

In the Matter of PEOPLES LIFE INSURANCE COMPANY OF WASHINGTON,
D. C. and AMERICAN FEDERATION OF INSURANCE SUPERVISORS' UNION
No. 23891, A. F. L.

Case No. 5-C-2229.—Decided October 14, 1947

Mr. Sidney Grossman, for the Board.

Mr. Joseph F. Castiello, of Washington, D. C., for the respondent.

Mr. George L. Russ, of Washington, D. C., for the Union.

DECISION

AND

ORDER

On January 7, 1947, Trial Examiner Peter F. Ward issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had unlawfully refused to bargain with the Union as the collective bargaining representative of a unit of its supervisory employees previously found appropriate by the Board,¹ and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto.

Since the issuance of the Intermediate Report herein, the National Labor Relations Act has been amended so as to exclude "any individual employed as a supervisor" from the definition of "employee" contained in the Act.² Supervisory employees are therefore now outside the coverage of the Act. We are therefore of the opinion, without considering the merits of the case, that it would not effectuate the policies of the Act, as amended, to require the respondent to take any remedial action in this case, which involves nothing except a refusal to bargain.³ Accordingly, we shall dismiss the complaint.

ORDER

IT IS HEREBY ORDERED that the complaint against the respondent, Peoples Life Insurance Company of Washington, D. C., Washington, D. C., be, and it hereby is, dismissed.

¹ *Matter of Peoples Life Insurance Company of Washington, D. C.*, 68 N. L. R. B. 863. The Union won the election and was certified by the Board on July 26, 1946.

² Section 2 (3) and (11) of the Act, as amended.

³ *Matter of Westinghouse Electric Corporation*, 75 N. L. R. B. 1. *L. A. Young Spring & Wire Corporation v. N. L. R. B.*, 163 F. (2d) 905 (C. A.-D. C.) 1.

75 N. L. R. B., No. 6

INTERMEDIATE REPORT

Mr. Sidney Grossman, for the Board.

Mr. Joseph F. Castiello, of Washington, D. C., for the Respondent.

Mr. George L. Russ, of Washington, D. C., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by American Federation of Insurance Supervisors' Union No. 23891, A. F. L., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated December 16, 1946, against Peoples Life Insurance Company of Washington, D. C., herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing and copies of the charge were duly served upon the Respondent and the Union.

With respect to the unfair labor practices the complaint alleges in substance that: (1) all staff superintendents and special ordinary superintendents employed in all the Respondent's District offices located in the city of Washington, D. C., namely, District #1, and District #2, but excluding all general managers, agents, office clerks, and cashiers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act; (2) since on or about October 18, 1946, and all various occasions thereafter, the Respondent has refused to recognize and to bargain collectively with the Union as the exclusive bargaining representative of the Respondent's employees in the unit designated by the Board as appropriate for the purposes of collective bargaining, notwithstanding a majority of said employees in such appropriate unit by secret ballot conducted on July 17, 1946, selected said Union as their collective bargaining representative and said Union was so certified by the Board as such representative on July 26, 1946; (3) since on or about July 26, 1946, and continuously down to the date of the issuance of the complaint, the Respondent has dealt directly and individually with its employees in the unit described above; and (4) by the acts described above, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Thereafter and on or about December 27, 1946, the Respondent filed its answer in which it admitted certain allegations of the complainant but denied that it had committed any unfair labor practices. In substance, the answer admitted that the Union had been certified by the Board as the exclusive representative for the purposes of collective bargaining of the employees in a unit found to be appropriate by the Board, and that it had refused to bargain collectively with the Union for the following reasons:

a. That the unit described in said Complaint is legally inappropriate since the staff superintendents and special ordinary superintendents are not employees within the meaning of the National Labor Relations Act.

b. The Supervisors' Charging Union is not independent of the Union representing the non-supervisory agent-employees.

c. The Supervisors' Charging Union and the Union of the Respondent's non-supervisory agent-employees are both affiliated with the Industrial and Ordinary Insurance Agents Counsel, and are all for practical purposes one and the same.

By stipulation of the parties the record in the *Matter of Peoples Life Insurance Company of Washington, D. C.*, Case No. 5-R-2162, including the transcript

and the exhibits, the Board's Decision and Direction of Election and the Board's Certification of Representation, was incorporated into and made part of the record herein.

