

In the Matter of PARAMOUNT PICTURES, INC. and NEWSPAPER GUILD
OF NEW YORK

Case No. R-725.—Decided June 23, 1938

Motion Picture Production Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; rival organizations; employer's refusal to bargain with union because of controversy concerning unit—*Unit Appropriate for Collective Bargaining:* employees in the editorial and traffic departments of the News Division, excluding executives and employees who are members of or eligible to membership in other union, and including the secretaries to the executives in charge of the laboratory and technical departments of the News Division; desires of employees—*Representatives:* proof of choice: comparison of list of employees with union membership application cards and petition—*Certification of Representatives:* upon proof of majority representation.

Mr. Jacob Blum, for the Board.

Mr. Austin C. Keough and Mr. G. A. Barry, of New York City, for the Company.

Mr. Abraham J. Isserman, of New York City, for the Guild.

Miss Geneva M. Marsh, of New York City, for the Federation.

Mr. Raymond J. Compton, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On February 9, 1938, Newspaper Guild of New York, 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 employees of Paramount Pictures, 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 February 28, 1938, 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 April 18, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Guild. Pursuant to the notice, a hearing was held on April 27, 1938, at New York City, before William Seagle, the Trial Examiner duly designated by the Board. At the opening of the hearing, American Federation of Bookkeepers, Stenographers and Accountants, Federal Local Union No. 20940, herein called the Federation, made an oral request to intervene. This request was granted subject to the filing of a written petition to intervene, which the Federation later submitted during the course of the hearing. On April 27, 1938, the Trial Examiner also granted a motion by the Guild to amend its petition by altering to some extent the description of the bargaining unit claimed by the Guild to be appropriate. The Board, the Company, and the Guild were represented by counsel; the Federation was represented by Geneva M. Marsh; and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on other motions and 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

The Company is a New York corporation originally organized under the name of Famous-Players-Laskey Corporation on July 19, 1916, changing to its present name on June 5, 1936. The Company is engaged in the business of making, selling, and distributing motion pictures and maintains its principal place of business in the Paramount Building, New York City. Two other buildings in New York City are occupied by the Company in the conduct of its business: The Paramount Exchange, on 44th Street, between 8th and 9th Avenues, and the Paramount News Building, at 544 West 43rd Street, which houses the Paramount News Division involved in this proceeding. The Paramount News Division formerly existed as a separate corporation under the name of Paramount News, Inc., but on April 29, 1937, merged with Paramount Pictures, Inc.

The Company owns or controls approximately 400 subsidiaries, most of which are engaged in operating theaters throughout the

United States. These subsidiaries operate some 800 theaters. The Paramount News Division makes not only all the news reels issued by the Company in the United States, but also various types of "shorts," consisting of travel, novelty, and cartoon pictures. Both the news reels and the "shorts" are made in the Paramount News Building. The News Division of the Company has 163 employees with an annual pay roll of about \$500,000. Approximately 1,000,000 feet of news reel and 400,000 feet of "shorts" are produced by the Company in the Paramount News Building every week. These films are sent to every State in the United States and to foreign countries. Over 50 per cent of the materials used in the production of these pictures are obtained outside the State of New York.

II. THE ORGANIZATIONS INVOLVED

Newspaper Guild of New York is a labor organization affiliated with the American Newspaper Guild, admitting to its membership "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."¹ It is affiliated with the Committee for Industrial Organization.

American Federation of Bookkeepers, Stenographers and Accountants, Federal Local No. 20940, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all the clerical and office workers of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Guild claims to represent a majority of the employees of the Company in the editorial, traffic, and accounting departments of the News Division, excluding executives and employees who are members of or eligible to membership in certain locals of an existing union in that Division, and including the secretaries to the executives in charge of the laboratory and technical departments. The Guild contends that the employees of the Company eligible to its membership constitute an appropriate bargaining unit. The Company has refused to bargain with the Guild, denying that the unit claimed by the Guild is an appropriate one, and also requesting "suitable proof of representation."

