

representation exists. After some years of experience the Board concluded that an informal claim to representation was not entitled to the same weight accorded a written claim in the petition, which would set in motion the Board's machinery for the prompt investigation of the substantiality of the alleged claim. The Board therefore held in the *General Electric X-ray* case that a naked claim to representation must be followed by a petition within 10 days to prevent a contract signed in the interim from operating as a bar to an election.

In the instant case the majority holds for the first time that a Petitioner need make no claim of majority status. It is sufficient, the majority finds, that the Petitioner notify the Employer of an intention to file a petition. I do not believe that a contract, duly executed by an employer and an incumbent representative of its employees, should be held in abeyance merely because another union indicates that it will file a petition. It seems to me that the least this Board should require for the disruption of a going bargaining relationship is a clear statement by the Petitioner that it does, in fact, represent a substantial number of employees, followed by an actual petition, supported by a 30-percent showing of interest, within 10 days. It should be of fundamental interest to this Board, as I said in my dissenting opinion in the *Essex Wire* case,<sup>7</sup> that "contracts are not nullified without a clear and substantial contest between claimants to majority representation at the time of the execution of the agreement."

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<sup>7</sup> *Essex Wire Corporation*, 102 NLRB 332, at 336.

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ALLSTATE INSURANCE COMPANY and INSURANCE AGENTS' INTERNATIONAL UNION, AFL, PETITIONER. *Case No. 7-RC-2406. July 29, 1954*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Myron K. Scott, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

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

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> The request of the Employer for oral argument is denied because the record and the briefs clearly set forth the positions of the parties.

The Employer's motion to dismiss because the organizing committee of the Petitioner has not complied with Section 9 (f), (g), and (h) of the Act is denied. The organizing committee is an auxiliary arm of the International, established for organizing purposes, and need not comply. *Grand Central Aircraft Co., Inc.*, 106 NLRB 358.

3. The Employer contends that insurance agents are independent contractors and moved to dismiss on this ground. The Petitioner argues that they are employees.

There are four kinds of insurance agents: Direct agents, who sell in a metropolitan area, working out of a district service office or branch office; county agents, who sell in a rural area, working out of their homes; retail agents, who spend 30 percent of their required 52 hours a week in a Sears Roebuck store booth and the remainder selling outside the store; and part-time agents, who work out of their homes and sell only in their spare time.

Insurance agents have a certain latitude in performing their services. They sign a written contract of employment with the Employer, which either party can terminate at any time. They arrange their own working hours (except retail agents who are required to work 52 hours), decide what calls they will make, adopt their own methods of approach, are paid on a commission basis, pay for secretarial service and other services such as advertising, and buy any gifts to customers such as matches or holders for documents.

The employer-employee relationship is indicated, however, by other factors. The Employer presents the agents with unilaterally drawn contracts at the beginning of their employment and amendments during employment changing territory, hours, or compensation which insurance agents must sign or seek jobs elsewhere. As stated above, either party may terminate at any time and the Employer has terminated such contracts for misconduct, such as drinking or misappropriating funds. The Employer, under a sales manager or assistant sales manager, conducts a period of training for agents at the beginning of their employment. It also prepares and issues to agents various instructional memoranda and manuals regarding working procedures, which are not necessarily to be rigidly followed. The Employer institutes production programs and requires the agents to meet certain standards with respect to the amount of sales. Members of the Employer's management staff handle complaints regarding agents. The record shows that at least one agent was transferred to another geographical territory, contrary to his wishes. Except for county agents, who may sell anywhere in the State, other agents are restricted to a certain territory, the Employer reserving in the employment contract the option to change. All payments of money are held by the agents in trust for the Employer without any deductions, and the agents, in turn, receive paychecks. The Employer prescribes the amounts and methods for payment of premiums. It furnishes certain application blanks and circulars, and selects which secretarial service will be used by agents. The Employer deducts from the agents' paychecks amounts for withholding tax, social-security, hos-

pitalization insurance, group insurance, and the Sears Roebuck profit-sharing plan. Agents also are allowed a 10-percent discount on Sears merchandise. All agents, except part-time agents, devote their time exclusively to selling insurance for the Employer and constitute an integral part of its business.

