

In the Matter of DAILY MIRROR, INC. and THE NEWSPAPER GUILD OF  
NEW YORK

*Case No. R-467.—Decided February 17, 1938.*

*Newspaper Industry—Investigation of Representatives:* controversy concerning representation of employees: refusal of employer to recognize petitioning union as representative of all its employees; controversy concerning appropriate unit—*Unit Appropriate for Collective Bargaining:* plant-wide; functional coherence; economic interdependence; desires of employees; prior bargaining by departmental unit based on incomplete organization held not conclusive in determination of appropriate unit; employees paid weekly—*Representatives:* proof of choice: membership application cards; comparison of pay roll with union list—*Certification of Representatives:* upon proof of majority representation.

*Mr. Will Maslow, for the Board.*

*Mr. Edward G. Woods and Mr. E. D. Salinger, of New York City, for the Company.*

*Mr. Abraham Isserman, of Newark, N. J., for the Union.*

*Mr. Richard A. Perkins, of counsel to the Board.*

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On November 3, 1937, the Newspaper Guild of New York, herein called the Union, 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 employees of Daily Mirror, Inc., New York City, 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 November 24, 1937, 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 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 17, 1937, the Regional Director issued a notice of hearing, copies of which were served upon the Company, upon the

Union, and upon Hearst Corporation.<sup>1</sup> On November 22, 1937, the Regional Director issued an amended notice of hearing, copies of which were served upon the same persons. Pursuant to the amended notice, a hearing was held at New York City from December 4 to December 13, 1937, before Emanuel Bloch, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Hearst Corporation did not appear. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. On December 8, 1937, the Trial Examiner allowed a motion by the Union to amend the petition so as to include in the description of the bargaining unit contended for by the Union several classes of employees not included in the original petition. Counsel for the Company were granted additional time in which to meet the issues raised by this amendment. During the course of the hearing the Trial Examiner made several rulings on other 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. All 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

Daily Mirror, Inc., a New York corporation, prints and publishes The New York Mirror, a daily and Sunday newspaper. Its principal offices and printing plant are located in New York City. There is an auxiliary printing plant in Brooklyn. The Company maintains advertising offices at Chicago, Illinois, and Detroit, Michigan.

All the newsprint and ink used by the Company are obtained from outside the State of New York. About 15 per cent of the daily and 50 per cent of the Sunday circulation of The Mirror is distributed outside the State of New York. The average circulation of The Mirror for the year ending September 30, 1936, was as follows: Daily—605,691; Sunday—1,719,919. Advertising volume for the period from January 1 to November 30, 1937 was in agate lines: Daily—2,847,448; Sunday—1,241,019. The Company's circulation manager testified that The Mirror is sold in all parts of the United States and Canada.

The Company is wholly owned by American Newspapers, Inc., a Delaware corporation wholly owned by William Randolph Hearst,

<sup>1</sup> The petition alleged that the Company "is a unit in the Hearst chain of newspapers." Hearst Corporation, however, owns no stock in the Company. Both corporations are wholly owned by American Newspapers, Inc.

and is part of the Hearst organization of publications and press, radio, and film services which we considered in the *Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Consolidated Publications, Inc., Hearst Corporation, American Newspapers, Inc., and King Features Syndicate, Inc. and American Newspaper Guild, Seattle Chapter, Case No. C-136*.<sup>2</sup> At the hearing, counsel for the Company admitted that although the corporate structure of the Hearst organization has altered somewhat since the date of that decision, the description there given may be taken as correct so far as the instant case is concerned. The Company concedes the jurisdiction of the Board.

For administrative purposes the Company has assigned its employees to five departments, viz: editorial, advertising, circulation, production, and business.

## II. THE ORGANIZATION INVOLVED

The Newspaper Guild of New York is a labor organization affiliated with the American Newspaper Guild, which in turn is affiliated with the Committee for Industrial Organization. Formerly, the American Newspaper Guild admitted only editorial employees of news publications and press services. Since June 7, 1937, when its constitution was amended, it has admitted "any person gainfully employed in and devoting the major part of his time to an editorial, business, circulation, promotion, or advertising department, or allied groups of employees, of a news publication" and certain classes of Government workers and employees of press services and radio broadcasting facilities.

