

IN the Matter of BANK OF AMERICA, N. T. & S. A., EMPLOYER and
OFFICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 29, AFL, PETI-
TIONER

Case No. 20-R-1701.—Decided October 11, 1946

Messrs. Philip S. Ehrlich, R. J. Hecht, and George Ghiselli, all of San Francisco, Calif., for the Employer.

Tobriner & Lazarus, by Mr. Mathew O. Tobriner, of San Francisco, Calif., for the Petitioner.

Gladstein, Anderson, Resner, Sawyer & Edises, by Messrs. Richard Gladstein and Norman Leonard, both of San Francisco, Calif., and Mr. Richard D. Lewis, of San Francisco, Calif., for the CIO.

Mr. Sydney S. Asher, Jr., of counsel to the Board.

DECISION
DIRECTION OF ELECTION
AND
ORDER

Upon a petition duly filed, hearing in this case was held at San Francisco, California, on various dates between June 6 and 28, 1946, before Robert E. Tillman, hearing officer.

Prior to the hearing, and again at the hearing, the Employer made several motions to dismiss the petition. For reasons stated hereinafter, the motions are hereby denied. At the hearing the United Office and Professional Workers of America, hereinafter referred to as the CIO, appeared and moved to intervene. The motion for intervention was granted by the hearing officer over the objections of the Employer and the Petitioner. Subsequently, the Employer moved to dismiss the CIO's intervention. All evidence introduced on behalf of the CIO was objected to by the Petitioner, but was admitted by the hearing officer. The CIO submitted no proof of representation among employees of the Employer. It relied upon its previous unsuccessful efforts to organize employees of the Employer, its representation among the employees of other banks, and upon its expectation of organizing employees of the Employer at some future time. We are of the opinion that the hearing officer erred in permitting the intervention of the CIO without any proof of representation.¹ Accord-

¹ In *Matter of Swift & Company*, 68 N. L. R. B. 440, the Board refused to permit the IAM to intervene because it did not have any representation interest in the employees affected at the time of the hearing, all of its application cards bearing dates subsequent to the date of the hearing. The position of the CIO herein is even weaker than was the IAM's position in that case, for here the CIO has not submitted any authorization cards of any date.

ingly, the Employer's motion to strike the CIO's intervention is hereby granted, the hearing officer's ruling permitting the CIO to intervene is reversed, the CIO's motion for intervention is denied, and all evidence submitted on behalf of the CIO over the objections of the Petitioner is hereby stricken from the record. The other rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed.

The record reveals that, prior to the filing of the petition, a representative of the Petitioner sought advice as to the appropriate unit from the Board's Regional Director. The Employer pointed out that the same Regional Director thereafter had control of the investigation of the petition and could have dismissed the petition without a hearing. On these grounds the Employer moved to dismiss the petition, claiming that such a procedure had "irreparably damaged" the Employer's position with its employees and constituted a "violation of constitutional guarantees." Inasmuch as a representation proceeding is not an adverse proceeding against the Employer, and since it is wholly appropriate for a Regional Director to express his opinion and to give advice and guidance in such matters when requested by any party to do so, we deem the Employer's contentions to be without merit.

The Employer and the Petitioner have requested oral argument. Both of these requests are hereby denied inasmuch as the record and briefs, in our opinion, adequately present the issues and positions of the parties.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Employer is a corporation organized under the National Bank Act, engaged in a general banking business in the State of California and London, England. Its principal place of business is located at San Francisco, California. It is a member of the Federal Reserve System and the Federal Deposit Insurance Corporation. As of March 30, 1946, the Employer had 494 branches and 27 facilities and operated in over 300 communities within the State of California. As of that date, its total assets were in excess of \$5,500,000,000; it had on deposit in 78 banks in 28 States other than the State of California a sum exceeding \$70,000,000; and 284 banks in 44 States other than the State of California had on deposit with the Employer the sum of approximately \$60,000,000. During the year 1945, the Employer sent to banks outside the State of California the sum of approximately

\$430,000,000 in the form of notes, drafts, bills, coupons, etc., for collection.

We find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer has refused to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer.

The Employer moved to dismiss the petition on the ground that neither in its request for recognition nor in the petition filed herein did the Petitioner state that it represented a majority of the Employer's employees, and that therefore no question concerning representation has arisen. We do not agree with the Employer's contentions. Under an almost identical factual situation, in the *Semon Bache* case,³ we rejected similar arguments.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner seeks either: (1) a unit composed of all of the employees in 33 designated branches located in the "East Bay Metropolitan Area" or (2) two separate units composed of the employees in Branch Supervision Districts Numbers 10 and 11, respectively, or, (3) a single unit composed of the employees in both of these Branch Supervision Districts. The Employer, without revealing what unit it considers to be appropriate, maintains that all of the units suggested by the Petitioner are inappropriate.

