

be found. Respondent through its counsel also acknowledged that Miss Locke's present whereabouts was unknown to Respondent.

In lieu of testimony from Miss Locke as to the authenticity of the signature on the union authorization card purporting to be hers, Government counsel presented into evidence samples of Miss Locke's signatures from the files of a former employer, as reflected in Miss Locke's "Form W-4-Employee's Withholding Exemption Certificate," and from the files of the Respondent Employer, as reflected in canceled payroll checks payable to Miss Locke showing her signatures. Following this, Government counsel presented a handwriting expert as a witness who rendered his expert opinion that the signatures on the indicated samples and the signature on the union authorization card here in question were written by one and the same person. From the testimony received from this expert witness, it is found that the union card in evidence as General Counsel's Exhibit 11(m) bears the true signature of Arlene E. Locke.

Throughout the remand hearing, Respondent was given the widest latitude on cross-examination, consistent with the remand which limited the further hearing to the adduction of "further evidence bearing on the question of the authenticity of the signatures on union authorization cards purporting to be those of" the above-named employees. Despite vigorous cross-examination, all witnesses adhered to their testimony that the signatures and dates on their respective union authorization cards were authentic, except that employee Kazmierczak (as heretofore noted) corrected (in his testimony) the erroneous date of August 21, 1964, shown on his card to some unremembered date in September 1964.

Respondent offered no rebuttal to any of the testimony adduced by General Counsel on the signature authentication issues under the Remand Order. Notwithstanding the Company's failure to produce any evidence contrary to the authentication evidence adduced by General Counsel at the remand hearing, Respondent requested permission to file a brief herein which was granted as a matter of right under the rules of the Board.

In its brief, Respondent now admits for the first time that "it must be conceded that the signatures have been proven . . ." but argues that "no witness presented any convincing evidence of the date of signature." As heretofore found, the evidence shows that each card was signed on the date shown on the card except for the one erroneous date on the card of Kazmierczak which he corrected in his testimony.

The Trial Examiner has set forth the evidentiary facts on the authentication issues here involved in greater detail than necessary for decision, particularly in view of Respondent's concession on the matter in its brief. This was done, however, because the case furnishes a classic example of the need for the retention of the rule in the *Taitel* case. It is evident from the record that the Respondent could not have had any reasonable doubt at any time as to the authenticity of the eight union authorization cards here in question or as to any of such cards in evidence in this proceeding, but that it was using the issue of authenticity to prolong and obstruct the efforts of the Union to obtain recognition. Under the strict application of the *Taitel* rule, it is obligatory for an employer to go forward with proof that card signatures are not genuine *after* General Counsel has presented a showing that the cards have come into the Union's

possession from keymen in the regular course of union business and *after* a further showing that opportunity has been afforded the employer to check the card signatures either before or during trial against the signatures of the employees in the employer's own files, such as canceled payroll checks. The *Taitel* rule contains all the reasonably necessary safeguards to employers for due process. A relaxation or abandonment of the *Taitel* rule would place an unnecessary burden on the trial process, particularly in cases involving hundreds of union authorization cards, as common experience indicates that signature forgery is the exception rather than the rule. The *Taitel* rule does not change the rule as to the party on whom the burden of proof falls on union card authentication issues; this burden always remains on General Counsel; the *Taitel* rule merely requires the Employer to go forward with the proof to the contrary after General Counsel has established a *prima facie* case on the genuineness of card signatures.

CONCLUSIONS OF LAW

1. It is found that the signatures on the union authorization cards purporting to be those of employees James A. Christopher, Larry O. Frank, Michael A. Kazmierczak, Arlene E. Locke, Carl Mikolajewski, Elizabeth Stark, Kathleen Steiner, and Bonnie Rene Weber, being General Counsel's Exhibits 11(d), 11(f), 11(i), 11(m), 11(n), 11(s), 11(t), and 11(v), inclusive, are in fact signatures of said employees.