Membership qualifications are identical for the American Newspaper Guild and The Newspaper Guild of New York except that the jurisdiction of the latter is limited to New York City and environs. The Newspaper Guild of New York is organized into employer units, one of which admits only employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

At a conference with Charles B. McCabe, the Company's president, on October 25, 1937, Union representatives sought to negotiate a contract covering employees of the commercial and allied departments of the Company as well as editorial employees. McCabe refused to recognize the Union as the representative of any except editorial employees, contending that a contract already existing between the Company and the Union which covered editorial employees committed the Union to bargain for them as a separate unit.

We find that a question has arisen concerning representation of employees of the Company.

<sup>2</sup>2 N L R B 530, decided January 13, 1937

## 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 "all employees in the editorial and commercial departments of the Daily Mirror, including in the commercial department employees engaged in advertising, circulation, promotion, and general business work, excluding only executives," constituted an appropriate bargaining unit. The amendment of December 8, 1937, added "composing room boys and other employees engaged in the production departments not eligible for membership in existing craft unions" to the unit contended for by the petitioner.

The evidence indicates that the Company is operating under contracts with the following labor organizations: International Typographical Union, Paper Handlers and Straighteners Union, International Printing Pressmen's Union, New York Stereotypers Union, New York Photo-Engravers Union, and International Brotherhood of Electrical Workers, for certain employees in the production department; and Mailers Union and Newspaper and Mail Delivery Union of New York, for certain employees in the circulation department. The petitioner does not claim to represent any persons who are members of or are eligible to membership in any of the foregoing organizations.

The Company's position is that employees of each department constitute an appropriate bargaining unit, or alternatively that the employees of each department should vote separately to determine whether or not they should be included in a larger unit. Further, the Company maintains that it has entered into an agreement with the Union covering editorial employees alone and that this agreement bars the Union from now urging a more inclusive bargaining unit. We shall first examine the nature and effect of the alleged agreement.

In January 1937, before the American Newspaper Guild extended its jurisdiction to non-editorial employees, Union representatives and Company officials had several conferences at which the matter of a contract covering editorial employees of the Company was discussed. Union representatives submitted in memorandum form a series of demands which they wished to have incorporated in a contract. The

Company countered with a document entitled "Notice to the Daily Mirror News Department Employees" which included some of the Union demands, scaled down others, and omitted still others. The notice recited that it embodied an agreement between the Company and "members of the Daily Mirror editorial staff and their representatives" but omitted any reference to the Union or any affiliated body and in form required the signature of only the Company. Company officials and Union representatives discussed the notice at length and the Company altered some of the provisions of the original draft of the notice to meet Union demands but still omitted others. The Company finally on January 28, 1937, posted the notice, which in its final form recited that it would be in effect for a year from that date.

Shortly after the notice was posted a grievance committee composed of Union members of the Daily Mirror unit commenced holding conferences with Company officials to discuss alleged departures from the terms of the notice and to interpret its provisions. These conferences continued until shortly before the hearing. There is no evidence that Union representatives ever expressed acceptance of the terms of the notice. The most that can be said is that they made no objection to provisions they regarded as favorable to the employees.

We need express no opinion as to what effect, if any, an actual agreement covering only editorial employees would have on the question of what unit might be appropriate for the purposes of collective bargaining, as we are convinced upon all the evidence that the dealings between the Company and the Union with respect to the notice did not result in the formation of a contract. The promulgation of the notice was a unilateral act on the part of the Company. It did not call for assent on the part of the Union and none was in fact given.<sup>9</sup> In any event the "Notice" was to be in effect only until January 28, 1938.

The advertising department of the Company solicits advertisements, prepares copy for the same, determines within limits the number of pages of each edition, and indicates the position of the advertisements on each page by blocking out space on a "dummy" or sample page. This department has to meet a "dead-line" by which all advertising copy must be delivered to the composing room. Included in the advertising department are advertising solicitors, make-up men, artists, copy writers, messengers, clerks, and stenographers.

The editorial department prepares or edits all the matter appearing in the newspaper other than advertisements. Reporters and correspondents gather news and either write news stories or furnish information to rewrite men for the preparation of news stories. Photographs are obtained from staff photographers and from syndicates.

---

<sup>9</sup> See *Matter of Lunkenheimer Company and Steel Workers Organizing Committee, Case No. R-471*, 4 N. L. R. B. 1131.