A. Operations of the Employer

The Employer carries on its operations through its 494 branches located in over 300 communities scattered throughout the State of California. Control over this vast system is centralized at the head office located in San Francisco, California, where the general ledger for the whole system is maintained. Policy making and rules of pro-

² *Matter of Bank of America National Trust & Savings Association*, 14 N. L. R. B. 207 and 26 N. L. R. B. 198, en'd 130 F. (2d) 624 (C. C. A. 9), cert. denied 318 U. S. 791.

³ *Matter of Semon Bache & Company*, 39 N. L. R. B. 1216

cedure originate with the so-called "senior management" and are transmitted to the employees of the branches by means of several detailed books known as the Standard Practice Manual, the Pro Forma Book, and the Arrangement Book.

All employees are paid by checks issued from the head office, which are sent to the branch managers and distributed by them or their chief clerks. The procedure for hiring new employees and salary brackets for position classifications are uniform throughout the system. The Employer has established a sick benefit plan, a retirement plan, and a group life insurance policy in which employees of the branches participate.

The operation of each branch and the direction of the personnel therein is under the direct control of the branch manager. He is responsible for ensuring that the operations of the branch are conducted in conformity with the Standard Practice Manual. He has limited discretion with respect to the loaning of money and may determine the maximum interest rates on loans. He may suspend any employee for cause, and has authority to promote non-official personnel in his branch to higher non-official positions and to reassign the duties of non-official personnel.

B. The Branch Supervision Districts

The supervisor of branches, through his assistant branch supervisors, is charged with the proper functioning of the branches. His authority extends to all functions except those covered by other departments of the Employer. Accordingly, he is charged with the supervision of branch personnel and has, as part of such responsibility, authority covering assignment of work in the branches, procurement and training of employees, adjustment of salaries and the making of recommendations with respect to promotions, transfers, demotions, separations, and vacations. He executes the personnel policies promulgated by the personnel relations department. He also checks upon adherence to the Standard Practice Manual and other operating guides. Thus, his decisions and those of his assistants have direct impact upon and control over personnel in the branches.

Since 1941 the Employer has divided the State of California into 20 "Branch Supervision Districts," each of which is assigned to an assistant branch supervisor. There are approximately 25 branch banks in each Branch Supervision District. The assistant branch supervisor within each Branch Supervision District has his office in the area of the District which he supervises. He confers frequently with officers and non-official employees of the branches. He has authority to hire non-official employees and to see that they are

trained and allocated to branches. Without his approval no one can get on the pay roll. As regards transfers, he may direct the transfer of non-official personnel from one branch to another in his District but must obtain the consent of the 2 branch managers involved. He may direct the transfer of non-official personnel from his area to another area through the supervisor of branches with the concurrence of the assistant branch supervisor and the branch manager in the second District. He can recommend to the supervisor of branches the transfer of official personnel but such transfer must be approved by the personnel relations officer and by senior management.

Branch managers may recommend limited salary adjustments within established salary brackets to the assistant branch supervisor who reviews the recommendations and has authority to approve increases up to \$15.00 a month where the employee is earning less than \$200.00 a month and to recommend increases outside these limits to the personnel relations department. In case of disagreement between the branch manager and assistant branch supervisor as to salary adjustments, senior management ultimately resolves the issue.

A branch manager may recommend the discharge of an employee having less than 5 years' service with the Employer and the assistant branch supervisor has authority to approve such recommendations. If he does not agree, the decision is made by senior management. Discharges of any employee having more than 5 years' service with the Employer and discharges of all official personnel must be approved by senior management.

A branch manager may recommend leaves without pay to the assistant branch supervisor, who has authority to grant such leaves up to 60 days. Longer leaves go to the personnel relations department for decision. Sick leaves less than 30 days in duration and less than $\frac{1}{16}$ of the employee's total service are granted automatically. Over these limits, sick leaves may not be granted without consulting the personnel relations department.

C. History of self-organization and bargaining

The record reveals that the Employer has no collective bargaining contract with any union as to any part of its system, nor has it ever bargained with any union on behalf of any of its employees.

The Petitioner has confined its organizational activities to the 33 branches described in its petition as constituting the branches in the "East Bay Metropolitan Area."⁴ Twenty-six of these branches con-

⁴ There was evidence that the Petitioner had sent letters to approximately 600 employees in the Employer's branches in Southern California, but the Petitioner contends that these letters were merely informative and were not an attempt to secure members in the branches in Southern California.

stitute all the branches in the Employer's Branch Supervision District Number 11. The remaining 7 branches are contained in the Employer's Branch Supervision District Number 10, which also includes an additional 19 branches not organized by the Petitioner.

D. The geographical extent of the unit

The Employer maintains that none of the units suggested by the Petitioner are appropriate, and that the petition should therefore be dismissed. We do not agree. Nor can we agree with the Petitioner that the employees of the 33 branches in the East Bay Metropolitan Area would constitute a satisfactory unit. The area designated by the Petitioner as the "East Bay Metropolitan Area" consists of 10 adjacent urban communities strung out along the eastern shore of San Francisco Bay. After careful consideration of the record, we believe that this proposed unit would constitute an arbitrary grouping of employees for collective bargaining purposes, lacking objective support. We are of the opinion, therefore, that a unit consisting of these employees would not be appropriate.

