

In the Matter of A. S. ABELL COMPANY, PUBLISHER, THE SUN PAPERS:
THE SUN, THE SUNDAY SUN, THE EVENING SUN, EMPLOYER *and*
AMERICAN NEWSPAPER GUILD, CIO, PETITIONER

Case No. 5-RC-104.—Decided January 11, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization named below claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks a unit composed of all employees in the editorial and news departments of the Employer, including telephone operators, but excluding certain managerial and administrative employees, and supervisors.¹ The Employer contends that in addition to those excluded by the petitioner, editorial writers, telephone operators, and copy boys and copy girls should be excluded from a unit of news department employees; and that certain individuals should be

¹ The parties are in agreement as to the exclusion of the following: publisher; executive editor; assistant to executive editor; general managing editor; editor-in-chief; editor, The Sun; editor, The Evening Sun; managing editor, The Sun; managing editor, The Evening Sun; confidential secretaries to all of the foregoing; head of Universal Art Department; General Feature editor; Sunday Feature Section editor; Sunday Rotogravure editor; director of photography; city editor, The Sun; city editor, The Evening Sun; assistant managing editors, The Sun; assistant managing editors, The Evening Sun; sports editor, The Sun; sports editor, The Evening Sun; news editor, The Sun; news editor, The Evening Sun; chief librarian; and employees of the Washington Bureau working in Washington.

excluded from any unit found appropriate on the ground that they are confidential or managerial employees, or supervisors.²

The disputed categories are as follows:

1. *Editorial writers*: The Employer contends that editorial writers are managerial employees, have no community of interest with employees of the news staffs, and should be excluded from a unit of such employees. The Petitioner contends that the editorial and news departments together constitute an appropriate unit. Editorial writers of The Sun and The Evening Sun are under the direction of an editor-in-chief. They are separately located, have private offices, and their working conditions are generally dissimilar from those of the news-gathering staff. They have daily conferences at which the editorial policy of the newspapers is discussed and formulated. The Employer has an unwritten "body of doctrine" which guides editorial writers in the preparation of editorials. Editorial writers are hired only if their philosophy coincides with this established doctrine, and the Employer may discharge any who deviate therefrom. As long as they remain within the framework of this policy, they may exercise considerable discretion as to the editorial position of the newspapers on specific issues.

The contention that editorial writers are "managerial" employees was rejected in another newspaper case in which the Board held that "the responsibilities of the editorial writers are not substantially different from those of the other employees" of the news staff.³ Where special circumstances are shown, the Board has found that an editorial adviser "participates in the formulation, determination, and effectuation of management policy,"⁴ but as a general rule such writers are included, with reporters, rewrite men, and other editorial employees, in one unit.⁵ The modern metropolitan newspaper is a large-scale business enterprise. The editorial content of a newspaper constitutes a relatively small proportion of the final product of such an enterprise. Management policy includes administrative, advertising, and business policy, as well as editorial policy. True, editorial writers may express management policy on certain topics, but even in

² On July 22, 1938, the Employer and the Baltimore Newspaper Guild, C. I. O., entered into an agreement for a consent election. The parties stipulated that the appropriate unit should include editorial writers, copy boys, make-up men, assistant city editors, and financial editors, all of whom the Employer now seeks to exclude, and that it should exclude telegraph editors and the assistant Sunday editor, whom the Petitioner would now include. *Matter of A. S. Abell Company*, 5-R-197.

³ *Matter of Worcester Telegram Publishing Company, Inc.*, 61 N. L. R. B. 1118.

⁴ *Matter of Marcellus M. Murdock, d/b/a The Wichita Eagle*, 69 N. L. R. B. 1270.

⁵ *Matter of The Register & Tribune Company*, 73 N. L. R. B. 728; *Matter of Worcester Telegram Publishing Company, Inc.*, supra; *Matter of Times Publishing Company*, 49 N. L. R. B. 506; *Matter of Telegram Publishing Company*, 44 N. L. R. B. 461; *Matter of New York Times Company*, 32 N. L. R. B. 928.

so doing they are guided by a "body of doctrine" which, though more nebulous than the blueprint which guides a skilled craftsman, nonetheless exists as a restriction on the exercise of their full discretion. We find no basis in the record for a conclusion that the Employer's editorial writers formulate or determine management policy.

