

In the Matter of UNITED PRESS ASSOCIATIONS and AMERICAN NEWS-
PAPER GUILD

Case No. R-206.—Decided August 20, 1937

News Collecting and Distributing Service—Investigation of Representatives: agreement for election—Unit Appropriate for Collective Bargaining: employees of subsidiary included in; supervisory and managerial employees excluded from—Election Ordered—Certification of Representatives.

Mr. David A. Moscovitz for the Board.

Mr. Thomas J. Edwards, of Cleveland, Ohio, for the United Press and the Los Angeles Service.

Mr. Abraham J. Isserman, of Newark, N. J., for the Guild.

Mr. Martin Kurasch, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

The petitioner, the American Newspaper Guild, herein called the Guild, filed with the Regional Director for the Second Region (New York, New York) a petition, verified May 12, 1937, alleging that a question affecting commerce had arisen concerning the representation of the news reporters, writers, copy readers, filing editors, editors, tabulators, and all persons contributing to news reports, including librarians, news department stenographers, and others employed in the offices of the United Press Associations, herein called the United Press, within the continental limits of the United States, herein referred to collectively as editorial employees, 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 June 21, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and to provide for an appropriate hearing. Thereafter the petitioner filed with the Board an amended petition, verified June 29, 1937, in which it alleged that there should be added to the classes of employees specified in the original petition and made part of the same bargaining unit, (1) the like classes of employees of the City News Service of Los Angeles, Inc., herein called the Los Angeles

Service, and (2) the employees who are the bureau managers of the several bureaus maintained by the United Press throughout the continental United States (with the exception of the bureau managers of the bureaus maintained at division points and the bureau at Washington).

The United Press and the Guild entered into a stipulation on May 20, 1937, and a further stipulation on July 7, 1937. By these stipulations it was agreed that an election by secret ballot should be conducted by and under the supervision of the Board. With the exception of two matters herein referred to, the terms, conditions and procedure under which such election should be conducted were fixed by the stipulation. The two matters upon which no agreement could be reached are:

1. Whether the editorial employees of the Los Angeles Service should be made part of the same bargaining unit as the editorial employees of the United Press and should be permitted to vote in the election.

2. Whether the bureau managers of the United Press, other than the managers of the bureaus maintained at Washington and at the division points, should be considered as a part of the editorial employees of the United Press and be permitted to vote in the election.

On July 6, 1937, the Regional Director issued and duly served a notice of hearing to be held at New York, New York, on July 8, 1937. Pursuant to the notice, a hearing was held on July 8th before Herman A. Gray, the Trial Examiner duly designated by the Board. The Guild, the United Press, and the Los Angeles Service were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to the parties, and the parties were granted a reasonable period for argument at the close of the hearing and were permitted to file briefs. The United Press and petitioner did thereafter file briefs by their respective attorneys.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The United Press Associations is a corporation with its principal offices in New York City, engaged, in substantial part, in the world collection, sale, and distribution of news to newspapers, radio stations and magazines, domestic and foreign. The United Press maintains 66 bureaus throughout the United States. Five bureaus are maintained at so-called "division points"—Atlanta, Georgia; Kansas City, Missouri; New York, New York; San Francisco, California, and

Chicago, Illinois. Each is the focal point of one of the five geographic divisions into which the United Press has divided the country. The staff of each bureau collects, edits and sends out the news by telephone, telegraph, and mail, both directly to clients, and to the bureau at the division point, from which place it is transmitted over the country. There is no uniformity in the size of a bureau—many have only one employee, the New York office has over 100.¹

The Los Angeles Service was first formed in 1931 or 1932 by Marvin Willard. It is a corporation engaged in selling its news service to newspapers in and around Los Angeles and to the United Press, and it serves newspapers for the United Press. The Los Angeles Service employs 17 men.

The United Press, in 1934, purchased 80 per cent of the stock of the Los Angeles Service. Willard retained the ownership of 20 per cent of the stock. The United Press thereupon elected four of the five members of the board of directors of the Los Angeles Service, two of whom were Hugh Baillie, president of the United Press, and Frank Bartholemew, Pacific Coast division manager of the United Press. Willard was the fifth member.

