

The Union excepted to the Regional Director's recommendation that the ballots of John Luongo, Ernest Pisiello, and Walter Maciejewski be opened and counted, on the ground that these men are recognized as foremen and that they have authority to assign and lay off employees. We find there is insufficient evidence either in the Regional Director's report or in the Union's exceptions upon which we can make a finding as to the supervisory status of the foregoing employees.

[The Board dismissed the objections.]

[The Board sustained the challenged ballots of Mildred Buttiglieri, Leonard Greenbaum, and Samuel Rodman and overruled the challenged ballots of Frank Gentile, Edward Liggiero, and Mary Nearing.]

[The Board directed that the Regional Director for the First Region shall, within ten (10) days from the date of this Direction, open and count the ballots of Frank Gentile, Edward Liggiero, and Mary Nearing, and serve upon the parties a revised tally of ballots.]

[The Board ordered that, if the ballots do not determine the results of the election, a hearing be held before a Trial Examiner, to determine the eligibility of Ernest Pisiello, Walter Maciejewski, and John Luongo to vote.]

[The Board further ordered that, in the event a hearing is held, the Trial Examiner serve upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said challenges. Within ten (10) days from the date of issuance of the report, any party may file with the Board in Washington, D. C., an original and six copies of exceptions, serve a copy upon each of the other parties, and file a copy with the Regional Director. If no exceptions are filed the Board will adopt the Trial Examiner's recommendations.]

[The Board ordered the above-entitled matter referred to the Regional Director for disposition.]

---

**Allstate Insurance Company and Insurance Agents International Union, AFL-CIO, Petitioner.** *Case No. 8-RC-2923. July 26, 1957*

#### 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 Carroll L. Martin, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

<sup>1</sup>The Employer moved the dismissal of the petition at the hearing on the following grounds: (1) Petitioner has not made a sufficient showing of representative interest; (2) both the unit originally requested by Petitioner and the unit as later amended by Peti-

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Murdock, Rodgers, and Bean].

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.

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 Employer is a wholly owned subsidiary of Sears, Roebuck & Company engaged in the sale of insurance in the United States and Canada. The Petitioner seeks a unit of insurance agents employed by the Employer in its Ohio branch, which unit is, in substance, identical to the unit the Board found appropriate for agents in the Employer's Detroit branch in a prior proceeding.<sup>2</sup>

However, the Employer contends that the unit should also include underwriters and claim examiners and adjusters by reason of certain conditions of employment common to the latter employees and the agents and the integration of work functions between employees in the three classifications.<sup>3</sup>

The Employer's Ohio branch, with headquarters in Cleveland, covers the State of Ohio and is under the direction of the branch resident manager. Responsible to him are seven department managers which include the sales manager, the underwriting manager, and the claim manager. The sales manager, working through his subordinates, the sales development manager, and seven district sales managers, directs the work of the insurance sales personnel employed in the Ohio branch. The underwriting manager and claim manager similarly supervise the activities of the underwriters and the claim examiners and adjusters respectively.

While the principal duties of the agents, the underwriters, and the claims examiners and adjusters are those suggested by their job classification titles, there is necessarily a certain amount of integration

---

tioner are inappropriate and are based upon the extent of Petitioner's organization; and (3) Petitioner refused to state unequivocally that it is willing to represent employees of the Employer other than insurance agents and related classifications. Having been referred to the Board for ruling, these motions are hereby denied for the following reasons: (1) Showing of interest is subject only to administrative determination and is not litigable by parties to a representation proceeding. Moreover, we are administratively satisfied that Petitioner has made an adequate showing of interest in the unit hereinafter found appropriate; (2) the amended unit sought by Petitioner has hereinafter been found to be appropriate for reasons entirely apart from the extent of Petitioner's organization; (3) Petitioner's willingness to represent employees other than those in the unit herein found appropriate is irrelevant to this proceeding.

<sup>2</sup> *Allstate Insurance Company*, 109 NLRB 578.