2. It is further found that each of the above-described union authorization cards was signed on the date shown thereon by the aforementioned respective employee-signers, except that the card signed by Michael A. Kazmierczak was signed on or about September 15, 1964, rather than on the August 21, 1964, date that appears on said card.

3. All of the Conclusions of Law stated by the Trial Examiner in his original Decision herein are hereby refound precisely as set forth in the original Decision.

RECOMMENDED ORDER

It is recommended that the orders recommended by the Trial Examiner in his original Decision be adopted by the Board.

The Western and Southern Life Insurance Company and Insurance Workers International Union, AFL-CIO. Case 6-CA-2625.

February 24, 1967

SUPPLEMENTAL DECISION AND ORDER

On September 12, 1962, the National Labor Relations Board issued a Decision and Direction of Elections in Cases 6-RC-3060 and 6-RC-3062, finding appropriate a unit of debit insurance agents at Respondent's McKeesport, Pennsylvania, district office and also finding appropriate a unit of debit insurance agents at Respondent's Wilkinsburg,

Pennsylvania, office.¹ After elections were duly conducted on October 5, 1962, the Regional Director for Region 6, on October 15, 1962, certified Insurance Workers International Union, AFL-CIO, as the exclusive bargaining representative in each of these units. Thereafter, contending that the Board's unit determinations were erroneous and in order to test these determinations, Respondent refused to bargain with that Union in both units.

On February 13, 1963, Trial Examiner Alba B. Martin issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent, by refusing to bargain with the Union in each of these units, had violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. On April 16, 1963, the Board issued a Decision and Order adopting the findings of the Trial Examiner and ordered Respondent to bargain, upon request, with the Union.² On March 4, 1964, the United States Court of Appeals for the Third Circuit issued its decision granting enforcement of the Board's Order.³

Thereafter, Respondent filed with the Supreme Court of the United States a petition for a writ of certiorari. On April 26, 1965, the Court granted certiorari,⁴ vacated the judgment of the United States Court of Appeals for the Third Circuit, and remanded the case to the latter court with instructions that it be remanded to the Board for further proceedings consistent with the opinion of the Supreme Court in *N.L.R.B. v. Metropolitan Life Insurance Co.*, 380 U.S. 438.

In the *Metropolitan* case, the Board had likewise found appropriate a single district office unit of insurance salesmen and had directed that employer to bargain in that unit. Following a decision of the Court of Appeals for the First Circuit denying enforcement of the Board's Order in that case, the Supreme Court had granted certiorari and issued its decision, *supra*, in which it vacated the judgment of the court of appeals and directed that the case be remanded to the Board for further proceedings "due to the Board's lack of articulated reasons for the

decisions in and distinctions among the cases . . ."⁵ involving unit determinations in the insurance industry. Subsequently, the Board, on February 11, 1966, issued a Supplemental Decision and Order in the *Metropolitan* case, in which the Board more fully explicated the rationale underlying its original unit determination as well as its general policy for determining appropriate bargaining units in the insurance industry.⁶

Meanwhile, on May 4, 1965, the United States Court of Appeals for the Third Circuit entered an order remanding the present case for further proceedings consistent with the opinion issued by the Supreme Court in the *Metropolitan* case, *supra*. Thereafter, the Board, on August 8, 1966, issued an order inviting the parties herein to file briefs directed to the unit issues of this case in the light of the Supreme Court's opinion in the *Metropolitan* case and the Board's subsequent decision in that same proceeding. Respondent and the General Counsel have filed briefs which the Board has duly considered.

In accordance with the aforementioned court orders, the Board has reconsidered its original decision in the present case, its earlier decision in the underlying representation case, and the entire record in both proceedings. Having done so, the Board finds no reason to modify its holdings therein.

