

In the Matter of ATLANTA JOURNAL COMPANY, d/B/A RADIO STATION
WSB and AMERICAN FEDERATION OF RADIO ARTISTS, ATLANTA
LOCAL

Case No. 10-R-1354.—Decided November 30, 1944

Messrs. A. S. Clay and John M. Outler, Jr., both of Atlanta, Ga., for the Company.

Messrs. Tom Maxwell and Ted Fen, both of Atlanta, Ga., for the Union.

Mr. David V. Easton, 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, Atlanta Local, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Atlanta Journal Company, d/b/a Radio Station WSB, Atlanta, Georgia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Albert D. Maynard, Trial Examiner. Said hearing was held at Atlanta, Georgia, on November 6 and 7, 1944. The Company and the Union appeared, participated, and 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

Atlanta Journal Company is a Georgia corporation with its principal office and place of business located at Atlanta, Georgia. The Company operates a 50,000-watt radio station with the call letters WSB, under license from the Federal Communications Commission,

59 N. L. R. B., No. 135.

which broadcasts programs supplied by the National Broadcasting Company, as well as by local talent. Station WSB is part of a Nationwide hook-up from 10 to 13 hours daily, broadcasting programs originating from points outside the State of Georgia. Such broadcasting amounts to approximately 62 percent of the station's total broadcasting time. WSB's broadcasting area is embraced within a radius of approximately 100 miles from its transmitter station.

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

II. THE ORGANIZATION INVOLVED

American Federation of Radio Artists, Atlanta Local, is a labor organization affiliated with the American Federation of Labor, 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 certain of its employees on the ground that it desires a determination of the appropriate unit by the Board.

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 parties agree that all regular staff announcers of the Company, excluding the barn dance announcer, the barn dance master of ceremonies, temporary announcers, and supervisory employees, constitute an appropriate unit. However, they disagree with respect to the status of three employees, Roy A. McMillan, Annie Lee Stagg, and Frank A. Cason, Jr. The Company contends that these employees are regular staff announcers, and, therefore, properly part of the unit, whereas the Union contends that they are the program director, assistant production manager, and continuity editor, respectively, and hence not properly part thereof.

Roy A. McMillan: It is undisputed that, until May 1, 1944, McMillan was program director of the Company and, as such, the immediate

¹ The Field Examiner reported that the Union submitted four designations and that the unit sought by the Union contained five employees.

supervisor of all staff announcers. The Company contends that, since that time, he has been relieved of his duties as program director and now performs a regular schedule of announcing as a staff announcer. The record indicates that, although McMillan is a regularly scheduled announcer, his functions have not materially changed since May 1. Memoranda of instructions to announcers have been issued by him since that time, and he has continued to interview new applicants for positions as announcers, as well as to act as part of the committee which auditions these applicants. He still occupies a private office and earns the same salary he received prior to May 1. Several of the announcers testified that they now regard McMillan as their supervisor, and the record indicates that this impression, until the hearing, has not been dispelled in any way by the Company. We are of the opinion that McMillan possesses sufficient indicia of supervisory status to warrant his exclusion. We shall, therefore, exclude him.

Annie Lee Stagg: This employee broadcasts on the air approximately 8 hours per week, spends approximately 15 hours in the preparation of her broadcasting programs, and spends the remainder of her working time in miscellaneous duties.² She occupies a private enclosure adjacent to the office of the production manager, and, at one time, was listed upon an organizational chart of the Company as the assistant production manager. The Company has not publicly indicated that she no longer occupies that position, and there is some evidence that, in the absence of the production manager and McMillan, she is the supervisor of the staff announcers. Staff announcers whose status is not in dispute spend approximately 40 to 48 hours per week in preparing their scripts for broadcasting, broadcasting, or "standing by." In view of the foregoing we shall exclude her.

Frank A. Cason, Jr.: This employee spends approximately 6½ hours per week in preparing his program and broadcasting it. The major portion of his working time is spent in script writing, program production work, and the performance of the duties of a continuity editor. In view of the foregoing, we shall exclude him from the unit.

We find that all staff announcers of the Company, excluding the barn dance announcer, the barn dance master of ceremonies, temporary announcers, Stagg, Cason, McMillan, 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.

² The record indicates that she works a 48-hour week.

V. THE DETERMINATION OF REPRESENTATIVES

The Union requests certification on the record. However, we are of the opinion, and find, that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The Union, in the event an election is directed, further requests that September 4, 1944, be adopted by the Board as the determinative eligibility date because the Company may possibly engage new staff announcers with the understanding that such employees will not become members of the Union. In our opinion, the Union's claim is speculative. Accordingly, we shall adhere to our customary procedure and shall direct that the employees of the Company eligible to vote in the election shall be those 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 Atlanta Journal Company, d/b/a Radio Station WSB, Atlanta, Georgia, 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 Federation of Radio Artists, Atlanta Local, affiliated with the American Federation of Labor, for the purposes of collective bargaining.