

American Automobile Association, Wisconsin Division and Milwaukee AAA Independent Sales Union, Petitioner. Case 30-RC-808

July 23, 1968

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN 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 Kenneth N. Rock. Thereafter, the Employer filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations 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.¹

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 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(c)(1) and Section 2(6) and (7) of the Act.

4. The appropriate unit:

Petitioner seeks an election in a unit composed of all district sales representatives in the Employer's Milwaukee office. Petitioner would exclude floor salesmen, travel consultants, office clericals, and all other employees from the unit. The Employer contends that a unit composed of all sales representatives in the State of Wisconsin is the optimum unit for bargaining. In the alternative, it seeks to expand the unit sought by Petitioner, first, by including employees from other district offices and, second, by including employees whose work is related to the work performed by the sales representatives.

The American Automobile Association, hereinafter referred to as AAA, is a nonprofit cor-

poration organized into a number of separate divisions. The Employer in this case is the Wisconsin Division of the AAA. Like the other divisions of AAA, it provides a number of services for its members. These include an emergency road service, a bail bond service, and a travel service. It also offers casualty, automobile, fire, homeowners, and boat insurance to its members. The insurance policies and memberships in the association itself are sold primarily by sales representatives.

The main office of AAA, Wisconsin Division, is located in Madison, Wisconsin. In addition, it operates 16 other offices throughout the State, including 2 offices in Milwaukee. The larger of these two, located on West Fond du Lac Avenue, is staffed by 70 employees. In contrast to the other Milwaukee office, which is primarily a travel office,² the office on West Fond du Lac Avenue handles all phases of the Employer's business. Thus, in addition to 29 sales representatives, it contains a travel department, staffed by 21 employees, and an emergency road service department, staffed by 4 full-time and 5 regular part-time employees. Other employees include "sales secretaries,"³ cashiers,⁴ a membership clerk, personal secretaries, a stenographer, a messenger, and a delivery boy. Of particular significance in this case, are two "floor salesmen," whose primary function is to administer the insurance policies sold by the sales representatives. The "floor salesmen" spend approximately half of their time assisting the sales representatives. If a sales representative is not performing as well as expected, one of the floor salesmen will be assigned to work with him. Questions concerning insurance coverage and automobile financing are directed to the floor salesmen. These employees are also responsible for checking all price quotations given by the sales representatives and for making certain that the insurance applications, filled out by the sales representatives, are complete. Both of the floor salesmen were sales representatives before they were promoted to their current positions, and both, like the sales representatives, are licensed by the State to sell insurance.

The Milwaukee offices are under the direct supervision of an area sales manager and a general office manager. The jurisdiction of the area sales manager extends to six counties, including Milwaukee. Thus, 9 sales representatives outside of Milwaukee, in addition to the 29 sales representatives

¹ Both at the hearing and in its brief, the Employer moved to dismiss the petition on the ground that Petitioner was, or was a successor to, a dominated labor organization. The Hearing Officer properly rejected this position taken by Respondent.

² There are no sales representatives at the smaller Milwaukee office.

³ These employees receive mail and telephone calls for the sales

representatives, answer mail and telephone inquiries from potential customers, and pass on to the sales representatives the names of potential customers.

⁴ All membership fees and insurance payments are turned over to the cashiers' office. The employees in this office are also responsible for compiling the membership kits that are distributed to new members.

in the Milwaukee office, are directly supervised by the same area sales manager. The general manager, however, exercises general supervisory capacity only over the employees of the Milwaukee offices. Apparently, the Milwaukee offices are the only district offices in the State with their own general office manager.

As noted above, the primary function of the sales representatives is to sell insurance policies and memberships in the AAA. As noted above, all of the sales representatives are licensed by the State to sell insurance. They report to the office daily, although unlike other employees there is no fixed time at which they must arrive and no required number of hours which they must spend in the office.⁵ A significant portion of the sales representative's time is spent calling on customers in his sales territory. Regardless of whether a sale is made in the office or in the field, however, binders and receipts are delivered to the cashier at the West Fond du Lac office. If questions arise concerning coverage or rates, inquiries are directed to the "floor salesmen" located there. If a prospective customer inquires about membership or insurance programs at the district office, his name will be given to a sales representative by one of the sales secretaries. One purpose of the daily visit to the office is to collect such messages. If a sales representative is not in the office during the afternoon, a sales secretary will usually call him at home to convey the messages which accumulated throughout the day. In addition to this daily contact with the district office, the sales representative attends periodic sales meetings there.

