

In the Matter of THE ASSOCIATED PRESS, A CORPORATION and  
AMERICAN NEWSPAPER GUILD

*Case No. R-26.—Decided May 6, 1936*

*News Collecting and Distributing Agency—Unit Appropriate for Collective Bargaining: occupational differences; organization of business—Election Ordered: question affecting commerce: confusion and unrest among employees; employees engaged directly in interstate commerce—controversy concerning representation of employees: majority status disputed by employer—Certification of Representatives*

*Mr. David A. Moscovitz* for the Board.

*Davis, Polk, Wardwell, Gardiner & Reed*, of New York City, for the Associated Press. *Mr. William C. Cannon* and *Mr. Harry W. Bissel*, of counsel.

*Greenbaum, Wolff & Ernst*, of New York City, for the Union. *Mr. Morris L. Ernst* and *Mr. Callman Gottesman*, of counsel.

*Mr. Louis L. Jaffe*, of counsel to the Board.

DECISION

STATEMENT OF CASE

On December 9, 1935, The Associated Press Unit of the Newspaper Guild of New York, hereinafter called the Guild unit, which is in turn a branch of the American Newspaper Guild, hereinafter called the Guild, filed with the Regional Director for the Second Region a petition alleging that a question affecting commerce had arisen concerning the representation of the editorial employees of the New York City office of The Associated Press, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935. On December 10, 1935, the Board authorized the Regional Director for the Second Region to conduct an investigation and provide for an appropriate hearing upon due notice. On December 16, 1935, the Board ordered that the hearing in this matter be held in conjunction with the hearing on a complaint, relating to the discharge of an employee, Morris Watson, issued against The Associated Press entitled "*In the Matter of The Associated Press and the American Newspaper Guild*", being known as Case No. II-C-28. On December 20, 1935, the Regional Director issued a notice setting the hearing

for January 9, 1936. Notice of hearing was duly served on The Associated Press and the Guild. The hearing was postponed from time to time,<sup>1</sup> until on April 2, 1936, the Regional Director issued a notice setting the hearing for April 7, 1936, which notice was duly served on the aforementioned parties. Hearings were held in New York, N. Y., on April 7 and 8, 1936, before a Trial Examiner, Dean Charles E. Clark of the Yale Law School, designated by order of the Board. Counsel for The Associated Press filed a special appearance for the purpose of moving that the complaint be dismissed on the grounds that the Act is "void, unconstitutional, and of no force and effect in so far as it purports to authorize an investigation, hearing or certification relative to collective bargaining by or on behalf of the aforesaid employee unit of The Associated Press since the matters do not come within the commerce or other powers of the Congress" and is unconstitutional for the further reasons that it violates the First Amendment to the Constitution of the United States in that it abridges the freedom of The Associated Press, and violates also the Fifth and the Tenth Amendments thereto. The Trial Examiner overruled the motion in so far as it rested on points "unconnected with interstate commerce"; after a showing as to the nature of the activity of The Associated Press, he overruled the motion on all grounds. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties.

Upon the evidence adduced at the hearing and from the entire record before it, including the pleadings filed, the transcript of the hearing, and exhibits introduced, the Board makes the following:

### FINDINGS OF FACT

#### I. THE ASSOCIATED PRESS

The Associated Press was organized in 1900 as a membership corporation of the State of New York, being a non-profit association of certain persons who, owning or representing certain newspapers, operated for profit, united in a mutual and cooperative association for the collection and interchange of information and intelligence for publication in the newspapers owned or represented by them. It has at present about 1350 members. Of the 2000 daily newspapers in the United States, approximately 1200 are members of The Associated Press; included among them are newspapers in every State. The Associated Press has members also in Alaska, Argentina,

<sup>1</sup>The postponements were the result of a bill in equity brought by The Associated Press in the United States District Court for the Southern District of New York to enjoin the hearing. The bill was dismissed on April 4, 1936, upon the motion of the Regional Director and Regional Attorney, defendants in the case.

Bolivia, China, Colombia, Costa Rica, Cuba, Dominican Republic, Dutch West Indies, Ecuador, Guatemala, Hawaii, Mexico, Panama, Paraguay, Peru, Phillipines, Puerto Rico, Spain, Uruguay, and Venezuela. Each member is entitled to at least a minimum news service, and each member supplies to The Associated Press local news gathered by him.

