

Newsday, Inc. and Nassau County Printing Pressmen and Assistants Union Local 406, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, Petitioner. Case 29-RC-909

June 17, 1968

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Richard J. Roth. After the hearing was closed, the Regional Director transferred the case to the National Labor Relations Board in accordance with Section 102.67(h) of the Board's National Labor Relations Board Rules and Regulations, Series 8, as amended.

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.

2. The labor organization involved claims to represent employees of the Employer.

3. The Employer is engaged, at Garden City, Long Island, New York, in publishing a newspaper. The Petitioner requests an election in a unit of 260 "District Circulation Managers," herein called managers, employed by the Employer. The Employer questions whether the managers are supervisors of the carrier newsboys, whom it concedes it has always considered to be independent contractors. The Petitioner contends the carrier boys are independent contractors or, in any event, not employees of the Employer.

Managers are responsible for the distribution and sale of the newspapers. They are hired by management and are carried on the Employer's payroll. They are paid salaries, which average \$95 a week, from which the Employer withholds income tax, social security, and other deductions. They are required to have an automobile, for which they receive a car allowance. They work 7 hours a day,

as do other employees of the Employer, are assigned to offices rented by the Employer, and are provided with all necessary materials. They receive a guidebook detailing their duties and report to their supervisor twice daily. They may not sell or distribute other periodicals.

Managers recruit, train, and direct carrier newsboys, whom they assign to routes and may terminate at their discretion. The average carrier boy is 13 years old, and works from 6 months to a year. Boys are required by New York State statute to have written permission from their parents and certification of good standing in school. They provide their own substitutes and may not distribute other publications.

Carriers are not on the Employer's payroll, and although they are, under state law, covered by workmen's compensation insurance, no deductions are made from their income. Their compensation consists of the difference between the wholesale price of their newspapers and the amount of money they collect from their customers at the retail price. Various plans are suggested by the Employer for increasing profits by solicitation, and incentives are offered toward this objective. Out of his profits, a carrier buys his own Newsday carrier bag, collection book, and any additional equipment desired such as a wagon or bicycle. He must pay his bill to the manager every week regardless of his collections and no credit is advanced. The carrier is not credited for unsold papers and bears the loss when his customers fail to pay or he fails to collect. He must post a bond in an amount equivalent to an average week's remittance, or a minimum of \$10; amounts over \$20 receive 6 percent interest payable, along with unforfeited principal, upon surrender of his route.

We find, on the basis of the facts set forth above, that the district circulation managers, although employees of the Employer, are not supervisors within the meaning of the Act. As noted above, the Employer, in line with the Petitioner's contention, concedes it has always considered the carriers to be independent contractors. We accordingly find that the carrier boys are not employees of the Employer. As the managers therefore do not exercise supervisory authority over any employees of the Employer, we find that, in their employment relationship with the Employer which is the only relationship relevant here, the managers are not supervisors within the meaning of the Act.¹

Accordingly, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the

¹ *El Mundo, Inc.*, 167 NLRB 760, *News Syndicate Co., Inc.*, 164 NLRB 422; *Eureka Newspapers, Inc.*, 154 NLRB 1181

meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. We find that the following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All district circulation managers, excluding all other employees and

supervisors within the meaning of the Act.

The name of the Petitioner will appear on the ballot as it requested at the hearing, in the absence of objection.

[Direction of Election omitted from publication.]²

² 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 29 within 7 days after 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. *Excelsior Underwear Inc.*, 156 NLRB 1236.