

In the Matter of BOSTON DAILY RECORD (NEW ENGLAND NEWSPAPER PUBLISHING Co.) and NEWSPAPER GUILD OF BOSTON (AMERICAN NEWSPAPER GUILD)

In the Matter of BOSTON EVENING AMERICAN AND BOSTON SUNDAY ADVERTISER (NEW ENGLAND NEWSPAPER PUBLISHING Co.) and NEWSPAPER GUILD OF BOSTON (AMERICAN NEWSPAPER GUILD)

In the Matter of NEW ENGLAND NEWSPAPER PUBLISHING Co. and AMERICAN FEDERATION OF NEWSPAPER WRITERS, REPORTERS & EDITORIAL WORKERS, FEDERAL LOCAL #21432

Cases Nos. R-720, R-721, and R-722, respectively.—Decided July 29, 1938

*Newspaper Publishing Industry—Investigation of Representatives:* controversy concerning representation of employees; controversy concerning appropriate unit; rival organizations; employer's refusal to grant recognition of unions until question of representation is determined by Board—*Unit Appropriate for Collective Bargaining:* election to determine; where other considerations determinative of appropriate unit are evenly balanced, decisive factor is desire and choice of employees involved—*Elections Ordered:* union granted 10 days' leave to apply for removal of name from ballot, where desire to participate not clear.

*Mr. Bernard J. Donoghue*, for the Board.

*Burns & Brandon*, by *Mr. Edmund J. Blake*, of Boston, Mass., and *Mr. E. D. Salinger*, of Chicago, Ill., for the Company.

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

*Mr. Francis P. Fenton*, of Boston, Mass., for the Newspaper Writers' Union, the Stenographers' Union, the A. F. of L., the Pressmen, the Building Employes, and the Machinists.

*Mr. Sumner Marcus*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

On January 28, 1938, American Newspaper Guild, herein called the Guild, on behalf of Newspaper Guild of Boston, herein called the Boston Guild, filed with the Regional Director for the First Region (Boston, Massachusetts) two petitions alleging that questions affecting

commerce had arisen concerning the representation of employees of the New England Newspaper Publishing Company, Boston, Massachusetts, herein called the Company, on the Boston Daily Record, herein called the Record, and on the Boston Evening American and the Boston Sunday Advertiser, herein called the American-Advertiser, respectively, and requesting investigations and certifications of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On March 10, 1938, the Guild filed amended petitions alleging that questions affecting commerce had arisen concerning the representation of employees of the Company on the aforesaid newspapers and also asking for investigations and certifications of representatives. On March 12, 1938, American Federation of Newspaper Writers, Reporters and Editorial Workers, Federal Local #21432, herein called the Newspaper Writers' Union, filed a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the Company on the afore-mentioned newspapers and requesting an investigation and certification of representatives.

On March 17, 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. The Board, acting pursuant to Article III, Section 10 (c) (2), of the Rules and Regulations, further ordered that the three cases be consolidated for the purposes of hearing.

On March 21, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the Boston Guild, and the Newspaper Writers' Union. On March 25, 1938, the Regional Director issued a notice of postponement of hearing, copies of which were duly served upon the same parties. On March 30, 1938, the Regional Director issued a second notice of postponement of hearing, copies of which were also duly served upon the parties. Pursuant to the second notice of postponement of hearing, a hearing was held on April 5 and 6, 1938, at Boston, Massachusetts, before Mapes Davidson, the Trial Examiner duly designated by the Board.

At the hearing motions to intervene were made on behalf of the Stenographers, Typists, Bookkeepers and Assistants Union, Local 14965 of Boston, herein called the Stenographers' Union; the American Federation of Labor, herein called the A. F. of L.; Building Service Help Local No. 30, Building Service Employees' International Union, herein called the Building Employees; International Printing Pressmen and Assistants' Union of North America, herein called the

Pressmen; and International Association of Machinists, herein called the Machinists. All these are labor organizations claiming to represent employees directly affected by the investigation and all were permitted to intervene. Representatives of Boston Typographical Union No. 13 and of Boston Photoengravers Union No. 3 stated at the beginning of the hearing that they did not represent any employees who were affected by the investigation.<sup>1</sup>

The Board, the Company, the Boston Guild, the Newspaper Writers' Union, the Stenographers' Union, the Pressmen, the Building Employees, the A. F. of L., and the Machinists 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. 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.