Each member of The Associated Press has one vote. However, bonds may be issued up to the aggregate sum of \$500,000, carrying a vote for each \$25 but not to exceed \$1,000 of registered bonds whereon interest is waived; on December 31, 1935, such bonds in the sum of \$235,525 were outstanding, which, being substantially held by the larger newspapers, carried increased voting power to such newspapers to the extent indicated.

The balance sheet of The Associated Press for the year 1935 showed assets of \$2,697,128.80 and its income was \$9,404,213.41, an excess of \$141,959.55 over its expenses of \$9,262,253.86; said income, outside of interest amounting to \$63,374.04, consisted exclusively of assessments levied upon its members according to a formula of assessment which, while adjusted to the type and amount of service received, is based fundamentally upon the plan of distributing the cost of operation among its members in proportion to the population of the community served by them.

Advertised statements by The Associated Press contain assertions that "it is the greatest clearing house for news in the world", and that "the revenues reach an annual aggregate of nearly \$10,000,000, while the number of words daily received and transmitted at each of the more important offices is over 200,000, or the equivalent of 125 columns of the average newspaper". These statements were not controverted at the hearing, and the extensive operations of The Associated Press in all parts of the world were amply demonstrated by all the evidence. It appears to be substantially larger than the other competing press agencies in the United States that are organized as commercial corporations.

The Associated Press has in excess of 1,700 employees and an annual pay roll in excess of \$3,000,000.

The principal office of The Associated Press is in New York City. It has its own representatives in important capitals and cities in the United States and in other parts of the world. It has an affiliate, The Associated Press of Great Britain, of which there is a branch office in Paris, whose function it is to obtain news pictures of news events abroad to be supplied to The Associated Press of New York. It also has an affiliate located in Berlin. It has reciprocal arrangements with important news agencies in foreign countries for the interchange of news: with Reuter, the Canadian Press—modeled

after The Associated Press, Domei-Tsuchin-Sha, a Japanese news bureau.

The Associated Press has established division points throughout the United States, each of which is responsible for the collection of news from its territories and for its distribution. These divisions are the Eastern, with headquarters in New York City; the Southern, Atlanta, Georgia; the Central, Chicago, Illinois; the Western, San Francisco, California; and the Southwestern, Kansas City, Missouri. Each division has regional offices and member newspapers reporting to it. In addition, The Associated Press has a special bureau at Washington, D. C., and a Foreign Service, operating from its New York City office with offices, staffs, and correspondents in Africa, Asia, Europe, and Central and South America. The control of news is extremely decentralized or "broken-down". Each collecting agent—regional office, member newspaper, division point—determines the value to other regions, divisions, etc. of each item of news collected by or coming to it and sends it along to other points or distributes it throughout the territory of which it is the key point according to its judgment of its interest for those points. Consequently the individual editorial employee no matter where he may be situated has a measure of responsibility for the effective functioning of the entire system.

The usual method of communication is by "leased wires" (or special service by contract with the Western Union Telegraph Company, the American Telephone & Telegraph Company, and the Pacific Telephone & Telegraph Company), although all forms of communication—telephone, messenger, wireless, mail—are employed. From each division point there stretches out to the East, the West, the North and the South, trunk telegraph wires which are the principal intake and feeding lines for the division and which provide inter-divisional communication. Subsidiary regional circuits tie into the primary circuits. As news is received at a division headquarters, it is revised by editorial employees under the direction of supervising editors and then transmitted throughout the division and to the headquarters of other divisions to the extent warranted by the news. Each trunk line is controlled by a "filing editor" who must be aware of the capacity of the line, i. e., the amount of news which he can wire out during his shift—usually eight hours—and the amount of news which his line will be expected to receive; during his shift he is responsible for sending out—"filing"—over his line a "balanced" news report.

The Associated Press, through itself or its affiliates, also conducts extensive operations in the collection of photographs of persons and events which it transmits to and from Europe and among its mem-

bers; when the immediate news value of these photographs is gone, they are sold to an agency for eventual use in magazines and other publications.

## II. OPERATION OF THE NEW YORK OFFICE: THE EDITORIAL EMPLOYEES

The number of employees in the New York office of The Associated Press, exclusive of the general office executives, is more than 350, and its annual pay roll in that office in excess of \$800,000.

The editorial work in the New York City office of The Associated Press is divided into various departments to facilitate the speedy and efficient operation of its business. An executive news editor, assisted by supervising editors and editorial employees, has general charge of the revision of the news as it is received from the filing editors in immediate charge of the wires to and from various places; and there are other departments or desks covering Foreign, City, Sports, Financial, News Photo, and Feature Service, as well as a morgue or library for retaining items of potential future value.

