

In the Matter of MONTGOMERY WARD & COMPANY and WAREHOUSE-  
MEN'S UNION, LOCAL No. 26, AFFILIATED WITH I. B. OF T. C. S. & H.  
OF A., A. F. OF L.

*Case No. R-1863.—Decided June 24, 1940*

*General Merchandising Mail Order Business—Investigation of Representa-  
tives: controversy concerning representation of employees: refusal of Company  
to recognize Union until certified by Board—Unit Appropriate for Collective  
Bargaining: all employees engaged in warehouse work excluding supervisory  
employees—Election Ordered*

*Mr. F. D. Roth, of Oakland, Calif., and Mr. John A. Barr, of  
Chicago, Ill., for the Company.*

*Green, Bosen & Landye, by Mr. James Landye, of Portland, Oreg.,  
for the Union.*

*Miss Ann Landy, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

On April 5, 1940, Warehousemen's Union, Local No. 26, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America,<sup>1</sup> herein called the Union, filed with the Regional Director for the Nineteenth Region (Seattle, Washington) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Montgomery Ward & Company, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On April 27, 1940, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an

<sup>1</sup> Referred to in the order directing investigation as Warehousemen's Union, Local No. 26, affiliated with I. B. of T. C. S. & H. of A., A. F. of L.

appropriate hearing upon due notice. On May 6, 1940, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union. On May 9, 1940, the Regional Director issued a notice of postponement of hearing, copies of which were served upon the same parties. Pursuant to the notice of hearing and notice of postponement, a hearing was held on May 27 and 28, 1940, at Portland, Oregon, before Thomas B. Graham, the Trial Examiner duly designated by the Board. The Company and the Union were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

Montgomery Ward & Company, an Illinois corporation having its principal executive offices in Chicago, Illinois, is engaged in the distribution of merchandise through the media of mail order houses and retail stores. The Company owns, operates, and maintains 9 mail order houses, 5 mail order warehouses, 260 order offices, and 625 retail stores throughout the United States. About 20,000,000 customers throughout the United States and in many foreign countries are served by the Company. The Company's net sales for 1939 amounted to \$474,882,032.

This proceeding is concerned solely with employees of the Company in Portland, Oregon, where the Company operates a mail order house, a retail store, and a separate warehouse. Approximately 90 per cent of the merchandise distributed by the mail order house and the store is shipped to Portland from points outside the State of Oregon. About 60 per cent of the customers of the mail order house live outside the State of Oregon.

Although located in the same building, the mail order house and the retail store are operated as separate units. On May 23, 1940, the mail order house employed over 1200 workers, the retail store 175, and the warehouse 27. The Company denies that the Board had jurisdiction over employees of the retail store.

## II. THE ORGANIZATION INVOLVED

Warehousemen's Union, Local No. 26, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company engaged in warehouse work.

## III. THE QUESTION CONCERNING REPRESENTATION

Shortly before the hearing the Union requested recognition as bargaining representative for the employees in the warehouse. The Company took the position that it could not recognize the Union as bargaining agent until the question of proper collective bargaining unit was determined by the Board. At the hearing the Company and the Union took conflicting positions regarding the appropriate unit. We find that a question has arisen concerning the representation of employees of the Company.

## IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE APPROPRIATE UNIT

In its petition the Union alleged that employees at the Company's warehouse engaged in warehouse work constitute an appropriate unit. The Union defines as warehouse workers employees who handle merchandise. At the hearing the Union amended its petition and alleged that all warehouse workers at the mail order house as well as the warehouse should be included in the unit.

The Company requests a unit comprising all the employees of the mail order house and the warehouse, excluding only five persons engaged, at the warehouse, in receiving and handling merchandise consigned to the retail store. Neither the Union nor the Company desire the inclusion of employees at the store itself.

V. H. Brooks, superintendent of operations at the mail order house, testified at the hearing regarding whether or not the employees in various departments and work classifications handle merchandise.

Counsel for the Union, on the basis of this testimony, summarized as follows the classifications claimed by the Union as falling within the appropriate unit: all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit, except those engaged in office work; all employees in the jewelry repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division, except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse.

The employees at the mail order house whom the Union would exclude from the unit consist primarily of clerical workers who are ineligible for membership in the Union but are eligible for membership in the Office Employees Union, a labor organization which, like the Union, is affiliated with the American Federation of Labor. The Office Employees Union is engaged in organizing them.

The Company claims that the close functional coherence and mutual interdependence of the operations of the mail order house necessitates that all its employees be included in the same unit. In support of this claim V. H. Brooks testified generally that employees who handle merchandise are frequently transferred to positions involving clerical work, and vice versa, but offered no specific evidence as to the number of employees affected by such transfers. The Company also offered testimony to the effect that its mail order house employees in other cities have been organized in plant-wide units. The Company has not entered into collective bargaining agreement with any labor organization in its mail order houses.

Under the circumstances of this case we find the unit requested by the Union to be appropriate. Organization of the employees has proceeded upon the basis of warehouse workers' unit, and the Union is the only labor organization existing among the employees involved.

The Company further contends that five warehouse employees who are on the retail store's separate pay roll should be excluded from the unit on the ground that the Board has no jurisdiction over the store. It is not contended that the work of these five employees differs from that of the other warehouse employees in any way except that they handle goods consigned to the store rather than to the mail order house. In another proceeding the Board had assumed juris-

diction over the employees of the store <sup>2</sup> and there appears to be no other reason for excluding these five employees from the unit. We shall include them. In accordance with our usual custom we shall exclude supervisory employees from the unit.

We accordingly find that the following employees of the Company employed at its Portland mail order house and warehouse constitute a unit appropriate for the purposes of collective bargaining: all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit, except those engaged in office work; all employees in the jewelry repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division, except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse, excluding supervisory employees.

#### VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing the Union and the Company stipulated that a number of the employees of the Company in the unit claimed by the Union have signed application cards for membership in the Union. We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The employees of the Company within the appropriate unit who were employed by the Company during the pay-roll period immediately preceding the date of our Direction of Election herein, including those employees who did not work during such pay-roll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause, shall be eligible to vote.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Montgomery Ward & Company, Portland;

<sup>2</sup>In the *Matter of Montgomery Ward & Company and Reuben Litzemberger et al.*, 9 N. L. R. B. 538, enfd *Montgomery Ward & Company v. National Labor Relations Board*, 107 F. (2d) 555 (C. C. A. 7).

Oregon, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit, except those engaged in office work; all employees in the jewelry repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division, except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse; excluding supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Montgomery Ward & Company, Portland, Oregon, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Election under the direction and supervision of the Regional Director for the Nineteenth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among all merchandise checkers in the shipping department; all receiving clerks in the receiving department; all employees on the freight elevators; all sorters, completers, and packers, but not billers, in the packing and billing department; all employees of the package opening department, except authenticators; all employees of the central repair unit, except those engaged in office work; all employees in the jewelry repair unit engaged in handling merchandise, except watchmakers; all employees in the merchandise division, except timekeepers and employees engaged in taking orders; all employees in the supply and multigraph department who fill in and stock supplies; all employees who handle merchandise in the

operating auditing, stock control, and catalog service departments; all porters; and all employees at the warehouse; who were employed by the Company at its Portland, Oregon, mail order house and warehouse during the pay-roll period immediately preceding the date of this Direction of Election, including those employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding supervisory employees and employees who have since quit or been discharged for cause, to determine whether or not said employees desire to be represented by Warehousemen's Union, Local No. 26, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

Mr. EDWIN S. SMITH took no part in the consideration of the above Decision and Direction of Election.