II. THE UNION

The American Newspaper Guild is a labor organization, which admits to membership all of the editorial employees of the United Press and of the Los Angeles Service. It also admits bureau managers to membership.

III. THE APPROPRIATE UNIT

A. The Los Angeles Service

When the United Press purchased control of the Los Angeles Service in 1934, the management of the Service was given by the board of directors to Willard. Willard has charge of employing and discharging the staff of the Los Angeles Service, of determining the salaries, and of directing the activities of the staff. Louis Mickel, superintendent of bureaus for the United Press, who has general supervision over the United Press bureaus, testified that he took no part in the direction or supervision of the Los Angeles Service.

The Los Angeles Service maintains a banking account in New York, where most of its funds are kept. Salary checks for the

¹ A tabulation of the list of the Editorial Department Employees will show that there are 68 bureaus (including the Washington, D. C., Bureau and the Washington News Service), of which 19 are one-man bureaus, ten are two-man bureaus, six are three-man bureaus, seven are four-man bureaus, five are five-man bureaus, six are six-man bureaus, and 15 bureaus have a staff of more than six men. Board's Exhibit No. 2.

staff of the Los Angeles Service and checks covering from 90 to 95 per cent of the expenses of the Los Angeles Service are signed in New York by officials of the United Press at the offices of the United Press. Mickel and Fancher, both of whom hold offices in the United Press, but have no official connection with the Los Angeles Service, are among those who sign these checks. The book-keeping for the Los Angeles office is handled, at least in part, in the New York offices of the United Press. The Los Angeles Service is operated by Willard so as to keep the expenses within certain limits which are defined by the New York office of the United Press. Although individual expenditures are left to the discretion of Willard, the total expenses are checked by the United Press.

The United Press also maintains a bureau at Los Angeles in which there are 16 men. But the two Los Angeles groups maintain a rough differentiation of function with respect to covering news for the United Press. The Los Angeles Service covers certain routine news sources, such as the courts, for the United Press; for this the United Press pays \$75 per week. The Los Angeles Bureau of the United Press does not cover these sources.

The Los Angeles Service is thus seen to be an integral part of the United Press system. The articulation is so close as to financial matters that it is difficult to conceive of the Los Angeles Service maintaining an independent policy in collective bargaining, especially in view of the check exercised by the United Press on its total expenses. That the supervision and direction of the personnel of the Los Angeles Service has been in the hands of Willard is attributable to the fact that he is the founder of the organization and is most familiar with its operation. But he is subject to the will of the board of directors, and hence of the United Press. It is significant that Frank Bartholemew, Pacific Coast division manager of the United Press, is a member of the board of directors. Since the main argument for not including the editorial employees of the Los Angeles Service rests upon the peculiar position of Willard, and since that peculiar position may, at any moment, be changed by the United Press, the fact that the Los Angeles Service operates to supplement the United Press service, and the fact of immediate and close financial control must override the nominal distinction. The editorial employees of the Los Angeles Service are thus, in practical effect, editorial employees of the United Press.

B. Bureau managers

Each of the United Press bureaus has a bureau manager. In one-man bureaus, the one man is designated a bureau manager. The duties of the bureau manager correspond, in large part, to the duties

of the other members of the bureau staff. He writes stories, edits news, sends news over the wires and does reporting work. In the one-man bureau, of course, he performs all of the work by himself. In the other bureaus, there is added the duty of directing the work of the other men. As the size of the bureau increases, it is evident that the scope of the necessary supervision will be enlarged and that a greater proportion of the bureau manager's time will have to be spent in directing the other members of the staff in the covering of news. When the bureau manager is out of the office, another man, who can exercise all the powers of a bureau manager, will be left in charge. The substitute is known as a second-man, but that is not a regular designation, and, in fact, the bureau manager may choose anyone to take charge. It seems clear that the primary responsibility rests with the bureau manager.

