

Utica Mutual Insurance Company¹ and Communications Workers of America, AFL-CIO, Petitioner. Case 3-RC-3955.

June 23, 1967

DECISION AND DIRECTION OF ELECTIONS

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer John W. Irving. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, the Employer and Petitioner filed briefs.

Upon the entire record in this case,² the National Labor Relations Board³ finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations⁴ involved claim 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 Sections 9(c)(1) and 2(6) and (7) of the Act.⁵

4. The Employer is engaged in all phases of the casualty insurance business on a nationwide basis. Its home office is located in New Hartford, New York. Regionally, the Employer operates through five branch offices located in Alhambra, California, Atlanta, Georgia, Waltham, Massachusetts, Richmond, Virginia, and Houston, Texas. In addition to the branch offices, the Employer maintains eight district offices, including one located on the same premises as the home office in New Hartford, all of which are located in the State of New York. Finally, there are 15 claims offices, of which 8 are within the State of New York.⁶

The Petitioner requests an election in a single-bargaining unit consisting of all the Employer's employees at its home office and district office located in New Hartford, except salesmen and statutory exclusions. In the alternative, Petitioner is

willing to accept any unit limited in scope to the New Hartford area. In opposition, the Employer contends that the only appropriate unit should encompass all of its operations, including its home office and its various branch, district, and claims offices throughout the United States. The Intervenor has indicated its willingness to participate in an election in any unit found appropriate by the Board. There is no history of bargaining for any of the Employer's employees.

Functionally, the overall activities of the Employer may be categorized as administrative, on the one hand, and operating or technical on the other. The operating activities are comprised of claims handling and sales. Administrative activities include underwriting,⁷ statistical compilations, reserve maintenance, personnel administration, advertising and public relations, accounting and bookkeeping, and the variety of housekeeping functions performed by any large business entity. Generally speaking, the administrative functions are centralized in the home office, which, through claims review and sales promotional activities, also supplements operating activities conducted regionally. However, there are no direct salesmen⁸ or claims adjusters assigned to the home office, such functions being the responsibility of the various regional offices of the Employer.

The Employer, in contending that only a nationwide unit is appropriate, argues that the centralized control exercised by the home office over all regional operations shows that the field offices lack the autonomy which would justify their separation from the home office herein for purposes of collective bargaining. In this connection, the record shows that such matters as purchasing, inventory control, and personnel administration are planned, coordinated, and controlled from the home office. Thus, the home office determines labor policy, rates of pay, hours of employment, and insurance benefits, and reviews vacation schedules prepared regionally. Training programs are devised and directed from the home office and payroll information is processed and maintained at that location, with all paychecks prepared there as well.

¹ The Employer's name appears as amended at the hearing.

² The Employer has requested oral argument. This request is hereby denied because the record and briefs adequately present the issues and positions of the parties.

³ 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.

⁴ At the hearing, Office and Professional Employees International Union was permitted to intervene on a showing of interest.

⁵ After the close of the hearing, the Employer, on October 17, 1966, filed a motion with the Regional Director requesting an investigation of Petitioner's showing of interest to determine whether acquisition thereof was tainted by supervisory participation. In its brief to the Board, the Employer urges dismissal of the petition as unsupported by a valid showing of interest. The sufficiency of a Petitioner's showing is a matter for

administrative determination by the Board. All the circumstances of this case, including those disclosed by the Regional Director's investigation, persuade us that the policies of the Act will be best effectuated if the employees' true desires herein are determined by ballots cast in a secret election. The Employer's request for dismissal on "showing" grounds is accordingly denied.

⁶ The remaining claims offices are located in Burlington, New Jersey, Coral Gables, Florida, Greensboro, North Carolina, Laurel, Maryland, Meridian, Connecticut, Newark, New Jersey, and Springfield, Massachusetts.

⁷ The underwriting function entails a variety of activities enabling a determination of whether the Employer should accept or reject a particular risk.

⁸ The Employer's sales activity is performed by its employees who are referred to as direct salesmen, and by an agency sales force consisting of persons whom the Employer considers to be independent contractors.

