

IN the Matter of MONTGOMERY WARD & COMPANY and RETAIL CLERKS  
INTERNATIONAL PROTECTIVE ASSOCIATION, AFFILIATED WITH THE  
A. F. L.

*Case No. 7-R-1877.—Decided February 13, 1945*

*Mr. William B. Powell*, of Chicago, Ill., for the Company.

*Mr. George S. Fitzgerald*, of Detroit, Mich., for the A. F. L.

*Mr. Nicholas J. Rothe*, of Detroit, Mich., for the C. I. O.

*Mr. David V. Easton*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon an amended petition duly filed by Retail Clerks International Protective Association, affiliated with the A. F. L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Montgomery Ward & Company, Royal Oak, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Detroit, Michigan, on December 27 and 28, 1944. The Company, the A. F. L.,<sup>1</sup> and United Retail, Wholesale and Department Store Employees of America, C. I. O., and its Local 332, herein collectively called the C. I. O., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the C. I. O. moved to dismiss the petition herein. The Trial Examiner referred this motion to the Board. For reasons stated in Section III, *infra*, the motion is granted. 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:

<sup>1</sup> The A. F. L. also appeared on behalf of its Local 1514.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Montgomery Ward & Company, an Illinois corporation, is engaged in the sale and distribution of general merchandise at retail through the media of mail order houses and retail stores. The Company operates 9 mail order houses and approximately 650 retail stores throughout the United States. The Company owns and operates 4 retail stores in the Detroit, Michigan, metropolitan area, and we are solely concerned herein with one of these stores, namely: the retail store located at Royal Oak, Michigan. Approximately 90 percent of the merchandise sold by the 4 stores in this area is purchased from sources located in States other than the State of Michigan, and less than 1 percent of the sales of these stores is shipped to points outside the State of Michigan. Orders from the catalogue of the Company are taken in each of the 4 retail stores in this area, and 90 percent of such catalogue merchandise is shipped directly to the Company's customers from its warehouse located in Chicago, Illinois. The total mail order business done by the 4 stores approximates 3 percent of the total volume of business. This percentage is the same with particular reference to the business of the Royal Oak store.

In view of the foregoing facts, we find that the Company, in the operation of its Royal Oak store, is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

Retail Clerks International Protective Association, and its Local 1514, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Retail, Wholesale and Department Store Employees of America, and its Local 332, are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

## III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On October 16, 1944, the A. F. L. filed the original petition in this proceeding seeking an investigation and certification of representatives of employees in the Company's Royal Oak store. Thereafter, in November, it orally requested recognition from the Company as the collective bargaining representative of certain employees in that store, and in the same month filed the amended petition herein. By letter dated December 11, 1944, addressed to the Company's district manager, the A. F. L. repeated its request for recognition, and on Decem-

ber 21, 1944, the Company replied by letter stating that "this is a matter to be decided by the National Labor Relations Board . . ."

On January 13, 1942, the C. I. O. was certified as the collective bargaining representative of employees of the Company's Royal Oak store.<sup>2</sup> Subsequently, on February 19, 1942, the Company and the C. I. O. reached an accord, which was reduced to memorandum form, upon certain provisions with respect to a collective bargaining agreement. However, the C. I. O. refused to execute a contract consisting solely of these provisions, and the memorandum was not signed by either of the parties. In a letter dated November 5, 1942, the C. I. O. requested the Company to meet with it and negotiate concerning wages and other matters. Negotiations were conducted by the parties pursuant to the C. I. O.'s request, but no agreement was consummated regarding the issues raised. On December 7, 1942, the C. I. O. resorted to the National War Labor Board for determination of the issues of wages and whether or not union shop and check-off seniority, and arbitration provisions should be included within a collective bargaining agreement between the parties. Hearings upon these issues were conducted in January 1943 before a mediation panel, which thereafter issued a report unanimously recommending the inclusion within a collective bargaining agreement of maintenance-of-membership and check-off, seniority, and arbitration clauses. At that time the mediation panel did not make any report with respect to wages, but apparently decided to issue a separate report after a study had been made by the Bureau of Labor Statistics of the wages paid at the Company's stores and by its competitors. These recommendations were adopted *in toto* by the National War Labor Board in its opinion and directive order issued August 20, 1943.<sup>3</sup>

