

In the Matter of LOUIS G. BALTIMORE, TRADING AS STATION WBRE and
AMERICAN COMMUNICATIONS ASSOCIATION, C. I. O.

Case No. 4-R-1422.—Decided August 25, 1944

Messrs. Hopkin T. Rowlands and Louis G. Baltimore, of Wilkes-Barre, Pa., for the Company.

Mr. Michael Mignon, of New York City, and Mr. Joseph M. Walsh, of Wilkes-Barre, Pa., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Communications Association, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Louis G. Baltimore, Trading as Station WBRE, Wilkes-Barre, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Wilkes-Barre, Pennsylvania, on July 17, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing the Company moved to dismiss the petition on the following grounds: (1) that the Company was not within the jurisdiction of the National Labor Relations Act, (2) that the unit sought by the Union is inappropriate, and (3) that the Union does not represent a majority of employees within the appropriate unit. For reasons hereinafter stated the said motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Louis G. Baltimore operates radio station WBRE in Wilkes-Barre, Pennsylvania, under license from the Federal Communications Commission. Although the Company claims that the effective range of its transmitter does not extend beyond the confines of the Commonwealth of Pennsylvania, it rebroadcasts programs received from the National Broadcasting Company, of which it is an affiliate, within its local area. Approximately 50 percent of the Company's revenue is derived from, and 50 percent of its broadcast time is devoted to, the rebroadcast of pickups received by telephone across State lines from the National Broadcasting Company.

We find, contrary to its contention, that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

American Communications Association, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of any of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, 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 seeks a unit comprising technicians, announcer-technicians, and the chief engineer. The Company contends that an appropriate unit should include all its employees, except the musicians.

¹ The Field Examiner reported that the Union submitted five authorization cards; that all five of the cards were dated April 15, 1944; and that there are eight employees in the unit petitioned for.

The Company claims that the petition should be dismissed because the Union has failed to submit proof that it represents a majority of the Company's employees. The claim is without merit. To be entitled to an election under the Board's procedure, the Union need only submit *prima facie* evidence that it represents a substantial number of employees in the unit claimed to be appropriate; this the Union has done. See *Matter of The Regina Corporation*, 57 N. L. R. B., No. 2, and cases cited therein.

The technicians, including the chief engineer, are licensed by the government and operate the station's transmitter which is located about 2 miles from the studio. The chief engineer has no power to hire, discharge, or discipline any employees. The Company admits that he is not a supervisory employee. The announcer-technicians, in addition to their duties as announcers, also operate the control board in the studio. The unit thus sought includes all the technical employees connected with the operation of the broadcasting station. The Board has held that technicians of the kind here described may constitute a separate unit appropriate for the purposes of collective bargaining.² Although the announcer-technicians do not possess the same degree of skill as the technicians, we are of the opinion, nevertheless, that the interest of the 2 groups of employees are sufficiently alike to permit them to be adequately represented in a single bargaining unit.

We find that all technicians,³ announcer-technicians,⁴ and the chief engineer, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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 payroll 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 the National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Louis G. Baltimore, Trading as Station WBRE, Wilkes-Barre, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but

² *Matter of Columbus Broadcasting Company, Inc.*, 56 N. L. R. B. 1182; *Matter of Inter-City Advertising Co., Inc.*, 55 N. L. R. B. 1415; *Matter of Colorado Radio Corp.*, 55 N. L. R. B. 423.

³ This category includes those employees described as "operators" on the Company's pay roll

⁴ This category includes Robert Sakoski and A. Grady, a regular part-time employee.

not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth 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 date of the election, to determine whether or not they desire to be represented by American Communications Association, C. I. O., for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.