Pursuant to notice a hearing was held in Washington, D. C., on January 3, 1947, before Peter F. Ward, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the Respondent, and the Union were represented by counsel. Full opportunity to be heard, and to examine and cross-examine witnesses, was afforded all parties. At the close of the evidence, counsel for the Board made a motion, in which he was joined by counsel for the Respondent, to conform the pleadings to the proof on formal matters. The motion was granted. At the close of the hearing, counsel for the Respondent moved that the complaint be dismissed; ruling thereon was reserved by the undersigned and it is hereby denied. All parties were given an opportunity to argue orally before the undersigned. Counsel for the Board and the Respondent availed themselves of this opportunity. The parties were afforded an opportunity to file proposed findings of fact and conclusions of law and briefs with the undersigned which was waived by the parties.

Upon the entire record in the case the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Peoples Life Insurance Company of Washington, D. C., incorporated in the District of Columbia, maintains its office in Washington, D. C. It is engaged in the business of insuring the lives of its policy holders. In the operations of its business, the Respondent maintains 36 district offices and 19 sub-offices in the States of Maryland, West Virginia, Delaware, Ohio, and in the District of Columbia. The Respondent employs approximately 180 persons in its home office and approximately 1100 in its field offices. Of the 1100 in the field offices, approximately 99 employees are employed in District #1 and District #2 offices of Washington, D. C., involved in these proceedings. Of these, 15 are engaged as staff superintendents and 2 as special ordinary superintendents. The Respondent's assets total approximately \$35,000,000, which consist largely of cash, bonds, mortgages, and real estate and which assets are maintained by the Respondent in accordance with the various State laws to meet policy reserves. Respondent has approximately 1,165,000 policies in force with a total face value of \$330,000,000. The Respondent admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

American Federation of Insurance Supervisors' Union No 23891, affiliated with the American Federation of Labor, is a labor organization, admitting supervisory employees of the Respondent to membership¹

III THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1 The appropriate unit

On June 21, 1946, after a hearing duly held, the Board issued a Decision and Direction of Election² wherein it found, contrary to the contentions of the

¹ Findings in this section are based upon a stipulation of the parties entered into at the hearing herein

² *Matter of Peoples Life Insurance Company of Washington, D. C.*, 68 N. L. R. B. 863.

Company,³ that all staff superintendents and special ordinary superintendents in all the Respondent's District offices located in the city of Washington, D. C., namely, District #1 and District #2, but excluding all general managers, agents, office clerks, and cashiers, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. On the basis of the foregoing and the entire record herein, the undersigned finds that the above-described unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2 Representation by the Union of a majority in the appropriate unit

On July 17, 1946, pursuant to the Board's Decision and Direction of Election, dated June 21, 1946, an election was held among the employees in the above-found appropriate unit at which an overwhelming majority of said employees by secret ballot selected the Union as their bargaining representative. By order dated July 26, 1946, the Board certified the Union as the exclusive bargaining representative of the employees in said unit. The undersigned accordingly finds that on and at all times after July 26, 1946, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid bargaining unit, and, pursuant to Section 9 (a) of the Act, the Union was on July 26, 1946, and at all times thereafter, has been and now is the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The complaint alleges, the Respondent's answer admits, and the undersigned finds, that on or about October 18, 1946, and at various times thereafter, the Union requested the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, or other conditions of employment, and that on or about October 22, 1946, and at all times thereafter, down to and including the date of the issuance of the Complaint, the Respondent refused and continues to refuse to bargain collectively with the Union. The undersigned accordingly finds that Respondent on October 22, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *Interference, restraint, and coercion*

The complaint alleged, *inter alia*, that the Respondent has, since on or about July 26, 1946, and continuously to the date of the issuance of the Complaint, in violation of Section 8 (1) of the Act, dealt directly and individually with its employees in the appropriate unit concerning rates of pay, wages, hours of employment, and other conditions of employment.

