

In the Matter of R. K. O. RADIO PICTURES, INC., COLUMBIA PICTURES CORP., LOEW'S INCORPORATED, PARAMOUNT PICTURES, INC., REPUBLIC PRODUCTIONS, INC., 20TH CENTURY-FOX FILM CORP., PRINCIPAL ARTISTS PRODUCTIONS, UNIVERSAL PICTURES CO., INC., WARNER BROS. PICTURES, INC., VANGUARD FILMS, INC. and SCREEN PLAYERS UNION

*Cases Nos. 21-R-2263, 21-R-2264, 21-R-2266 to 21-R-2273, inclusive*

## SECOND SUPPLEMENTAL DECISION

AND

## AMENDED CERTIFICATION OF REPRESENTATIVES

*March 28, 1945*

On December 17, 1944, pursuant to the Decision and Direction of Election issued by the Board herein on November 8, 1944,<sup>1</sup> as amended on November 27, 1944, and to a Supplemental Decision issued on December 13, 1944, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California). Upon the basis of the results of such election, the Board on December 30, 1944, certified Screen Players Union as the exclusive collective bargaining representative of all employees of R. K. O. Radio Pictures, Inc., Los Angeles, California, Columbia Pictures Corp., Hollywood, California, Loew's Incorporated, Culver City, California, Paramount Pictures, Inc., Los Angeles, California, Republic Productions, Inc., Hollywood, California, 20th Century-Fox Film Corp., Los Angeles, California, Principal Artists Productions, Culver City, California, Universal Pictures Co., Inc., Universal City, California, Warner Bros. Pictures, Inc., Burbank, California, and Vanguard Films, Inc., Culver City, California, who are engaged primarily in the performance of extra work.<sup>2</sup>

<sup>1</sup> 59 N. L. R. B. 132

<sup>2</sup> The unit for which the Independent was certified as collective bargaining representative was described as "all employees of [the Companies] who perform extra work, including those who, in addition to the performance of extra work, also perform stunts, singing, or bits or parts involving a line or lines of essential story dialogue, either directly pursuant to day player, stock, or free-lance contracts or by adjustment subsequent to being employed originally for extra work, but excluding all employees who perform exclusively stunts, singing, or bits or parts with essential story dialogue, and all Class A and Class A Junior members of the Guild."

61 N. L. R. B., No. 12.

On January 24, 1945, R. K. O., Columbia, Loew's, Paramount, Republic, 20th Century-Fox, Principal Artists, Universal, and Warner Bros., filed a Petition for Reconsideration, and on January 29, 1945, the Guild filed a Petition for Clarification and Modification, of the Board's Decision and Certification of Representatives. Vanguard joined in the Companies' petition on February 6, 1945. Pursuant to notice a hearing for the purpose of oral argument on the foregoing petition was held before the Board at Washington, D. C., on February 22, 1945. Counsel for the Companies, the Guild, and the Independent appeared and presented argument.

The Companies and the Guild contend that the collective bargaining unit delineated by the Board in its Decision and Direction of Election heretofore issued herein is not appropriate for the purposes of collective bargaining insofar as there is included therein not only those who perform extra work but also those who in addition to the performance of extra work, perform stunts, singing, or bits or parts involving a line or lines of essential story dialogue. Upon a further review and reconsideration of the record, we are of the opinion that there is merit in this contention.

As we pointed out in our Decision, all work before the motion picture camera falls primarily in two main classes, the one being known as acting work, defined as all performances involving the speaking of a line or lines of dialogue, and including also certain specialized performances such as stunts and singing, and the other being known as extra work, comprising all other work before the camera, and customarily described in the industry as atmospheric or background work. All extra work and the greater portion of acting work involve separate periods of employment of relatively short duration by one or more of several different employers. The unit which has herein been found to be appropriate is a unit composed primarily of extras. As we have previously pointed out, extras customarily and historically have also been employed in the performance of bits, small parts, and stunts.<sup>3</sup> However, it is apparent from the record as a whole that such performances comprise not more than a comparatively small portion of the work at which extras are employed. The record discloses that during the year 1943 a total of 4,277 Class B members of the Guild were engaged at extra work.<sup>4</sup> Extras employed through Central Casting Corporation, the usual method of employment for such work, performed a total of 331,684 man days of extra work, an average of 1,080

<sup>3</sup> The Guild, which since 1937 has held a closed-shop contract covering all types of performances before the motion picture camera, has recognized this to be true and, accordingly, has permitted the extras within its membership to perform not only extra work but any type of work which they were able to obtain.

<sup>4</sup> Board's Exhibit No 2-A.

extras being employed during each working day.<sup>5</sup> On the other hand, during the entire year not more than 990 Class B members<sup>6</sup> were employed under day player contracts for the performance of bits and parts, and not more than 349 were employed for similar work under free-lance contracts.<sup>7</sup> Of those who were engaged for performances under day player contracts, more than half obtained employment under but one such contract,<sup>8</sup> and the average number of contracts for all Class B members so employed was but slightly more than two. The great majority of Class B members who were engaged for performances under free-lance contracts obtained not more than one.<sup>9</sup>