Home office functionaries also possess authority to control the hiring and discharge of field personnel.

The record also discloses some interrelationship between regional and home offices in the areas of underwriting, claims, and sales. Thus, organizationally, these activities are divided into three separate departments, each of which is headed by a vice president, who is based in the home office. In the regional offices, separate underwriting, claims, and sales departments are structured into the organizational framework, with a separate branch or district manager for each function. Although the respective regional offices also have an overall manager, his regionwide authority is restricted to administrative matters, and he exercises no technical responsibility with respect to underwriting, claims, and sales. Instead, each regional department head reports directly to his counterpart in the home office. With respect to sales, however, there appears to be no overlap in *operating* activities between the home and regional offices. Home office activities in that area are concerned with coordinating and promoting sales and providing general assistance to direct salesmen and sales agents operating regionally.⁹ Concerning underwriting, which embraces activities for determining whether the Employer should accept a particular risk, the district and claims offices are not assigned such activities, these functions are performed in the home and branch offices only. Generally speaking, home office and branch office underwriting personnel perform parallel functions, although some property underwriting is duplicated in the home office, with the home office controlling casualty underwriting by spot checks. The most significant overlap is in the area of claims processing. All claims activity is initiated in the field, where claims adjusters and their supervisors are responsible for conducting the investigation of an alleged loss and managing the claim to satisfactory disposition. The regional offices have authority to settle, without home office approval, claims within a prescribed ceiling, which varies from office to office, the highest being \$5,000, the lowest \$1,500, and the normal ceiling being \$2,500. Decisions to litigate claims are first made in the field, but are subject to review in the home office. Otherwise, the home office claims personnel are engaged essentially in coordinating and clearinghouse functions, i.e., providing information as to coverage, reviewing open claims files to insure

adequacy of investigation, taking steps necessary to maintain adequate reserves to meet claims as they mature, and making settlement determinations where the ceiling of a particular regional office is exceeded.

Although the Employer's nationwide operations are conducted with a substantial degree of centralized control and coordination of certain operating activities, we nevertheless do not agree that these attributes of the Employer's organizational structure are sufficient to defeat the appropriateness of a separate bargaining unit on a home office basis. Thus, despite the high degree of centralization with which we are confronted herein, the Employer's regional offices are, to a significant degree, separate entities through which the Employer conducts its business operations. The various branch, district, and claims offices are the operating appendages of the Employer within their respective territories. They are not organized into subordinate administrative or supervisory groupings, but are responsible individually to the home office. The various activities performed in the regional offices are, in significant respects, performed subject to separate, immediate supervision, with regional supervisors responsible for day-to-day discipline and effective implementation of company policies within their area, and possessing authority effectively to recommend hiring, discharge, and employee advancement. It is immaterial that the actual authority is held by several operating supervisors and the regional office manager, rather than being vested in a single individual; for, the existence of local autonomy depends upon the authority and responsibility of the local office, not the identity or number of persons to whom such authority and responsibility has been entrusted.

It further appears that each regional office is responsible for its own cost control and is separately budgeted. As indicated, they have independent authority to commit the Employer in settling claims within prescribed limits. There is no significant interchange of similarly situated nonsupervisory personnel either between regional offices or between the home office and the regions.¹⁰ The wage structure of employees is not uniform throughout the country but varies depending upon local labor market conditions and cost-of-living factors. Also significant is the fact that the regions include the only employees performing the basic operating functions of claims adjusting and sales. Under all the

⁹ See fn. 8, *supra*.

¹⁰ In view of the abundance of evidence bearing upon companywide personnel movement developed at the hearing, our finding as to the lack of substantial interchange requires further comment. The weight to be given interchange depends not only upon its frequency, but also upon its type. The evidence here shows a number of permanent transfers, the use of home office personnel on a sporadic basis to assist in opening new offices or to alleviate temporary work load problems in the region, and the use of home office personnel (i.e., the work measurement group) for

work in the field, performing a home office administrative function in their home office classification. In our opinion, this type of personnel movement does not alter the plain fact that the Employer's regional offices are comprised of employees who have a reasonably permanent identity with the classifications within those offices, and in no way suggests the appropriateness of bargaining only on a nationwide basis. Apart from the foregoing, the only evidence of temporary interchange, within a period of 2 years, consists of a single interregional transfer, and a single transfer from the region to the home office.

circumstances we find no merit in the Employer's contention that separation of home office and regional personnel for purposes of collective bargaining will unduly impede management's ability to run its business in areas affected by employee organization.

