

In the Matter of THE REGISTER AND TRIBUNE COMPANY and DES MOINES MAILERS UNION No. 58, AN AFFILIATE OF THE INTERNATIONAL MAILERS UNION

Case No. 18-R-1154.—Decided February 2, 1945

Mr. Vincent Starzinger, of Des Moines, Iowa, for the Company.

Mr. Edward J. Fillenworth, of Indianapolis, Ind., for the I. M. U. Local.

Messrs. Robert D. Jackson and *Paul Welton*, of Des Moines, Iowa, and *Mr. Woodruff Randolph*, of Indianapolis, Ind., for the I. T. U. *Mr. Donald H. Frank*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Des Moines Mailers Union No. 58, an affiliate of the International Mailers Union, herein called the I. M. U. Local, alleging that a question affecting commerce had arisen concerning the representation of employees of The Register and Tribune Company, Des Moines, Iowa, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Des Moines, Iowa, on December 14, 1944. The Company, the I. M. U. Local, and the International Typographical Union, herein called the I. T. U., 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

1. THE BUSINESS OF THE COMPANY

The Company is an Iowa corporation whose principal business is the publication of a morning, an evening, and a Sunday newspaper

60 N. L. R. B., No. 74.

in Des Moines, Iowa. Both the daily and Sunday circulation exceed 30,000. Of the daily papers, one-half of one percent of the circulation is outside the State of Iowa, and one and one-half percent of the Sunday circulation is outside the State. Approximately 18,000 tons of newsprint are used annually, all of which is imported from outside the State. The Company maintains a News Bureau in Washington, D. C., and leases between 13 and 18 wires. It is a member of the Associated Press and the United Press, and uses numerous nationally syndicated features and the Chicago Daily News Foreign Service. The Company owns a majority of the common stock of Cowles Magazines, Inc., which publishes Look Magazine, and owns the stock of Cowles Broadcasting Co., which operates radio stations KRNT, Des Moines, and WOL, Washington, D. C. In addition to these activities, the Company has a job printing shop, a commercial engraving department, a syndicate department which sells feature comics to newspapers throughout the United States, and several rental properties which it operates.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act, and we so find.

II. THE ORGANIZATIONS INVOLVED

Des Moines Mailers Union No. 58, affiliated with the International Mailers Union, is a labor organization admitting to membership employees of the Company.

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III. THE QUESTION CONCERNING REPRESENTATION

The Company has bargained with the Des Moines Mailers Union No. 58, for the employees of its Mail Room for several years. In 1940, a closed shop contract was negotiated with the local union, then affiliated with the I. T. U., which was to expire on November 4, 1943, unless automatically extended. In the summer of 1943, a majority of the members of the local union voted to change its affiliation from I. T. U. to I. M. U. When, thereafter, a new contract was submitted to the Company by the I. M. U. Local, the Company refused to sign it so long as the affiliation with the I. M. U. was stated in the contract. As a result, the contract as signed in December 1943, omits all mention of affiliation. That contract was made effective as of November 4, 1943, and is to terminate on November 4, 1945, unless automatically extended. Provision is made therein for the opening of negotiations on wages on November 4 of any year during the life of the contract,

by written notice on or before October 1 of such year. By oral notice given prior to October 1, 1944, and by letter of October 3, 1944, the I. M. U. Local requested such negotiations for a new wage scale, and by letter of October 9, 1944, the I. M. U. Local served a demand on the Company that the existing contract be amended to show the I. M. U. affiliation. Thereafter the Company received a warning from the I. T. U. that recognition should not be granted the "Secessionist Mailers" since the I. T. U. had a chartered union of mailers in Des Moines, the officials of which were both mailer employees of the Company.¹ Faced with these claims, the Company refuses to carry on further negotiations with the I. M. U. Local until the National Labor Relations Board has certified it as the proper collective bargaining agent.

The Board as a general rule, will not proceed with an investigation as to representation where there exists a valid contract, having a reasonable period to run, with an active labor organization of clearly established identity. Here, however, there are conflicting claims which establish that there is an unresolved doubt with respect to the identity of the labor organization which should administer the contract. It is not our intention to invalidate the contract or to disturb it in any respect. The election which we shall hereinafter direct is for the purpose of determining the identity of the representative which shall administer the contract.²

A statement of a Board agent, introduced into evidence at the hearing, indicates that the I. M. U. Local represents a substantial number of employees in the unit hereinafter found appropriate.³

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 I. M. U. Local contends that the appropriate unit consists of all employees in the Mail Room of the Company. This is substan-

¹The Book of Laws of the I. T. U. states that no local union chartered by the I. T. U. may surrender its charter while there are eight members of the local who wish to retain that affiliation. There were more than eight members of the local union who voted against surrender of the I. T. U. charter and affiliation with the I. M. U. in 1943. Many of the members of the local union continued thereafter to retain their memberships in the I. T. U. The apparent reason for this was the desire to preserve certain pension, mortuary, and insurance benefits accruing to members of the I. T. U. There was some contention by the I. T. U. that the I. M. U. and the I. M. U. Local are not labor organizations but the latter's existence as such was amply borne out by abundant evidence and testimony at the hearing.