The Company receives national and foreign news, comic strips, and feature articles from various press services. There are also feature writers and artists in the editorial department. The editors or copy desk men edit all material, write headlines and captions and place the various items on the pages so as to fill the space left after advertisements have been blocked out on the "dummy." The editorial department must send all copy to the composing room before the editorial "dead-line," which is later than the "dead-line" for the advertising department. Included in the editorial department are reporters, rewrite men, copy desk men, photographers, artists, feature writers, messengers or "copy boys," clerks, and stenographers.

The production or mechanical department prints the newspaper. This department receives copy from the advertising and editorial departments, casts type, and makes photoengravings. Stereotype plates are cast for each page and placed in the presses which print the newspaper. The production department includes compositors, composing room boys, paper handlers, photoengravers, stereotypers, pressmen, electricians, machinists, and clerks.

The circulation department receives newspapers from the press room and distributes them. Newspapers for mail delivery are labeled with subscribers' addresses and bundled in the mail room. Drivers receive newspapers for handling by the Company's own delivery system and deliver them to news dealers. Representatives of the circulation department arrange for distribution of the newspaper through wholesale and retail outlets. This department includes mailers, addressing machine operators, drivers, city inspectors, country roadmen, and news hustlers.

The business department is in general the fiscal agent and administration office for the Company's entire organization. This department prepares pay rolls and budgets and collects statistics on plant operations for the information of the management. Included in the business department are accountants, clerks, stenographers, and telephone operators.

The metropolitan newspaper business is such that promptness in the collection of news and production and distribution of newspapers is vital. "Dead-lines" for the various departments are timed so that all operations synchronize in order that each edition may contain the latest news possible. Each department is administratively separate but economically dependent on the others. A shut-down in any department, resulting from a labor dispute, would in all likelihood cause a suspension of publication and would at least cripple the operations of the other departments and eventually render the whole enterprise unprofitable.

It was established at the hearing that various locals of the American Newspaper Guild have entered into contracts with publishers (among

them some members of the Hearst organization) covering only editorial employees, and that some of these contracts were entered into after the June 1937 convention when American Newspaper Guild jurisdiction was extended. It appears, however, that the action of the convention in extending membership to non-editorial employees was somewhat in doubt until it was finally ratified in September 1937 by a referendum among members of the American Newspaper Guild. The executive secretary of the Union testified that some of these agreements made since the June convention resulted from negotiations begun prior to the convention. He also stated that the practice of American Newspaper Guild locals, even after the June convention, is to negotiate for editorial employees alone where the locals have not yet organized a substantial number of commercial employees. In the *Matter of News Syndicate Co., Inc.*, and *Newspaper Guild of New York*<sup>4</sup> we found that commercial employees of a newspaper, apart from editorial employees, constituted an appropriate unit, where the employees wished such a separate unit and a contract existed between the employer and the editorial employees alone. In the instant case, however, the employees wish the larger unit and, as we have seen, editorial employees have no contract. The previous bargaining upon the basis of the editorial employees as a separate unit is not conclusive.<sup>5</sup> The functional interdependence of the various departments of the Company and the greater effectiveness of the larger unit for collective bargaining make the employer unit appropriate.

Thus in general the employer unit, excluding employees in the specified crafts covered by contract, is appropriate in this case. It is necessary that the unit be strictly delimited and we shall proceed to consider several specific classes of employees.

In the production department are about 20 composing room boys who move galleys of type about, operate proof presses, and do errands generally in the composing room. Functionally the composing room boys are much closer to the compositors than to any other class of employees. Composing room boys are ineligible to join the typographical organization, however, unless they become apprentices and undergo a long training. Very few composing room boys have become apprentices in the history of the Company. Further, most of these "boys," who range in age up to 40 or 50, are above the maximum age limit of 21 fixed by typographical organization rules for beginning apprentices, in the absence of special dispensation from the compositors' local. Nearly all the composing room boys

<sup>4</sup> 4 N L R B 1071

<sup>5</sup> *Matter of R. C. A. Communications, Inc.*, and *American Radio Telegraphists' Association*, 2 N L R. B 1109; cf. *Matter of The Associated Press, a Corporation*, and *American Newspaper Guild*, 1 N L. R. B. 686.

are members of the petitioning Union. If the typographical craft organizations desired to bargain for them we should be disposed to exclude them from a unit composed largely of white-collar workers, but we are impelled by the consideration that no one will bargain for these workers if the Union does not. We therefore include composing room boys within the bargaining unit.