On the other hand, we are convinced that a unit limited to employees within a Branch Supervision District is practicable at this time. It accords with the Employer's administrative arrangements. As we have seen, self-organization among the Employer's employees has embraced all of the branches in Branch Supervision District Number 11. In view of the vast territory over which the Employer's operations are spread and the present extent of self-organization among the employees, we find that, at the present time, a unit limited to the employees of Branch Supervision District Number 11 is appropriate.⁵ We can see no justification, based upon the Employer's administrative set-up, for creating a unit combining Districts 10 and 11.

With respect to Branch Supervision District Number 10, taken by itself, we find that self-organization among the employees in this District has not yet reached the point where we consider it advisable to direct an election among these employees at this time. We shall therefore dismiss the petition insofar as it pertains to these employees. However, this finding shall be without prejudice to the right of the Petitioner or any other labor organization to petition for an election among such employees at some future time.

E. Specific disputed work categories

The Petitioner desires to exclude from the appropriate unit vice presidents, assistant vice presidents, branch managers, assistant branch

⁵ See *Matter of Banco Popular de Puerto Rico (Santuce Branch)*, 61 N. L. R. B. 676.

managers, and chief clerks. The Employer takes no position with regard to their inclusion or exclusion. The record indicates that all of these categories are supervisory employees within our usual definition, and we shall therefore exclude them from the appropriate unit.

The Petitioner would exclude from the appropriate unit assistant cashiers and pro-assistant cashiers. The Employer has taken no position with respect to the inclusion or exclusion of these employees. These employees are part of a group of so-called "signing officers" who are authorized to sign certain documents on behalf of the Employer. The interests of these employees appear to be more closely linked to those of other employees excluded from the unit than to those included. Accordingly, we shall exclude assistant cashiers and pro-assistant cashiers.

The Petitioner asks us to include in the appropriate unit temporary assistant cashiers and temporary pro-assistant cashiers. The Employer took no position with respect to these employees. The record indicates that some employees having other job classifications such as note teller, for example, are temporarily designated as signing authorities at the branches. The temporary designation is given in those cases where an employee temporarily fills the vacancy of an employee who has permanent signing authority. In view of the limited nature of the designation, we shall include temporary assistant cashiers and temporary pro-assistant cashiers in the unit.

Both the Petitioner and the Employer agree that utility employees should be included in the appropriate unit. Utility employees are clerical employees assigned to a Branch Supervision District rather than to any particular branch. They are moved about from branch to branch within their District and work wherever they are needed. Some of them are versatile and can fill in on several positions. In accordance with the desires of the parties, we shall include utility employees within the appropriate unit.

F. Conclusion

We find that all employees of the Employer in its Branch Supervision District Number 11, as presently constituted, including utility employees assigned to that District, temporary assistant cashiers, and temporary pro-assistant cashiers, but excluding vice presidents, assistant vice presidents, branch managers, assistant branch managers, chief clerks, assistant cashiers, pro-assistant cashiers, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot, subject to the limitations and additions set forth in the Direction.

Each new employee of the Employer, when hired, serves a 90-day probationary period before he can become a permanent employee. The vast majority of such probationary employees do become permanent employees at the termination of their probationary period. The Petitioner desires that these probationary employees should be eligible to vote in the election; the Employer took no position with respect to their eligibility. Inasmuch as they have a vital interest in the outcome of the election, we find that they are eligible to participate.

Employees designated by the Employer as "temporary employees" are hired for an unlimited time, frequently without physical examinations. We are of the opinion that they have an interest in the election similar to that of other employees within the unit. We shall therefore direct that they be eligible to vote.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Bank of America, N. T. & S. A., San Francisco, California, 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 Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the bargaining 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 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, temporary employees and probationary employees, 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, to determine whether or not they desire to be represented by Office Employees' International Union, Local 29, AFL, for the purposes of collective bargaining.

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 petition for investigation and certification of repre-

sentatives of employees of Bank of America, N. T. & S. A., San Francisco, California, filed by Office Employees' International Union, Local 29, AFL, be, and it hereby is, dismissed without prejudice, insofar as it relates to employees employed in Branch Supervision District Number 10.

CHAIRMAN PAUL M. HERZOG, concurring specially:

I agree wholeheartedly with my colleagues in their disposition of this matter, but would not limit the Direction of Election to the employees in District 11. . It seems to me that there is sufficient indication of existing self-organization in the East Bay Metropolitan Area, the over-all unit originally requested by the Union, to warrant our directing a simultaneous, but separate, election among the employees in District 10, which is part of that area. Our dismissal of that portion of the petition at this time may well lead the Union to file an early second petition covering only the District 10 employees. That would require the Bank, the Union and the Board to expend additional time and funds to make a new record. I believe it would have been wiser to dispose of the entire controversy at this time.