The refusal to bargain having been admitted, the only issue in the case is the appropriateness of the two units. Each is a unit of the Respondent's debit insurance district agents employed at a district office, one at McKeesport and the other at Wilkinsburg, Pennsylvania. Applying the Board's usual unit principles, it is clear that a district office unit is one which the Board will normally find appropriate as the insurance industry's analogue of the single manufacturing plant⁷ or the single store of a retail chain.⁸ We so held in our recent Supplemental Decision in *Metropolitan*, *supra*, and we affirm that policy determination here.⁹

In *Metropolitan*, the district office unit found appropriate functioned as a distinct entity within

¹ 138 NLRB 538.

² 142 NLRB 28.

³ 328 F.2d 820.

⁴ 380 U.S. 522.

⁵ 380 U.S. 438, 442.

⁶ *Metropolitan Life Insurance Company (Woonsocket, R.I.)*, 156 NLRB 1408. After issuance of the decision in the cited case, the Board approved an agreement between the company and the union, whereby, *inter alia*, the company agreed to recognize the union in a unit of employees at the company's district office in Woonsocket, R.I., as well as in units at other district offices of the company. Order dated June 3, 1966, in *Metropolitan Life Insurance Co.*, Case 13-CA-5981 (not published in printed volumes of Board Decisions and Orders), 62 LRRM 142. The Board thereupon, on the basis of the aforesaid agreement, dismissed the complaint and approved withdrawal of the unfair labor practice charges in *Metropolitan Life Insurance Company, (Woonsocket, R.I.)*, by order dated June 17, 1966, (also not published in printed volumes of Board Decisions and Orders).

⁷ As the plant is the basic component of a manufacturing enterprise, and as Section 9(b) of the Act specifically recognizes

the validity of such a unit, the Board has long held that a unit confined to a single plant of a particular employer is, presumptively, an appropriate unit. See, e.g., *Beaumont Forging Company*, 110 NLRB 2200, 2201-02, *Frederickson Motor Express Corporation*, 121 NLRB 32, 33.

⁸ In *Sav-On Drugs, Inc.*, 138 NLRB 1032, in which the Board found a single store to be an appropriate unit, the Board reconsidered its prior policy that the appropriate unit for retail chainstore operations should embrace employees of all stores within an employer's administrative division or geographic area. The Board concluded that the above-stated earlier policy "has overemphasized the administrative groupings of merchandising outlets at the expense of factors such as the geographic separation of the several outlets and the local managerial autonomy of the separate outlets . . ." See, also, *Primrose Super Market of Salem, Inc.*, 148 NLRB 610, *enfd.* by unpublished order on April 7, 1965 (C.A. 1), cert. denied 382 U.S. 830, rehearing denied 353 F.2d 675 (C.A. 1); *The J. L. Hudson Company*, 155 NLRB 1345; *J. W. Mays, Inc.*, 147 NLRB 968.

⁹ We also incorporate by reference herein the rationale of that decision.

that employer's operations. That district office, along with other district offices, covered a delimited geographic area and was to a significant degree autonomous in its day-to-day operations. The district office manager supervised the so-called agency managers and they, in turn, exercised immediate control and supervision over the sales agents. The agents in each district office enjoyed common working conditions and benefits and provided service primarily to clients within their designated territories. There was almost no transfer or interchange of employees between district offices. Supervision of district offices was the responsibility of a regional manager. However, most of the regional manager's contact in each district office was with the district office manager and then primarily in respect to sales program development. Hence, insofar as the individual agents were concerned, it was their own district office manager, and not the regional manager, who was the principal representative of company authority and policy. And it was the agency managers, working under the direction of the district office manager, who transmitted and explained company policy to the agents through meetings and conferences and who reviewed each agent's performance with him.