The Employer states that it has carefully selected and instructed its editorial writers, and that it insists that they keep themselves free from outside commitments which might impair their judgment or divide their loyalties. It contends that to ask such men to participate in a union election is to ask them to compromise themselves, to yield part of their loyalty to an outside organization. The Board rejects this contention. We cannot subscribe to the suggestion that participation in a union election or membership in a labor organization "compromises" integrity or freedom of thought. The Supreme Court dismissed a similar argument, saying:

The order of the Board in nowise circumscribes the full freedom and liberty of the Petitioner to publish the news as it desires it published or to enforce policies of its own choosing . . . and . . . to discharge . . . any editorial employee who fails to comply with the policies it may adopt.⁶

With regard to the Employer's contention that editorial writers lack a community of interest with other employees, the record in this case indicates that there is occasional consultation between editorial writers and newsmen, for the purpose of obtaining background information or suggesting news stories, and that transfer of an employee from the reportorial staff to the editorial writing staff is not unknown. Clearly there is an interdependence between employees of the news department who gather and write news, and editorial writers, who editorialize that news. In view of the decisional pattern in the newspaper industry, we find that a unit including both editorial and news departments is appropriate for collective bargaining.

2. *Telephone operators*: The Petitioner contends that the telephone operators should be permitted to determine for themselves whether or not they wish to be included in the unit. Telephone operators comprise a subdivision of the Employer's business department. We find no justification in the record for departing from our practice of excluding such employees from a unit composed of editorial and news departments.⁷

3. *Copy boys and copy girls*: The Employer contends that "copy children" are messengers who have such routine duties as filling paste

⁶ *Associated Press v. N. L. R. B.*, 301 U. S. 103

⁷ See *Matter of Field Enterprises, Inc.*, 73 N. L. R. B. 141, and cases cited therein

pots, sharpening pencils, and running errands; that they are transient employees who remain with the Employer for short periods of time; and therefore, that they have no community of interest with reporters, rewrite men, and copy readers of the news department. The Petitioner seeks their inclusion in the proposed unit.

The Employer's normal complement of copy boys is approximately 30. In the 2½ years preceding the hearing, the Employer hired 154 copy boys and girls, and 147 of them left its employ. Although many of these employees remain with the Employer for only 6 months to a year, at least 8 or 10 copy boys have been promoted to jobs as reporters, photographers, and other positions. Thus, although hired to do the menial tasks about the news department, these employees have an opportunity to progress if they have the interest and ability to do so. They work in the news department, are a small but indispensable cog in the production of the newspaper, and have traditionally been included in editorial units, even where they are only part-time employees.⁸ For these reasons, we shall include them in the unit hereinafter found appropriate.

4. *Assistant city editors*: The Employer contends that assistant city editors are supervisors and should therefore be excluded from the unit sought by the Petitioner. There are two assistant city editors on the staff of The Sun and two on The Evening Sun. They are under the direct supervision of their city editor and under the general supervision of a managing editor or assistant managing editor. On each paper, the city editor and his two assistant city editors arrange their shifts to cover a period of 12 to 16 hours. The city editor is present during the busiest portion of the day, and the assistant city editors are in charge of the city desks before he arrives and after he leaves. At least 1 day a week the city editor is off duty, and the assistants are then in sole charge. The assistant city editors read copy and make routine assignments to reporters. They can reject stories, and are occasionally consulted by management with regard to the quality of work being done by particular reporters. As there have been very few discharges from the Employer's staff, there was much conjecture but little evidence in the record as to the authority of assistant city editors to recommend discharges. Copy boys and girls are hired by the assistant city editors, but all other hiring is done by a managing editor, an assistant managing editor, or a city editor. The authority to grant promotions is vested in the city editor or his superiors, although the opinion of an assistant city editor is given some

⁸ *Matter of Marcellus M Murdock, d/b/a The Wichita Eagle*, 69 N L R B 1270; *Matter of Chicago Daily News*, 56 N L R B 274; *Matter of The New York Times Company*, 32 N L R B 928

weight. These assistant city editors appear to have the authority effectively to recommend changes in the employment status of some of their subordinates, and at regular intervals they responsibly direct a large department.⁹ Accordingly, we shall exclude them from the unit.

5. *Telegraph editors and chiefs of copy desks:* On both The Sun and The Evening Sun there is a copy desk which is under the direction of the news editor; of a telegraph editor, who functions as an assistant to the news editor; and of a chief of the copy desk, who is commonly referred to as the "slot man." The Employer seeks to exclude news editors, telegraph editors, and chiefs of copy desks from the bargaining unit as supervisors. The Petitioner concedes that the news editors should be excluded, but contends that telegraph editors and chiefs of copy desks are not supervisors and should be included.