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

¹The quoted words are taken from the Constitution of the American Newspaper Guild. The record shows that the same classification of employees are eligible to membership in the Newspaper Guild of New York

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

The Guild contends that the employees of the Company in the editorial, traffic, and accounting departments of the News Division, excluding executives and employees who are members of or eligible to membership in Locals 52, 644, and 702 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, hereinafter called the I. A. T. S. E., and including the secretaries to the executives in charge of the laboratory and technical departments of the News Division, constitute an appropriate bargaining unit. The Guild bases its contention upon the fact that it has organized the employees of the News Division on an industrial basis, excluding all those who are members of or eligible to membership in a union which already exists and has membership in the News Division. The I. A. T. S. E., affiliated with the American Federation of Labor, has been recognized by the Company as the bargaining representative for all those employees excluded from the unit which the Guild claims to be appropriate.

While not objecting to the inclusion of the editorial employees within the unit claimed by the Guild, the Company contended that such unit should not include secretarial, stenographic, and clerical employees. The Federation also asserted that a unit composed of the clerical and office workers in all three divisions of the Company was an appropriate bargaining unit and alleged that the Federation had a substantial membership among the employees of the other two divisions of the Company. Both the Company and the Federation contend that those employees of the News Division eligible to membership in the Federation should be excluded from the unit claimed by the Guild, inasmuch as they will be organized by the Federation when it completes its intended organization in that Division.

The Federation admittedly has made no attempt to organize the employees of the News Division and it offered no proof of either a majority or a substantial membership among the office and clerical

employees in the other two divisions of the Company in which it has organized. The mere fact that the Federation intends at some future time to organize the employees of the News Division does not justify their exclusion from the bargaining unit claimed to be appropriate by the Guild. Furthermore, the Federation introduced no evidence showing that the employees of the News Division eligible to the Federation had expressed any desire to become members of or to be represented by the Federation. On the other hand, all those employees who are included within the unit which the Guild claims to be appropriate are ineligible to any union existing and having membership in the News Division at the time of the hearing. In addition, the Guild introduced evidence showing that a substantial majority of such employees are members of the Guild and have expressed a desire that it represent them. Under these circumstances, we see no reason for deviating from the unit claimed to be appropriate by the Guild.

The contention was also made by the Company that since certain employees of the News Division which the Guild includes within its requested unit work on both "shorts" and news reels they should be excluded. It was shown at the hearing, however, that such employees devote the major part of their time to news reels and properly come within the rules of eligibility adopted by the Guild. We will not exclude these employees from the unit which we find to be appropriate.

Since the six accountants employed in the News Division were loaned to it by the home office, and the News Division had no control over them, either as to tenure of office or terms and conditions of employment, it was stipulated by the Guild that they should be excluded from the unit. Accordingly, the six accountants will be excluded from the unit which we find to be appropriate.

We find that all employees of the Company in the editorial and traffic departments of the News Division, excluding executives and employees who are members of or eligible to membership in Locals 52, 644, and 702 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, and including the secretaries to the executives in charge of the laboratory and technical departments of the News Division, 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 includes 23 employees listed on the "schedule of employees" introduced in evidence

by the Company. The Guild offered in evidence 20 membership application cards, together with a petition bearing the signatures of 19 Guild members and expressing the desire that the Guild be their representative for the purposes of collective bargaining. As evidenced by both the petition and the application cards, the Guild represents 21 of the 23 employees within the appropriate unit. No objection was made to the introduction of either the cards or the petition and no question was raised as to the authenticity of the signatures appearing thereon.

We find that the Guild 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 Paramount Pictures, 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 in the editorial and traffic departments of the News Division, excluding executives and employees who are members of or eligible to membership in Locals 52, 644, and 702 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, and including the secretaries to the executives in charge of the laboratory and technical departments of the News Division, 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 Newspaper Guild of New York has been designated and selected by a majority of all employees of Paramount Pictures, Inc., in the editorial and traffic departments of the News Division, excluding executives and employees who are members of or eligible to membership in Locals 52, 644, and 702 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, and including the secretaries to the executives in charge of the laboratory and technical departments of the News Division, 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.