The study of the Bureau of Labor Statistics was completed on July 1, 1943, and copies were sent to the parties. However, the parties failed to reach an agreement on wages, and a further hearing was held before a mediation panel on September 23, 1943. Thereafter the National War Labor Board issued a directive order on May 22, 1944, supplementing its directive order of August 20, 1943, by providing that certain terms and conditions of employment respecting wages should govern the relations between the parties.<sup>4</sup> The two directive orders were later reaffirmed by the National War Labor Board in a directive order issued December 14, 1944,<sup>5</sup> which provided that:

<sup>2</sup> This certification is reported in 36 N. L. R. B. 204

<sup>3</sup> See in *Re Montgomery Ward and Company*, 10 War Lab. Rep. 415; Case No. 3930-CS-D.

<sup>4</sup> In *Re Montgomery Ward and Company, Inc.*, 16 War Lab. Rep. 399, Case No. 3930-D.

<sup>5</sup> In *Re Montgomery Ward and Company, Inc.*, War Lab. Rep. , Case No. 3930-CS-D. Many of the foregoing facts are set forth in the opinions accompanying the directive orders issued by the National War Labor Board, of which we take official notice.

The terms and conditions of employment set forth in the August 20, 1943 and May 22, 1944 directive orders shall be incorporated in a signed agreement . . .

Meanwhile, negotiations between the Company and the C. I. O. affecting all four stores in the Detroit, Michigan, metropolitan area, including the Royal Oak store, were being continued and a proposed agreement, including provisions for back pay, was submitted to the Company by the C. I. O. at a meeting in July 1944. At a subsequent meeting held in the same month, the C. I. O.'s Regional Director insisted that, in accordance with the directives of the National War Labor Board, a maintenance-of-membership and check-off provision be included within the agreement, and the Company thereupon broke off negotiations.

At the hearing, the C. I. O. moved for a dismissal of the proceeding, contending, in effect, that it had been compelled to resort to the processes of the National War Labor Board, that Directives issued by that agency were not complied with by the Company, that it is entitled to a reasonable time within which to obtain a contract including the terms of such Directives, and that it is entitled to a further reasonable period within which "to put that contract into force."

As a newly certified bargaining representative, within the first year of its designation by the Board, the C. I. O. initiated proceedings before the National War Labor Board in order to resolve the substantial issues relating to collective bargaining<sup>6</sup> which had arisen between it and the Company.<sup>7</sup> Directives disposing of these matters were then issued by that agency and were later reaffirmed by it on December 14, 1944, with the statement that the terms and conditions of employment which they contained were to be "incorporated in a signed agreement."

Had the case been brought before us for decision after the institution of the National War Labor Board proceedings and prior to the issuance of the Directives, we are satisfied that, in accordance with our well-settled principles, we would have dismissed the petition.<sup>8</sup> In *Matter of Kennecott Copper Corporation*<sup>9</sup> we held:

. . . An election . . . might serve to negate the proceedings of the War Labor Board, require new proceedings before that Board,

<sup>6</sup> As noted above, questions concerning wages, union shop and check-off, seniority and arbitration were submitted to the National War Labor Board for determination.

<sup>7</sup> Inasmuch as the subject matter of these issues was not covered by the memorandum of February 19, 1942, and since the parties did not sign that document, we find no merit in the Company's assertion to the effect that the CIO has had the benefits of a full collective bargaining relationship. Significantly, an A. F. L. witness testified that when she presented grievances as the CIO's chief steward at the Royal Oak store, no mention was ever made of the 1942 memorandum.

<sup>8</sup> *Matter of Aluminum Company of America*, 53 N. L. R. B. 593; *Matter of Kennecott Copper Corporation, Nevada Mines Division*, 51 N. L. R. B. 1140.