There are approximately 15 copy readers on The Sun and 12 on The Evening Sun. They work in overlapping shifts so that there are, under ordinary circumstances, only 8 or 10 working at one time. Their function is to read both local and telegraph copy, edit it, and write heads for it. The news and telegraph editors determine the size of heads and length of stories for the front page and inside pages. The chief of the copy desk receives the copy from the telegraph editor or the city editor and distributes it to copy readers with instructions as to the kind of head to be put on it and the amount of space to be accorded it. Either the chief of the copy desk or the telegraph editor may reject work, and they may be consulted by a superior in connection with pay raises or disciplinary actions. As in the case of assistant city editors, there are regular periods during the day in which either the telegraph editor or the chief of copy desk is in charge of the department.

Assistant news editors and chiefs of copy desks have usually been excluded from bargaining units by the Board.¹⁰ On the basis of the facts before us, we find that these telegraph editors and chiefs of copy desks have the authority responsibly to direct their subordinates and to recommend changes in their employment status. Accordingly, we shall exclude them from the unit.¹¹

⁹ Assistant city editors of large metropolitan newspapers have sometimes been excluded from bargaining units found appropriate by the Board, *Matter of The New York Times Company*, 32 N. L. R. B. 928; and sometimes included in such a unit *Matter of Marshall Field, d/b/a The Chicago Sun*, 46 N. L. R. B. 1335; *Matter of Seattle Times Company*, 46 N. L. R. B. 1019.

¹⁰ *Matter of Chicago Journal of Commerce, Inc.*, 73 N. L. R. B. 1213; *Matter of Chicago Daily News, Inc.*, 56 N. L. R. B. 274; *Matter of Seattle Times Company*, 46 N. L. R. B. 1019.

¹¹ Members Houston and Murdock would find that, as the authority of telegraph editors and chiefs of copy desks is limited by the close supervision of the news editor and an assistant managing editor, and as the record does not adequately establish the existence of power of effective recommendation, such employees are not supervisors within the meaning of the Act, as amended, and should be included in the unit.

6. *Assistant sports editors:* The Employer requests that the assistant sports editor of The Sun and the assistant sports editor of The Evening Sun be excluded from the unit as supervisors. The duties of assistant sports editors are in some respects similar to those of assistant city editors. They read copy and make spot assignments to reporters. In the absence of the sports editors, who are out of the office a considerable portion of the time, the assistant sports editors are responsible for the direction of the sports departments. Although permanent assignments within the departments are made by the sports editors, who also make the decisions concerning hiring, discharging, and pay raises, they consult their assistant regarding such matters.

The Board has frequently held that assistant sports editors are supervisors where it appeared that they had considerable authority for the direction of their department and could affect the employment status of subordinates.¹² We find in the present case that the assistant sports editors are supervisors within the meaning of the Act, and accordingly, they will be excluded from the unit.¹³

7. *Racing editor:* The Employer would also exclude the racing editor of the Sun papers. During the Maryland racing season, which lasts approximately 3 months, one sports reporter from The Sun and one from The Evening Sun are assigned to assist the racing editor. The racing editor gives them daily assignments while they are working with him, but exercises no other supervisory authority over them. We find that he is not a supervisor within the meaning of the Act, and will include him in the unit.

8. *Make-up editors and assistant make-up editors:* On each paper there is a make-up editor and an assistant make-up editor, who, the Employer contends, are supervisors or managerial employees. It is their responsibility to see that the paper is set up in accordance with a schedule which they receive from the news departments. They arrange the position of articles on each page, and, where physical limitations require, they may shorten a story or shift it to another page. The relationship of the make-up editor to the assistant make-up editor is that of a leadman rather than a supervisor, and neither the make-up editor nor the assistant exercises supervisory authority over the men in the composing room. The Employer maintains that the make-up editor and his assistant represent the news department and management in the composing room, that they exercise independent judgment, and that they are, therefore, managerial or executive em-

¹² *Matter of Chicago Daily News*, 56 N. L. R. B. 274; *Matter of Marshall Field*, d/b/a *The Chicago Sun*, 46 N. L. R. B. 1335; *Matter of Evening News Association*, 46 N. L. R. B. 763.