At the close of the hearing the Boston Guild filed a second amended petition which further defined the unit which it claimed to be appropriate and which expressly excluded therefrom press clerks, paper handlers, and building service and maintenance employees. Since the record indicates that the reason for the intervention by the Pressmen and by the Building Employees was the inclusion by the Boston Guild in its original and first amended petitions of such employees in the units it claimed to be appropriate, it appears that the two labor organizations do not represent employees who will be affected by the investigation.

On April 20, 1938, the Guild filed a petition requesting that the case be reopened for the purpose of determining the employees who were discharged in the course of a mass lay-off which was effected by the Company after the hearing. On July 2, 1938, the Boston Guild, the Newspaper Writers' Union, and the Company entered into a stipulation setting forth the names of persons who had been discharged or who had quit since March 12, 1938, and who, the parties agreed, should not be eligible to vote in any election directed by the Board. On July 9, 1938, all the other parties here involved signed a statement approving the stipulation. The petition filed by the Guild is therefore denied.

Pursuant to notice to all parties a hearing was held before the Board on May 17, 1938, in Washington, D. C., for the purpose of oral argument. The Boston Guild, the Newspaper Writers' Union, and the Company were represented at this hearing. The Company has filed a brief which the Board has considered.

<sup>1</sup> It is clear from the record that the Machinists does not claim to represent any employees who will be affected by the investigation.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

The New England Newspaper Publishing Company is a Massachusetts corporation, wholly owned by American Newspapers, Inc., which is part of the Hearst organization of publications and press, radio, and film services. The Company publishes at Boston, Massachusetts, the Boston Daily Record, a daily morning newspaper, the Boston Evening American, a daily afternoon newspaper, and the Boston Sunday Advertiser, a Sunday newspaper. In the publication of these newspapers, the Company uses newsprint and other supplies, substantially all of which are shipped from States other than Massachusetts and from Canada. The Company also subscribes to and receives material from services which collect news, features, and photographs in all parts of the United States and foreign countries, and which transmit their products to the Company. The three newspapers published by the Company are members of the Associated Press and subscribe to the International News Service. The three newspapers also receive advertising which originates outside Massachusetts.

The average daily circulation of the Boston Daily Record is approximately 240,000 copies, of which approximately 25 per cent are circulated and distributed outside Massachusetts. The Boston Evening American has an average daily circulation of approximately 260,000 copies, of which approximately 10 per cent are circulated and distributed outside Massachusetts. The Boston Sunday Advertiser has an average weekly circulation of approximately 540,000 copies, of which approximately 40 per cent are circulated outside Massachusetts.

The Company concedes that its operations affect interstate commerce within the meaning of the Act.

#### II. THE ORGANIZATIONS INVOLVED

Newspaper Guild of Boston is a labor organization affiliated with American Newspaper Guild, which in turn is affiliated with the Committee for Industrial Organization. American Newspaper Guild admits into 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."

American Federation of Newspaper Writers, Reporters and Editorial Workers, Federal Local #21432, is a labor organization affiliated with the American Federation of Labor, apparently admitting to its membership all employees of the Company's editorial departments, excluding executives.<sup>2</sup>

Stenographers, Typists, Bookkeepers and Assistants Union, Local 14965 of Boston, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all employees of the Company employed as stenographers, bookkeepers, typists, filing clerks, accountants, comptometer operators, multigraphers, stencil cutters, ledger clerks, cashiers, or who are otherwise employed in a clerical or a stenographic capacity.

### III. THE QUESTION CONCERNING REPRESENTATION

Early in 1937 the Boston Guild secured the membership of a majority of the employees in the editorial departments of the Company's papers. After negotiations it entered into oral agreements with the Company regarding wages, hours, and other working conditions on behalf of the employees of the editorial departments of the Record and of the American-Advertiser. The agreements, which were to be effective until March 31, 1938, and April 8, 1938, respectively, were embodied in statements of policy which were posted by the Company on its bulletin boards.

