargaining unit. When this situation arises, we think the Act clearly intends that the exclusive bargaining agent may represent the employees in the appropriate unit, but only as to those matters which affect their interests therein, and not with respect to their employment in another capacity, which does not come within the ambit of that unit.

To hold otherwise would be to ignore the basic purpose of the determination of the appropriate unit, which is to insure that all employees who have substantially identical interests shall participate, as constituents of the same unit, in the choice of the bargaining agent for the furtherance of their joint interests.

The conclusion therefore is clear. The Union, pursuant to our certification and the proceedings upon which it is based, is entitled to bargain with the Company respecting the hours, wages, and conditions of employment of the telephone department employees as such. Since the extra and collateral work performed by these individuals in the back office is the characteristic and essential function of another group of employees who are expressly excluded from the appropriate unit, the Union is not entitled to negotiate concerning the rates of pay and specific working conditions surrounding that work.

We do not mean to indicate by the opinion herein expressed that the Union, as the statutory bargaining agent of the employees in the telephone department, is not authorized to negotiate on behalf of those employees concerning any interest of theirs which is a normal incident of their employment in the telephone department, even though such interest be one which they share in common with all other employees of the Company. The inclusion of certain employees in a bargaining unit apart from other employees of their employer does not divest them of any rights and privileges which might otherwise accrue to them as the result of their general status as employees, and their statutory bargaining agent is entitled to speak for them with respect to all such rights and privileges. Accordingly, the Union is authorized to negotiate on behalf of the telephone clerks and bag boys, not only with respect to the wages, hours of employment, and working conditions surrounding their employment in the telephone department, but also with respect to tenure of employment, rights and privileges based upon seniority in the Company's employ, promotions, opportunities for advancement, vacations, holidays, leave of absence, sick

leave, opportunities for overtime and extra work, insurance and sick benefits, and all other matters of employee welfare which are, or normally would be, the fruit of the Company's general personnel policy, applicable to all its employees as such, and all of which are fairly comprehended within the term "conditions of employment," within the meaning of the Act.

### CERTIFICATION OF REPRESENTATIVES

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, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3.

IT IS **HEREBY CERTIFIED** that New York Stock Exchange & Financial Employees Independent Association has been designated and selected by a majority of all telephone clerks and bag boys employed by Edward C. Fiedler, Charles F. Samson, Roger D. Mellick, J. Wright Brown, Kenneth Boardman, Harold W. Carhart, C. Maury Jones, Clarkson Runyon, Jr., Archie M. Reid, Louis Lee Stanton, Robert A. Haughey, Van R. Halsey, Walter I. Clayton, Dewees W. Dilworth, F. K. M. Hunter, Stuart Scott, Jr., Albert Francke, David A. Lowry, Walter B. Levering, Edward J. Stray, John B. Maher, and Joseph J. O'Brien, General Partners, and John T. Winkhaus, Limited Partner, doing business as Carlisle & Jacquelin, a partnership, New York City, who work on the floor of the New York Stock Exchange, excluding coheads, supervisors of the telephone department, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.