We are satisfied that the regional offices possess sufficient autonomy and are distinct units within the framework of the Employer's overall operation, and that they thereby are presumptively appropriate for collective bargaining.¹¹ We are also of the opinion that the Employer's activities are not so integrated as to merge effectively the single offices into an all encompassing operation, which would require employees to exercise their right to organize collectively on a nationwide basis, if at all. Neither the fact that the regional offices merely implement centrally promulgated policies, nor the fact that the home office performs a variety of services in support of regional operations, nor the fact that the actual activities carried on in the regional offices are to an extent duplicated, controlled, or assisted by the home office, defeat the separate identity of the Employer's branch, district, and claims offices.¹²

In view of the foregoing, and upon the entire record, particularly considering such factors as the degree of autonomy vested in the regional offices, the physical separateness of such offices, the absence of significant interchange, the functional differences, and diverse community of interests between home and field personnel, we find that a unit limited to the home office employees of the Employer is appropriate for collective-bargaining purposes.

However, having found that the home office and various regional offices may be separated for purposes of collective bargaining, we nevertheless do not agree that a single unit, as requested by Petitioner, combining the home office with the New Hartford district office represents a "coherent and sensible" grouping for such purposes.¹³ Although located in the same building, home office and district office personnel are segregated physically,

and, as indicated, are engaged in distinct phases of the Employer's business. The New Hartford district office, like all other regional offices, constitutes an autonomous operation with separate immediate supervision. Its operations, though materially different from those conducted in the home office, are parallel to, but identical with, those performed in the various district offices. Furthermore, we see no geographic or operational coherence in a unit which combines home office personnel, whose influence is nationwide in scope, and a district office, which like the other regional offices, is operationally confined to a limited geographic territory. Accordingly, and in view of these functional differences, the absence of substantial interchange, and the diverse community of interests between home office and field personnel generally, we shall direct elections in separate units of home office and New Hartford district office employees.

Remaining for consideration are the issues raised with respect to the unit placement of certain employees and classifications assigned to the Employer's New Hartford offices.

Salesmen. Petitioner would exclude all direct salesmen assigned to the Utica district office. The direct salesmen are engaged exclusively in the sale of insurance and are the only employees of the Employer so engaged. They spend about 20 percent of their time in the office and the remainder outside, are separately supervised, and, unlike other employees, have an incentive plan, are paid expenses, and are reimbursed for entertainment of clients. As these facts indicate substantial differences between the sales force and other employees in the district office, and in view of the Board's policy of treating indemnity salesmen on a parity with life insurance agents, for whom the Board has consistently found separate units appropriate, we find the interests of direct salesmen to be sufficiently different from unit employees to warrant their exclusion.¹⁴

Confidential employees and others with interests closely allied with management. The individuals

¹¹ *NLRB v Sun Drug Co, Inc.*, 359 F 2d 408, 413 (C.A. 3) Since Section 9(b) specifically recognizes the validity of the plantwide unit, the Board has long held that a unit confined to a single manufacturing plant of a particular employer is presumptively an appropriate unit. See, e.g., *Beaumont Forging Company*, 110 NLRB 2200, 2201-02, *Fredrickson Motor Express Corporation*, 121 NLRB 32, 33. Moreover, where a district office in the insurance industry possesses the requisite autonomy, the Board has considered such office as the analogue of the single manufacturing plant. See, e.g., *Metropolitan Life Insurance Company (Woonsocket, R I)*, 156 NLRB 1408.