Reexamination of the record herein reflects that Respondent's district office organization is very similar to that of the district office in the *Metropolitan* case. Thus, here, as in *Metropolitan*, the district office is a separate administrative entity through which the Respondent conducts its business operations. Each district office has a district sales manager in charge who is the immediate supervisory authority for the agents assigned to that office. Several associate sales managers assist the manager in carrying out this responsibility. All agents are required to perform their duties subject to the supervision and instruction of the associate sales managers and the district sales manager. Each district office sales force operates in its own distinct geographic area, and there is no interchange, and virtually no transfers, of agents between district offices. Labor relations policies are established by the Respondent's home office in Cincinnati, Ohio, and all agents work under the same wage policies and have the same employee benefits and working conditions.¹⁰ The next level of organization above

the district offices here involved is Respondent's Division E, of which Superintendent of Agencies Maly is in charge. This division comprises some 15 district offices (including the offices here involved at McKeesport and Wilkinsburg) and six detached offices; it covers most of the Commonwealth of Pennsylvania and part of the State of Delaware. Maly, who maintains his office in Philadelphia, several hundred miles from McKeesport and Wilkinsburg, oversees the operations of all offices within his division, and either he or his assistant visits each such office several times a year.¹¹

Notwithstanding the foregoing, Respondent contends that district office units at McKeesport and Wilkinsburg are inappropriate. It argues that when the Board originally determined these units to be appropriate it did not follow its then existing unit principles. It avers that if the Board now reaffirms these unit findings it could only be on the basis of a retroactive application of a recent change in the Board's policy. It further argues that these unit findings must fall, in any event, because they rest ultimately upon the Union's "extent of organization," thus violating the provisions of Section 9(c)(5) of the Act which limit the Board's authority in making unit determinations. Respondent also advances in the affirmative contention that the appropriate unit should instead consist of all the district offices in its Division E, or, alternatively, all its district offices in western Pennsylvania or in the Pittsburgh metropolitan area. Lastly, Respondent argues that single district office units at McKeesport and Wilkinsburg are inappropriate essentially for the reason that the operations of the district offices in its Division E are so closely controlled by Superintendent Maly that, individually, they do not constitute autonomous administrative units. We reject all these arguments as lacking a merit.¹²

Contrary to Respondent, the Board's original unit findings in the underlying representation case here were founded upon its policies as they existed at that time—in 1962—and continue to exist at the present time. As more fully explained in the supplemental *Metropolitan* decision,¹³ the Board has, since its *Quaker City Life Insurance Company*¹⁴ decision, consistently applied to the insurance business the same unit rules it has applied to other industries.¹⁵

¹⁰ There is no bargaining history for the employees involved in this proceeding.

¹¹ The facts concerning the Pittsburgh and McKeesport district offices and Respondent's organizational structure and administrative policy are set forth in more detail in the decision in the representation case, 138 NLRB 538. Based on our reexamination of the record in that proceeding, we reaffirm those findings.

¹² Respondent also contends that the Board has prejudged its present decision in this case, contrary to the remand orders of the Supreme Court and the Court of Appeals for the Third Circuit. In support of this contention, Respondent adverts to the Board's Supplemental Decision in *Metropolitan*, 156 NLRB 1408, and particularly to a reference the Board made therein to cases (including the underlying representation case here) where the

Board had found single district offices to be appropriate units in the insurance industry.

Respondent's contention in this regard is without foundation, because it is bottomed upon a reading of the foregoing reference out of its context. An examination of the reference in the full context in which it appears readily shows that the Board was merely pointing out the historical fact that it had, at the *initial stage* of this proceeding and in numerous others like it, determined that single district office units were appropriate in this industry. See 156 NLRB 1408, text following footnote 20.

¹³ *Id.*

¹⁴ 134 NLRB 960, issued December 15, 1961.

¹⁵ Prior to *Quaker City*, the Board applied special rules in making unit determinations in this industry. A history of the development of these rules and their eventual rescission is also set forth in the Supplemental Decision in *Metropolitan*.

