

In the Matter of MONTGOMERY WARD & Co., INCORPORATED and UNITED MAIL ORDER, WAREHOUSE AND RETAIL EMPLOYEES UNION, LOCAL 20, OF THE UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, AFFILIATED WITH THE C. I. O.

Case No. 13-R-2374.—Decided May 2, 1944

Mr. J. G. Evans, for the Board.

Messrs. John A. Barr, Dana M. Norton, and William Powell, of Chicago, Ill., for the Company.

Mr. Francis Heisler, of Chicago, Ill., *Mr. Samuel Wolchok*, of New York City, *Mr. Leonard Levy*, of Chicago, Ill., and *Mr. Henry B. Anderson*, of Chicago, Ill., for the Union.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petition duly filed by United Mail Order, Warehouse and Retail Employees Union, Local 20, of the United Retail, Wholesale and Department Store Employees of America, affiliated with the C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Montgomery Ward & Co., Incorporated, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel H. Jaffee, Trial Examiner.¹ Said hearing was held at Chicago, Illinois, on April 29 and May 1, 1944. 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed.

¹ In the formal papers of this proceeding the Union is designated as "United Mail Order, Warehouse and Retail Employees Union, Local 20, affiliated with the C. I. O." The Company is designated as "Montgomery Ward & Company, Incorporated." Their respective names appear in the caption and in the body of this decision as they were amended at the hearing.

Both parties waived their rights to file briefs with the Board and to request oral argument.

During the hearing the Union made a motion that the Board issue an order to show cause why the prior certifications of the Union hereinafter referred to were not valid and existing, and if no cause be shown, that the hearing be closed. The Union, nevertheless, stated that in any event it desired an election to be held. Ruling on the motion was reserved for the Board. We have considered the Union's motion, and it is hereby denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Montgomery Ward & Co., Incorporated, an Illinois corporation having its head offices in Chicago, Illinois, is engaged in the purchase, sale, and distribution of general merchandise² at retail through the media of mail order houses, catalog order offices, and retail stores. In connection with such distribution, the Company operates 9 mail order houses, over 200 catalog order offices, and more than 600 retail stores throughout the United States. This proceeding involves the following facilities of the Company located in Chicago, Illinois: its Mail Order and Fashion House, its Retail Store, certain of its Administrative Departments, and its Schwinn Warehouse. During the fiscal year ending January 31, 1944, the Chicago Retail Store made purchases of merchandise having a value of approximately \$2,750,000, of which about 74 percent was shipped to the Store from points outside the State of Illinois; its sales of merchandise amounted to nearly \$4,000,000, of which about 2 percent was sales to customers outside the State of Illinois. During the same period, the Chicago Mail Order and Fashion House made purchases in excess of \$58,500,000, of which about 80 percent came from sources outside the State of Illinois; its sales amounted to approximately \$72,500,000, of which approximately 91 percent represents the value of shipments to customers at points outside the State of Illinois. During the same period, the Schwinn Warehouse received goods valued at about \$19,000,000, of which approximately 83 percent was shipped to the Warehouse from points outside the State of Illinois.

² It was indicated in *Matter of Montgomery Ward & Co., Incorporated*, 38 N L R B. 297, 298, that the merchandise handled by the Company includes clothing, dry goods, furniture, home furnishings, household equipment, plumbing, heating, and farm equipment and supplies, building materials, jewelry, musical instruments, automobile accessories, electrical supplies, books, stationery, drugs, cosmetics, sporting goods, luggage, tools, hardware, and other goods.

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

II. THE ORGANIZATION INVOLVED

United Mail Order, Warehouse and Retail Employees Union, Local 20, of the United Retail, Wholesale and Department Store Employees of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On December 18, 1942, upon an order of the National War Labor Board, herein called the W. L. B., and in compliance with the order of the President acting as Commander-in-Chief, the Company entered into a contract with the Union effective as of December 8, 1942, for a 1-year term. At a conference held on or about November 16, 1943, the Union advised the Company that it desired to renew the contract. The Company took the position that it questioned whether the Union represented a majority of the employees in its Mail Order and Fashion House and in its Retail Store. On January 13, 1944, the W. L. B. issued a decision which held, in effect, that a question of representation had arisen which was within the exclusive jurisdiction of the Board to determine.³ On February 14, 1944, the Union filed a "Petition for Recertification" with the Board. In an order issued on March 6, 1944, the Board considered the petition as one for the investigation and certification of representatives pursuant to Section 9 (c) of the Act, and referred it to the Regional Director for the Thirteenth Region for further proceedings.