In June 1937 the American Newspaper Guild, with which the Boston Guild is affiliated, voted to surrender its affiliation with the American Federation of Labor and to become affiliated with the Committee for Industrial Organization. It also voted to extend its membership and organizational activities to all employees of newspapers who had hitherto been unorganized.

As a result of this action, some of the employees of the Company's editorial departments applied to the American Federation of Labor for a charter and in January 1938 the A. F. of L. chartered the Newspaper Writers' Union.

Both the Boston Guild and the Newspaper Writers' Union informed the Company during January 1938, that they represented a majority of the employees of the Company's editorial departments and requested collective bargaining conferences with the Company. The Company refused to meet with either because it did not know which union was actually the representative of its employees. On

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<sup>2</sup>It is not clear from the testimony of the president of the Newspaper Writers' Union whether all employees of the Company's editorial departments or only those actually engaged in editorial work are admitted to membership. The constitution of the Newspaper Writers' Union was not in evidence.

March 21, 1938, and on March 31, 1938, the Company, at the request of the Newspaper Writers' Union, consented to extensions of the existing statements of policy, pending resolution by the Board of the question concerning representation of the Company's employees.

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

At the hearing the Boston Guild contended for a single unit composed of all the employees of the Company, excluding executives, press clerks, paper handlers, bootjacks, building service and maintenance employees, and also excluding those employees on behalf of whom the following labor organizations have already bargained and secured contracts with the Company: Boston Mailers Union No. 16, Boston Typographical Union No. 13, International Association of Machinists, Lodge No. 264, Truck Drivers, Chauffeurs and Helpers Union, Local No. 25, Boston Newspaper Printing Pressmen's Union No. 3, Boston Photoengravers Union No. 3, Boston Stereotypers Union No. 2, Newspaper Chauffeurs, Distributors and Helpers, Local Union No. 259, International Brotherhood of Electrical Workers, Local No. 103.<sup>3</sup> The Stenographers' Union claimed that there should be a separate unit composed of all "office help."<sup>4</sup> The Newspaper Writers' Union and the Company contended for a separate unit com-

<sup>3</sup> In its original petitions the Boston Guild contended for two units, one composed of all the employees in the editorial department of the Record, excluding executives, and the other composed of all the employees in the editorial department of the American-Advertiser, excluding executives. In its first amended petitions the Boston Guild contended for two units composed, respectively, of all employees on the Record, excluding executives and those belonging to craft unions in the mechanical departments, and of all the employees on the American-Advertiser, excluding executives and those belonging to craft unions in the mechanical departments.

<sup>4</sup> A representative of the Stenographers' Union claimed that the appropriate unit consisted of "anyone that works in an office, uses a pen or a typewriter, that uses an adding machine, a bookkeeping machine, or works in any clerical position, any office help, every filing clerk, \* \* \* whatever is classified in office help." Although this definition would not seem to embrace those employed as messengers and salesmen, it is apparent that the Stenographers' claims extend to these employees, since more than half of the employees who signed cards introduced into evidence by the Stenographers' Union are engaged either as messengers or salesmen.

posed of the employees in the editorial departments, excluding executives.

In view of the general language used by the representative of the Stenographers' Union in setting forth its claim, it is not clear precisely what employees it desires to include in the unit. There is some evidence indicating that it seeks a unit which would exclude a number of non-editorial employees whom the Boston Guild desires to include. On the other hand, there is evidence indicating that it desires to include in the unit substantially all the non-editorial employees which the Boston Guild wants to include. Since the position of the Stenographers' Union is vague and since the record shows that the interests of the employees which the Boston Guild desires to include in the unit are closely allied, we find that all the employees of the Company, excluding executives, press clerks, paper handlers, building service and maintenance employees, and excluding those employees in behalf of whom the following labor organizations have already bargained and secured contracts with the Company: Boston Mailers Union No. 16, Boston Typographical Union No. 13, International Association of Machinists, Lodge No. 264, Truck Drivers, Chauffeurs and Helpers Union Local No. 25, Boston Newspaper Printing Pressmen's Union No. 3, Boston Photoengravers Union No. 3, Boston Stereotypers Union No. 2, Newspaper Chauffeurs, Distributors and Helpers, Local Union No. 259, International Brotherhood of Electrical Workers, Local No. 103; and including or excluding the employees in the editorial departments as shall be hereafter determined upon the basis of the results of the election herein ordered, constitute a unit appropriate for the purposes of collective bargaining.

