

IN THE MATTER OF ASHBACKER RADIO CORPORATION *and* RADIO BROADCAST
TECHNICIANS' LOCAL UNION #1295 OF THE INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS (AFL)

Case No. 7-R-1904.—Decided March 1, 1945

Mr. C. N. Sessions, of Muskegon, Mich., for the Company.

Mr. Freeman L. Hurd, of Washington, D. C., and *Mr. Calvin J. Miller*, of Grand Rapids, Mich., for the Union.

Mr. Benj. E. Cook, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Radio Broadcast Technicians' Local Union #1295 of the International Brotherhood of Electrical Workers (AFL), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ashbacker Radio Corporation, Muskegon, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cecil Pearl, Trial Examiner. Said hearing was held at Muskegon, Michigan, on January 31, 1945. 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

Ashbacker Radio Corporation, a Michigan corporation, is engaged, as authorized by the Federal Communications Commission, in the operation of a radio station at Muskegon, Michigan, under the call 60 N. L. R. B., No. 171.

letters WKBZ. It is a 250-watt station and its programs have a broadcast range outside the State of Michigan. It is affiliated with the Mutual Broadcasting System and the Blue Network, national broadcasting organizations which represent two-thirds of the Company's broadcasting time. Approximately 5 percent of its revenue comes from national advertisers.

We find, contrary to its contention, that the Company is engaged in commerce within the meaning of the National Labor Relations Act.¹

II. THE ORGANIZATION INVOLVED

Radio Broadcast Technicians' Local Union #1295 of the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, 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 its technicians 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.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 Union seeks a unit composed of all technicians employed full time at the Company's transmitter, including the chief engineer, but excluding the control room employees. The Company contends that an appropriate unit should include all employees of the transmitter and the control room, but excluding the chief engineer.

In the conduct of its business, the Company maintains a studio within the city of Muskegon and a broadcasting transmitter outside the city. The control room is in the studio where there are six employees, four of whom are announcers and two announcer-technicians. Duties of the latter two are confined primarily to the control room, although they are occasionally transferred to the transmitter. The transmitter

¹ See *Consolidated Edison Co v N. L. R. B.*, 305 U. S. 197, *N. L. R. B. v. Central Missouri Telephone Co*, 115 F (2d) 563 (C. C. A. 8); *Matter of Newark Telephone Company*, 59 N L R B 1408

² The Field Examiner reported that the Union submitted five authorization cards, two of which bore signatures of persons listed on the Company's pay roll of December 12, 1944, which contained the names of four employees in the appropriate unit and that the cards were dated October 1944.

technicians possess full licenses from the Federal Communications Commission and are qualified to operate and repair all of the transmitter equipment whereas the announcer-technicians possess a restricted Federal license, can make no repairs, and are otherwise limited in performance of duties connected with the transmitter. We shall therefore exclude the announcer-technicians and all other control room employees.³

The Union would include the chief engineer and the Company urges his exclusion on the ground of his alleged supervisory position. The record indicates that he is in charge of the transmitter and all technical equipment, assigns and supervises the work of all the technicians, and has authority effectively to recommend their hire and discharge. We find that he falls within our customary definition of a supervisory employee and, accordingly, we shall exclude him.⁴

We find that all technicians regularly employed at the Company's transmitter but excluding employees of the studio, the chief engineer, and all or any other 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 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 Ashbacker Radio Corporation, Muskegon, 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 for the Seventh Region, acting in this matter

³ See *Matter of Colorado Radio Corporation*, 55 N L R B 423; *Matter of Inter-City Advertising Co., Inc., Operators of WAYS, Charlotte, N C.*, 55 N L R B 1415.

⁴ See *Matter of Columbus Broadcasting Company, Inc.*, 56 N L R B 211.

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 the 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 any 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 the Radio Broadcast Technicians' Local Union #1295 of the International Brotherhood of Electrical Workers (AFL), for the purposes of collective bargaining.