²See *Matter of Harbison-Walker Refractories Company*, 44 N. L. R. B. 816, and *Matter of Harbison-Walker Refractories Co.*, 43 N. L. R. B. 1349.

³The Field Examiner reported that the I. M. U. Local submitted a joint authorization which bore the names of 42 persons listed on the Company's pay roll of November 6, 1944, which contained the names of 59 employees in the appropriate unit. The I. T. U. relies on its previous contracts with the Company as evidence of its interest.

tially the unit embraced by the present and previous contracts of the Company. The I. T. U. contends that the unit appropriate is an industry-wide unit and that if an election is ordered it should be held among all the mailers in the nation. The I. T. U., however, offers no evidence in support of its contention and in its testimony admits that the history of bargaining with this Company has been on a single-employer basis. Our position on this contention and on the arguments stated in its support are discussed in detail in our Supplemental Decision and Order in *Matter of Post Printing and Publishing Co.*, 17-R-1005 and 17-R-1006,⁴ and nothing appears herein to call for further consideration of the contention.

Although the unions do not agree as to the correct geographical scope of the unit, they are agreed as to the classifications of employees appropriately to be included in the unit. They stipulated that the unit appropriately includes "all employees in the mail room" of the Company, "including supervisory employees." The present contract with the Company provides that "Foremen of the Mailing Department shall be members of Mailers Union No. 58 . . ." The superintendent is included in that category of employees. On the ground that the foremen and superintendents in the printing trades, while possessing supervisory authority, have been traditionally included within the bargaining unit, we are of the opinion that the supervisory employees involved herein are appropriately included in the unit for which the I. M. U. Local petitioned.⁵

There remains one class of employees to be considered. These are the permit men, whom the I. M. U. Local desires to include but whom the I. T. U. would exclude from the unit. The evidence shows that the permit men have designated the I. M. U. Local to represent them, and that they have been bargained for by the I. M. U. Local at various times. They are employees who, by agreement with the Union, have been hired by the Company and permitted to work by the I. M. U. Local, without meeting the requirement of membership in the I. M. U. Local, since the I. M. U. Local has not been able to fulfill its closed-shop obligation to furnish employees to the Company. The permit men are in training, under an accelerated program. They are regular employees doing mailing work as truly as any worker in the department. There are eight of such employees, and they will continue to work for the Company even after the war emergency. All have had newspaper experience prior to their employment by the Company. We are of the opinion that permit men are properly included in the unit petitioned for, and we shall include them in the unit hereinafter found appropriate.

⁴ 60 N. L. R. B. 231.

⁵ See *Matter of Cincinnati Daily Newspaper Publishers Association*, 55 N. L. R. B. 571, and *Matter of W. F. Hall Printing Company*, 51 N. L. R. B. 640.

We find that all employees in the Mail Room of the Company, including the foreman, superintendent, and permit men, 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

At the hearing, the I. T. U. representative moved that the date of the election be set "far enough in advance so that the Mailer members . . . will have a fair opportunity to vote knowing that they cannot be members in I. T. U. as well as I. M. U.," and he suggested February 1945. Noting the date of this Decision and Direction of Election, we find that it is unnecessary to pass upon the I. T. U.'s motion.

In addition, the I. T. U. moved that the Board "indicate on the ballot that a vote for representation by the I. M. U. will sever connections from the I. T. U." The motion is hereby denied.⁶

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot. The Unions agree that the "Saturday night men" should not participate in the election herein directed. These employees are casual, part-time workers who derive their income principally from employment elsewhere. Since their interest in conditions of employment does not approximate that of the other employees in the appropriate unit, we shall exclude them from the voting group. We shall direct that the employees of the Company eligible to vote in the election shall be, with the exception of the "Saturday night men," those employees in the appropriate unit who were employed during the pay-roll 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Register and Tribune Company, Des Moines, Iowa, 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 Eighteenth Region, acting

⁶ A similar motion was entered by the I. T. U. and denied by the Board in the *Matter of Post Printing and Publishing Co.*, 59 N. L. R. B. 1115.

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 the 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 "Saturday night men" and 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 they desire to be represented by Des Moines Mailers Union No. '58, an affiliate of the International Mailers Union, or by Des Moines Mailers Union No. 58, affiliated with the International Typographical Union, for the purposes of collective bargaining, or by neither.