The Company stipulated that the Union has a substantial interest in each of seven units of the Company's employees in which the Union was recognized by the Company or certified by the Board as the exclusive collective bargaining representative.

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 UNITS

The Union contends that all the employees in the seven units in which the Company has recognized, or the Board has certified, it as the exclusive collective bargaining representative should now be found to comprise a single appropriate unit. The Union was certified by

³ In re *Montgomery Ward and Company* [Chicago, Ill], 13 W. L. R. 454.

the Board on August 26, 1940, as the representative of the Company's employees at its Chicago Schwinn Warehouse.⁴ On February 28, 1942, the Union was certified by the Board as the representative of employees in the Company's Chicago Mail Order and Fashion House and in its Chicago Retail Store.⁵ On April 27, May 18, August 12, and October 26, 1942, the Company on the basis of card checks recognized the Union as the representative of employees in four of what were termed at the hearing as "administrative departments."⁶

The Company contends that its employees comprise four separate appropriate units, as follows: the Mail Order and Fashion House, the Retail Store, the Schwinn Warehouse, and the four administrative departments referred to above.

The Company and the Union are in agreement as to which categories of employees are to be included and which excluded from the appropriate unit or units found by the Board.

The Mail Order and Fashion House, the Retail Store, and the Company's Administrative Offices are contiguous to each other in separate buildings. The Schwinn Warehouse is located between 3 and 3½ miles from these buildings.

In support of its contention for four units, the Company relies upon evidence which is principally to the effect that there are functional differences in the work of the employees of each of the claimed units. It is urged, for example, that in the Retail Store the employees are broadly divided between salespeople and non-selling personnel, while in the Mail Order and Fashion House there are few, if any, salespeople, the work being concerned with the listing and filling of catalog orders mailed in to the Company. There is further evidence that the Mail Order and Fashion House, the Retail Store, and the Schwinn Warehouse, have separate pay rolls; that the lines of authority therein differ from one another; that the job classifications are different; that there are differences in the hours of work; that there are different eating and recreational facilities; that the employees in each of these buildings work separately from one another; that there is no interchange of employees between them; and that there are other differences in working conditions. Evidence of a generally similar nature was received differentiating the administrative departments from the three units mentioned.

In support of its contention for a single unit, the Union, on the other hand, points to the fact that in many respects the Company's operations are so arranged as to indicate the greater feasibility of such unit. Thus, there is evidence that the Company has but one

⁴ *Matter of Montgomery Ward & Co.*, 26 N. L. R. B. 1347.

⁵ *Matter of Montgomery Ward & Co., Incorporated*, 39 N. L. R. B. 400.

⁶ I. e., the photographic department, the maintenance employees, the central printing department, and the display factory.

grievance officer for its operations at Chicago, who handles grievances for all employees therein irrespective of their place of employment; that its personnel policies are applicable generally to all employees; that it has a single wage policy, a single rating policy, a single employee benefit plan, a single policy as to vacations, and a single policy as to filling vacancies, whether by hiring or promotion. There is further evidence that the Company's general personnel department sets policy for the personnel departments in the Mail Order and Fashion House, and in other of its operations. Except as to the Retail Store, employees are hired initially through a general employment office. In addition, the Union presented considerable evidence that the employees by the form of their union organization—no other labor organization is involved herein—have indicated the greater feasibility of a single unit. Thus, Local 20 includes in its membership employees from all groups involved in this proceeding, and there is no division within the Union for each of the Company's operating groups, one for the Mail Order and Fashion House, another for the Retail Store, and still another for the Schwinn Warehouse. There is but one Steward's Council, elected by the membership as a whole, one grievance committee, one negotiating committee, one meeting place. Further, Union activity takes place as a whole and not by operating departments. In other respects as to the Union's organizational set up, and in its activities, the evidence makes clear that so far as union organization is concerned, the employees apparently have no difficulty in acting together. We perceive no sufficient reason why the employees may not properly bargain together—with a single exception of which mention will presently be made. Giving all due weight to the evidence offered on behalf of the Company, we are of the opinion that it is outweighed by the other evidence in the case. In this connection, it is significant that when in July 1940 we considered the first petition filed by the Union—that involving the Schwinn Warehouse—we found that a unit confined to that warehouse was appropriate on the basis of the Union's then present extent of organization.⁷ Our finding in that case did not, and does not, preclude a later finding that the employees in the Schwinn Warehouse might function effectively in a larger unit. In the succeeding case, involving the Mail Order and Fashion House and the Retail Store, the parties stipulated to units for the employees of each. A single unit at this time of the employees of all would, in our opinion, based in part on the extent of organization of the employees, the evidence recited, and the evidence as a whole, be most appropriate for the purposes of collective bargaining. This conclusion, it may be noted, is strengthened by the fact that in the Schwinn case the Company itself contended that a

⁷ See footnote 4, *supra*.

unit comprising all of its employees in the Chicago area, or, in the alternative, those within the Chicago Mail Order and Fashion House proper, would be appropriate.

