

In the Matter of METROPOLITAN LIFE INSURANCE COMPANY and AMERICAN FEDERATION OF INDUSTRIAL AND ORDINARY INSURANCE AGENTS' UNION #23253 (AFL)

In the Matter of METROPOLITAN LIFE INSURANCE COMPANY and AMERICAN FEDERATION OF INDUSTRIAL AND ORDINARY INSURANCE AGENTS' UNION #23371 (AFL)

Cases Nos. 8-R-1131 and 8-R-1370 respectively.—Decided June 24, 1944

Mr. Frank L. Danello and *Mr. John R. Hill*, for the Board.

Mr. Charles A. Horsky, of Washington, D. C., for the Company.

Mr. George L. Russ, of Washington, D. C., for the Federation and its locals.

Gold and McCann, by *Mr. Ray T. McCann*, of Milwaukee, Wis., and *Mr. Donald J. Dimock*, of Wausau, Wis., for the Independent.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed in Case No. 8-R-1131 by Local 23253 of American Federation of Industrial and Ordinary Insurance Agents' Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Metropolitan Life Insurance Company, New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James C. Batten, Trial Examiner. Said hearing was held at Toledo, Ohio, on October 11, 1943. The Board, the Company, Local 23253, and International Union of Life Insurance Agents, an unaffiliated labor organization, herein called the Independent, appeared and participated.¹ All parties were afforded full op-

¹ United Office and Professional Workers of America, affiliated with the Congress of Industrial Organizations, herein called the C. I. O., also served with notice, did not appear at the original hearing, nor at the further hearings hereinafter noted. Upon its request, the Trial Examiner granted the C. I. O. permission to file a brief in support of its contention with respect to a unit appropriate for the Company's employees.

portunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the parties signified their desire to enter into an agreement for a consent election among the Company's employees in a State-wide unit, to be held in January 1944. The petition was duly amended to indicate that the parent body of Local 23253, herein called the Federation, was the real party in interest in the proceeding and the unit described therein and limited to employees of the Company at Toledo, Ohio, was amended to include employees of the Company in the State. No consent election was, however, thereafter held. On December 1, 1943, the Federation filed a motion to withdraw its petition as amended at the hearing on October 11, 1943, and to reinstate the original petition filed by Local 23253. On December 3, 1943, the motion was granted. On December 24, 1943, Local 23371 of the Federation filed a separate petition for investigation and certification of representatives in Case No. 8-R-1370, alleging that a question had arisen concerning the representation of employees of the Company at Akron, Ohio.

Pursuant to notice, the Board provided for an appropriate consolidated hearing upon both petitions before Earl S. Bellman, Trial Examiner. Said hearing was held at Cleveland, Ohio, on January 17, 18, and 25, 1944. The Board, the Company, the Federation and its locals, and the Independent 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.

On April 18, 1944, a hearing was held before the Board at Washington, D. C., for the purposes of oral argument.² The Company and the Federation appeared and presented argument. The Independent and the C. I. O. did not appear. 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 COMPANY

Metropolitan Life Insurance Company, a New York corporation, has its principal office and place of business, known as the home office, in New York City. The Company is a mutual life insurance corpora-

² For the purposes of oral argument, the representation cases in the instant proceeding were consolidated with two other representation cases involving employees of the Company in Virginia. See *Matter of Metropolitan Life Insurance Company*, Cases Nos. 5-R-1369 and 5-R-1441, 56 N. L. R. B. 1642.

tion engaged in the business of selling and servicing life, health, and accident insurance in every State in the United States and in the Dominion of Canada.

On December 31, 1942, the Company had approximately 40,300,000 policies of insurance in force, with a total face value of approximately \$26,800,000,000. These policies were held by some 29,700,000 policyholders, residing in every State of the United States, in the District of Columbia, and in Canada. On December 31, 1942, the Company's admitted assets, consisting of cash, Government bonds, stocks, mortgages on real estate, real estate and bonds, real estate and policy loans, and notes, totaled a little less than \$6,000,000,000. All securities purchased by the Company are delivered to, or are immediately transferred to, and kept in, its home office at New York City except those on deposit with various Government agencies. The Company owns the real estate in New York upon which its home office is located, and other real estate used in the administration of its business in the States of New York, California, and Virginia, and in Ontario, Canada. The Company has acquired and owns other real estate through mortgage foreclosures, or conveyances in lieu of such foreclosures. On December 31, 1942, the Company owned, through such transactions, real estate valued at approximately \$259,000,000. During the 5-year period from 1938 to 1942 the Company annually invested in bonds, stocks, and mortgages approximately \$635,500,000. In 1942 it so invested approximately \$807,500,000.

