

In the Matter of WSPR, INC. and NATIONAL ASSOCIATION OF BROADCAST ENGINEERS AND TECHNICIANS

*Case No. 1-R-2247.—Decided March 20, 1945*

*Mr. August J. Burati*, of Springfield, Mass., for the Company.  
*Mr. A. T. Powley*, of Washington, D. C., for the Association.  
*Mr. Russell D. Lighty*, of Dedham, Mass., for the I. B. E. W.  
*Mr. Donald H. Frank*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by National Association of Broadcast Engineers and Technicians, herein called the Association, alleging that a question affecting commerce had arisen concerning the representation of employees of WSPR, Inc., Springfield, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert E. Greene, Trial Examiner. Said hearing was held at Springfield, Massachusetts, on February 2, 1945. The Company, the Association, and Radio Broadcast Technicians Local Union #1282, affiliated with International Brotherhood of Electrical Workers (AFL), 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

WSPR, Inc., is engaged in the business of radio broadcasting pursuant to a license granted the corporation by the Federal Communications Commission, No. 236.

cations Commission. During the daylight hours it operates on a frequency of 1,000 kilowatts; during the night hours, on a frequency of 500 kilowatts. Its signals are heard throughout northern and western Massachusetts and northern Connecticut. Approximately 50 percent of its program material is supplied to it by the Blue Network. All of this Blue Network material is picked up by the Company from points outside the State of Massachusetts and relayed by it. The annual gross income of the Company is in excess of \$125,000, and over 50 percent of this sum is derived from national advertising.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act, and we so find.

## II. THE ORGANIZATIONS INVOLVED

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

Radio Broadcast Technicians Local Union #1282, 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 Association as the exclusive bargaining representative of certain of its employees until the Association has been certified by the Board in an appropriate unit.

On November 19, 1942, the I. B. E. W. signed a collective bargaining contract with the Company, covering the unit sought herein. This contract provided that it would remain in effect until November 1, 1943, and "continue from year to year thereafter, from November 1 of any year to November 1 of the next succeeding year," unless notice of desire to terminate or change were given "in writing at least 30 days prior to November 1 of any year." On October 1, 1943, the I. B. E. W. requested in writing the extension of the contract to February 1, 1944. The letter from the I. B. E. W. stated that the request was made because wage adjustments were pending before the National War Labor Board, and added, "this will correspond to the term of the WMAS<sup>1</sup> agreement and will enable our International Office to serve both contracts with less travel . . ." The Company did not reply to this request, but the I. B. E. W. and the Company agreed that the contract was extended to February 1, 1944. In March 1944, the National War Labor Board issued its wage revisions,

<sup>1</sup> WMAS is the only other Springfield, Massachusetts, radio station.

and in June 1944 the contracting parties appended an "addendum" to their original contract, which incorporated the new wage provisions and said, "Addendum made the 26th day of June 1944, to Agreement executed the 19th day of November 1942 . . ." and "Said Agreement, except as modified by this addendum, is specifically herein renewed as of February 1, 1944."

It is the contention of the I. B. E. W. that the claim of interest sent on December 29, 1944, by the Association to the Company was not timely because the renewal provision of the addendum renewed all the provisions of the contract, except as to wages, in exactly their original terms, resulting in the renewal of the contract as of November 1, 1944. The Company's understanding was that the addendum altered the contract's terms to make it effective from February 1 to February 1, and pursuant to that understanding it notified the I. B. E. W. on December 29, 1944, that it would not renew the contract when it expired on February 1, 1945. The October 1, 1943, letter from the I. B. E. W. to the Company showed the desire of the I. B. E. W. to substitute February for November in the contract. We are of the opinion that the contention of the I. B. E. W. is without foundation. Since the Association's claim of majority membership was submitted more than 30 days prior to February 1, its notice was timely, and the contract is not a bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Association represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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 Association, the I. B. E. W., and the Company agree that all engineers and technicians of the Company who operate the facilities of the Engineering Department used in transmitting, converting, or conducting audio and radio in broadcasting and on-the-air play back, constitute an appropriate unit. The parties also agree on the inclusion of the chief engineer in that unit. We note, however, that the chief engineer has the authority to recommend hire and discharge. We shall, therefore, exclude the chief engineer from the unit hereinafter found appropriate.

<sup>2</sup> The Field Examiner reported that the Association submitted six authorization cards, all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll which contained the names of five employees in the appropriate unit, and that the cards were dated five in November and one in December 1944.

We find that all engineers and technicians of the Company who operate the facilities of the Engineering Department used in transmitting, converting, or conducting audio and radio in broadcasting and on-the-air play back, but excluding the chief engineer and 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 WSPR, Inc., Springfield, Massachusetts, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction under the direction and supervision of the Regional Director for the First 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 payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll 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 they desire to be represented by National Association of Broadcast Engineers and Technicians, or by Radio Broadcast Technicians Local Union #1282, affiliated with the International Brotherhood of Electrical Workers (AFL), for the purposes of collective bargaining, or by neither.