

American Automobile Association, Wisconsin Division and Office & Professional Employees International Union, Local No. 9, AFL-CIO, Petitioner.
Case 30-RC-1197.

June 5, 1970

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, McCULLOCH, AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Michael O. Miller of the National Labor Relations Board. Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, this case was transferred to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs with the Board.

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.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They 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 and it will effectuate the purposes of the Act to assert jurisdiction herein.¹
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(a)(1) and Section 2(6) and (7) of the Act.
4. The Petitioner seeks to represent a unit composed of district sales representatives working out of the Employer's two offices in Milwaukee, Wisconsin, the Northside of Fond du Lac office and the Southside office.² The Employer contends that the smallest appropriate unit would include the sales representatives in the Employer's southeast area, which includes the two offices in Milwaukee, and offices in Racine, Kenosha, and Waukesha, Wisconsin. The Employer would also include two

other groups of employees in the appropriate unit, floor salesmen or underwriters and sales secretaries, whose work is related to that of the sales representatives.

In a prior proceeding³ the Board found that a unit of district sales representatives and floor salesmen employed in the Employer's Northside, or Fond du Lac, office in Milwaukee, Wisconsin, constituted an appropriate unit. All other employees, including sales secretaries, were excluded from the unit. In an election held pursuant to the decision in that proceeding the union did not receive a majority of the votes, and therefore no bargaining representative was selected.

Sometime before the election in the prior proceeding the Employer opened the Southside office, but the office was not staffed with sales representatives until after the election had been held. The Southside office was subsequently staffed, principally by the transfer of sales representatives from the Northside office, and the geographical area formerly serviced by the Northside office was divided between it and the Southside office. The Employer contends that changes made in its operations since the prior proceeding render a unit of the sales representatives in the two offices located in Milwaukee inappropriate and, as noted above, require a finding that the smallest appropriate unit consists of the five offices in the Employer's southeast area.

We have carefully examined the record with respect to the changes made in the Employer's operations since our prior decision and find them insubstantial. The district managers in the Milwaukee offices are now under the direct control of the sales supervisors of the southeast area; but the other district offices in the southeast area remain under district managers who have retained their authority to veto the hiring of applicants for employment, to approve vacations, and to settle disputes among the sales representatives. The two offices service the same geographical area as the single office had serviced before the prior proceeding, and the Southside office has been staffed largely by transfers from the Northside office. The sales representatives of the two Milwaukee offices share a common insurance "pot," with each of the other three offices in the southeast area having its own in-

¹ The Employer contends that it would not effectuate the purposes of the Act to assert jurisdiction over its operations since it is a nonprofit organization whose only activities of a commercial nature have, as their sole aim, the furthering of educational, charitable, and humanitarian objectives. We do not agree. One of the primary duties of the salesmen and underwriters involved herein is the sale and servicing of automobile insurance policies, an activity clearly commercial in nature. That profit from this activity may

be used in educational and humanitarian undertakings does not change the essential nature of the activity. *Labor Relations Commission of the Commonwealth of Massachusetts*, 138 NLRB 1329, 1331

² A third office in Milwaukee serves primarily as a travel office and has no sales representatives.

³ *American Automobile Association, Wisconsin Division*, 172 NLRB No 131

insurance "pot" for its own sales representatives.⁴ And as we found in our prior decision there is little transfer of agents between offices.

It is thus evident that the two offices in Milwaukee have continued to function as a single administrative unit with respect to the sales representatives involved herein in the same manner as when it had been a single office covering the same geographical area. We therefore find that a unit consisting of the sales representatives in the two Milwaukee offices is appropriate.

In the prior decision the Board found that "floor salesmen" sometimes called "underwriters" should be included in the unit and that sales secretaries should be excluded. No reason appears for reaching a different result here. In this connection we shall

include Leonard Plourde in the unit as a floor salesman since the record shows that he is performing the same duties as the employees placed in that category in the prior decision.

Accordingly, we find the following unit appropriate within Section 9(b) of the Act:

All sales representatives and floor salesmen ("underwriters") employed by the Employer in its Northside and Southside offices in Milwaukee, Wisconsin, but excluding all office clerical employees, district managers, travel counselors, sales secretaries, guards and supervisors as defined in the Act.

[Direction of Election⁵ omitted from publication.]

⁴ An insurance "pot" is money placed in a fund each month from a percentage of the money received from renewal of policies sold in previous years. The sales representatives share in this pot in a proportion dependent upon the amount of new insurance each sales representative sells in that month.

⁵ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Un-*

derwear Inc., 156 NLRB 1236, *NLRB v Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 30 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list 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 whenever proper objections are filed.