

In the Matter of WORLD PUBLISHING COMPANY and OMAHA MAILERS
UNION No. 100, INTERNATIONAL MAILERS UNION

Case No. 17-R-1092.—Decided August 22, 1945

Mr. Alfred C. Munger, of Omaha, Nebr., for the Company.

Mr. Fred Owens, of Des Moines, Iowa, for Local 100.

Mr. Donald H. Frank, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by Omaha Mailers Union No. 100, International Mailers Union, herein called Local 100, alleging that a question affecting commerce had arisen concerning the representation of employees of World Publishing Company, Omaha, Nebraska, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer L. Hunt, Trial Examiner. The hearing was held at Omaha, Nebraska, on May 18, 1945. The Company and Local 100 appeared and participated.¹ 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

I. THE BUSINESS OF THE COMPANY

World Publishing Company is a Nebraska corporation, with its principal place of business at Omaha, Nebraska, where it is engaged

¹ Omaha Typographical Union No. 190, affiliated with International Typographical Union, was served with Notice of Hearing, but failed to appear or participate at the hearing.

in printing, publishing, and distributing a newspaper, The World-Herald, in operating its radio station, KOWH, and in operating its Omaha business properties: and 8-story newspaper plant and office building known as The World-Herald Building; a 3-story office building known as The Paxton Block; and a garage building used principally for the storage and maintenance of the Company's vehicles.

The World-Herald has a daily and Sunday circulation of approximately 2,000,000 copies, of which about 25,000 are shipped outside the State of Nebraska. During 1944 the Company purchased, for its newspaper publishing, paper and ink valued at more than \$800,000, all of which was shipped to it from points outside the State of Nebraska. Approximately 20 percent of the advertising space in The World-Herald is purchased by advertisers through national agencies outside the State of Nebraska.

* KOWH operates on a daytime schedule under a license from the Federal Communications Commission. This station transmits commercial broadcasts over a trade area which includes western Iowa and Missouri, and Kansas, Nebraska, South Dakota, and Minnesota.

The Company's real property accounts for 5½ percent of the Company's gross annual income; KOWH accounts for 2½ percent of that income.

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

II. THE ORGANIZATION INVOLVED

Omaha Mailers Union No. 100, affiliated with the International Mailers Union, is a labor organization admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION; THE APPROPRIATE UNIT

The Company has refused to grant recognition to Local 100 as the exclusive bargaining representative of certain of the Company's employees until Local 100 has been certified by the Board in an appropriate unit. A statement of a Board agent, introduced into evidence at the hearing, indicates that Local 100 represents 14 of the employees in the unit it seeks.

At the hearing, the Company argued that the petition is barred by a consent election conducted on February 15, 1945,² in which Local 100, the only participating labor organization, failed to poll a majority. In view of the circumstances present in this case, we find merit in the Company's contention. An election which does not result in

² Case No. 17-R-1053.

the designation of a collective bargaining agent is not, *per se*, a bar to a new investigation of representatives within a relatively short period of time, for encouragement of collective bargaining is a major objective of the Act.³ However, as a matter of practical administrative policy, the Board in all cases requires that a labor organization petitioning for a determination of representatives make a *prima facie* showing of substantial interest, sufficient to indicate that an election will probably result in a majority vote for a statutory bargaining agent.⁴ Similarly, we consider that a union which has lost one election and seeks another within a year should make such a showing of interest on the second occasion as will indicate that it has renewed and extended its organizational efforts since the prior election. Absent such a showing that the union's chances of receiving a majority vote have improved, expenditure of the Board's time and funds in the conduct of a second election sooner than a year after the first one, would be unjustified.⁵

In the instant case, the consent election conducted in February 1945 resulted in a tie vote, 19 employees casting ballots for Local 100, and 19 against representation by a labor organization. Only 2½ weeks after that election, Local 100 filed its petition in this proceeding, seeking another election among the Company's mail room employees, in a unit substantially the same as the unit agreed upon for purposes of the consent election. As evidence of its present interest, Local 100 showed, *prima facie*, that it represents 14 employees. By agreement of the parties, stencil cutters, approximately 5 in number,⁶ are now excluded from the proposed unit.

In addition, over the Company's objection, Local 100 now contends that the employees known as stuffers⁷ should be excluded. In this establishment the stuffers are all part-time employees,⁸ but it is clear that this occupational group should be included in any bargaining unit composed of the mailers in the Company's employ. "Stuffing,"

³ See N. L. R. B. Eighth Annual Report, page 47.

⁴ See N. L. R. B. Ninth Annual Report, pages 23 and 24.

⁵ *Matter of Edgewater Steel Company*, 61 N. L. R. B. 1006; *Matter of Miami Shipbuilding Corporation*, 59 N. L. R. B. 1101; *Matter of The Mead Corporation*, 58 N. L. R. B. 1645; *Matter of Automatic Products Company*, 40 N. L. R. B. 941; *Matter of Chrysler Corporation*, 37 N. L. R. B. 877.

⁶ There were approximately five stencil cutters in February 1945; about three were employed at the time of the hearing herein. The record reveals that the stencil cutters do not work in the mailing room and are not in the mailing department or carried on its pay roll.

⁷ Stuffers have been variously referred to as inserters, stickers, and Saturday-night men.

⁸ At least 12 in the group of about 16 stuffers are regular employees. Some of these work, on the average, about 6 hours weekly, others average as high as 15 or 16 hours per week. Our conclusion that stuffers, as such, should be included in the unit is applicable to all the stuffers in the Company's employ. However, we do not now determine whether or not all of the regular part-time employees in question devote a sufficient amount of working time to employment with the Company, as compared with the regular full-time workers in the mail room, to be eligible to vote in an election conducted for the purposes of designating a bargaining representative.

the trade name descriptive of the operation of assembling the various sections of Sunday newspapers, is a function of mailers.⁹ Indeed, representatives of Local 100 testified at the hearing that their organization claims jurisdiction over the work of stuffing as part of the activities of the mail room, and it is evident that if Local 100 were certified as the bargaining representative of the Company's mailers, it would assert the right to bargain with the Company concerning the wages, hours, qualifications, conditions of hire, and working conditions of stuffers. Local 100 agreed to their inclusion in the unit in the February election. Nevertheless, it argues, a few months later, that none of these employees should have a voice in the selection of their representative. We infer that it has made no attempt, since the February election, to organize the stuffers or solicit their endorsement as bargaining agent. Local 100 is attempting, in a word, to secure a new election upon the basis of a reduction in the unit which we cannot approve, rather than by a demonstration of renewed and extended organizational efforts.

In these circumstances, we conclude that a present determination of representatives is not warranted, and we shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition for investigation and certification of representatives of employees of the World Publishing Company, Omaha, Nebraska, filed herein by Omaha Mailers Union No. 100, International Mailers Union, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

⁹ See *Matter of The Post Printing and Publishing Company*, 59 N. L. R. B. 1115, and Second Supplemental Decision thereto, 61 N. L. R. B. 333.