In analogous situations, we have found that a single district office unit, as opposed to a statewide unit or a combination of district offices, is presumptively appropriate.⁶ The rationale of the cited cases is controlling here. As in the insurance cases, the district office here is a separate, administrative entity through which the Employer conducts its busi-

ness operations. The Milwaukee offices have their own general manager who is responsible for the overall administration, operation, and maintenance of these offices and whose supervisory authority extends to all personnel in these offices. The sales force in the Milwaukee district office operates in its own distinct geographical area, and there is no exchange and virtually no transfer of agents between offices.⁷ On the basis of the foregoing and the entire record, we find that the individual district office is a separate administrative entity through which the Employer conducts its business operations and, therefore, an appropriate unit for bargaining.⁸

In determining which employees are to be included in the unit, the Employer argues for the inclusion of several employees whose work is related to the work of the sales representatives. With regard to the two "floor salesmen," sometimes called "underwriters," we think that the Employer's contention is well taken. These two employees spend approximately half of their time assisting the sales representatives. In view of the line of progression from sales representative to floor salesman, the frequent working contact between the two groups and their common supervision, we conclude that the floor salesmen should be included in the unit.⁹ The remaining employees (sales secretaries, cashiers, membership clerk, travel employees, pool stenographer, etc.) do not sell insurance, perform functions of a different nature from those performed by the sales representatives, and have different qualifications and working conditions. Accordingly, they will be excluded.

Lastly, Petitioner seeks to exclude sales representatives based in the Milwaukee office whose sales territories are outside of Milwaukee County.¹⁰ Although two or more of the sales representatives based in the Milwaukee office do not sell insurance within that county, in all other respects, their working conditions, supervision, and job functions are

⁵ The time spent by each sales representative in the office varies significantly, some spending as little as 2 hours per day at their desks.

⁶ *Western and Southern Life Insurance Co.*, 163 NLRB 138, enfd 391 F 2d 119 (C A 3, 1968). See also *Quaker Life Insurance Co.*, 138 NLRB 61, enfd in part 319 F 2d 690 (C A 4, 1963), *Metropolitan Life Insurance Co.*, 138 NLRB 512, 515, *Western and Southern Life Insurance Co.*, 142 NLRB 28, enfd 328 F 2d 891 (C A 3, 1964), remanded 380 U S 522 (1965), *Metropolitan Life Insurance Co.*, 147 NLRB 69, *Metropolitan Life Insurance Co.*, 147 NLRB 688. See generally *Metropolitan Life Insurance Co.*, 156 NLRB 1408.

We are not persuaded by the Employer's attempt to distinguish these cases. It is true, as the Employer points out, that most insurance offices primarily sell insurance policies whereas the Employer herein offers a number of other services as well. The fact remains, however, that the sales representatives involved herein spend little or no time providing these other services (travel and emergency road service, for example), and, like insurance agents, are based in a district office, do not have regular office hours, often meet with customers at locations away from the office, are

licensed by the State to sell insurance, and devote a substantial portion of their time to the selling of insurance policies.

⁷ See cases cited in fn 5, *supra*.

⁸ The mere fact that sales representatives in some counties outside of Milwaukee are supervised by the same area sales manager who supervises the sales representatives in the Milwaukee office does not make the Milwaukee office inappropriate as a unit for bargaining. Apart from the fact of common supervision by the area sales manager, the various sales representatives, as indicated above, have virtually no contact with one another. Moreover, we have often found a single office appropriate for bargaining despite the fact that it was under the dual supervision of an officer whose jurisdiction included more than one office. E.g., *Metropolitan Life Insurance Co.*, 147 NLRB 688, 690.

⁹ *Metropolitan Life Insurance Co.*, 147 NLRB 688, 692; *Metropolitan Life Insurance Co.*, 144 NLRB 149, 151-152.

¹⁰ In its petition, Petitioner sought a unit of all representatives in the Milwaukee office without regard to the location of the representative's sales territory.

indistinguishable from those of the other sales representatives. The mere fact that their territories lie outside Milwaukee County is not, by itself, a valid reason for excluding them from the unit. They, therefore, will be included.

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

All District Sales Representatives and Floor Salesmen ("underwriters") employed by the

Employer at the West Fond du Lac Avenue office in Milwaukee, Wisconsin, but excluding all office clerical employees, district managers, sales managers, travel counselors, guards, and supervisors as defined in the Act.

[Direction of Election¹¹ omitted from publication.]

¹¹ 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 Underwear 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.