<sup>3</sup> The Employer took this position for the purpose of this proceeding only and reserved the right to demonstrate in future proceedings that all employees in a branch, except those whose exclusion is required by the Act, constitute the optimum appropriate unit.

between the work of employees in these classifications. Agents submit all policy applications they secure to underwriters for evaluation and rate determination. To minimize the rejection of applications and to advise their customers and prospective clients, agents must be conversant with the Employer's underwriting policies. They also frequently assist the insured in the preparation and submission of claim reports and participate in the investigation and settlement of certain claims. In evaluating risks, when applications, inspection and claim reports, and requests for policy changes or renewals are received, underwriters rely to a substantial degree upon information received from, and personal contacts with, the agents servicing the accounts in question. In general, the agents act as liaison between claimants and policy applicants and holders and the Employer's underwriters and claim adjusters. The induction training program for employees in these classifications reflects the interdependence of their work functions, new employees in each classification being instructed to some extent in the functions of the other classifications. The Employer also emphasizes the fact that sales, underwriting, and claim employees enjoy the same fringe benefits; that personal administration for all these classifications is centrally handled by the branch personnel department; and that they are all carried on the same payroll.

The foregoing, however, does not diminish the fact that the interests and employment conditions of the agents differ substantially from those of the underwriting and claims personnel. The primary function of the agents, not performed by any of the Employer's other employees, is to sell insurance through personal contact with prospective policyholders. They are separately supervised. They are the only employees required by the State of Ohio to be licensed and few other employees in the Employer's service hold such licenses. Agents are, with insignificant exceptions, the only employees who are employed on the basis of individual contracts and are paid on the basis of commissions. Sales trainees receive a minimum guaranteed salary with a small percentage of commission based upon business written; full-time and regular part-time agents are compensated entirely on the basis of commissions; underwriters and claim employees receive salaries.

In sum, the method of compensation, functions, supervision, and licensing requirements for the Employer's insurance agents clearly distinguish them from the Employer's other employees in much the same manner that such agents are usually distinguishable from other employees. The Employer has not demonstrated that these distinctions are, to any significant degree, less substantial for the agents here in question than they are for insurance agents for whom the Board has in the past consistently found separate units to be appropriate. For these reasons, and in accordance with the Board's long-established

policy, we find that the following employees in the Employer's Ohio branch constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All insurance agents, including sales trainees, regular part-time agents and sales office supervisors, but excluding production clerical employees, office employees, underwriters, claim examiners and adjusters, professional employees, the sales department manager, sales development manager and district sales managers, and all other supervisors as defined in the Act.<sup>4</sup>

[Text of Direction of Election omitted from publication.]

<sup>4</sup> Except for the unit placement of the underwriting and claim personnel, the parties agreed that this unit is appropriate for purposes of collective bargaining. The parties stipulated that the sales office supervisors exercise no supervisory authority and have the same duties as booth managers in the Employer's Detroit branch, a classification the Board included in the unit in *Allstate Insurance Company*, 109 NLRB 578. Accordingly, we find the sales office supervisors not to be supervisors within the meaning of the Act and we include them in the unit.

**Ames, Harris, and Neville and Bob. J. White and Local No. 382, International Printing Pressmen & Assistants Union of North America, AFL-CIO. Case No. 20-RD-162. July 26, 1957**

#### 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 L. D. Mathews, Jr., hearing officer. 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 Act.

2. The Petitioner, an employee of the Employer, asserts that the Union, currently recognized by the Employer as the exclusive bargaining representative of the Employer's employees, is no longer such representative, as defined in Section 9 (a) of the Act.

The petition herein was filed on March 28, 1957. The Union and the Employer urge as a bar thereto their contract executed on May 1, 1955, for a term of 3 years. Under Board policy a contract for more than 2 years may not operate as a bar beyond the first 2 years of its term unless a substantial part of the industry involved is covered by such contracts,<sup>1</sup> and the burden of establishing such coverage is upon the party asserting a contract for more than 2 years as a bar.<sup>2</sup>

The record indicates that the Employer manufactures textile, as well as paper, bags, and so may be classified as being either in the

<sup>1</sup> *Thompson Wire Co.*, 116 NLRB 1933.

<sup>2</sup> See *Joseph Aronauer, Incorporated*, 106 NLRB 1382.