

In the Matter of WESTERN AND SOUTHERN LIFE INSURANCE COMPANY
and UNITED OFFICE & PROFESSIONAL WORKERS OF AMERICA, CIO

Case No. 14-R-1284.—Decided February 6, 1946

Vorys, Sater, Seymour & Pease, by Mr. Carl H. Tangaman, of Columbus, Ohio, and Mr. Ernest M. Blersch, of Cincinnati, Ohio, for the Company.

Mr. Laney T. Funderburk, of St. Louis, Mo., for the Union.

Mr. John A. Nevros, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Office & Professional Workers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Western and Southern Life Insurance Company, Cincinnati, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Ryburn L. Hackler, Trial Examiner. The hearing was held at St. Louis, Missouri, on December 19, 1945. The Company and the Union appeared and participated. 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 opportunity to file briefs with the Board. After the hearing, the Company filed a motion to dismiss the petition on the ground that the unit requested is inappropriate. For the reason stated hereinafter in Section IV, *infra*, the motion is denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Western and Southern Life Insurance Company, an Ohio corporation, has its office and principal place of business in Cincinnati, Ohio. It is engaged in the business of writing life insurance in the States

of Ohio, Kentucky, West Virginia, Illinois, Missouri, Indiana, Michigan, and Pennsylvania.

As of December 31, 1944, the Company had in force approximately 4,000,000 policies with a total face amount of approximately \$1,402,072,494. On that date the Company's total assets, consisting of bonds, stocks, mortgages on real estate, real estate, loans, rents, interest, uncollected premiums and cash, amounted to \$270,038,018.

The annual purchases of the Company for such items as furniture, fixtures, mechanical equipment and supplies amount to approximately \$170,000, of which about 92 percent is purchased in the State of Ohio. Approximately 20 percent of these items is purchased for use in States other than the State of Ohio. The Company's annual expenditure for postage, telephone, telegraph, and express service totals approximately \$150,000, and its annual outlay for traveling expenses amounts to approximately \$80,000.

The Company admits, and we find, that it is engaged in interstate commerce within the meaning of the National Labor Relations Act.¹

II. THE ORGANIZATION INVOLVED

United Office & Professional Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Union, by letter dated August 30, 1945, asked the Company for recognition as bargaining representative of its agents in the State of Missouri. On or about September 19, 1945, the Company denied the request on the ground that the unit sought is inappropriate.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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

IV. THE APPROPRIATE UNIT

The Union contends that the appropriate unit should consist of all trustees or agents³ of the Company in the State of Missouri collect-

¹ *Polish National Alliance v. N L R. B.*, 322 U. S. 643, affirming 136 F. (2d) 175 (C. C. A. 7), en'g. as mod 42 N L R B. 1375.

² The Field Examiner reported that the Union submitted 23 cards, bearing the names of employees listed on the Company's pay roll of September 8, 1945, and that there are approximately 40 employees in the unit sought.

³ The parties stipulated that agents are the same persons referred to by the Company as trustees.

ing and selling life insurance, except for office and clerical employees, associate managers, managers, and all other supervisory employees. The Company differs with the Union only as to the geographical extent of the unit, contending that no unit smaller in scope than one of its administrative divisions should be found appropriate.

The Company has divided the areas of the nation in which it does business into three territorial divisions for administrative purposes. The employees involved herein are included in the Company's Territorial Division B. At present, Territorial Division B comprises the St. Louis, Missouri, area, the State of Illinois with the exception of Lawrenceville, and the cities of Gary, Hammond, and South Bend, Indiana. This division is under the direction of a vice president, who, due to war conditions and other circumstances, temporarily is also supervising the entire State of Michigan, the area adjacent to Cincinnati, Ohio, and Lexington and Covington, Kentucky. Division B contains 37 district offices, two of which are in St. Louis, Missouri. These two together with a detached office, St. Louis West, which is under the supervision of one of the St. Louis offices, are the only offices of the Company in the State of Missouri.

Each territorial division is under the supervision of a vice president. Each district office is under the supervision of a manager, who reports and is responsible to the vice president for his division. The agent in one district office in Territorial Division B is in no different position from the agent in another district office in that division. Those factors which directly affect his work, such as collections, promotions, compensation, working conditions, rules and regulations, supervision, and termination, are uniform throughout Territorial Division B. On the other hand insurance agents are licensed by their States. Requirements for a license vary greatly from one State to another. The insurance agents of each State are to this extent similarly situated.

The Board many times found State-wide units to be appropriate even though such units do not correspond to any organizational division of the company.⁴ Here the Union has confined its organizational efforts solely to agents of the Company in Missouri, *viz*, those working out of the St. Louis, Missouri, district offices, and the detached office in St. Louis West. It also appears that it has contractual or bargaining relationships with other insurance companies in the area on the basis of State-wide units, with the exception of Prudential Insurance Company with which it bargains on a Nation-wide basis.⁵ In those cases in which we have established State-wide

⁴ See *Matter of The Prudential Insurance Company of America*, 47 N. L. R. B. 1103, 49 N. L. R. B. 450, 50 N. L. R. B. 689; *Matter of Metropolitan Life Insurance Company*, 43 N. L. R. B. 962.

⁵ The Union is dealing with Metropolitan Life Insurance Company, Monumental Life Insurance Company, and Missouri Insurance Company on a State-wide basis.

units we have always made it clear that we have done so in order to make collective bargaining an immediate possibility in such units, and that our finding such units to be appropriate does not preclude a later finding that a larger or company-wide unit is appropriate. We see nothing in the record of this case to lead us to find that the State-wide unit is not now appropriate or that the time is ripe for the establishment of a division-wide or Nation-wide unit.⁶

We therefore find that all trustees or agents of the Company in the State of Missouri, collecting and selling life insurance, excluding office and clerical employees, associate managers, detached managers, managers, and all or any 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 among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Western and Southern Life Insurance Company, Cincinnati, Ohio, 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 Fourteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among employees in the 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

⁶ See *Matter of Metropolitan Life Insurance Company*, 56 N. L. R. B. 1635.

of the United States who present themselves in person at the polls, 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 United Office & Professional Workers of America, CIO, for the purposes of collective bargaining.