The Company is licensed to do business in 48 States, in the District of Columbia, and in most of the Provinces of Canada. On December 31, 1942, there were in the United States 9 agency divisions of the Company's operations and 758 district offices. At this time, the Company had 28,378 employees, exclusive of 17,853 agents selling insurance and otherwise dealing with its policyholders.

During the calendar year 1942, the Company purchased for its operating requirements, furniture, fixtures, and mechanical equipment valued at \$991,456. Most of this equipment was shipped to the Company from points within the State of New York, and approximately 34 percent of such goods, originating in New York, was shipped to, and used in, Canada and States other than the State of New York. During the same period the Company purchased stationery supplies valued at \$1,502,092. Approximately 25 percent of these supplies, most of which originated in the State of New York, was shipped to offices of the company located in other States and in Canada. During the same period the Company spent approximately \$2,595,628 for postage and telephone, telegraph, and express services, and spent \$2,558,724 for traveling expenses.

We find that the Company's wide-spread financial and investment activities have a direct and substantial effect upon commerce between the several States and that the Company's various activities themselves constitute commerce, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

American Federation of Industrial and Ordinary Insurance Agents' Union and its Locals 23253 and 23371 are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Union of Life Insurance Agents is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE ALLEGED APPROPRIATE UNITS

The Company's home office is at New York City, where its insurance business is managed and directed by national directors and officers. For administrative purposes in the United States, the Company presently groups its agents in 12 agency divisions or territories. Each territory is under the direct control of a superintendent of agencies, who is to all intents and purposes the effective executive presiding over all district offices and office account agencies in that territory. Each of the offices in Ohio is under the supervision and control of the superintendent of agencies for territory G, which includes not only Ohio, but also Indiana and West Virginia. In territory G, as of November 24, 1943, there were 67 district offices, of which 41 were in Ohio. Of these, 2 are at Toledo, and 2 at Akron, Ohio.³ Each office is a small administrative unit under the charge of a manager directly responsible to the superintendent of agencies in the territory. Immediately under the manager are one or more assistant managers. Each office has a cashier and one or more other office employees.

Agents are authorized to solicit and write various types of insurance sold by the Company—ordinary, industrial, group and accident and health insurance. Their fees and rates of commissions are determined by the directors and officers of the Company at New York City and are uniform throughout the United States. All the factors which affect the agents' work, such as selection, promotion, compensation, working conditions, rules and regulations, supervision, and termination of employment, are uniform throughout the State of Ohio and territory G. At their request, agents are occasionally transferred from one district office to another within a territory. There

³ The Toledo offices include the office at Toledo and the office at North Toledo. The Akron offices include the Akron and Firestone offices.

are approximately 1364 agents in territory G, of which 878 are employed in Ohio. Of this number, 48 employees are assigned to the offices at Akron, and 58 to the offices at Toledo, Ohio.

The Federation and its locals contend that separate bargaining units limited to the agents of the Company at Akron and Toledo, Ohio, respectively, constitute appropriate bargaining units. The C. I. O., which is also engaged in organizing the Company's employees in Ohio, favors the city-wide units. The Company contends, and the Independent agrees with its contention, that the proposed city-wide units are not appropriate for bargaining, but that the appropriate unit for these employees should be State-wide in scope.

