

In the Matter of NEWS SYNDICATE Co., INC. and NEWSPAPER GUILD
OF NEW YORK

Case No. R-424.—Decided January 19, 1938

Newspaper Industry—Investigation of Representatives: controversy concerning representation of employees: employer desires certification by Board of bargaining representative before entering into any negotiations—*Unit Appropriate for Collective Bargaining:* no controversy as to, except as to inclusion of advertising salesmen in; community of interests—*Representatives:* proof of choice: membership applications; petition requesting employer to negotiate with union for a contract covering employees; comparison of petition and applications with pay roll—*Certification of Representatives:* upon proof of majority representation.

Mr. Will Maslow, for the Board.

Mr. George T. Townley, of New York City, and *Mr. J. Howard Carter*, of New York City, for the Company.

Mr. Abraham Isserman, of Newark, N. J., and *Mr. Joseph Goodwin*, of New York City, for the Union.

Mr. B. O. Sullivan, of New York City, for the Advertising Salesmen.

Mr. Daniel J. Harrington, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On October 6, 1937, Newspaper Guild of New York, herein called the Union, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of News Syndicate Company, 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 October 26, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 17, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Union, and upon B. O. Sullivan, a representative of a group of advertising salesmen, herein called the Advertising Salesmen, who claim to be employees directly affected by the investigation. Pursuant to the notice, a hearing was held on November 26 and 27, 1937, at New York City, before Emanuel Bloch, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union, were represented by counsel, and the Advertising Salesmen were represented by B. O. Sullivan and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

News Syndicate Co., Inc., a New York corporation, having its office in New York City, is the owner and publisher of a daily and a Sunday newspaper known respectively, as the "Daily News" and the "Sunday News".

The Company maintains a branch office in Chicago, Illinois, for the solicitation of advertising, and maintains a news office in Washington, D. C.

Approximately 84 per cent of the raw materials used in the publication of the "Daily News" and the "Sunday News", such as paper, ink, and machinery, are shipped to the Company from points outside the State of New York. Approximately 50 per cent of the "Sunday News" and 15 per cent of the "Daily News" are circulated outside the State of New York. Approximately four per cent of the advertising published in the Daily and Sunday News is solicited by advertising solicitors having offices outside the State of New York.

Some 250 correspondents at various times furnish news items to the Company on a free lance, space-rate basis. Many of these correspondents reside outside the State of New York. The Company uses the following wire or picture services: Associated Press, A. P. Photos, Wire Photos, United Press, Acme News Pictures, Chicago Tribune Foreign Service, Standard News Association. These services, through their offices in New York City, sell to the Company news and photographs which are gathered from points within and without the State of New York.¹

¹ The above facts relative to the business of the Company were stipulated to by the Company, counsel for the Board, and counsel for the Union.

II. THE ORGANIZATION 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."² The American Newspaper Guild is affiliated with the Committee for Industrial Organization.

III. THE QUESTION CONCERNING REPRESENTATION

About September 30, 1937, the Union sent to the Company a petition, signed by a majority of the employees in the commercial departments of the Company, asking the Company to negotiate with the Union for a contract covering such employees. The record does not show that the Company replied to the petition, but indicates that the Company has at all times desired certification by the Board of bargaining representatives before entering into any negotiations. In a letter of October 14, 1937, to the Regional Director of the Second Region, 47 out of the 51 advertising salesmen within the commercial departments stated that they did not desire to be represented by the Union.

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 1 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 Union alleges in its petition that "all employees in the commercial department of the Daily News,³ embracing employees engaged in advertising, circulation, promotion, and general business work, excluding executives" constitute a unit appropriate for the pur-

²The 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.

³The stipulations between the various parties and the testimony at the hearing show that the Union intended to refer to all employees in the "Commercial departments of the Company" and not merely to a department of the "Daily News."

poses of collective bargaining. The Company and the Union stipulated ⁴ at the hearing that they desired exclusion of "major executives, garage employees (except clerks); building guards, firemen (Brooklyn plant), rotogravure inkmen, rotogravure engraving helper, traffic manager, and machinist helper" from the bargaining unit. The Union also asked at the hearing that employees in the editorial and mechanical departments be excluded from such unit. The Company raised no objection to the exclusion of these employees. Although the Union feels that editorial workers should ordinarily be included within the bargaining unit, it does not insist upon inclusion of such workers in the unit at this time in view of an existing contract between the Company and the editorial workers. Under the circumstances, the editorial workers will not be included within the bargaining unit at this time. No determination is here made concerning inclusion of such workers in the unit apart from the present special circumstances.