The Board's decision in the representation case here applied these normal unit rules and was issued by the Board 9 months after *Quaker City* was decided.¹⁶

The short answer to Respondent's contention that the Board's original unit findings here were based on the Union's "extent of organization" is that it is without foundation. We have reexamined the transcript of the record in that case, in which all the witnesses were presented by the Respondent, and are unable to find any evidence bearing on this factor. Respondent itself was apparently aware that such evidence was lacking in the representation case, for it sought at the subsequent 8(a)(5) proceeding to introduce testimony bearing on the Union's organizational campaign. The Trial Examiner, however, sustained an objection to such testimony. Respondent thereupon made offers of proof, the substance of which was that the Union had sought to organize four of its district offices in the Pittsburgh area but had apparently succeeded only in organizing the two offices involved herein. The Trial Examiner also rejected the offers of proof.

In its present brief, Respondent, relying on its offers of proof in the 8(a)(5) proceeding, again advances its contention that the Board's determination in the representation case was based upon the Union's "extent of organization."

However, accepting such proffered evidence as proof, it would not change our original unit findings. Respondent's view seems to be that, if it can succeed in establishing that the Board's unit findings coincided with the Union's "extent of organization," such findings automatically become anathema by the force of Section 9(c)(5) of the Act. Respondent's view, however, misapprehends the thrust of this statutory provision. For, as the Supreme Court pointed out in *N.L.R.B. v. Metropolitan Life Insurance Company*, "both the language and the legislative history of Section 9(c)(5) demonstrate that the provision was *not* intended to prohibit the Board from considering the extent of organization as one factor, though not the controlling factor, in its unit determination."¹⁷ Stated otherwise, that provision was merely intended to preclude the Board from basing its unit determination *solely* on "extent of organization" in the absence of other criteria of appropriateness.¹⁸ It

was not intended to prohibit the Board from considering "extent of organization" as *one* factor in its determination or to invalidate units which have qualified under other established tests for appropriateness irrespective of "extent of organization." The Board's original unit determinations here rested upon such *other* established tests for appropriateness. Hence, if we were to accept Respondent's offer of proof, the proffered evidence would not serve to overturn these original unit determinations. Rather, it would provide additional support for such determinations.

Respondent, as noted, further contends that some combination of its district offices—Pittsburgh area, western Pennsylvania area, or all of its Division E—would be more appropriate than a single district office unit at McKeesport and another single district office at Wilkinsburg. Respondent also objects that the Board, in reaching its decision in the representation proceeding, neglected to answer Respondent's contentions in respect to one of these alternatives. These arguments by Respondent misconstrue the Board's authority under the Act to determine bargaining units. There is nothing in the Act which requires that the unit for bargaining be the only appropriate unit. The Act requires simply that the unit be "appropriate" to insure to employees in each case the fullest freedom in the exercise of their rights guaranteed by the Act.¹⁹ Hence the Board did not, in the representation case, and need not now, decide that district office units are the *only* appropriate units of Respondent's employees. Likewise the Board did not previously, and need not now, decide that the alternative units advanced by Respondent are inappropriate. Applying our usual principles, we hold merely, as we have in other similar cases, that a district office unit is presumptively an appropriate unit in this industry.

We further hold that there is no factual basis in this case for rebutting the presumption that each of the two units here involved—one at McKeesport and the other at Wilkinsburg—is appropriate.²⁰

The Respondent argues, however, that, unlike the normal situation in the insurance industry, its district offices within Division E are not individually appropriate units for the reason that their operations

¹⁶ 138 NLRB 538, issued September 12, 1962.

¹⁷ 380 U.S. 431, 441-442. [Emphasis supplied.]