The filing editors supervise the news as it goes out on trunk or primary circuits and the secondary wires from New York City, including the North wire to New York State and New England and Boston, the South wire to Atlanta, there breaking into subdivided regional extensions, the main West wire (with a parallel wire for financial, commodity, and money market news) to Kansas City with trunk wires there to the Pacific Coast and the Southwest, a "Metro" wire for the newspapers of Greater New York City, and state wires to New York and Pennsylvania. Such editors determine what news, from the vast amount of copy delivered to them, is to be sent on their respective wires; they supervise its rewriting, as they determine to be desirable for the uses of their respective circuits, and its delivery to teletypewriter operators for transmission over such wires.

The operations described above are carried on in three daily shifts of employees; the day shift from 8:00 A. M. to 4:00 P. M., the night shift from 4:00 P. M. until midnight, and the early shift from midnight until 8:00 A. M.

The operations of the editors and editorial employees require a high degree of skill, for they must be able to determine the news value of items, and to rewrite copy with speed and the utmost accuracy, so that in the case of important news all the work on a particular item may be completed within a few minutes. Thus a story from abroad may be received, rewritten, and sent out over the leased wires in from 12 to 20 minutes, and an unusually important item, such as the death of the King of England, would be sent out in half that time. Less important news is handled in a more leisurely way, but all news is perishable and very quickly becomes valueless for the purposes of

The Associated Press and as soon as it becomes generally known through competing press agencies or otherwise.

The Feature Service supplies to the member newspapers special stories covering particular events, or recurring features, such as articles on sports or scientific events or surveys of the news. These are often sent out as the product of special staff employees, and published over the "by line" or name of the writer; and such assignments are naturally among those most desired and sought after by the editorial employees.

The mechanical operations of the transmission of news are conducted by the Traffic Department, the employees of which perform no editorial functions and are not classed as editorial employees; and the actual sending of the news by wire is performed by the telegraph companies the use of whose facilities is purchased by The Associated Press.

At the time of the hearing, approximately 157 of the employees in New York City were classified as editorial employees, including reporters and editors engaged in the preparation or revision of news for transmission and distribution in this country and abroad. The editorial employees of The Associated Press in the New York City office are a definite and separate class; they constitute a unit appropriate for the purpose of collective bargaining.

The operations of The Associated Press and of its editorial employees occur in the course and current of commerce among the several States and with foreign countries; are an integral part of the operations of the instrumentalities of such commerce; and constitute commerce among the several States and with foreign countries.

### III. QUESTION OF REPRESENTATION AFFECTING COMMERCE

In 1933 the unrest which had developed among editorial employees and reporters of newspapers had become acute, due to lowering of wages generally and the elimination of various newspapers, notably "The New York World", the sale of which threw many such employees out of work. The remuneration paid such employees was generally lower than that paid less highly skilled workers in the mechanical departments of newspaper service who had been organized in unions, who had had service contracts, and who had suffered less drastic wage cuts.

In view of these conditions the American Newspaper Guild was organized to obtain the benefits of unionization for editorial employees and reporters of press associations and newspapers. It comprised a national organization, of which the New York Newspaper Guild was a branch and of which local units were installed in individual newspapers or press associations in about 70 cities.

The Associated Press unit of the New York Newspaper Guild was organized in November, 1933. Morris Watson, an editorial employee in the New York City office, whose discharge has given rise to the complaint case which was heard simultaneously with the instant matter, was the leader in the Guild unit and its first chairman.

In July, 1934, the Guild unit adopted a resolution sponsored by Watson, addressed to the American Newspaper Guild, asking the Guild to undertake collective bargaining on behalf of the Guild unit. Among the points at issue an important one was the securing of a five-day week for editorial employees, instead of the six day week then in force.

Thereafter the Guild sent to Frank B. Noyes and to Kent Cooper, president and general manager of The Associated Press, respectively, formal letters, signed by the executive secretary of the Guild and by Watson, asking for an appointment for the purposes of collective bargaining.

Thereafter the executives of The Associated Press interviewed the editorial employees individually in respect to their Guild connections, and strongly objected to such connections, so that membership of the Guild unit fell off sharply and the collection of dues likewise declined substantially. As a result, the Guild unit held a meeting on August 17, 1934, and suspended its request for collective bargaining pending the creation and report of a committee from the Guild unit to discuss the matter with Cooper.

On the following day the committee met with Cooper, who declined to bargain collectively, stating that he would quit his job rather than bargain with "an outsider"—referring to the Guild—and intimating that, if Guild activities were given up, the five-day week would be granted.

