

In the Matter of TWENTIETH CENTURY-FOX FILM CORPORATION and  
SCREEN OFFICE EMPLOYEES GUILD, LOCAL 1391—A. F. L.

*Case No. 21-R-2252.—Decided April 29, 1944*

*Mr. Alfred Wright*, of Los Angeles, Calif., for the Company.  
*Katz, Gallagher & Margolis*, by *Mr. Ben Margolis*, of Los Angeles,  
Calif., for the Screen Office Employees Guild, Local 1391, A. F. L.  
*Mr. Ralph Woodland*, of Los Angeles, Calif., for the Twentieth  
Century Fox Office Employees Guild.  
*Mrs. Margaret L. Fassig*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Screen Office Employees Guild, Local 1391, A. F. L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Twentieth Century-Fox Film Corporation, Los Angeles, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. Said hearing was held at Los Angeles, California, on March 22, 1944. The Company, the A. F. L., and Twentieth Century-Fox Office Employees Guild, herein called the Guild, and which was permitted to intervene at the hearing, 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

Twentieth Century-Fox Film Corporation, a New York corporation, is engaged in the production of motion pictures, with its studios located

in Los Angeles County, California. The Company purchases its film from three distributing companies located in California which are the exclusive distributors respectively of Eastman Kodak film manufactured in Rochester, New York, Dupont film manufactured in Parlin, New Jersey, and Agfa film manufactured in Binghamton, New York. The Company has its own distribution department, the principal offices of which are located in New York City, and its films are distributed throughout the United States.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.<sup>1</sup>

## II. THE ORGANIZATIONS INVOLVED

Screen Office Employees Guild, Local 1391, affiliated with the International Brotherhood of Painters, Decorators, and Paperhangers of America, an affiliate of the American Federation of Labor, is a labor organization admitting to membership office and clerical employees of the Company.

Twentieth Century-Fox Office Employees Guild is an unaffiliated labor organization admitting to membership office and clerical employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On March 24, 1941, the Company and the Guild entered into an exclusive collective bargaining contract covering in general the Company's office employees. The contract, which is for a 5-year term commencing January 1, 1941, contains a provision that in the event another organization shall be chosen by the Company's office employees as their exclusive representative or if the Guild shall affiliate with any labor organization for the purposes of bargaining collectively with the Company, the agreement shall become null and void at the option of the Company.

At a regular meeting on December 17, 1943, the Board of Governors of the Guild adopted a resolution to affiliate with the A. F. L. and which further provided it should not become effective until ratified by a majority vote of the members present and voting at a special membership meeting of the Guild. A called meeting of the Guild was held on January 7, 1944, attended by about 250 persons, at which 139 votes were cast for affiliation with the A. F. L. and 101 votes were cast against such affiliation. The President of the Guild testified that at that time there were between 300 and 350 employees in good standing in the Guild. Ralph Woodland, who appeared at the hearing as a

<sup>1</sup> It was stipulated that the business of the Company was substantially as found by the Board in the *Matter of Metro-Goldwyn-Mayer Studios, et al.*, 7 N. L. R. B. 662, 680.

representative of the Guild, questioned the legality of the action taken on January 7, to affiliate with the A. F. L.<sup>2</sup>

On January 10, 1944, officials of the Guild executed a document which purported to transfer and assign to the A. F. L. the March 24, 1941, contract which by its terms was to expire January 1, 1946. Thereafter by letter dated January 15, 1944, signed jointly by representatives of the Guild and A. F. L., the Company was advised of the affiliation of the Guild with the A. F. L. and of the assignment by the Guild to A. F. L. of its collective bargaining contract with the Company. The Company replied in effect that it would continue to recognize the Guild as the collective bargaining agent for the employees described in the agreement of March 24, 1941, until such time as a new bargaining agent might be certified by the National Labor Relations Board.

Without attempting to decide whether the A. F. L. is the legal successor of the Guild and assignee of the collective bargaining contract dated March 24, 1941, between the Company and the Guild, we nevertheless find that the contract is no bar to a present determination of representatives since such contract is for a 5-year term and has already been in effect for more than 2 years.<sup>3</sup> Moreover, it is clear that there exists an unresolved doubt with respect to the identity of the labor organization which the employees of the Company desire to represent them.<sup>4</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. L. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</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 Act.

#### IV. THE APPROPRIATE UNIT

We find in substantial accord with a stipulation of the parties,<sup>6</sup> that all office clerical, secretarial and accounting employees of the Com-

<sup>2</sup> It appears, however, that the Board of Governors of the Guild has held no meetings since January 7, 1944, and that no one purporting to act for the Guild has dealt with the Company with reference to grievances or other collective bargaining matters since January 7, 1944, whereas formerly the Board of Governors met once each month and representatives of the Guild met with officials of the Company on an average of every 2 weeks with regard to grievances and other matters between the Company and the Guild.

<sup>3</sup> See *Matter of National Lead Company*, 45 N. L. R. B. 182, and cases cited therein.

<sup>4</sup> See *Matter of Atlantic Waste Paper Company, Inc.*; 45 N. L. R. B. 1087, and cases cited therein.

<sup>5</sup> The Field Examiner reported that the A. F. L. submitted 276 authorization cards; that the names of 252 persons appearing on the cards were listed on the Company's pay roll of February 1, 1944, which contained the names of 515 employees in the appropriate unit; and that the cards were dated from October 1943 to January 1944. The Guild made no showing of membership, relying on its unexpired contract, mentioned above, as proof of its interest in this proceeding.

<sup>6</sup> Subsequent to the hearing the parties entered into a stipulation defining the appropriate unit, which stipulation is hereby approved and made a part of the record.

pany, office and tabulating machine operators, switchboard operators, casting clerks, messengers and other persons doing work of a similar nature, excluding casting directors, assistant casting directors, outside messengers attached to the Transportation Department, laboratory shipping clerks, production script clerks, and other employees of the Company covered by the terms of any other collective bargaining agreement, or classified within a group represented by any other collective bargaining representative; confidential secretaries to the officers of the Company, confidential secretaries to the executive head of production in the studio, to the executive manager, to the general production manager, to the executive producers, to the studio treasurer, to the executive in charge of public relations, to the executive in charge of labor relations, to the comptroller of the studio, not more than one confidential secretary in the Legal Department of the studio, employees who perform executive, administrative or supervisory functions during a substantial portion of their working time and all or 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.<sup>7</sup>

#### V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot. We shall accord a place to the Guild on the ballot inasmuch as it is a party to a closed-shop contract with the Company,<sup>8</sup> and, as indicated above, there is a substantial dissident minority which apparently opposed affiliation with the A. F. L.

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 payroll 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 Re-

<sup>7</sup> This is substantially the same unit as that found appropriate by the Board in the *Matter of Columbia Pictures Corporation, et al*, 27 N. L. R. B. 708, at page 717, (to which the Company herein was a party), and is also substantially the same as that described in March 24, 1941, contract between the Company and the Guild.

<sup>8</sup> See *Matter of Monark Battery Company, Inc*, 35 N. L. R. B. 24.

lations 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 Twentieth Century Fox Film Corporation, Los Angeles, California, 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 Twenty-first 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 they desire to be represented by Screen Office Employees Guild, Local 1391, A. F. L., or by Twentieth Century-Fox Studio Office Employees Guild, for the purposes of collective bargaining, or by neither.