¹² Our decisions in *State Farm Mutual Automobile Insurance Company*, 158 NLRB 925, and *Home Exterminating Company*, 160 NLRB 1480, on which the Employer relies are distinguishable on material grounds. Thus, in *State Farm* where the record established that day-to-day supervision was exercised on a divisional, multioffice rather than a district office basis, we found that the various claims offices lacked sufficient autonomy to be separately appropriate. In *Home Exterminating*, we found a statewide unit embracing the Employer's main and branch offices

to be the minimal appropriate unit, where the centralized control similar to that exhibited by the instant record was further supported by substantial temporary interchange between the main and branch offices, by the fact that the branch offices were small in size with the largest having but two employees, and by the fact that the branch offices were geographically proximate to the main office with the most distant being but 110 miles away.

Also without merit is the Employer's contention that, by inclusion of cafeteria and certain maintenance workers, the home office unit constitutes a heterogeneous grouping, embracing employees having disparate interests, who cannot be appropriately combined for purposes of collective bargaining. Although the cafeteria and maintenance workers might be separately represented, if sought on that basis, we are satisfied that their employment at the home office evidences a sufficient unity of purpose with other employees to enable effective representation of all home office personnel in a single unit.

¹³ *State Farm Mutual Automobile Insurance Co*, *supra*.

¹⁴ *Allstate Insurance Company*, 118 NLRB 855, 857.

listed on the attached Appendix A are excluded either as confidential employees or as employees whose duties evidence that they are more closely allied with management than with unit employees.

Supervisors. The individuals listed on the attached Appendix B are excluded as supervisors in view of their authority effectively to recommend discharge and wage increases, and responsibly to direct employees in the performance of their duties.

The Employer would exclude, as supervisors, some 41 home office claims examiners because of the review functions they perform with respect to the work product of field office adjusters. We disagree. The claims examiners are primarily engaged in ministerial review of the data compiled through field office claim investigations; they may make recommendations concerning an adjuster's investigation or a proposed settlement, and their opinion may be elicited and used by acknowledged supervision in evaluating the performance of a particular adjuster. They do not have regular contacts with the adjusters, such communication being conducted through established supervisory channels. Their work is essentially of a production nature, and the Employer, in our opinion, has vested immediate supervisory responsibility over the work of the adjusters in the field office claims managers and, secondarily, in the seven home offices claims supervisors we have heretofore excluded in Appendix B. As the relationship between the examiners and the adjusters does not reveal that the examiners possess the requisite indicia of supervisory authority, we shall include them in the home office unit.¹⁵

Professional employees. The individuals listed on Appendix D qualify as professional employees and shall be excluded from the appropriate units.

Systems programmers. The Employer would exclude, and the Petitioner would include, the eight systems programmers assigned to the Electronic Data Processing Section within the Statistical Department in the home office. The Employer argues that they are confidential, professional, managerial, and technical employees. The systems programmers are responsible for developing and revising systems and procedures whereby the Employer's computers are utilized to solve problems, store data, or perform other functions which would otherwise be done manually. Employees are selected for these positions on the basis of a special aptitude test administered by IBM and only those scoring above a certain grade are accepted. Five of the eight programmers were promoted thereto from classifications within the home office. IBM supplies one of its own employees, classified as a "customer system engineer," to work with the systems programmers and to assist them

with the on-the-job phase of their training and to supplement their education from miscellaneous courses. Each of the programmers is being trained to become a specialist in one of the Employer's operating areas, and is responsible for an understanding of the Employer's objectives, so as to enable the programmer to initiate projects consistent with the desires of management in that area. Upon development of a system by the programmer, it is turned over to an "operator," who will run the program through the machine, with the systems programmer then checking the results and making innovations in the basic system as necessary. In preparing their programs, the systems programmers also have frequent contacts with department heads and other management representatives, and occasionally work on systems which will have an impact upon jobs of other employees. Though subject to separate immediate supervision, they work with little supervision, do not actually operate the machines, and will advise management as to the feasibility of computerizing certain phases of the Employer's operations. On the basis of the foregoing, it appears that the systems programmers are technical employees whose unit placement must be determined upon appraisal of the factors set forth in the Board's *Sheffield* decision.¹⁶ However, as the record is not sufficiently developed to enable a conclusive determination on this issue at this time, we shall permit the systems programmers to vote subject to challenge.