The only issue with respect to the bargaining unit which was raised at the hearing concerned the advertising salesmen. Such employees of the Company, numbering 51, are of three types: those soliciting national advertising; those soliciting retail advertising; and those soliciting classified display advertising. Forty-seven of such employees have objected to their inclusion within the bargaining unit. They contend that because of a number of considerations their interests differ from those of the other employees. They point out that the duties of advertising salesmen are specialized and require such a knowledge of advertising and salesmanship that other employees could not perform their work. Many of the advertising salesmen have taken special courses and others have served long periods of apprenticeship. The advertising salesmen place emphasis upon the fact that due to the peculiarity of the make-up, the size of the paper, and the large circulation of "The News," the advertising salesmen of the Company must have greater technical knowledge than advertising salesmen working on most other newspapers. The advertising salesmen also point out that they differ from the other employees in that they spend a considerable period of time each day away from the offices of the Company. They normally spend about two or three hours each morning at the office, then go out to solicit business, and return to the office late in the afternoon. The average weekly pay of the advertising salesmen is higher than that of most of the other employees and in addition they receive a bonus based at present upon the collective gain in the advertising revenue of all salesmen.

The Union seeks inclusion of the advertising salesmen within the bargaining unit. It emphasizes particularly the inter-relation of the

⁴ Board's Exhibit No. 10.

work of the advertising salesmen and that of the other employees in the advertising department and the employees in the commercial departments of the Company. The Company employs in the advertising department, in addition to the advertising salesmen, approximately 43 office workers, 13 merchandising men, and 13 workers in the publicity section, including a number of research employees, production employees, and copywriters. The merchandising men communicate with retail stores and outline details with respect to advertising campaigns. The research employees compile statistical data required in selling advertising space, spot retail outlets on maps, and answer requests of advertisers for statistical information about advertising. The copywriters at times edit letters of the advertising salesmen and assist the salesmen with their selling problems. The advertising salesmen check daily with employees in the publication department with respect to advertising orders, future advertising schedules, and the position of advertising copy. Circulation figures furnished by the employees in the promotion department are interpreted by the advertising salesmen.

Notwithstanding certain differences between the advertising salesmen and other commercial employees of the Company, we feel that the interests of the advertising salesmen are closely related to those of such other employees and that the advertising salesmen should be included within the bargaining unit.

We find that all the employees within the commercial departments of the Company, excluding editorial employees, mechanical employees, major executives, garage employees except clerks, building guards, firemen (Brooklyn plant), rotogravure inkmen, rotogravure engraving helpers, traffic manager, and machine helper, 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

A pay roll of the Company showing the names of 522 employees within the appropriate unit was introduced in evidence at the hearing. All parties agreed that 522 employees should be considered as the number of employees within the unit which we have found to be appropriate. The Union introduced in evidence 311 applications, dated May and June, 1937, for membership in the Newspaper Office Guild of New York. In June 1937, the American Newspaper Guild, of which the Union is an affiliate, extended its jurisdiction to employees in the commercial departments of the Company and the Newspaper Office Guild of New York merged with the American Newspaper Guild

and became a part of the Newspaper Guild of New York. The Executive Secretary of the Union testified that the persons whose names appear on the applications submitted in evidence are now members of the Union and have received membership cards. Two hundred and seventy-seven or 280 of the names on the application cards also appear on the Company's pay roll which was introduced in evidence. The Union also introduced in evidence a petition signed during September 1937, by 303 employees in the commercial departments of the Company, requesting the Company to negotiate with the Union for a contract covering such employees. Two hundred and sixty-nine names on the petition are also on the Company's pay roll above mentioned. Ten of the names appearing on the petition are not sufficiently legible to allow comparison with names on the pay roll. The Company made no objection to the admission in evidence of the petition and application cards, or to the genuineness of the signatures appearing thereon.

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

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of News Syndicate Co., 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 commercial employees of the Company, excluding editorial employees, mechanical employees, major executives, garage employees except clerks, building guards, firemen (Brooklyn plant), rotogravure inkmen, rotogravure engraving helpers, traffic manager, and machinist helper, 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 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 the commercial employees of News Syndicate Co., Inc., New York City, excluding editorial employees, mechanical employees, major executives, garage employees except clerks, building guards, firemen (Brooklyn plant), rotogravure inkmen, rotogravure engraving helpers, traffic manager, and machinist helper, 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.