

In the Matter of BANKERS TRUST COMPANY AND BANKERS SAFE DEPOSIT COMPANY, ITS WHOLLY OWNED SUBSIDIARY and UNITED OFFICE & PROFESSIONAL WORKERS OF AMERICA, C. I. O.

*Case No. 2-R-4467.—Decided May 30, 1944*

*White and Case*, by *Mr. Chester Bordeau*, of New York City, for the Company.

*Boudin, Cohn & Glickstein*, by *Mr. Leonard B. Boudin*, of New York City, for the Union.

*Mr. A. Sumner Lawrence*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon an amended petition duly filed by United Office & Professional Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Bankers Trust Company, New York City, herein called the Bank, and Bankers Safe Deposit Company, New York City, herein called the Safe Deposit Company, herein collectively called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jerome I. Macht, Trial Examiner. Said hearing was held at New York City from April 21 to 24, 1944. The Companies 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 Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Company's request for oral arguments is hereby denied. 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 COMPANIES

Bankers Trust Company and Bankers Safe Deposit Company, a wholly owned subsidiary of Bankers Trust Company,<sup>1</sup> are New York corporations, each having a principal place of business in New York City. The Bank is engaged primarily in commercial banking, including the financing of war industries, is a member of the Federal Reserve System, and has extensive business transactions throughout the United States, Canada, and various foreign countries. Such transactions include deposit accounts in 17 banks in 9 States including the District of Columbia and excluding the State of New York, which accounts amounted on December 31, 1943, to a total of \$2,671,000. In addition thereto, 354 banks located in 44 States (other than New York), Alaska, District of Columbia, and Hawaii, had as of December 31, 1943, on deposit with the Bank deposits valued at approximately \$137,475,000. The Bank employs approximately 1,500 persons at its 3 New York offices and ranks seventh among the thousand largest banks in the United States.

Bankers Safe Deposit Company is engaged in the business of renting safe deposit space to the public from which the Safe Deposit Company received in the year 1943 the sum of \$84,268.35 in rentals for safe deposit boxes and space. As of December 31, 1943, approximately 77 percent of its safe deposit boxes and space under lease was rented to customers of the Bank. Of the boxes and space thus leased, about 13 percent was rented to customers whose addresses of record indicate that they are non-residents of the State of New York.

The Companies assert that they are not subject to the jurisdiction of the Board, contending that neither the Bank nor the Safe Deposit Company is engaged in interstate commerce or in any business that affects interstate commerce. On the basis of the facts set forth above, we do not agree with the contention of the Companies and conclude that they are engaged in commerce and that their operations constitute a single integrated enterprise affecting commerce within the meaning of the National Labor Relations Act.<sup>2</sup>

<sup>1</sup> The parties stipulated at the hearing, not only that the Safe Deposit Company is a wholly owned subsidiary of the Bank, but also that the two Companies are integrated and that so far as interstate commerce is concerned, anything affecting one will directly affect the other.

<sup>2</sup> See *Matter of City National Bank and Trust Company*, 50 N. L. R. B. 516, and cases cited therein.

## II. THE ORGANIZATION INVOLVED

United Office & Professional Workers 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

Prior to the filing of the present petition, the Union requested that the Companies recognize it as the exclusive bargaining representative of the floormen, watchmen, guards, and messengers employed by the Companies in their New York offices. The Companies declined to recognize the Union unless and until the Union had been certified by the Board in an appropriate unit.

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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

The Union contends that all floormen, watchmen, guards, guard clerks, and messengers in all branches of the Companies in New York City, excluding maintenance employees, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute an appropriate unit. The Companies, while agreeing to the exclusions requested by the Union,<sup>4</sup> urge an overall unit of all employees of the Companies in New York City.