In support of their contention that the employees of the editorial departments, excluding executives, constitute a separate bargaining unit, the Newspaper Writers' Union and the Company state that different skills are required of such employees than are required of employees in the other departments of the Company's newspapers and that the editorial department is functionally independent of the other departments. The evidence shows, however, that the editorial and other departments are substantially interdependent and that the skill required of many employees in the editorial departments more closely resembles the skill required of various groups of employees in other departments than it does that required of other employees in the editorial departments.

Included in the editorial departments are editors and reporters who are skilled in writing, reporting, and editing; photographers and artists who possess creative talents and special skills of a different order; laboratory men who are skilled in the treatment of

photographic films; and stenographers, clerks, and copy boys, that is, messengers, who possess little or no specialized skill. Included in the advertising, circulation, and business departments are also writers, who write news items; photographers, and artists; and stenographers, clerks, and messenger boys. A stenographer, clerk, or messenger, regardless of the department in which he works, does substantially the same type of work and receives the same amount of compensation. This is true also of photographers, artists, and other employees. It is clear, therefore, that, if there were any logic behind the contentions that units should be created on the basis of similar skills, the units would cut across departments rather than be formed along departmental lines.

With respect to the contention that the various departments of the Company's newspapers function independently, it is clear that in the newspaper industry all departments must work together in order that the individual issues of the newspaper meet the "deadline" of periodic publication.

The Newspaper Writers' Union and the Company also contend that the bargaining history of employees both of the Company and also of other newspapers has been on a craft rather than an industrial basis. It is to be noted, however, that, while organization of newspapers employees has in the past generally proceeded along craft lines to the extent that there has been organization, the history of organization among the types of employees here involved is not long or well-defined. Thus, organization of editorial employees of newspapers generally did not begin until 1933. At that time, such employees were organized separately rather than as parts of industrial units. It was at an even later date that organization of the employees of the type here involved commenced among employees of the Company. In the first part of 1937, the Boston Guild began to organize the editorial department employees of the Company and in September or October of the same year extended its organizational activities to include other employees of the Company. The News-writers' Union did not begin its organizational activities until the latter part of 1937.

On the basis of all the facts, we are of the opinion that the employees of the editorial departments, excluding executives, may appropriately be included in the general unit sought by the Boston Guild or be established as a separate unit as sought by the Newspaper Writers' Union. The close relation between the editorial and other departments and the similarity of the interests of the employees in the several departments are indicative of the feasibility of the first approach; the fact that editorial-department employees have in the past been organized separately is indicative of the

feasibility of the latter approach. There is no history of bargaining for either type of unit in the newspaper industry which can as yet be said to indicate the greater feasibility of one unit rather than the other. We hold that under the circumstances the desires of the employees in the editorial departments, excluding executives, shall be determinative.<sup>5</sup> The evidence introduced at the hearing indicated that the Company employs in its editorial departments approximately 210 persons, exclusive of executives. The Newspaper Writers' Union offered in evidence membership cards of 140 employees in the editorial departments and a ledger showing the receipts of dues from 137 of these employees. On the other hand, the Boston Guild offered uncontradicted evidence that in April 1937 it represented a majority of these employees. It further offered evidence that since that date there have been but six resignations from it and that its membership among the editorial departments of the Company's newspapers had by January 1937 increased to 150. It is clear, therefore, that neither labor organization has clearly established that it represents a majority of the editorial-departments employees. We shall, therefore, order an election among such employees to determine whether they desire to be represented by the Boston Guild or by the Newspaper Writers' Union, for the purposes of collective bargaining, or by neither.

If a majority of the employees in the editorial departments select the Newspaper Writers' Union, they will constitute a separate bargaining unit. If the Boston Guild is accorded a majority by such employees and also by a majority of the employees in the general plant unit, the employees in the editorial departments together with the other employees shall constitute a single bargaining unit. If the Boston Guild is accorded a majority by the employees in the editorial departments but not by the other employees, the employees in the editorial departments shall constitute a separate unit.