The Federation has centered its organizational efforts among employees of the Company at Toledo and Akron; the Independent, at Cincinnati, and the C. I. O., at Cleveland. None of these organizations desires to limit its organization of the Company's employees to the centers at which they successfully maintain their headquarters. None presently claims to represent a substantial number of employees in the State-wide unit which they admit is an appropriate bargaining unit for the Company's employees. The Federation and the C. I. O., however, urge that the Board set up city-wide units, pending a broad successful organizational campaign covering agents in a State-wide unit by one of the organizations represented herein. Based upon the extent of organization among employees of an employer, we have frequently found appropriate for bargaining purposes small groups of employees with a provision for revision of a unit upon a later showing of broader organization. We believe, however, that the principle upon which we have set up such units is not controlling in the instant case. Organization among insurance agents is comparatively recent, but is steadily growing. The tendency of such organization is toward State-wide units. Organization of employees of the Company and employees of the Prudential Insurance Company of America, its principal competitor, is proceeding along such lines. The Board found a State-wide unit appropriate for employees of the Company in Wisconsin⁴ and, subsequently, State-wide units have been established by consent-elections for employees of the Company in New Jersey, Minnesota, Pennsylvania, Connecticut, and Illinois,⁵ respectively. Organization has also progressed on a State-wide basis in the District of Columbia, in Massachusetts, and in California, although no bargaining representative has yet been selected by employees in these units so

⁴ *Matter of Metropolitan Life Insurance Company*, 43 N. L. R. B. 962; 44 N. L. R. B. 53, 54.

⁵ *Matter of Metropolitan Life Insurance Company*, Cases Nos. 2-R-4117, 18-R-724, 4-R-1149, 1-R-1755, and 13-R-2046.

far as the record discloses.⁶ On an extent-of-organization theory, the Board found appropriate a city-wide unit for agents of the Company at St. Louis and Clayton, Missouri,⁷ and a petition has recently been filed for a State-wide unit for agents of the Company in Missouri by the same labor organization.⁸ The Board has found State-wide units appropriate for employees of The Prudential Insurance Company of America in Maryland, in the District of Columbia,⁹ and in Minnesota,¹⁰ and by consent elections State-wide units have been established among agents of this employer in Delaware, Virginia, Michigan, Massachusetts, and New Jersey, respectively.¹¹ For employees of The Prudential Insurance Company of America, the Board found a city-wide unit appropriate for agents at Toledo, Ohio.¹² Subsequently, other employees in the State were organized. The Board within 6 months of its Toledo decision found appropriate a State-wide unit covering agents of this employer in Ohio, excluding those at Toledo and certified a different labor organization as their exclusive bargaining representative.¹³ Thus, the rapid growth of union organization among insurance agents makes it clearly appear that provisional units less than State-wide in scope are, under ordinary circumstances, unnecessary to make collective bargaining reasonably possible for them if they desire it. Accordingly, we are of the opinion that, in the absences of unusual circumstances, the practice of setting up units for insurance agents smaller than State-wide in scope should be avoided. In the instant case, since the Federation, the Independent, and the C. I. O. are all actively engaged in a broad organizational program in Ohio, and since it may reasonably be anticipated that one of these organizations may in the near future extend its membership to State-wide proportions, we are of the opinion that it will not effectuate the policies of the Act to set up city-wide units for employees of the Company in Ohio at this time. We shall therefore dismiss without prejudice the petitions filed herein.

Since the units proposed in this consolidated proceeding are not appropriate for the purposes of collective bargaining, we find that no questions have arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) of the Act.

⁶ *Matter of Metropolitan Life Insurance Company*, Cases Nos. 5-R-1340, I-R-1528, 20-R-1015, wherein consent elections were held.

⁷ *Matter of Metropolitan Life Insurance Company*, 54 N. L. R. B. 585

⁸ *Matter of Metropolitan Life Insurance Company*, Case No. 14-R-977.

⁹ *Matter of The Prudential Insurance Company of America*, 49 N. L. R. B. 450.

¹⁰ *Matter of The Prudential Insurance Company of America*, 47 N. L. R. B. 1103.

¹¹ *Matter of The Prudential Insurance Company of America*, Cases Nos. 5-R-1194; 5-R-1253; 7-R-1007; 1-R-1148, and 2-R-3201.

¹² *Matter of The Prudential Insurance Company of America*, 46 N. L. R. B. 430.

¹³ *Matter of The Prudential Insurance Company of America*, 50 N. L. R. B. 689; 52 N. L. R. B. 234; 53 N. L. R. B. 775.

ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record in this consolidated proceeding, the National Labor Relations Board hereby orders that the petitions for investigation and certification of representatives of employees of Metropolitan Life Insurance Company, New York City, filed by Local 23253 and Local 23371 of American Federation of Industrial and Ordinary Insurance Agents' Union, respectively, be, and they hereby are, dismissed without prejudice.