

In the Matter of WEEKLY PUBLICATIONS, INC. and NEWSPAPER
GUILD OF NEW YORK

Case No. R-809.—Decided July 5, 1938

News Magazine Publishing Industry—Investigation of Representatives: controversy concerning representation of employees: refusal of employer to recognize petitioning union as representative of any employees not members; controversy concerning appropriate unit—*Unit Appropriate for Collective Bargaining:* editorial department employees, excluding executives and including employees in Newsphoto department, Washington employees, the department editors, writers, copy readers, research writers, clippers, typists, secretaries, library staff, make-up staff, photographic staff, and part-time employees; economic interdependence; community of interest; desire of employees—*Representatives:* proof of choice; comparison of pay roll with union membership application cards and petition—*Certification of Representatives:* upon proof of majority representation.

Mr. Albert Ornstein, for the Board.

Whitman, Ransom, Coulson & Goetz, by *Mr. William L. Ransom* and *Mr. Pincus M. Berkson*, of New York City, for the Company.

Isserman, Isserman & Kapelsohn, by *Mr. Abraham J. Isserman*, of Newark, N. J., for the Guild.

Mr. Robert L. Condon, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On December 30, 1937, the 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 Weekly Publications, 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 March 8, 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,

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ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On May 6, 1938, the Regional Director issued a notice of hearing, copies of which were served upon the Company and the Guild. Pursuant to the notice a hearing was held on May 13, 1938, and continued on May 18, 1938, at New York City, before William Seagle, the Trial Examiner duly designated by the Board. The Board, the Company, and the Guild were represented by counsel and 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.

At the beginning of the hearing, the Trial Examiner permitted the Guild to amend its petition to particularize the description of the unit claimed to be appropriate and to strike out certain other matters. This ruling is hereby affirmed. The Trial Examiner permitted the Company to file an answer to the amended petition, alleging in substance that, because of the peculiar nature of the work of editorial writers, it would be improper to certify the Guild as exclusive representative of all the editorial writers, including those who did not desire to be represented by the Guild. On this ground and upon other grounds stated orally during the course of the hearing, the Company moved to dismiss the petition. The Trial Examiner denied the motion. His ruling is hereby affirmed. During the course of the hearing the Trial Examiner made several other rulings on motions and objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On June 7, 1938, the Company filed a brief which the Board has duly considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY¹

Weekly Publications, Inc., is a corporation organized under the laws of the State of New York on December 23, 1936. The Company maintains its principal place of business at No. 1270 Sixth Avenue, Borough of Manhattan, New York City.

The Company is engaged in the business of editing, publishing and selling to the public a weekly news magazine known as Newsweek,

¹ The facts found in this section are based upon a stipulation entered into by counsel for the Board and counsel for the Company

which selects, summarizes, and interprets what it deems to be significant news of the week. News material and photographs are obtained, edited, and prepared for publication. Advertising space in Newsweek is sold, and advertising matter is published.

The Company conducts and operates at No. 1270 Sixth Avenue, New York City, its general administrative, circulation, advertising, editorial, and photographic departments, where among other things advertising, news, photographs, and editorial material and special articles are received and prepared for publication.

The magazine is printed on behalf of the Company by a printing establishment in Dayton, Ohio. The editorial, advertising, and photographic copy is sent from New York City by the Company to the printer in Dayton, Ohio, by means of regular mail, air mail, and the American Telephone and Telegraph Company teletype. After being printed, the magazines are distributed from the plant of the printer in Dayton, Ohio, to subscribers throughout the United States, Canada, and in foreign countries, by means of the United States mail and to news stands throughout the United States by means of the S-M News Company, Inc.

The average weekly circulation of Newsweek is approximately 300,000 copies. Of this circulation approximately 6 per cent is delivered to points within the State of Ohio, and approximately 94 per cent is delivered to points outside the State of Ohio. Likewise approximately 10 per cent is delivered to points within the State of New York and approximately 90 per cent is delivered to points outside the State of New York.

At the principal place of business of the Company in New York City, informative material constituting news service is from time to time received from the International News Service and other sources. Photographs are purchased and received from various national photographic agencies. News copy, photographs, and other material originate in part at points outside the State of New York, including foreign countries. News, editorial, and photographic material is received at such offices from part-time correspondents of the Company located in Washington, District of Columbia; Paris, France; Cambridge, Massachusetts; New Haven, Connecticut; and other points.

The Company maintains and operates branch offices in Paris and Washington, at which branch offices employees or agents of the Company engage in securing and preparing news and editorial material, photographs for publication, comments upon and interpretation of news events, and the like.

The name Newsweek is registered in the United States Patent Office.

II. THE ORGANIZATION INVOLVED

Newspaper Guild of New York is a labor organization affiliated with American Newspaper Guild, which in turn is affiliated with the Committee for Industrial Organization.

American Newspaper Guild admits to membership employees devoting a major portion of their time to an editorial, business, circulation, promotion, 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 American Newspaper Guild and Newspaper Guild of New York except that the jurisdiction of the latter is limited to New York City and environs. Newspaper Guild of New York is organized into employer units, one of which admits only employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 29, 1937, the Guild submitted to the Company a notarized statement of the number of members who were employees of the Company and demanded the right to be the exclusive bargaining agent for all of the editorial employees, since it claimed to represent a majority. In reply the Company expressed willingness to negotiate with the Guild for its members only. It refused to bargain with the Guild as the exclusive representative of the editorial employees, on the ground that it doubted whether the Guild had a majority and that the unit described was not appropriate.