The Company's pay roll includes a total of 13 machinists and machinists' helpers. These men are not members of the petitioning Union and there is no showing that they belong to any other labor organization, save that they are omitted from the Company's list of production department employees not affiliated with craft labor organizations.<sup>6</sup> It further appears that the Union and the Company have both omitted these employees in calculating the number eligible for membership in the Union. In this unsatisfactory state of the record we are inclined to exclude machinists and machinists' helpers from the bargaining unit under consideration.

The record indicates that the Company employs in its editorial department a number of space writers, who are not in regular attendance at the Company's offices and who are paid according to the amount of work they do, though they may be guaranteed a minimum wage. We will include space writers, except those permanently located outside the metropolitan area of New York City, in the bargaining unit.

All parties agree that employees of the advertising offices in Chicago, Illinois, and Detroit, Michigan, should not be included in the bargaining unit. We shall accordingly exclude them.

The circulation department employs a number of "country roadmen" who promote circulation of the newspaper outside New York City. These men seldom call at the New York City offices of the Company but the record does not indicate that they are permanently located elsewhere. They will be included in the bargaining unit.

Part-time employees who are regularly employed will be included in the bargaining unit.

The Company occasionally employs for short periods a number of persons to tabulate contest results and do similar work. We will exclude these temporary employees.

The Company and the Union stipulated that the appropriate bargaining unit should include only employees paid weekly and should exclude employees paid an hourly wage. We see no reason to depart from this limitation desired by the parties.

We find that all employees of the Company, excluding executives, persons employed at hourly wages, persons who belong or are eligible to belong to International Typographical Union, Paper Handlers

<sup>6</sup> Board Exhibit 35.

and Straighteners Union, International Printing Pressmen's Union, New York Stereotypers Union, New York Photo-Engravers Union, International Brotherhood of Electrical Workers, Mailers Union, and Newspaper and Mail Delivery Union of New York, machinists and machinists' helpers, persons employed in advertising offices located outside the New York City metropolitan area, temporary employees, and space writers permanently located outside the New York City metropolitan area, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

The unit which we have found to be appropriate included 486 employees on November 20, 1937. The Union introduced in evidence a number of membership application cards, 311 of which bear names appearing on the pay roll of the Company for November 20, 1937. The Company admitted the genuineness of some of the cards and offered no controverting proof as to the rest, which were supported by the oath of Union witnesses. Many of the cards are dated prior to June 1937 and are addressed to the Newspaper Office Guild of New York rather than to the Union. The record sufficiently shows the merger of the Newspaper Office Guild of New York with the Union after the June 1937 convention of the American Newspaper Guild. In addition, witnesses produced Union records indicating that these persons were carried on its rolls as members. Some were in arrears in dues but were retained as members. A comparison of the Union membership applications in evidence with the list of persons whom we have found to be included in the appropriate unit indicates that the Union represents a majority in the appropriate unit.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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 Daily Mirror, Inc., New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company, excluding executives, persons employed at hourly wages, persons who belong or are eligible to belong to International Typographical Union, Paper Handlers and Straighteners Union, International Printing Pressmen's Union, New York Stereotypers Union, New York Photo-Engravers Union, International Brotherhood of Electrical Workers, Mailers Union, and Newspaper and Mail Delivery Union of New York, machinists and machinists' helpers, persons employed in advertising offices located outside the New York City metropolitan area, temporary employees, and space writers located outside the New York City metropolitan area, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. The Newspaper Guild of New York is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

#### CERTIFICATION OF REPRESENTATIVES

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 Newspaper Guild of New York has been designated and selected by a majority of all employees of Daily Mirror, Inc., New York City, excluding executives, persons employed at hourly wages, persons who belong or are eligible to belong to International Typographical Union, Paper Handlers and Straighteners Union, International Printing Pressmen's Union, New York Stereotypers Union, New York Photo-Engravers Union, International Brotherhood of Electrical Workers, Mailers Union, and Newspaper and Mail Delivery Union of New York, machinists and machinists' helpers, persons employed in advertising offices located outside the New York City metropolitan area, temporary employees, and space writers permanently located outside the New York City metropolitan area, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, The Newspaper Guild of New York is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.