¹⁸ 156 NLRB 1408. Section 9(c)(5) provides

In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

¹⁹ E.g., *A S Beck Shoe Corporation*, 92 NLRB 1457, 1459, *General Instrument Corporation v. N.L.R.B.*, 319 F.2d 420, 422-423 (C.A. 4), cert. denied 375 U.S. 966; *Mountain States Telephone and Telegraph Co v. N.L.R.B.* 310 F.2d 478, 480 (C.A. 10), *N.L.R.B. v. Smythe*, 212 F.2d 664, 667-668 (C.A. 5), *Harris Langenberg Hat Company v. N.L.R.B.*, 216 F.2d 146 (C.A. 8), *Mueller Brass Company v. N.L.R.B.*, 180 F.2d 402, 405 (C.A. D.C.).

²⁰ Consistent with the foregoing, and as more fully explained in the Supplemental Decision in *Metropolitan*, a unit composed of two or more district offices may also be appropriate, if there is a

reasonable degree of geographic coherence among the offices and if other factors support the combination. In such cases—where either the district office or a combination of offices might be appropriate on the basis of factors other than "extent of organization"—the Board will take the Union's request into account in deciding in which unit an election should be conducted. For there is little justification in requiring that adjacent offices, sought by the same labor organization, be in different bargaining units where a combination would also be appropriate. On the other hand, although other rational groupings of offices may be possible, there is no reason to compel a labor organization to seek representation in a unit other than the one requested unless the requested unit is itself inappropriate. See *Metropolitan*, 156 NLRB 1408; *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631; *P. Ballantine & Sons*, 141 NLRB 1103, 1107; *Bagdad Copper Company*, 144 NLRB 1496; *Gordon Mills, Inc.*, 145 NLRB 771, 773-774.

are so closely controlled by Division E's Superintendent Maly as to preclude them from separately constituting autonomous administrative entities. Thus, Respondent points out that Maly is the official with final authority to hire, discharge, promote, and demote agents in Division E; that it is he who determines to establish debits within an office and to set up new detached offices; that he, or his assistant, makes frequent visits to all offices within Division E; that he is responsible for training of new agents; that he issues promotional material; that he supervises production, collections, and the servicing of policies; and that he is charged with responsibility for making certain that Respondent's uniform rules and procedures, as set forth in its various manuals,²¹ are carried out. While the record largely supports these contentions by Respondent concerning the extent of Maly's authority, we are not persuaded that the possession and exercise of such authority within the framework of Respondent's organizational structure requires us to overturn the Board's original conclusion—on which its unit findings were largely based—that each district office is, in effect, a “separate administrative entity through which the Employer conducts its business operations. . . .”²² For, although Maly and his assistant *oversee* the aforementioned operations, it is the district sales manager and his associate sales managers who responsibly *carry out* these functions. Moreover, the record indicates that the district office's management has considerable leeway within the broad lines of company policy to implement on a day-to-day basis Respondent's overall business program.²³

Thus, although Maly has the final say in the hiring of an agent, the district office management does the recruiting, obtains completion of the personnel forms, and makes the recommendation. If hired, the new agent signs a contract which explicitly binds him to “Be subject to the supervision and instruction of his associate sales manager and his district sales manager.” Upon execution of the contract the new agent is then appointed to a particular district and, again by the explicit terms of his agreement, “accepts his appointment as district agent to represent the Company in such district.”

Although Maly supervises the 26-week training period of new agents—in that he maintains a training “Progress Book” and follows training activities through correspondence and occasional consultation with district office personnel—the agent's actual

training is carried out, according to Respondent's Manager's Manual, “with the constant help and supervision of his district sales manager and his associate sales manager.” The managers and associate managers also give and grade tests for new agents and prepare them to pass the State insurance examination.

While promotions, demotions, and discharges are finally determined by Maly, his action in each instance is taken upon consideration of the recommendation of the district manager. Debits are established or changed in the same fashion. Further, as to discharges, a frequent procedure followed by Respondent in obtaining an agent's separation is to have the district manager persuade the agent to resign.