In view of the foregoing, we find that the agents of the Employer are not independent contractors but are employees within the meaning of Section 2 (3) of the Act, and deny the motion of the Employer to dismiss.<sup>2</sup> Accordingly, we find that 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 to represent a statewide unit of the Employer's insurance agents in Michigan, including sales trainees, but excluding part-time agents. The Employer contends that the scope of the bargaining unit should be companywide, including part-time agents, but excluding trainees. There is no past bargaining history for insurance agents of the Employer.

The Employer, a wholly owned subsidiary of Sears, Roebuck & Co., is an Illinois corporation with its main or home office at Skokie, Illinois. It is engaged in the sale of casualty insurance throughout the United States and Canada. The home office determines all questions of policy, both with respect to labor relations and administration. The Employer divides its operations into 26 branches, out of which the agents work. The insurance agents herein involved work out of a branch called the Detroit Branch, which covers the State of Michigan. They are licensed by the State of Michigan. Although, as the Employer urges, the companywide unit is the optimum unit for insurance agents, we find that a statewide unit of the Employer's insurance agents in Michigan is also appropriate.<sup>3</sup>

The parties disagree as to inclusion in the unit of part-time agents and sales trainees. They further disagree as to the status of booth managers.

Part-time agents perform the same duties and have substantially the same conditions of employment as other insurance agents, with the exception that they are employed full-time in other businesses. Licensed as insurance agents, they work out of their homes and sell insurance at any time that they have an opportunity to make calls. As regular part-time employees, we include part-time insurance agents in the unit, and find them eligible to vote in the election directed herein.<sup>4</sup>

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<sup>2</sup> *United Insurance Company*, 108 NLRB 843.

<sup>3</sup> *United Insurance Company*, *supra*.

<sup>4</sup> *Lasowitz, Inc., et al*, 108 NLRB 1479.

Sales trainees, hired for training purposes, do clerical work in the insurance sales location in the Sears, Roebuck & Co. retail stores during their training period. In the course of their training, they are not licensed; they are paid a salary rather than a commission; they may not necessarily remain in insurance sales work. As trainees in insurance sales work, however, they accept premium payments, make out insurance receipts, and perform other clerical duties in connection with selling insurance. Their immediate line of progression is to insurance agent after a period of 6 months or more of training. We include sales trainees in the insurance agents' unit.<sup>5</sup>

Booth managers are senior insurance agents who, like all insurance agents, work out of Sears, Roebuck & Co. retail stores. Until January 1954, booth managers held meetings at which insurance agents reported their sales, instructed trainees, and directed agents, reporting the progress of agents and the quality of their work to the assistant sales manager. For a portion of this period, immediately prior to January 1954, they received as extra compensation an additional \$10 per month for each agent or trainee under their direction.

During the first part of January 1954, at a meeting of booth managers, management officials gave booth managers a choice of retaining their supervisory duties, and pay therefor, with the prospect of progressing to management jobs (such as assistant sales manager), or of remaining at the insurance agent level, losing their supervisory duties as booth managers and the extra pay therefor. The booth managers decided to relinquish the extra duties and compensation and remain agents. They retain, however, the title of booth manager. They also retain the work of mailing memoranda and other materials to other insurance agents. They receive no extra compensation for this duty. On request, as do other agents, they give to the assistant sales manager their opinions regarding the quality of the work of other agents. We find that booth managers are not supervisors and include them with other insurance agents in the unit.

We find that all insurance agents of the Employer in Michigan, including sales trainees, regular part-time agents, and booth managers, but excluding office employees, the manager, the assistant managers, the claims examiners, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

MEMBER PETERSON took no part in the consideration of the above Decision and Direction of Election.

<sup>5</sup> *Intermountain Telephone Company*, 79 NLRB 715, at p. 719.