

In the Matter of L. B. WILSON, INC. and AMERICAN FEDERATION OF
RADIO ARTISTS (A. F. OF L.)

Case No. 9-R-1260.—Decided December 28, 1943

Mr. Sawyer A. Smith, of Covington, Ky., and *Mr. Fred A. Palmer*, of Cincinnati, Ohio, for the Company.

Mr. Leonard R. Lyons, of New York City, and *Mr. André Carlton*, of Cincinnati, Ohio, for the Union.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Federation of Radio Artists (A. F. of L.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of L. B. Wilson, Inc., Cincinnati, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin E. Cook, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on November 16 and 17, 1943. The Company and the Union appeared, participated, were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

L. B. Wilson, Inc., is a Kentucky corporation, engaged in the business of radio broadcasting. It operates through radio station WCKY, located in Cincinnati, Ohio. The station broadcasts approximately 18 hours per day under authority of the Federal Communications Commission, over a designated wave length of 1,530 kilocycles.

The station has 50,000 watts power, the maximum permitted to long-wave broadcasting stations. Approximately 90 percent of the Company's revenues comes from advertisers who are engaged in interstate commerce.

The Company admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

American Federation of Radio Artists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about October 22, 1943, the Union requested recognition as the exclusive bargaining representative of the radio artists in the Company's employ. The Company has refused to grant such recognition until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union in its petition requested a unit consisting of all persons in the employ of the Company who appear before the microphone as radio artists. During the hearing the Union indicated that by the term "radio artists" it means persons whose principal income is derived from earnings as radio performers. The Company agreed generally with the position of the Union, differing, however, as to the inclusion or exclusion of certain specific employees, discussed below.

Robert Fleming: Fleming is the program manager and production manager of the station. He is in complete charge of all the staff artists and has authority to hire and discharge. He apportions the duties of the various artists, and plans ideas for programs. On occasion, Fleming appears before the microphone. Because Fleming is a supervisory employee, the Union would exclude him from the unit.

¹ The Field Examiner reported that the Union submitted a sheet entitled "Bargaining Authorizations," bearing 8 apparently genuine original signatures of persons listed on the Company's pay roll of November 1, 1943. Said pay roll contained the names of 14 employees in the appropriate unit.

Because he appears before the microphone, the Company contends that he should be included in the appropriate unit. Since he is a supervisory employee we shall, in accordance with our usual policy, exclude Fleming from the unit.

Dorothea Ehbauer: Ehbauer, a graduate of a school of dramatics and radio training, plans a career as a radio artist. When she applied for work at the station, no work was available as a radio artist so she accepted employment in a clerical position. Since August of this year she has been given extra parts on the air and shortly before the hearing she was given a daily program of her own, for which she is paid. Since Ehbauer appears before the microphone the Company seeks to include her in the unit. Because she still spends the major portion of her time at clerical duties and cannot be said to earn her living as a radio artist, the Union would exclude Ehbauer from the unit. The Union however, requested her to join its ranks and admits that if it becomes the certified bargaining representative, it may insist that she join the Union or cease entirely her appearances before the microphone. It is also relevant that the Union, in a similar case which was before us in 1940, requested that regular clerical employees, who did part-time work before the microphone, be included in the unit.² Ehbauer's work before the microphone will undoubtedly increase in the near future. We shall include her in the appropriate unit.

Theodore Hahn: Hahn is classified as the music librarian. His primary function is to catalog and file all recordings and transcriptions and to pull them from the files as they are needed. In addition it is his duty to see that the Company violates no copyrights in broadcasting musical compositions. Hahn is a former symphony conductor and instrumental musician and, by reason of this background, writes and presents on the air program notes for the broadcasts of the Cincinnati Symphony Orchestra. He also conducts a short program of his own once a week. The Company contends that because Hahn appears before the microphone he should be included in the unit. The Union contends that his radio appearances are merely incidental to his primary occupation as music librarian and also that his inclusion in the unit would be likely to result in a conflict of jurisdiction with the American Federation of Musicians. The Union indicated that it customarily excepts such individuals from its contracts and would do so if certified in the instant proceeding. We shall exclude Hahn from the appropriate unit.

Nancy Prentice: Prentice is a child psychologist who has broadcast a regular program on child psychology from the Company's station for several years. Whenever possible the Company has ob-

² *Matter of Star-Times Publishing Company*, 25 N. L. R. B. 492.

tained a sponsor for her program. When Prentice has a sponsor, she is carried on the pay roll of the sponsor, "reverting automatically" to the Company's pay roll when her sponsorship expires, according to the testimony of the station manager. She is presently on the pay roll of a local department store. The Company contends that Prentice, even though not on its pay roll, is really an employee of the station and, since she appears before the microphone, should be included in the unit. The Union does not object to her inclusion in the unit, but contends that, if Prentice is included in the unit, then Pollay West O'Brien, discussed below, should also be included. Although there is testimony indicating that when the Company enters into a contract with a sponsor for Prentice's program, the contract price is reduced by the amount of her salary, the evidence is unclear as to the extent to which, if at all, the Company retains control over her activities. The contract with Prentice's present sponsor is not in evidence nor is there adequate evidence as to the Company's relationship to Prentice during periods when her program is unsponsored. The record also fails to reveal when her current sponsorship expires. We shall permit Prentice to vote, subject to challenge. If her ballot can affect the outcome of the election, additional evidence pertaining to Prentice's employee status will be obtained and a decision made thereon as to her inclusion in or exclusion from the unit.

Pollay West O'Brien: O'Brien is not and never has been in the employ of the Company. She is an employee of an advertising agency which buys radio broadcasting time from the Company and she conducts a regular program over the Company's facilities. She prepares her program at the office of her employer and appears at the radio station only when she conducts her program. The Union seeks to include her in the unit because she is a radio artist who appears before the Company's microphones. The Company would exclude her since she is not in its employ. The Union presented no evidence to indicate how it would bargain with the Company on behalf of an employee of another firm. We shall exclude O'Brien from the unit.

Sylvia Brown: Brown is an employee of the Family Consultation Service, a unit of the local Community Chest. She appears regularly on the radio, but receives no additional compensation for her work on the air, it being merely incidental to her regular work. Both parties agreed that she should be excluded from the unit, the Company, however, contending that she should be treated exactly as O'Brien. Since we have excluded O'Brien, no dispute arises as to Brown. She will be excluded from the unit.

In substantial conformance with the stipulation of the parties and the above conclusions we find that all persons in the employ of the Company, who appear before the microphone as radio artists, including Dorothea Ehbauer, but excluding Robert Fleming, Theodore

Hahn, Pollay West O'Brien, Sylvia Brown, and any supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We make no finding at this time with reference to the status of Nancy Prentice.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with L. B. Wilson, Inc., Cincinnati, Ohio an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11 of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the election, to determine whether or not they desire to be represented by American Federation of Radio Artists, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.