³ The Respondent, both in the prior Representation proceedings and herein, contended that the unit described in the Complaint is "legally inappropriate since staff superintendents and special ordinary superintendents are not employees within the meaning of the National Labor Relations Act," and that the Union herein and the Union of the Respondent's non-supervisory agent-employees are both affiliated with the same parent Union, thereby raising the identical issue determined by the Board in *Matter of Jones & Laughlin Steel Corporation*, 66 N L R B. 386 (decided March 6, 1946), which decision is reaffirmed by the Board in the *Matter of Jones and Laughlin Steel Corporation*, 71 N L R B 1261 (decided December 30, 1946). Since the foregoing decisions are controlling here, the Respondent's contentions in this connection are without merit. It is so found.

The Respondent in its answer categorically denied the foregoing allegations, but at the hearing stipulated that it:

has continued its practice of dealing unilaterally and directly with the individual employees of the unit found appropriate by the Board in Case No. 5-R-2162, without consultation or discussion with the Union, of all matters pertaining to wages, hours, and working conditions of the employees in said appropriate unit.

The Respondent contends, in effect, that since it, in good faith, deems the unit found appropriate by the Board, to be 'legally inappropriate,'"⁴ it is justified in continuing its former practice of dealing unilaterally with its employees and without consultation or discussion with the Union. This contention is without merit.⁵ The undersigned accordingly finds that by the conduct above described the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It has been found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit; it will be recommended that Respondent upon request bargain collectively with the Union.

Because of the basis of the Respondent's refusal to bargain, as indicated in the facts found above, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the Respondent's conduct in the past, the undersigned will not recommend that Respondent cease and desist generally from the commission of unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that the Respondent cease and desist from the unfair labor practices found and from in any manner interfering with the efforts of the Union to bargain collectively with it.⁶

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. American Federation of Insurance Supervisors' Union No. 23891, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act

2. All staff superintendents and special ordinary superintendents employed in

⁴ Since this contention was litigated in the prior proceedings above referred to and determined adversely to the Respondent, the undersigned finds it unnecessary to discuss the contentions further herein.

⁵ In the *Matter of Arundel Corporation and International Union of Marine and Shipbuilding Workers of America, CIO, Local 143*, 59 N. L. R. B. 505.

⁶ See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426.

namely, District #1 and District #2, but excluding all general managers, agents, office clerks, and cashiers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3 American Federation of Insurance Supervisors' Union No. 23891, A. F. L., was on July 26, 1946, and at all times thereafter, has been the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act

4 By refusing on or about October 22, 1946, and at all times thereafter, to recognize and to bargain collectively with American Federation of Insurance Supervisors' Union No. 23891, A. F. L., as the exclusive representative of all its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the Respondent, Peoples Life Insurance Company of Washington, D. C., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to recognize and to bargain collectively with American Federation of Insurance Supervisors' Union No. 23891, A. F. L., as the exclusive representative of all staff superintendents, and special ordinary superintendents employed at all of the Respondent's District offices located in the city of Washington, D. C., namely, District #1 and District #2, but excluding all general managers, agents, office clerks, and cashiers;

(b) Engaging in like or related acts of conduct interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist American Federation of Insurance Supervisors' Union No. 23891, A. F. L., or any other labor organization of their choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Insurance Supervisors' Union No. 23891, A. F. L., as the exclusive representative of all its employees in the aforesaid appropriate unit;

(b) Post in its various offices in the District of Columbia copies of the notice attached to the Intermediate Report marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Fifth Region, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt of this Intermediate Report;

(c) Notify the Regional Director for the Fifth Region, in writing, within ten (10) days from the date of the receipt of this Intermediate Report what steps the Respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the Respondent notifies said Regional Di-

rector in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203 39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203 38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203 65. As further provided in said Section 203 39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

PETER F. WARD,
Trial Examiner.

Dated January 7, 1947

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with American Federation of Insurance Supervisors' Union No 23891, A F L, as the exclusive representatives of all employees in the bargaining unit described herein with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is.

All staff superintendents and special ordinary superintendents in all of the Respondent's District offices, namely, District #1 and District #2, but excluding all general managers, agents, office clerks, and cashiers

We will not in any manner interfere with the efforts of the above-named union to bargain with us or refuse to bargain with said Union as the exclusive representative of all our employees in the above-described appropriate unit

We will not deal directly and individually with the employees in the appropriate unit concerning rates of pay, wages, hours of employment, or other conditions of employment.

PEOPLES LIFE INSURANCE COMPANY OF WASHINGTON, D. C.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.