Although Maly, through the examination of periodic reports, keeps a watchful eye on other operations, such as sales, production, collections, and servicing of policies, the actual responsibility for their proper performance is lodged in the district manager and his staff. The applications for new business are submitted by an agent to his district office and reviewed by the manager of that office before forwarding to the home office. Moneys collected by the agents are deposited and accounted for in the district office. The various forms and papers needed for servicing policies are submitted to district office management and usually to the associate manager. These include forms for transfer, cancellation, lapse, or change of insurance policies and cash surrender papers. As for Respondent's overall production program, its Manager's Manual recites that “To the District Sales Manager falls the *entire* responsibility of overseeing his District's production and conservation effectiveness.” [Emphasis supplied.]

From the above, and contrary to Respondent's contention, it seems clear to us that each district office under the direction of its district manager operates in a manner demonstrating a significant degree of local autonomy.²⁴ While Maly and his assistant oversee these operations, the control and supervision which they exercise seem to us a little different from the control and supervision exercised by intermediate higher management of any well-run enterprise over its field operations. Maly's authority appears in fact to be similar to the authority exercised by the regional manager in *Metropolitan, supra*.²⁵ The existence of such authority, however,

²¹ The Manual for Fieldmen, the Manager's Manual, and the Ordinary Rate Book

²² 138 NLRB at 539-540.

²³ The considerable authority of the district manager and his associate is summed up in Respondent's Manager's Manual (p. 1) in the following manner.

District Sales Managers and Associate Sales Managers are appointed by the Home Office and are responsible for the management of their district and staff beginning on the date of their appointment or transfer

As a District Sales Manager, you have the responsibility for the overall supervision of the business and the men in your

District. The Associate Sales Managers are your assistants and they in turn are responsible for the success of their staffs. However, the overall responsibility rests upon the District Sales Manager . . .

²⁴ We are thus unable to accord much weight to the conclusionary testimony of Respondent's Vice President Roth at the hearing in the representation case that each district office is not an autonomous operation

²⁵ For a discussion of the functions of the regional manager in that case see 156 NLRB 1408, and Trial Examiner's Decision therein, section III

does not render inappropriate an otherwise appropriate unit of employees working at a lower echelon, particularly where, as here,²⁶ the supervision of that lower echelon has a meaningful degree of autonomy in carrying out its day-to-day activities.²⁷

The record therefore amply supports the subsidiary conclusion, which the Board reached in the underlying representation case²⁸ and which we here reaffirm, that each individual district office of the Respondent, at least within its Division E, is, in effect, "a separate entity through which the Employer conducts its business operations."

For these reasons, after reexamining the full record of these proceedings, we reaffirm the Board's earlier findings that all debit insurance district agents at Respondent's McKeesport, Pennsylvania, district office and all debit insurance district agents at Respondent's Wilkesburg, Pennsylvania, district office separately constitute appropriate bargaining units for the purposes of the Act, and we also reaffirm the Board's earlier finding that by refusing to bargain with the Union in these units, Respondent has violated Section 8(a)(5) and (1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, The National Labor Relations Board hereby orders that the Respondent, The Western and Southern Life Insurance Company, McKeesport and Wilkesburg, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Insurance Workers International Union, AFL-CIO, as the duly certified exclusive bargaining representative of its employees in the following units:

All debit insurance district agents at Respondent's district office in McKeesport, Pennsylvania, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act.

All debit insurance district agents at Respondent's district office in Wilkesburg, Pennsylvania, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act.

(b) Interfering with the efforts of the Insurance Workers International Union, AFL-CIO, to negotiate for or represent the employees in the said appropriate units as the exclusive bargaining agent.

2. Take the following affirmative action, which it is found will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the said certified Union as the exclusive representative of the employees in the units described above, with

respect to grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of work; and embody in a signed agreement or agreements any understandings reached.

