

In the Matter of THE EVENING NEWS ASSOCIATION and NATIONAL
ASSOCIATION OF BROADCAST ENGINEERS AND TECHNICIANS

Case No. 7-R-1834.—Decided October 27, 1944

Mr. C. D. Brewer, of Detroit, Mich., for the Company.

Mr. Thomas Y. Dunn, of Washington, D. C., for the NABET.

Mr. Freeman L. Hurd, of Washington, D. C., for the I. B. E. W.

Mr. Thomas A. Ricci, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the National Association of Broadcast Engineers and Technicians, herein called the NABET, alleging that a question affecting commerce had arisen concerning the representation of employees of The Evening News Association, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Weiner, Trial Examiner. Said hearing was held at Detroit, Michigan, on September 25, 1944. The Company, the NABET and International Brotherhood of Electrical Workers, Local 1218, A. F. L., herein called the I. B. E. W., 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. 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

The Evening News Association is a Michigan corporation having its principal place of business in Detroit, Michigan, where it publishes a daily newspaper known as The Detroit News. The Company also

owns and operates two radio broadcasting stations, named WWJ and WENA, and a transmitter station, all located in Detroit, Michigan. This proceeding solely concerns certain of the Company's employees at its broadcasting and transmitter stations. The effective radius of the Company's radio stations is 55 miles, reaching into the States of Ohio, Indiana, Wisconsin, Illinois, and the Province of Ontario, Canada.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The National Association of Broadcast Engineers and Technicians is a labor organization admitting to membership employees of the Company.

International Brotherhood of Electrical Workers, Local 1218, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 31, 1944, the Company's broadcast technicians and engineers orally advised the Company that they had decided to withdraw from the I. B. E. W. and requested that the Company recognize a new bargaining agent as their representative. The Company replied that it would consider the request and subsequently stated that it would not recognize the NABET until it has been certified by the Board. Thereupon, the NABET filed the petition herein.

On March 15, 1943, pursuant to a consent election, the I. B. E. W. was designated by the Board's Regional Director for the Seventh Region as the exclusive representative of all the Company's broadcast technicians and engineers up to and including the rank of supervisor. On July 27, 1943, the Company and the I. B. E. W. entered into a collective bargaining agreement, effective August 2, 1943, which, by its terms, was to remain in effect for a period of 1 year and from year to year thereafter unless written notice to abrogate was given by either party at least 60 days prior to August 1 of any year. Since neither party to the contract gave notice prior to June 1, 1944, of intention to alter any of its terms, the contract renewed itself for a further period of 1 year on August 1, 1944. The I. B. E. W. urges this contract as a bar to an election at the present time.

During May and June 1944, the Company's technicians and engineers became disgruntled by certain proposed changes in jurisdictional policies within the framework of the American Federation

of Labor. At informal meetings in their place of employment they discussed the advisability of changing their union affiliation and joining the NABET. On July 31, 1944, when they first received definite information concerning intra-A. F. L. affairs which had caused their dissatisfaction with the I. B. E. W., all the Company's technicians and engineers decided to disassociate themselves from the I. B. E. W., and, as stated above, notified the Company of their decision. On August 9, 15 of the employees met and decided to join the NABET.

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the NABET submitted 16 authorization cards, that the names of all the employees appearing on those cards were listed on the Company's pay roll of August 16, 1944, and that there are 16 employees in the appropriate unit. This statement, we find, establishes that the NABET represents a substantial number of employees in the unit hereinafter found appropriate.¹

We have stated on several occasions heretofore that the Board will not as a general rule proceed with an investigation and certification of representatives if a valid contract urged by a party exists. However, the Board has found that a contract is not a bar to a present determination of representatives where substantially the entire membership of the contracting union in the affected bargaining unit has shifted to another organization.² As stated above, all the members of the I. B. E. W. in the unit involved herein have voted to sever their affiliation with the I. B. E. W. and to affiliate with the NABET. Accordingly, we find that the contract which was renewed on August 1, does not constitute a bar to a present determination of representatives.

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

We find, in substantial accordance with the stipulation of the parties, that all the Company's employees at its radio broadcasting and transmitter stations, who work in connection with the installation (except new construction work), operation and maintenance of radio broadcast, television, facsimile, and audio equipment and apparatus by means of which electricity is applied for the transmission or transference, production or reproduction of voice, sound, or vision, with or without ethereal aid, including the cutting and playing of records and transcriptions, except those used expressly for sound effect pur-

¹ The I B E W relies upon its contract to establish its interest in this proceeding.

² *Matter of Gelatin Products*, 49 N L R B 173.

poses,³ but 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 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Evening News Association, Detroit, Michigan, 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 from the Seventh 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 they desire to be represented by National Association of Broadcast Engineers and Technicians, or by International Brotherhood of Electrical Workers, Local 1218, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

³ There are two employees having the title of "supervisor." The record reveals that they do the same kind of work as the other technicians and engineers. They have the additional duties of arranging time schedules and preparing whatever clerical reports are incidental to the work of the entire group. Except for approximately 4 weeks during the year, while the chief engineer is on vacation or in the field, they do not have the power effectively to recommend any changes in the status of other employees. They have been included in previous bargaining agreements since 1937, and we see no reason to upset the stipulation of the parties as to their inclusion.