Thereafter, on August 21, 1934, the Guild unit voted to suspend indefinitely its request for collective bargaining. This meeting was well attended, because the executives of The Associated Press actively worked to induce attendance and in some cases themselves relieved the employees of their duties to that end.

Thereupon the five-day week was instituted and continued in force until October 7, 1935.

Thereafter the executives, at staff meetings held for the different shifts of employees, protested the action of the Guild unit in only suspending the request for collective bargaining and not rescinding it, asking the employees if they were not thereby "binding themselves to outsiders and ceasing to be free agents," particularly unless they obtained back their authorizations to bargain collectively, which were held by Watson as an officer of the Guild unit and which he refused to deliver up.

On October 7, 1935, the editorial employees were notified that the five-day week was withdrawn and that a six-day week was effective at once. At a meeting of the Guild unit on October 9, 1935, Watson introduced a resolution, asking the Guild to begin collective bargaining on its behalf. The resolution recited particularly the fact that the six-day week had been re-scheduled without notice to the workers and without affording opportunity for discussion or adjustment and that an agreement continuing the policy of the five-day week, among other things, was needed to safeguard the interests of employees and was otherwise fair and equitable, and therefore the Guild unit selected the Guild by its proper committee to act as the exclusive representative for the purpose of collective bargaining in respect to conditions of employment and particularly in respect to hours of employment. A referendum on the resolution was completed on October 11, 1935. Seventy-two voted on the referendum and the vote was all but unanimous in favor of adopting the resolution. At the time, the Guild unit had about 95 or 96 members.

On October 17, 1935, the Guild, by its National Executive Board (that being the board or committee which, under the constitution of the Guild, was authorized to conduct collective bargaining for guild units), wrote to Kent Cooper, general manager, referring to the resolution adopted on October 11, 1935, and asking for an opportunity to "discuss with you the subject of hours and conditions of employment, with the purpose in view of negotiating a collective agreement."

On October 22, 1935, Cooper replied to the letter of October 17, 1935, and stated, among other things, that he could not without instructions from his board of directors "consider negotiations with outsiders looking toward such an eventuality as you have suggested." Thereafter further correspondence was had between the attorneys for the Guild and executive of The Associated Press wherein the former pressed for a hearing to discuss collective bargaining and the latter referred the matter to the meeting of the board of directors to be held in January.

After the discharge of Watson on October 18, 1935, membership in the Guild unit fell off to about 85 and there was a falling off in the collection of dues; at the time of the hearing the membership was increasing and the collection of dues had improved. The reduction in membership was due directly to the opposition of The Associated Press to the Guild activities and the fear of the employees of reprisals for such activities.

The Associated Press has disputed the fact that the Guild does represent a majority of the editorial employees for the purposes of collective bargaining. We find that a question concerning the representation of the editorial employees has arisen.

The editorial employees of The Associated Press at its New York office in the activities hereinbefore described are directly engaged in interstate and foreign commerce by facilitating and making possible the flow of news from place to place throughout this country and other countries; and any interference with or cessation of such activities would hamper, impede, and interfere with such commerce.

Any cessation of editorial activities at the New York office would cause a break in the flow of foreign news and of some of the important domestic news and, until such break could be repaired or in some manner overcome, would seriously impede, if not prevent, the issuance of newspapers in all parts of the country. Random tests of the dependence of newspapers on continued service by The Associated Press showed a paper in Dayton, Ohio, with nineteen stories and one photograph on its front page credited to The Associated Press; one in Portland, Maine, with eight such stories and one photograph; one in San Francisco, California, with nine such stories; one in Phoenix, Arizona with eleven such stories; one in Memphis, Tennessee, with twenty-seven such stories; and with each of such papers carrying, in addition to such stories appearing on its front page, many other such stories on other pages.

We conclude that the question concerning representation which has arisen is a question affecting commerce, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. To determine this question it is appropriate to conduct an election by secret ballot among the employees in question. In connection with the election Morris Watson, whose discharge by The Associated Press is claimed to have been due to his organizational activity and whose case is now before us, will be considered as among the editorial employees of The Associated Press. Whether his vote in the election will be counted will depend upon our ultimate decision in the case relating to him.