Moreover, the Company, in now asserting that the four administrative groups referred to constitute a single unit, itself in effect concedes that a unit which is in part based on the extent of organization among the employees may be appropriate. These four administrative groups form but a small portion of the administrative groups or departments in the administrative set up of the Company, there being several dozen of such groups therein. The Union, however, has apparently little or no organization in the others.

These administrative groups, however, should not properly be included in the same unit with the Mail Order and Fashion House, the Retail Store, and the Schwinn Warehouse. The differences in their functional organization are sufficiently great to warrant a difference in treatment in the disposal of the unit problem. Secondly, it must be kept in mind that these administrative departments are located in Chicago only because Chicago is the place where the main offices of the Company are located, and their work applies to the operations of the Company nationally. Based on these considerations, and the evidence as a whole, we believe and find that a separate unit should be set up for the four administrative groups referred to.⁸

We find that all employees of the Company in its *Schwinn Warehouse*, including catalog-office employees, cafeteria employees, and group heads, but excluding supervisory employees on the time card pay roll, ledger and supervisory pay roll employees; all employees in the *Mail Order and Fashion House*, including the fashion department, telephone exchange operators, and group heads, but excluding employees in the medical department, the branch manager, the branch operating manager, the branch merchandising manager, the branch comptroller, and all other supervisory and confidential employees described as executives, secretaries to executives, department heads, assistant department heads, supervisory and assistant supervisory employees, house police, merchandisers, buyers, re-buyers, assistant buyers, assistant re-buyers, trainees, timekeepers, and personnel employees in the fashion department; and all employees in the *Retail Store*, including the receiving and shipping departments of the Store in the South building, and the telephone operators, but excluding the manager, assistant operating manager, assistant merchandising manager, and other confidential or supervisory employees described as executives, floormen, merchandisers, buyers, assistant buyers, personnel employees, cashiers, timekeepers, house police, and watchmen,

⁸ See *Matter of Pacific Gas & Electric Company*, 40 N. L. R. B. 591, 603; and *Matter of The Western Union Telegraph Company*, 39 N. L. R. B. 287, 293.

constitute an appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

We also find that all employees in the *photographic department* in the South building; all employees in the Administration and South buildings engaged as maintenance men, electricians, porters, engineers, carpenters, elevator operators, typewriter repairmen, office machinery repairmen, receiving men, liquidation pool receivers and shippers, painters, refinishers, venetian blind repairmen, and group heads; all employees in the *central printing department* in the South building, including group heads; and all employees in the *display factory*, including group heads; and excluding in all instances timekeepers and all 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 elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll periods ending in the week of April 23-29, 1944, subject to the limitations and additions set forth in the Direction of Elections.

We find, in accordance with a stipulation of the parties, that all part-time employees on the pay roll for the week ending April 26, 1944, who have been on the pay roll for the 10 preceding pay-roll weeks and have worked at least 20 hours during each of the 10 weeks, are eligible to vote. We also adopt the agreement of the parties that part-time employees who worked regularly during each of the 10 weeks, but because of an excused absence may have worked less than 20 hours in any of the 10 weeks, are eligible to vote if they averaged 20 hours per week for the 10-week period. The parties agreed, and we find, that no employee shall be declared ineligible because he did not work between April 12 and 26, 1944. The parties further agreed, and we find, that employees on the temporary pay roll are not eligible to vote.

DIRECTION OF ELECTIONS

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 Montgomery Ward

& Co., Incorporated, Chicago, Illinois, separate elections by secret ballot shall be conducted as early as possible, but not later than seven (7) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth 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 units found appropriate in Section IV, above, who were employed during the pay-roll periods ending in the week of April 23-29, 1944, including employees who did not work during said pay-roll periods 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 or not they desire to be represented by United Mail Order, Warehouse and Retail Employees Union, Local 20, of the United Retail, Wholesale and Department Store Employees of America, affiliated with the C. I. O., for the purposes of collective bargaining.