We find that a question has arisen concerning 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, as amended, the Guild alleged that "all of the employees in the editorial department of said publication, excluding only executives, and including department editors, writers, copy

readers, researchers, clippers, typists, secretaries, library staff, make-up staff and photographic staff" constituted an appropriate unit. In its answer and at the hearing the Company opposed this contention, taking the position that certain of the employees claimed by the Guild are not in the editorial department. The Company further maintained that a unit containing editorial writers and clerical employees is not appropriate. Although it was willing to negotiate with the Guild for its own members in whatever capacity employed, it insists that the Guild cannot be certified as an exclusive representative of all the employees in the unit claimed to be appropriate.

The Company introduced two pay rolls, one containing the names of all the employees in the editorial department and the other the names of the employees in the Newsphoto department. Included among the editorial department employees are the various editors, writers, make-up assistants, research writers, typists, secretaries, clippers, photo department employees, librarians, and others who are responsible for the writing and editing of copy for the magazine. Without exception these employees are intimately connected with the editorial process. The duties of the editors, writers, and make-up assistant are clearly editorial. The research writers not only check the factual accuracy of stories that appear in the magazine, but also interview people and occasionally write stories. The typists prepare the final copy that goes to the printer; the secretaries, in addition to routine correspondence and telephone calls, prepare the letters and answers that are printed in the magazine; the clippers watch newspapers for "futures" and make telegraphic inquiries about pending news stories; the librarians have charge of the "morgue" and help the research writers; the photo department assists in the selection and preparation of the photographs that appear in the magazine. The employees in the various categories have a functional interdependence which justifies their inclusion in the same unit.

There are seven employees in the Newsphoto department in New York City. Four of them work on the same floor of the same building as do the other Newsweek employees. Of the other three, two are stationed in a darkroom located in another building, and the third is a photographer who reports to the darkroom where he develops his pictures, but spends most of his time obtaining pictures of the various events occurring in New York City. The Newsphoto department is a picture agency owned by the Company. This department supplies pictures to Newsweek and to others who may wish to purchase them. It receives pictures from its own photographers, from Newsweek, and from various other sources throughout the world. Although the Company contends that this department is not editorial but comes under the supervision of the business manager, we find that these employees are intimately connected with the as-

sembling and preparation of the material appearing in the magazine. In a magazine like Newsweek the photographs are of almost the same importance as the text. The Newsphoto employees participate in the picture conference that selects the pictures for the magazine, and two of the Newsphoto employees write most of the captions which appear under the pictures that are printed. The Newsphoto files and the picture files of the magazine are in the same room. Some of the Newsphoto employees spend part of their time working in the photo department of the magazine. Every picture that appears in the magazine must be recopied in the Newsphoto darkroom. All Newsphoto pictures are submitted first to the magazine before they can be disposed elsewhere. The salesman for Newsphoto spends at least half his time doing work of an editorial nature for the magazine, such as suggesting stories and writing captions. The pay checks of these seven employees are signed in the same manner as those of the editorial employees, and the Newsphoto employees received their vacation notice from Rex Smith, the managing editor of Newsweek. Furthermore, all seven signed a petition designating the Guild as their representative for the purposes of collective bargaining. We find that the employees in the Newsphoto department in New York City should be included within the unit.

The Company maintains bureaus at Washington and at Paris. The Guild desires to include the Washington employees in the unit and to exclude the Paris employees. At Washington the Company employs a correspondent, an assistant, a secretary, and a photographer. The correspondent is listed as an editorial employee, the photographer as in the Newsphoto department, and the other two as part time in each category. The Company does not oppose the inclusion of the Washington employees in the unit unless these employees do not wish to be represented by the Guild. Under these circumstances we shall include the Washington employees in the appropriate unit and exclude the Paris employees.

The Guild desires to exclude as executives with the power to hire and discharge the following employees: The managing editor, the business assistant to the editor, the news editor, the editor of the Nation and Periscope department, the editor of the Foreign department, and the editor of the Business department. The Company produced no evidence to show that they were not supervisory officials other than the assertion of counsel for the Company that some of them had no power to hire and discharge. We shall exclude them from the unit.

Several employees in the editorial department were listed as part-time. The Guild desired to exclude those who worked less than 2½ days a week and include those who worked more than that period. It appears, however, that all of them are permanently employed by

the Company even though they are not full-time employees. We do not believe that these employees, otherwise within the appropriate unit, should be excluded for the sole reason their employment is not on a full-time basis. We shall, therefore, include all part-time employees in the unit.

We find that the editorial department employees, excluding executives and including the employees of Newsphoto department, the Washington employees, the department editors, writers, copy readers, research writers, clippers, typists, secretaries, library staff, make-up staff, photographic staff, and part-time employees, 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

During the course of the hearing, the Guild introduced in evidence the application cards for membership in the Guild of 38 employees in the appropriate unit. In addition, it introduced a petition signed on May 19, 1938, by 46 of these employees. The authenticity of these signatures was not disputed by the Company. An examination of the pay rolls reveals that there are 63 employees within the appropriate unit.

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

2. The editorial department employees, excluding executives and including the employees of Newsphoto department, the Washington employees, the department editors, writers, copy readers, research writers, clippers, typists, secretaries, library staff, make-up staff, photographic staff, and part-time employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Newspaper Guild of New York is the exclusive representative

of all 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 the editorial department employees of Weekly Publications, Inc., New York City, excluding executives and including the employees of Newsphoto department, the Washington employees, the department editors, writers, copy readers, research writers, clippers, typists, secretaries, library staff, make-up staff, photographic staff, and part-time employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, 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.