In support of their contention, the Companies point to the fact that there is a centralization of management and a single personnel department to handle the labor relations of the Companies with respect to all the employees thereof; that the Company maintain numerous benefits and privileges such as group insurance, medical department, lunchroom, and an educational program, which are open alike to all employees; and that the group of protective employees, for whom the Union seeks a separate unit, are not under the super-

<sup>3</sup> The Field Examiner reported that the Union had submitted 49 designations dated between October and December 1943, bearing names of employees within the claimed appropriate unit containing approximately 122 employees.

<sup>4</sup> In addition to the exclusion of supervisory employees within the usual definition of the Board, both parties agreed to the exclusion of maintenance employees who do exclusively building maintenance work and have interests entirely different from those of the employees in the claimed appropriate unit.

vision of any one person but work in different departments. The Companies further point out that some transfers occur between the protective services and the clerical employees generally; that the Union has jurisdiction of and admits to membership not only the present group of protective employees, but also the clerical and general banking employees of the Companies; and that the Union has, in a number of cases involving other banking concerns, represented overall units of banking employees including the protective group herein concerned, and has issued leaflets which have been circulated among all the employees of various banks in the New York metropolitan area, including the Companies herein involved.

The Union, on the other hand, cites in favor of its position the fact that the protective employees in question have been recognized by the Companies as a separate group for the purpose of establishing job classifications; that such employees have a different salary range and are subject to different regulations with respect to promotions and salary increases; and that such transfers as occur between the clerical group and the protective employees herein concerned, are infrequent and arise in the case of transfers to the protective groups, because of the Companies' desire to retain on the pay roll for pension benefits certain clerical employees who by reason of age have become too slow for clerical work, and in the case of transfers to the clerical group, by way of promotion for such protective employees as have undertaken courses of study to qualify themselves for clerical positions. The Union further contends that protective employees as a group have similar skills, interests, and problems,<sup>5</sup> are exposed to dangers not generally shared by the clerical employees, and perform related tasks under substantially the same working conditions; and that while the Union has not strictly limited its activities to the group of protective employees, its present membership among the employees of the Companies is almost wholly confined to the protective group whose request for representation apart from the clerical employees provided the occasion for the Union's original attempt to organize the employees of the Companies.<sup>6</sup> In addition thereto, the evidence reveals that the Companies have no collective bargaining history upon an over-all basis. There is nothing in the record, moreover, to indicate

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<sup>5</sup> The classifications of floormen, watchmen guards, guard clerks, and messengers describe employees whose primary function is to protect or transport while protecting property or items of value belonging to the Companies. While none of the employees in the above classifications are militarized, all with the exception of the messengers are armed. The latter are, moreover, to some extent interchangeable with the guards and as such are armed when engaged in the performance of guard duties.

<sup>6</sup> The only evidence that the Union has obtained members among the Companies employees aside from the protective group is to the effect that the Union has received signed application cards from two individuals in the clerical group.

that any other labor organization has succeeded in organizing the group of clerical employees.

From the foregoing facts and upon the basis of the entire record, we are of the opinion that the unit proposed by the Union constitutes a homogeneous identifiable group appropriate for the purposes of collective bargaining.<sup>7</sup> Our finding in this respect, however, does not preclude a later determination that a larger unit is appropriate when effective organization has extended to other employees of the Companies.

We find that all floormen, watchmen, guards, guard clerks,<sup>8</sup> and messengers, employed in all branches of the New York City offices of Bankers Trust Company and Bankers Safe Deposit Company, New York City, excluding maintenance employees 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 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 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 Bankers Trust Company and Bankers Safe Deposit Company, New York City, 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 Second 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

<sup>7</sup> See *Matter of City National Bank and Trust Company of Chicago*, 50 N. L. R. B. 516.

<sup>8</sup> Guard clerks are hired primarily as guards, but have certain additional clerical duties which they perform when not actively engaged in the performance of guard duty.

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 or not they desire to be represented by United Office & Professional Workers of America, C. I. O., for the purposes of collective bargaining.