#### VI. THE DETERMINATION OF REPRESENTATIVES

There was introduced at the hearing evidence showing that on March 12, 1938, the Company employed approximately 300 persons in the general unit, excluding editorial employees. Although the Boston Guild claimed to represent a majority of such employees, it did not introduce membership cards or other evidence in support of this claim. The Stenographers' Union offered in evidence authori-

<sup>5</sup> See *Matter of The Globe Machine and Stamping Co. and Metal Polishers Union, Local No. 3, International Association of Machinists, District No. 54, Federal Labor Union 18788*, and *United Automobile Workers of America*, 3 N. L. R. B. 294; and *Matter of American Hardware Corporation and United Electrical and Radio Workers of America*, 4 N. L. R. B. 412.

zation cards signed by 47 employees. Under the circumstances, it is clear that an election will be necessary to determine the question of representation. We shall, therefore, order that an election be held among the employees in the general unit, excluding the employees in the editorial departments, to determine whether they desire to be represented by the Boston Guild or by the Stenographers' Union, for the purposes of collective bargaining, or by neither. Since it is not clear from the record whether the Stenographers' Union desires that its name appear on such a ballot, we shall amend our direction of election to delete its name from the ballot if it notifies the Regional Director of such desire within 10 days from the date of the issuance of this decision and prior to the actual election.

As pointed out in Section V above and for the reasons therein set forth, we shall also direct an election among the employees of the editorial departments, excluding executives, to determine whether they desire to be represented by the Boston Guild or by the Newspaper Writers' Union for the purposes of collective bargaining, or by neither.

At the hearing the parties agreed that in the event the Board directed an election the Company's pay-roll list of March 12, 1938, should be used to determine eligibility to vote. After the hearing it was stipulated that this list should be used subject to a second list which included employees who had quit or been discharged subsequent to March 12, 1938. Eligibility to vote in the elections shall therefore be determined on the basis of the list of employees of the Company on March 12, 1938, as modified by the stipulation and exclusive of any other employees who have since quit or been discharged for cause.

Upon the basis of the above findings of fact, the Board makes the following:

#### CONCLUSION OF LAW

A question affecting commerce has arisen concerning the representation of employees of New England Newspaper Publishing Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

#### DIRECTION OF ELECTIONS

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

**DIRECTED** that, as part of the investigations authorized by the Board to ascertain representatives for the purposes of collective bargaining

with New England Newspaper Publishing Company, elections by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the First 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 the employees of New England Newspaper Publishing Company who fall within the groups described below :

(a) All the employees on the Boston Daily Record, Boston Evening American, and Boston Sunday Advertiser who were employed on March 12, 1938, excluding executives, employees in the editorial departments, building service and maintenance employees, press clerks, paper handlers, bootjacks, and excluding employees on behalf of whom the following unions have bargained and secured contracts : Boston Mailers Union No. 16, Boston Typographical Union No. 13, International Association of Machinists, Lodge No. 264, Truck Drivers, Chauffeurs and Helpers Union, Local No. 25, Boston Newspaper Printing Pressmen's Union No. 3, Boston Photoengravers Union No. 3, Boston Stereotypers Union No. 2, Newspaper Chauffeurs, Distributors and Helpers, Local Union No. 259, International Brotherhood of Electrical Workers, Local No. 103, and also excluding those who have since quit or who have been discharged for cause, to determine whether they desire to be represented by Newspaper Guild of Boston, or by Stenographers, Typists, Bookkeepers and Assistants Union, Local 14965 of Boston, for the purposes of collective bargaining, or by neither.

(b) The employees in the editorial departments of the Boston Daily Record, Boston Evening American, and Boston Sunday Advertiser, excluding executives, who were employed on March 12, 1938, and who have not since quit or been discharged for cause, to determine whether they desire to be represented by Newspaper Guild of Boston, or by the American Federation of Newspaper Writers, Reporters & Editorial Workers, Federal Local #21432, for the purposes of collective bargaining, or by neither.