Part-time and seasonal employees. The parties apparently agree that only those part-time employees working a substantial number of hours in each workweek should be included in the appropriate units. We shall include the 13 regular part-time cafeteria workers, and exclude the 3 who work sporadically, on an on-call basis and only when extra help is required. We shall also, in accord with the agreement of the parties, include John Hoffman of the Statistical Department; Rusty Hoffman of the Mail Room; Doris Luker of the policy typing section; and Charlotte Wiebel, a part-time telephone receptionist, all of whom work regularly in each workweek.

The Employer would also include Mr. Kunkel of the Statistical Department, a college student who apparently has worked during the summer months only, but is to be hired on a permanent basis upon completion of his college program. As Kunkel's present status or employment history with the Employer is not sufficiently clear to enable us to determine his unit placement, we shall allow him to vote subject to challenge.

On the basis of the foregoing and the entire record in this case, we find that the following employees constitute units appropriate for purposes of

¹⁵ See, e.g., *National Broadcasting Company, Inc.*, 160 NLRB 1440.

¹⁶ *The Sheffield Corporation*, 134 NLRB 1101, 1103-04

collective bargaining within the meaning of Section 9(b) of the Act:

- (1) All employees assigned to the Employer's home office at New Hartford, New York, excluding officers, professional employees, guards, supervisors as defined in the Act, managerial, and confidential employees.
- (2) All employees assigned to the Employer's

district office located in New Hartford, New York, excluding salesmen, officers, professional employees, guards, supervisors as defined in the Act, managerial, and confidential employees.

[Direction of Elections¹⁷ omitted from publication.]

¹⁷ Election eligibility lists, containing the names and addresses of all eligible voters in the respective units, must be filed by the Employer with the Regional Director for Region 3 within 7 days from the date of this Decision and Direction of Elections. The Regional Director shall make these lists available to all parties to the elections. No extension of time to file these lists shall be

granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election or elections whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

APPENDIX A

Confidentials and individuals whose interests are more closely allied with management than unit employees

Janice Gossin	Secretary to Personnel Director
Harold Becraft	Secretary to Chairman to Board of Directors
Claire A. Nelson	Secretary to the President
Ruth Mellor	Secretary to Comptroller
Mrs. Tucker	Secretary to General Counsel
Esther Andrews	Secretary to Vice President in Charge of Operations and Procedures
Jean Urstadt	Secretary to Vice President and General Claims Manager
Joan Sheridan	Secretary to administrative assistant to Sr. Underwriting Vice President
Janet Bobenhousen	Secretary to Budget and Planning Director
Annette Constant	Special Asst. to Vice President in Charge of Operations and Procedures
Richard Rust	Asst. Budget Director
Charles Hall	Director of Training and Education
Howard Kenp	Traveling Auditor
Raymond G. Stoub	Specialist Claims Analyst
Mr. Klyne	Cost Control— Claims
Clarke Woodruff	Director of Personnel— Claims Department

APPENDIX B

Utica Home Office

H. O. Beach
Edward Magee
Roderick McDowell
William Esele
John Hart
Walter Shannon
Joseph Chechia
Arthur Syran
Stanley Hajeck
Lawrence Fontana
George Rutherford
Lawrence Crockett
Mr. Snyder

Supervisory Personnel

General Manager— Claims
Asst. General Manager— Claims
Admin. Asst. to General Manager— Claims
Compensation Claims Manager
Liability Claims Manager
Liability Claims— Fire
Asst. to Compensation Claims Manager
Subrogation Attorney
Asst. to Liability Claims Manager
Property Damage
Senior Underwriting Vice President
Vice President, Property Underwriting
Chief Underwriter

