

In the Matter of PALM BEACH BROADCASTING CORPORATION¹ and
AMERICAN COMMUNICATIONS ASSOCIATION, CIO

Case No. 10-R-1261.—Decided November 29, 1944

Mr. C. L. McCoy, of Lake Worth, Fla., for the Company.

Mr. Charles N. Smolikoff, of Miami, Fla., for the Union.

Miss Ruth Rusch, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Communications Association, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Palm Beach Broadcasting Corporation, Palm Beach, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry Whitaker, Trial Examiner. Said hearing was held at West Palm Beach, Florida, on September 22, 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. 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 Company is a Florida corporation engaged in operating a radio broadcasting station and is affiliated with the Mutual and Blue networks, which are national broadcasting organizations. The Company is licensed by the Federal Communications Commission. Pro-

¹ All the formal papers were corrected to show the proper name of the Company as set forth above.

grams of the national networks, which are broadcast throughout the country and transmitted locally by the Company, constitute 80 percent of its business. Approximately 80 percent of the Company's broadcasts is received by wire from sources outside of the State of Florida.

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

II. THE ORGANIZATION INVOLVED

American Communications Association is a labor organization affiliated with the Congress of Industrial Organizations, 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 its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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 parties agree that the unit should be comprised of the Company's two announcers, two engineers, the janitor,³ and the typist, excluding the president and the station manager, who are an executive and a supervisory employee, respectively. The unit thus agreed upon comprises all the employees of the Company's broadcasting station except three who are in dispute. The Company contends that three employees whom it classifies as confidential should be excluded. The Union would include them in the unit, as clerical employees.

One of these employees is the bookkeeper and the "keeper of confidential records." She makes up the pay roll, keeps the records, some of which are Government reports, and has access to the files. In addition, she keeps the program schedules which show the commercial lists to be billed. Although the Company stresses the fact

² The Field Examiner reported that the Union submitted application cards, 10 of which bore the names of persons appearing on the Company's pay roll which contained the names of 11 employees. There were 9 cards dated in June 1944 and 1 dated in July 1944.

³ At present, the Company employs no janitor, but it expects to obtain the services of one as soon as possible.

that she has access to "confidential" files and should be excluded for that reason, there is no showing that the files contain papers of a confidential nature pertaining to labor relations. In fact, there is no indication that the Company has any information concerning labor relations in its files.

The other two clerical employees in dispute do general office work and take dictation from the president and the station manager interchangeably. One does all the copy writing for the station, some programming, and some traffic work. At the present time, she is training the other office employee to be traffic manager. The apprentice traffic manager is in charge of the programs, and it is her duty as such to write suitable copy for the customers' merchandise and to promote advertising. She is also the receptionist. Both have access to the files;⁴ but as stated above, the files contain no papers which are confidential within the meaning of the Board's definition.⁵ If there were any indication that one of the office employees takes dictation from either or both the president or the station manager exclusively and performs private secretarial functions, we might see some justification for excluding her from the unit as a confidential employee.⁶ However, this is not the case in the instant proceeding. Since the bookkeeper and the two office employees do not have access to files which contain matters of a confidential nature insofar as labor relations are concerned, and it does not appear that the executives in this small establishment have occasion to utilize the services of a private secretary whose confidential information might presumptively include personnel matters, we shall include them in the unit.

We find, in accordance with the agreement of the parties and the foregoing conclusions, that all employees of Palm Beach Broadcasting Corporation, Palm Beach, Florida, excluding executives and 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

⁴ One of them recently typed a letter notifying an employee at the station of his discharge. It is clear, however, that she had no advance information concerning the discharge or the Company's reasons therefor.

⁵ See *Matter of Creamery Package Manufacturing Company (Lake Mills Plant)*, 34 N. L. R. B. 108.

⁶ See *Matter of General Cable Corporation*, 55 N. L. R. B. 1143 and *Matter of The Press Company, Inc.*, 57 N. L. R. B. 266.

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 Palm Beach Broadcasting Corporation, Palm Beach, Florida, 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 Tenth 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, CIO, for the purposes of collective bargaining.