¹³ As in the case of telegraph editors and chiefs of copy desks, and for the same reasons, Members Houston and Murdock would include assistant sports editors in the unit

employees. Clearly, their discretion is limited to occasions when the instructions from the editorial and news departments conflict with mechanical limitations, and is no greater than that exercised by any highly skilled craftsman. We find no basis for excluding such employees from the appropriate unit. There is also a make-up editor for the Sunday Feature Section and Magazine. He has no assistants, and does not work under the pressure that is exerted on the make-up men for the regular editions. Consequently his authority and discretion are even more limited. We shall include all the make-up editors and assistant make-up editors in the unit hereinafter found appropriate.

9. *Field correspondents and Washington Bureau correspondents:* At the time of the hearing, there were two employees classified as field correspondents and two employees assigned to the Washington Bureau whom the Petitioner seeks to include in and the Employer to exclude from the unit. The Petitioner concedes that employees assigned to the Washington Bureau who work primarily in Washington should be excluded.

The classification of field correspondent was created by the Employer after the war to utilize the ability and experience of certain of its war correspondents. These men are given special assignments: for example, to cover a political convention, to travel with a presidential candidate, or to travel around the world studying international problems. However, they ultimately return to Baltimore, and may work there many months before another major assignment is forthcoming. They have desks in the city room with other reporters, and may be assigned to write local stories as well as those of national import.

Although these men, because of their superior skill and experience, have been promoted to more responsible positions than that of a regular reporter, they remain essentially reporters. The Employer's contention that they lack a community of interest with the local news staff is without merit. Equally baseless is the Employer's argument that, because the writing of these men is interpretative rather than factual reporting, they should be "above suspicion," and should not have attached to them the label of any organization which has taken positions on social, economic, political, or ideological issues. This contention is identical with that advanced as to editorial writers, and must be dismissed for the same reasons. We find that the field correspondents are employees who have a sufficient community of interest with the other employees of the news and editorial departments to be included in the same bargaining unit.

At the time of the hearing, two employees were carried on the Employer's pay roll as members of the Washington Bureau who were actually working out of Baltimore, covering local or national political assignments in much the same fashion as field correspondents do. As the nature of their work and their working conditions are indistinguishable from those of the employees in the unit hereinafter found appropriate, they will be included. However, if they should be assigned to work regularly out of Washington, they will no longer be eligible to vote in the election hereinafter directed, or to constitute part of the unit.

10. *Dramatic critics:* The Employer contends that the motion picture and dramatic critics of The Sun and The Evening Sun should be excluded because their work involves the exercise of independent judgment. As in the case of the editorial writers and field correspondents, the Employer maintains that inclusion in the unit would preclude the impartial exercise of their independent judgment and would impair the public's acceptance of their critiques. We are not persuaded, however, that the Employer's drama critics will be any less competent to pass upon the merits of motion pictures and stage plays because of their inclusion in the appropriate unit. We find no justification in the record for the exclusion of dramatic critics, and they will therefore be included in the unit.

11. *Cartoonist:* The Employer seeks to exclude its cartoonist from the unit on the same grounds that it advanced for the exclusion of editorial writers, field correspondents, and dramatic critics. For the reasons set forth above, we find these grounds unpersuasive, and we shall therefore include the cartoonist in the unit.

12. *Chiefs and assistant chiefs of the Art and Photographic Departments:* The Employer contends that the assistant chief of the Universal Art Department and the two assistant chiefs of the Universal Photographic Department are supervisors. These assistant chiefs act for the heads of their departments when the heads are ill or on vacation. The authority of these employees is too limited and too infrequently and sporadically exercised to warrant supervisory classification, and we find none of them to be a supervisor within the meaning of the Act.

The Employer also contends that the chief photographer of the Magazine Department should be excluded. By his own admission, this individual works alone and exercises no authority over the other photographer in the Magazine Department. He will be included in the unit.

13. *Assistant editor of Sunday Feature Section, assistant editor of Sunday Magazine, and secretary to editors:* The assistant editor of

the Sunday Feature Section is in charge of the department when the editor is ill or on his 3 weeks' vacation. On such occasions, the assistant editor exercises a limited discretion over the eight persons in the department and over the contents of the Sunday Feature Section. His regular function is to read copy, and there is no evidence that he ever recommended the hiring, discharge, promotion, or transfer of anyone in the department.

The assistant editor of the Sunday Magazine is in charge of a staff of five employees when the head of the department is absent. Such absences are infrequent, and, if serious questions arise at such time, they are decided not by the assistant editor but by some higher authority.