<sup>9</sup> See footnote 8, *supra*.

and create uncertainty and unsettled bargaining conditions for an additional indeterminate period. From the standpoint of stable labor relations, it is undesirable to penalize a statutory representative for unavoidable delays consequent upon its voluntary acceptance of orderly procedures established by governmental authority for the adjustment of differences with an employer: *To charge a certified bargaining representative with such delays would have the effect of discouraging resort to such orderly procedures and promoting industrial strife and unrest which the Act was designed to avoid . . .* [Italics supplied.]

And, if the matter were to have come to us for determination early in the term of a contract of reasonable duration entered into between the Company and the C. I. O. embodying the provisions of the Directives, we also would have refused to direct an election, thus permitting the employees the enjoyment of these contractual gains.<sup>10</sup>

In the present posture of the case the content of the issued Directives reaffirmed as recently as December 1944, has not been incorporated into a signed agreement, as ordered. We are asked to afford a labor organization, forced into a large measure of inactivity by recourse to the peaceful means of settlement provided by the Government,<sup>11</sup> a reasonable period within which to attain this end, and, achieving it, an additional reasonable time to insure to the employees its benefits. This request, in our opinion, is entirely justified, and we shall grant it. Accordingly, we find that no question affecting commerce exists at this time concerning the representation of employees of the Company's Royal Oak store. The A. F. L.'s amended petition will be dismissed.<sup>12</sup>

#### ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the National Labor Relations Board hereby orders that the amended petition for an investigation and certification of representatives of employees of Montgomery Ward & Company, Royal Oak, Michigan, filed by Retail Clerks International Protective Association, affiliated with the A. F. L., be, and it hereby is, dismissed.

MR. GERARD D. REILLY, concurring:

I concur in the view that the petition should be presently dismissed, but on grounds which the majority opinion has not set forth.

<sup>10</sup> *Matter of Aluminum Company of America*, 58 N. L. R. B. 24.

<sup>11</sup> There is no evidence that the C. I. O. failed in any manner to act expeditiously.

<sup>12</sup> We wish to make it clear that the matter contained in the concurring opinion, which was fully considered by us and rejected as irrelevant, forms no part of the basis for our decision.

Judicial notice may be taken of the fact that the Royal Oak Store, the subject of these proceedings, is one of the retail outlets of Montgomery Ward & Company, which is being operated by the Secretary of War pursuant to an Executive Order of the President,<sup>13</sup> based in part on Section 3 of the War Labor Disputes Act, popularly known as the Smith-Connally Act.<sup>14</sup> The seizure of these properties has been the subject of litigation in the United States District Court of the Northern District of Illinois,<sup>15</sup> and the Government has announced its intention of appealing a judgment of that Court denying a petition for an injunction and declaratory judgment. Since a stay has been granted pending appeal, it is apparent that the War Department will continue to operate this enterprise for a considerable period. We are therefore faced with the question as to whether or not this is an appropriate time to issue an order for an election.

Since the Secretary of War's authority over labor relations is limited by Section 2 of the Order, which directs him, *inter alia*, to "observe the terms and conditions of the directive orders of the National War Labor Board, including those dated June 6 and 16, 1944, and December 14 and 15, 1944, it would appear that he would not be authorized to enter into negotiations for other terms and conditions of employment. Under these circumstances, selection of a new bargaining agent would be nugatory. Consequently, an election at this time would be premature.

I think the dismissal of the petition should be without prejudice, however, since the case in other respects is not readily distinguishable from the *Yale and Towne* case.<sup>16</sup>

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<sup>13</sup> Executive Order No. 9508, dated December 27, 1944.

<sup>14</sup> Act of June 25, 1943, U. S. Code, Title 50, Sec. 1503.

<sup>15</sup> *U S v. Montgomery Ward & Co.*, No. 44C1611 (15 LRR 745)

<sup>16</sup> *Matter of Automatic Transportation Company, Division of The Yale & Towne Mfg Co.*, 59 N. L. R. B. 970.