The bureau manager and the other employees at the bureau are encouraged to make contacts with prospective clients. The bureau manager is sometimes given United Press claims to collect, and has, to some extent, a control over office expenses, although the bureau is run in accordance with a budget. All accounts, even though the client may be directly serviced by the bureau, are payable at the New York office.

The bureaus of the United Press are scattered over the country. Each bureau manager is subject to the supervision of the bureau manager of his respective division point. The division manager and the superintendent of bureaus constitute the next steps in the hierarchy. Normally, the bureau manager will be the sole representative of the United Press who has direct contact with the bureau staff. He is on the scene, and for reasons of convenience and of efficiency, he has the power to hire and to discharge. Although his judgment may be overruled, the record indicates that, as a practical matter, his judgment is controlling. Since he is in the best position to adjudge competency, he recommends salary increases, though he cannot grant such increases himself.

That bureau managers are sometimes shifted to larger bureaus, where they will only be regular staff employees, is a complicating factor. Thus, half of the editorial employees of the Washington office are former bureau managers who have acquired the experience necessary for the more important Washington posts. Such a change is in the nature of a promotion in that the salary of a staff employee of a larger bureau may be greater than that of a bureau manager of a small bureau. But, despite this shifting, the presence of the managerial and supervisory functions attached to the position of bureau manager in other than one-man bureaus must, in a determination of bargaining unit, outweigh the inconveniences that result from having these employees, as they shift their status, lose or regain their

right to be included within a unit for purposes of collective bargaining. Except in the case of one-man bureaus, the Board believes that inclusion of the bureau manager in the same unit as the other members of his bureau would not be consonant with the most efficient exercise of his duties with respect to those employees.

As to one-man bureaus, the title of bureau manager can not of course signify any factual managerial position. There are no editorial employees to supervise or direct. The bureau manager in a one-man bureau must perform all of the functions of a regular employee. Although it is true that he may, on occasion, be required to look after the business affairs of his office, his interests are those of the regular staff members, and, since he has no problems of personnel, his representation together with staff members elsewhere will not be prejudicial to the United Press.

In view of all the afore-mentioned facts and in order to insure to the editorial employees of the United Press and of the Los Angeles Service the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that all the editorial employees of the United Press and of the Los Angeles Service, excluding the bureau managers of bureaus having more than one man and the bureau managers of the bureaus maintained at the division points and the bureau at Washington, but including the bureau managers of one-man bureaus, constitute a unit appropriate for the purposes of collective bargaining.

IV. QUESTION CONCERNING REPRESENTATION

On the basis of the facts stated in the opinion and the stipulations entered into by the parties we find that a question has arisen concerning the representation of the editorial employees of the United Press.

V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the United Press and of the Los Angeles Service described in Section I above, tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. CONDUCT OF ELECTION

The United Press and the Guild have agreed to an election by secret ballot to determine the proper representatives for collective bargaining and thus to resolve the question concerning representation. The election shall be conducted according to the terms and conditions agreed to by the parties in the afore-mentioned stipulation and supplemental stipulation.

CONCLUSIONS OF LAW

On the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of the editorial employees of the United Press, within the meaning of Section 9 (c), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. All the editorial employees of the United Press and of the Los Angeles Service, excluding the bureau managers of bureaus having more than one man and the bureau managers of the bureaus maintained at the division points and the bureau at Washington, but including the bureau managers of one-man bureaus, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations 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 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the United Press Associations, an election by secret ballot in accordance with the terms and conditions agreed upon in the stipulation and supplemental stipulation entered into by the parties, shall be conducted within 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Second 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—Series 1, as amended, among the editorial employees of the United Press and of the Los Angeles Service, excluding the bureau managers of bureaus having more than one man and the bureau managers of the bureaus maintained at the division points and the bureau at Washington, but including the bureau managers of one-man bureaus, to determine whether they desire to be represented by the American Newspaper Guild for the purposes of collective bargaining.