These two assistant editors, like assistant chiefs of the Art and Photographic Departments, exercise limited and sporadic authority. We find that they are not supervisors within the meaning of the Act, and they will therefore be included in the unit.

The Employer contends that the secretary to the editors of the Sunday Feature Section and the Sunday Magazine is a confidential employee because she has access to the budgets prepared by the editors of these departments. Neither of these editors is on the committee which accepts or rejects departmental budgets. The Board excludes employees who assist in a confidential capacity anyone exercising managerial functions in the field of labor relations.¹⁴ However, the editors of these departments perform no such function. Therefore their secretary will be included in the unit.

14. *Assistant librarians*: Both the Petitioner and the Employer agree to exclude the assistant librarian who, at the time of the hearing, was acting as head of the library. The Employer contends that the night librarian is also a supervisor and should be excluded.

The night librarian's duties are to cut and file newspaper clippings and answer telephone calls for information. She has two young people, usually students, who assist her, each working on alternate nights. Although she interviews her assistants before they are hired, she does not have authority to hire them, and she does not know what salaries they receive. She trains her assistants, who do the same kind of work she does. On one occasion she complained to the head librarian that one of her assistants could not do the work; he was interviewed by the head librarian, and discharged.

It appears that although the night librarian may assign and guide the work of her assistants, her authority to recommend action affecting their employment is rarely exercised, and is subject to independent

¹⁴ *Matter of The Register & Tribune Company*, 73 N. L. R. B. 728; *Matter of Farm Journal, Inc.*, 69 N. L. R. B. 1346.

investigation. Although the record indicates that it is a function of the night librarian to direct her assistants with some degree of responsibility, we are not convinced, on the basis of all the evidence, that she has the required authority "responsibly to direct" within the meaning of Section 2 (11) of the Act, as amended. Accordingly, we find that the night librarian is not a supervisor within the meaning of the Act, and we shall therefore include her in the appropriate unit.

15. *Heads of the Financial Departments:* The Employer seeks the exclusion of the heads of the Financial Departments of the Sun papers on the ground that they are supervisors.

The Financial Tabulating Department of The Evening Sun assembles tabular information, stock, bond, and curb tables, and other financial information. The chief of this department has two regular clerks, and, during the rush periods of the day, several messengers are assigned to his department. The regular clerks have other duties unrelated to financial tabulation, such as distribution of patterns, comics, and radio programs; and they may be assigned to do other tasks by the managing editor. There is no evidence in the record as to what authority the chief financial tabulator has over the clerks who regularly assist him.

The financial editor of The Sun writes a daily column on financial news, and selects material that goes into the financial section. One man assists him part of the day in making up the section and writing headlines. This assistant has other duties, such as separating and distributing Associated Press copy to the various departments, and handling radio programs. The financial editor had nothing to do with the selection of this employee, has no authority to increase his salary, and does not know what that salary is. He testified that he thought that, if the work of this assistant was unsatisfactory, he could speak to the managing editor, who would look into the situation, though there had never been an occasion for such action. This assistant's predecessor was a man of considerable experience over whom the financial editor exercised no supervision at all.

From the foregoing facts, we find that neither the chief of the Financial Tabulating Department of The Evening Sun nor the financial editor of The Sun is a supervisor within the meaning of the Act; they will therefore be included in the unit.

We find that all the employees in the Editorial and News Departments of the Employer, including editorial writers, copy boys and girls, the racing editor, make-up and assistant make-up editors, field correspondents, Washington Bureau correspondents working regularly in Baltimore, dramatic critics, cartoonist, assistant chief of the

Art Department, assistant chiefs of the Photographic Department, chief photographer of the Magazine, assistant editor of the Sunday Feature Section, assistant editor of the Magazine, the secretary to the editors of the Sunday Feature Section and Magazine, the night librarian, the chief of the Financial Tabulating Department, and the financial editor, but excluding telephone operators, news editors, assistant city editors, telegraph editors, chiefs of copy desks, and assistant sports editors, and also excluding certain managerial and confidential employees, and all supervisors,¹⁵ constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with A. S. Abell Company, Publisher, The Sun Papers: The Sun, The Sunday Sun, The Evening Sun, Baltimore, Maryland, 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 Fifth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, 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, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by American Newspaper Guild, CIO, for the purposes of collective bargaining.

¹⁵ All those persons set forth in footnote 1, above.