#### CONCLUSIONS OF LAW

Upon the basis of the above findings, the following conclusions of law are made by the Board:

1. The editorial employees, with the exception of executives, of The Associated Press, in its New York City office constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.
2. A question affecting commerce has arisen concerning the representation of the editorial employees of The Associated Press in its New York office, within the meaning of Section 9 (c) of the 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, approved July 5, 1935, 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 investigation authorized by the Board to ascertain representatives for collective bargaining with The Associated Press, an election by secret ballot shall be conducted within ten 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 of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the editorial employees, with the exception of executives, of The Associated Press in its New York City office, on the payroll as of the date of this Direction, to determine whether or not they desire to be represented by the American Newspaper Guild.

[SAME TITLE]

## AMENDED DIRECTION OF ELECTION

*May 13, 1936*

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, approved July 5, 1935, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Direction of Election issued on May 6, 1936 is amended to read as follows:

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with The Associated Press, an election by secret ballot shall be conducted on or before May 27, 1936, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the editorial employees, with the exception of executives, of The Associated Press in its New York City office, on the payroll as of May 6, 1936, to determine whether or not they desire to be represented by the American Newspaper Guild.

[SAME TITLE]

## SECOND AMENDED DIRECTION OF ELECTION

*May 26, 1936*

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, approved July 5, 1935, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Amended Direction of Election issued on May 13, 1936, is further amended to read as follows: It is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with The Associated Press, an election by secret ballot shall be conducted on or before June 3, 1936, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the editorial employees, with the exception of executives, of The Associated Press in its New York City office, on the payroll as of May 6, 1936, to determine whether or not they desire to be represented by the American Newspaper Guild.

[SAME TITLE]

## CERTIFICATION OF REPRESENTATIVES

*July 3, 1936*

A petition for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, was filed on December 9, 1935, with the Regional Director for the Second Region by the American Newspaper Guild, said petition alleging that a question affecting commerce had arisen concerning the representation of the editorial employees of The Associated Press, New York, New York. The National Labor Relations Board on December 10, 1935, acting pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, authorized the Regional Director for the Second Region to conduct an investigation and to provide for an appropriate hearing upon due notice. Pursuant to such authorization, notice of hearing was duly issued and served by the Regional Director and on April 7 and 8, 1936, a hearing was held at New York City, by Charles E. Clark, the Trial Examiner designated by the Board.

After said hearing and upon the full record in the case, the National Labor Relations Board issued its Direction of Election dated

May 6, 1936, which Direction was thereafter amended on May 13, 1936, and again on May 26, 1936. Pursuant to the Amended Directions, an election by secret ballot was conducted by the Regional Director between May 25, 1936 and May 29, 1936, by registered mail, among the editorial employees of The Associated Press on the payroll of the Company on May 6, 1936, excluding executives, said election being held in accordance with Article III, Section 9 of said Rules and Regulations, as amended. Thereafter the Regional Director prepared and served upon the parties to the proceeding her Intermediate Report in which she found that a majority of the employees eligible to vote in said election had voted, and that a majority of those voting had selected the American Newspaper Guild to represent them for the purposes of collective bargaining with The Associated Press.

A majority of those eligible voted; a majority of those voting, though less than a majority of those eligible, voted for the American Newspaper Guild. In certifying the Guild we are following the rule established by the Circuit Court of Appeals for the Fourth Circuit in *Virginian Railway Co. v. System Federation No. 40*, decided June 18, 1936. The Court had before it the provision in the Railway Labor Act, 45 U. S. C. § 131 et seq., that: "The majority of any craft or class shall have the right to determine who shall be the representative of the class or craft." It decided that where a majority of the eligibles voted, a majority of those voting, though less than a majority of those eligible, determined the representative.

After pointing out that popular democratic government is universally conducted upon that principle and alluding to the many decisions of the Supreme Court applying the principle to political elections, the Court says:

"We see no reason why the act should not be interpreted as contemplating that this well settled rule of elections should be applied in the case of the employees' election for which it provides, in cases like this where a majority of those qualified to vote participate in the election. Such a rule is fair and just to all parties. It gives every employee an opportunity to express his choice. It preserves the secrecy of elections. And it prevents the breaking down of the plan of collective bargaining which it was the purpose of the act to set up."

With these reasons we are in entire accord. The parallel language in the National Labor Relations Act: "Representatives designated or selected . . . by the majority of the employees in a unit" differs slightly but not materially from that in the Railway Labor Act and requires the same construction.

Now THEREFORE, 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 Associated Press, New York, New York, as their representative for the purpose of collective bargaining with The Associated Press, and that pursuant to Section 9(a) of the National Labor Relations Act, the American Newspaper Guild is the exclusive representative of all such editorial employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.