APPENDIX B—Continued

Mr. Peckham	Technical Advisor (John L. Train Co.)
Books	Fidelity— Surety Division
Mr. Harrison	Underwriting— property
Miss McCarthy	Underwriting— property, coding
Mr. Evans	Multiple Line Division (Casualty)
Mr. Henry	Multiple Line Division (Property)
Mr. Seidel	Chief Underwriter— Casualty
Mr. Graziadie	Asst. Chief Underwriter— Casualty
Eugene Vaeth	Admin. Asst. to Vice President Underwriting
Mr. LaGrange	Underwriting Process Manager
Mr. Kober	Divisional Underwriting— Casualty
Mr. Knapp	Divisional Underwriting— Casualty
Mr. Coloton	Divisional Underwriting— Casualty
Mr. Thompson	Divisional Underwriting— Casualty
Mr. Broedel	Divisional Underwriting— Casualty
Mr. Jones	Assigned Risk Supervisor
Mr. Stott	Renewal Supervisor
Miss Rahn	Supervisor Miscellaneous Typing
Mr. Jeromenik	Divisional Underwriting (Casualty)
George Glass	Workmen's Compensation Experience Rating
Mr. Mintel	Divisional Underwriting (Liability)
Mr. Doyle	Agency Review Manager
Mr. Rice	Accident Frequency Point Merit Rating
Mr. Mitten	Rating Automobile Pool
Mr. Wahl	Underwriting Mail Center
Mr. Knott	General Liability Workmen's Compensation
Mr. Blaine Platt	Director, Personnel and Planning
Eugene T. Kylo	Vice President, Information
Mr. Schiffer	Manager, Statistical Dept.
Mr. Fagan	Manager, Data Processing
Mr. McNeil	Asst. Manager, Statistical Dept.
James Hartley	Systems Program Supervisor
Mr. Coleman	Machine Room Manager
Miss Roberts	Conventional Tabulating Machine
Thomas Evans	Automatic Renewal— Premium-Loss
Alice Yule	Liability Loss Processing
Howard Peters	Keypunch Supervisor
Richard Quinn	Automatic Renewal Section
Jack Hoffman	Compensation & Disability Risk Experience
Eleanor Esele	Compensation Loss Processing
Bill May	Internal Report Unit
Mae Naedle	Compensation Loss Payment Unit
Harold Andrews	Purchasing Agent
Robert Patell	Assistant Purchasing Agent
Herbert Evans	Maintenance Foreman
Julius Kozalowski	Cleaning Foreman
John Coughlin	Manager, Payroll Audit
Mr. Porter	Chief Auditor
John O'Brien	Chief Payroll Examiner
George Rea	Director of Advertising and Pub. Relations
Stephen G. Clark	Budget and Planning Director
Wesley C. King	Vice President, Operations and Procedures
Harry Condon	Work Measurement
James Redmond	Credit Manager
Thomas Fitzgerald	Office Service Manager
Edward Alli	Mail Room
Lester Greene	Records Unit
Sam Fovel	Stockroom

APPENDIX B—Continued

Norbert Firsching	Print Shop
Florence Hill	Stenographic Unit
Lillian Allen	Policy Typing
Eugenia Wagner	Cafeteria Manager
George R. Thompson	Chief Accountant
Jack Riffle	Vice President, Marketing
John S. Flemma	District Sales Manager
Howard Halpin	Vice Pres., Superintendent of Agencies
Richard Hoffman	Asst. Head of Agencies
Keene Abbott	Asst. District Sales Manager (Casualty)
Ralph Dempsey	Asst. District Sales Manager (Property)

Utica District Office

George Sutliff
Milton Owens
James Paye
Margaret McClintock
Jack Cavanaugh

Supervisory Personnel

Claims Manager
Territory Claims Adjusters
Local Claims Adjusters
Chief Clerk
Production Manager

APPENDIX C

Guards

Mr. Miller
Mr. Bristol
Mr. Mitzler

APPENDIX D

Professional employees

Dr. Robert W. Hurd	Physician
Frances Rolfe	Registered Nurse
William Evans III	Associate General Counsel
Gerald Pierce	Claims Attorney
John Sullivan	Asst. Claims Attorney
Joseph Craugh, Jr.	Attorney
William Rounddy	Attorney
Thomas Fagan	Manager, Data Processing