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

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

September 18, 1937

On August 20, 1937, the National Labor Relations Board, herein called the Board, issued a Direction of Election in the above-entitled proceeding, the election to be held within 30 days from the date of the Direction, under the direction and supervision of the Regional Director for the Second Region (New York, New York). The Board having been advised by the Regional Director that a longer period is necessary, hereby amends the Direction of Election issued on August 20, 1937, by striking therefrom the words "within thirty (30) days from the date of this Direction," and substituting therefor the words "within sixty (60) days from the date of this Direction."

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Direction of Election.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

October 25, 1937

On May 12, 1937, the American Newspaper Guild, herein called the Guild, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of news reporters, writers, copy readers, filing editors, editors, tabulators, and all persons contributing to news reports, including librarians, news department stenographers, and others employed in the offices of the United Press Associations, herein called the United Press, within the continental limits of the United States, herein referred to collectively as editorial employees, 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 June 29, 1937, the Guild filed with the National Labor Relations Board, herein called the Board, an amended petition in which it alleged that there should be added to the classes of employees specified in the original petition and made part of the same bargaining unit (1) the like classes of employees of the City News Service of Los Angeles, Inc., herein called the Los Angeles Service, and (2) the employees who are the bureau managers of the several bureaus maintained by

the United Press throughout the continental United States (with the exception of the bureau managers of the bureaus maintained at division points and the bureau at Washington).

The United Press and the Guild entered into a stipulation on May 20, 1937, and a further stipulation on July 7, 1937. By these stipulations it was agreed that an election by secret ballot should be conducted by and under the supervision of the Board. With the exception of two matters herein referred to, the terms, conditions, and procedure under which such election was to be conducted were fixed by the stipulation. The two matters upon which no agreement could be reached were:

1. Whether the editorial employees of the Los Angeles Service should be made part of the same bargaining unit as the editorial employees of the United Press and should be permitted to vote in the election.

2. Whether the bureau managers of the United Press, other than the managers of the bureaus maintained at Washington and at the division points, should be considered as a part of the editorial employees of the United Press and be permitted to vote in the election.

Pursuant to notice duly issued and served, a hearing was held at New York, New York, on July 8, 1937, before Herman A. Gray, the Trial Examiner duly designated by the Board. On August 20, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot in accordance with the terms and conditions agreed upon in the stipulation and supplemental stipulation be held among the editorial employees of the United Press and of the Los Angeles Service, excluding the bureau managers of bureaus having more than one man and the bureau managers of the bureaus maintained at the division points and the bureau at Washington, but including the bureau managers of one-man bureaus, to determine whether they wished to be represented by the American Newspaper Guild for the purposes of collective bargaining. On September 18, 1937, the Board issued an Amendment to the Direction by which the time within which the election was to be held was changed from thirty (30) days from the date of the Direction to sixty (60) days from the date of the Direction.

Pursuant to the Direction of Election and the Amendment to the Direction of Election, a secret ballot was conducted through the mails and by cablegrams. All returned ballots had to show a post mark of not later than midnight, October 7, 1937, to be acceptable. Full opportunity was accorded to all the parties to this investigation to participate in the conduct of the secret ballot and to make challenges.

On October 13, 1937, the Regional Director, acting pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties to the proceeding her Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot the Regional Director reported as follows:

Total Number Eligible to Vote.....	421
Total Number of Ballots Cast.....	374
Total Number of Votes in favor of American Newspaper Guild..	277
Total Number of Votes against the American Newspaper Guild..	84
Total Number of Blank Votes.....	2
Total Number of Void Ballots.....	9
Total Number of Challenged Votes.....	2

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 and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that the American Newspaper Guild has been selected by a majority of the editorial employees of the United Press and of the Los Angeles Service, excluding the bureau managers of bureaus having more than one man and the bureau managers of the bureaus maintained at the division points and the bureau at Washington, but including the bureau managers of one-man bureaus, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, the American Newspaper Guild is the exclusive representative of the editorial employees of the United Press and of the Los Angeles Service, excluding the bureau managers of bureaus having more than one man and the bureau managers of the bureaus maintained at the division points and the bureau at Washington, but including the bureau managers of one-man bureaus, for the purposes of collective bargaining in regard to rates of pay, wages, hours of employment and other conditions of employment.