

guaranteed in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. By picketing the Company from November 13, 1959, to January 15, 1960, with an object of forcing and requiring the Company to recognize and bargain with the Respondent as the collective-bargaining representative of the Company's employees and forcing and requiring employees of the Company to accept and select the Respondent as their bargaining representative, although more than a reasonable period elapsed after November 13, 1959, without a petition under Section 9(c) of the Act being filed, the Respondent engaged in unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Loew's Inc., Petitioner and Office Employees International Union, Local No. 174, AFL-CIO. Case No. 21-RM-593. June 2, 1960

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Norman A. Greer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

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

1. The Employer-Petitioner is engaged in commerce within the meaning of the Act.
2. The Union is a labor organization within the meaning of the Act.
3. Since 1946 the Employer has voluntarily recognized the Union as the collective-bargaining representative for all of its office employees within the confines of its studios at Culver City, California, and has had continuing contractual relationships with the Union covering "office, clerical, and accounting employees, office and tabulating machine operators. . . ." These office employees were scattered throughout all factory and office departments, including the accounting and tabulating departments and other finance departments. The only office employees who were excluded were a secretary, managerial and professional employees, and supervisors. Beginning with 1957, the Employer gradually replaced some of the manual tabulating operations performed by office and tabulating machine operators within the bargaining unit by a Remington Rand computer and then later by an IBM 650 computer. It also delegated and split up duties which had in the past been performed by managerial employees in the finance

departments and outside auditors and accountants and created new jobs in new departments called the systems and procedures, budget and forecasting, and internal auditing departments, to perform these duties.

The Employer seeks an election in a unit consisting of the employees in the newly created jobs who, it claims, are professional and technical employees, or in any event, employees outside the existing unit, the unit being described by the Employer as "all employees in the Internal Auditing, Budget and Forecasting, and Systems and Procedures Departments and programmers." The Union, on the other hand, asserts that it represents these employees as part of its existing unit, denies that it claims or has claimed to represent the employees in the unit described in the petition, and further denies that such unit is appropriate.¹ The Union does not seek an election in any unit, and the Employer has, in effect, disclaimed any desire for an election in any unit other than that petitioned for.

The employees in the internal auditing department perform some of the auditing functions formerly performed by outside auditors and accountants. Wagner, who was hired from the firm of outside auditors and accountants to become the head of the department, responsibly directs the other employees and has the power effectively to recommend the hiring, transfer, and discharge of employees. Accordingly, in agreement with the Employer, we find that he is a supervisor. Houston and Foss were transferred from jobs which they had held in the accounting department within the bargaining unit to be trained as junior auditors. Neither has yet received any training to qualify him for conduct of an audit, and it has not been established that, with training, either could be regarded as a technical or managerial employee, as contended by the Employer.² Houston is utilizing his prior experience with the Employer as laboratory accountant and picture cost clerk in assisting the head of the systems and procedures department in the compilation of factual data, on the basis of which the head of the department may make recommendations concerning the details of installation of a new cost accounting system. His duties involve those of accounting and office clerical employees who are within the unit. Foss is continuing to perform the same duties of location auditor which he previously performed in the bargaining unit and the evidence clearly establishes that this will be his principal job in the future.

Prior to his transfer as head of the budget and forecasting department, Charlton was the head of a systems and procedures group which worked with the outside auditors and accountants and concerned

¹ The Union also contends its contract with the Employer is a bar to the petition. Because of our decision herein, we find it unnecessary to consider this contention

² *Latton Industries of Maryland, Incorporated*, 125 NLRB 722

itself also with budgets and forecasts and taxes. Prior to that Charlton had been an accountant and an office manager with the Employer. He is a graduate accountant and a CPA. He responsibly directs employees and has the power effectively to recommend hiring, transfers, and discharge of employees. He assigns work to his assistant, Sykes, and receives reports from him as to the factual situation regarding departmental budgets and the cash position of the Employer. Charlton then recommends to management appropriate action or directs Sykes to attempt to effect voluntary budget reductions with the department affected. We find, in agreement with the Employer, that Charlton is a supervisor. While Sykes has an accounting degree from a business school and has had an accounting background, having been transferred to his present position from accounting work in the accounting department, and while he exercises some degree of judgment, we find that the record does not affirmatively establish that he is a technical, professional, or managerial employee,³ and that his duties are like those of accounting employees included in the unit.

Wright was hired from the firm of outside auditors and accountants as head of the systems and procedures department because he was instrumental in formulating recommendations to the Employer regarding systems and procedures. He had been a senior accountant with that firm. He responsibly directs Brookhart in the assignment of work and overtime and may effectively recommend transfers. Accordingly, in agreement with the Employer, we find that he is a supervisor. Brookhart was originally hired by the Employer as IBM 650 programmer in the data processing department. After 7 months he was transferred in the same capacity to the systems and procedures department and 6 months later was given his present position, which involves recommending to the head of the department changes in systems and procedures, including preparation of flow charts, which will result in reduction of costs, and programming cost-data into the IBM 650 computer. He had 4 months' prior employment history as a computer programmer and prior to employment by the Employer took a 2 weeks' IBM course in 650 programming and a 1 week's course in 650 wiring. He has had no other technical background or training. Contrary to the contentions of the Employer that he is a professional or technical employee, we find that his duties are like those of office and tabulating machine employees in the unit in the data processing department, from which he was transferred.

Gan was hired by the Employer as assistant head of the data processing department, with prior employment history in the fields of systems programming and tabulating systems. His principal duties include responsible direction of the second shift comprising punch and tabu-

³ *Litton Industries of Maryland, Incorporated, supra. Western Electric Company, Incorporated, 126 NLRB 1346.*

lating machine operators in the department, who are admittedly in the unit. He also effectively recommends hiring and discharge. Accordingly, in agreement with the Employer, we find that he is a supervisor. Miller was hired by the Employer in this department as a tabulating machine operator, having had some prior experience in this work. After 4 months, he was transferred to his present job of programmer on the IBM 650, having received during his employment 2 weeks of IBM instruction on 650 programming. He programs into the computer payroll data, laboratory billing, and other data which formerly had to be manually computed on tabulating and other office machines. Since his work involves office machine work like that of tabulating operators in the unit who work alongside him, we find, contrary to the contention of the Employer that he is not a technical employee.

In view of the foregoing, and upon the entire record, we find that all the individuals in the departments designated in the petition are either supervisors or employees who are performing work within the scope of the existing unit and are, therefore, in that unit.⁴ Accordingly, as the Employer seeks an election in an inappropriate unit consisting of only a segment of the employees in the existing unit, and the petition, therefore, apart from any other considerations, does not raise a question concerning representation within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, we shall dismiss the petition.⁵

[The Board dismissed the petition.]

⁴ We find no merit in the Employer's apparent contention that it can unilaterally remove employees or jobs from a unit such as that involved herein merely by changing their department assignments and job titles.

⁵ Cf. *Continental Can Company, Inc.*, 127 NLRB 286.

Terminal System, Inc., Bramble Cab Corporation, Clover Cab Corporation, Elder Cab Corporation, Fennel Cab Corporation, Fern Cab Corporation, Hawthorne Cab Corporation, Hazel Cab Corporation, Iris Cab Corporation, Maple Cab Corporation, Meteor Cab Corporation, Shamrock Cab Corporation, Stock Cab Corporation, Wags Transportation System, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Taxi Driver's and Terminal Employees, Local Union 826, Petitioner. Case No. 2-RC-9990. June 2, 1960

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 Milton A. Shaham, hearing 127 NLRB No. 133.