(b) Post at its district offices in McKeesport and Wilkesburg, Pennsylvania, copies of the attached notice marked "Appendix."²⁹ Copies of said notice, to be furnished by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

²⁶ We deem it significant in the present case that Maly and his assistant found it necessary to make only occasional visits—averaging less than one visit per month—to McKeesport and Wilkesburg during the year preceding the hearing in the representation case. Thus the record shows that Maly made four trips to the McKeesport office—each of a 1-day duration—and his assistant made one visit to McKeesport remaining there for 3 days at that time. During the same period Maly visited the Wilkesburg office seven times and his assistant visited it four times.

²⁷ 138 NLRB at 539-540.

²⁸ 138 NLRB at 539-540.

²⁹ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT interfere with the efforts of the Insurance Workers International Union, AFL-CIO, to negotiate for or represent the employees in the said appropriate units as the exclusive bargaining agent.

WE WILL bargain collectively, upon request, with Insurance Workers International Union, AFL-CIO, as the exclusive bargaining representative of all employees in the bargaining units described below concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of work, and embody in a signed agreement or agreements any understandings reached. The bargaining units are:

All debit insurance agents at our district office in McKeesport, Pennsylvania,

excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act.

All debit insurance agents at our district office in Wilksburg, Pennsylvania, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act.

THE WESTERN AND
SOUTHERN LIFE
INSURANCE COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1536 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 644-2977, if they have any questions concerning this notice or compliance with its provisions.

North America Assurance Society of Virginia, Inc. and Insurance Workers International Union, AFL-CIO. Case 5-CA-2523.

February 24, 1967

SUPPLEMENTAL DECISION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

On February 14, 1964, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,¹ finding that the Respondent had refused to bargain collectively with the Charging Party as the duly certified bargaining representative of the employees in the unit found appropriate by the Board² in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, and ordering it to cease and desist therefrom and to take certain appropriate action. Thereafter, because of developments in court litigation involving the Board's unit determinations in the insurance industry, the Board decided to reconsider its findings in this case. Therefore, on September 20, 1966, the Board issued an order granting leave to the parties to file briefs directed to the unit finding. No briefs were filed by the parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the

Board has delegated its powers in connection with this case to a three-member panel.

For the reasons heretofore set forth in the Board's Supplemental Decision and Order in *Western and Southern Life Insurance Company*, 163 NLRB 138, and in *Metropolitan Life Insurance Company (Woonsocket, R.I.)*, 156 NLRB 1408, we reaffirm the unit finding in our Decision and Order heretofore issued in this case.

¹ 145 NLRB 1751

² The unit found appropriate in the present case consists of all combination or debit insurance agents attached to or working out of District Office 83 in Newport News, Virginia, excluding all clerical employees, managers, professional employees, guards, watchmen, and supervisors within the meaning of the Act.

The Life Insurance Company of Virginia and Insurance Workers International Union, AFL-CIO. Case 5-CA-2394.

February 24, 1967

SUPPLEMENTAL DECISION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

On August 15, 1963, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,¹ finding that the Respondent had refused to bargain collectively with the Charging Party in an appropriate unit² in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, and ordering it to cease and desist therefrom and to take certain appropriate action.

On March 2, 1964, the Board filed with the United States Court of Appeals for the Fourth Circuit a petition for enforcement of its Order. While the petition was pending before the Court of Appeals, the Supreme Court of the United States, on April 5, 1965, handed down its decision in *N.L.R.B. v. Metropolitan Life Insurance Co.*³ In that decision, the Supreme Court vacated a judgment of the Court of Appeals for the First Circuit denying enforcement of a Board Decision and Order, and ordered that the case be remanded to the Board for further proceedings because of the "the Board's lack of

¹ 143 NLRB 1343.

² Our unit finding herein reaffirms an earlier unit determination of the Board's Regional Director On January 10, 1963 (Case 5-RC-3974), the Regional Director for Region 5 found the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act

All weekly premium agents working out of or assigned to the [Respondent's] district office in Petersburg, Virginia, excluding all other employees, cashiers, clerks, associate managers, district manager, and guards and supervisors within the meaning of the Act

³ 380 U S 438