We find the record thus to be clear that the performance of bits and parts, as well as stunts and singing,<sup>10</sup> is not the characteristic function of the group comprising the extra players, but rather of the professional actors, consisting of the Class A and Class A Junior members of the Guild, who customarily perform no extra work. The factual situation thus presented is analogous to that appearing in the case of *Carlisle & Jacquelin*,<sup>11</sup> wherein the employees in the unit, composed primarily of the Company's telephone clerks working on the floor of the New York Stock Exchange, were accustomed also to perform ordinary clerical work for their employer on an overtime and voluntary basis in the Company's offices. In that case we said:

The latter requirement, that employees must comprise an appropriate unit before an obligation arises on the part of the employer to bargain collectively with their majority representative, necessarily operates as a limitation upon the scope of the authority to bargain collectively. . . . This limitation can arise, as here, where the employees perform part of their duties in a group which might well become a separate bargaining unit. When this situa-

<sup>5</sup> Intervenor's Exhibit No 67. Although these figures apparently include some work done pursuant to "adjustment" of the extra's pay to a figure higher than the extra pay scale, i. e., to \$25 per day or higher, analysis of Central Casting's monthly placement reports, Intervenor's Exhibits Nos 68-A to 68-F, discloses that such work done by adjustment to other than strictly extra work amounted to less than 1 percent of the total.

<sup>6</sup> Board's Exhibit No. 2-B. This is a total of the number engaged under such contracts at rates both for \$25 to \$50 and over \$50, in which there is probably some duplication. Disregarded are approximately 45 B-Minor members, and approximately 31 B-Special members who were restricted to some specialty such as dancing or singing. It is to be noted that the record indicates that a portion of the Class B members included in the total above set forth relied exclusively on the performance of bits and parts and hence are not extras within the contemplation of our unit definition. The number of extras engaged in performances of bits and parts is therefore less than indicated by any computation based solely on Class B membership.

<sup>7</sup> Board Exhibit No 2-C. The figure in respect to free-lance performance is computed in similar manner to that for performances under day player contracts. See footnote 6, *supra*.

<sup>8</sup> Board's Exhibit No. 2-D

<sup>9</sup> Board's Exhibit No 2-E

<sup>10</sup> As we noted in our original decision, stunt work, as such, is not properly to be considered extra work, and the singers, as a class, are allied with the professional actors rather than with the extra group.

<sup>11</sup> *Matter of Edward C. Fiedler, et al., doing business as Carlisle & Jacquelin, a partnership*, 55 N. L. R. B. 678.

tion arises, we think the Act clearly intends that the exclusive bargaining agent may represent the employees in the appropriate unit, but only as to those matters which affect their interests therein, and not with respect to their employment in another capacity, which does not come within the ambit of that unit.

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The conclusion therefore is clear. The Union, pursuant to our certification and the proceedings upon which it is based, is entitled to bargain with the Company respecting the hours, wages, and conditions of employment of the telephone department employees as such. Since the extra and collateral work performed by these employees in the back office is the characteristic and essential function of another group of employees who are expressly excluded from the appropriate unit, the Union is not entitled to negotiate concerning the rates of pay and specific working conditions surrounding that work.

Inasmuch as the performance of bits, parts, stunts, and singing is the essential and characteristic function of the group designated as professional actors whom we have excluded from the unit found appropriate herein, it is apparent that all those who perform such work possess interests in common with the motion picture actors rather than with the extras and should likewise be excluded from the unit herein which is composed essentially of those who are engaged in the performance of extra work.

We shall, in accordance with the foregoing, amend the description of the unit for which the Independent has been herein certified as collective bargaining representative by striking therefrom the words "including those who, in addition to the performance of extra work, also perform stunts, singing, or bits or parts involving a line or lines of essential story dialogue, either directly pursuant to day player, stock, or free-lance contracts or by adjustment subsequent to being employed originally for extra work, but excluding all employees who perform exclusively stunts, singing, or bits or parts with essential story dialogue, and all Class A and Class A Junior members of the Guild," and substituting therefor the words "but excluding all employees who, either directly pursuant to day player, stock, or free-lance contracts, or by adjustment subsequent to being employed originally for extra work, perform stunts, singing, or bits or parts involving a line or lines of essential story dialogue." We shall also amend the Certification in accord herewith.

We are fully aware that the unit delineation set forth herein is, at best, not entirely satisfactory due, as we have pointed out, to the fact that extras customarily have performed not only extra work but also bits, small parts, singing, and stunts. We wish to make it clear that

our unit determination shall in no manner be construed as a limitation upon the type of work which extras may be, and customarily have been, called upon to perform. In view of the union shop contracts prevalent in the motion picture industry, it is apparent that such overlapping between the fields of acting and extra work may require members of the Independent also to maintain membership in the Guild. It is with deep concern, therefore, that we note intimations appearing in the record concerning the possibility that the unions may indulge in reprisals designed to prevent persons who have customarily performed both acting and extra work from continuing to do so. It should be emphasized in this regard that it is the duty of the exclusive representative of the employees in an appropriate bargaining unit to represent all employees therein without hostile discrimination and with a view to the promotion of their best interests.<sup>12</sup> Should either the Guild or the Independent engage in such restrictive practices, or otherwise circumvent the objectives of the Board inherent in this decision, the Board will not regard itself as precluded, upon consideration of the circumstances thus presented, from taking appropriate remedial action, including either a re-determination of the bargaining unit or revocation of the certification herein.

#### AMENDED CERTIFICATION OF REPRESENTATIVES

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, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended,

IT IS HEREBY CERTIFIED that, Screen Players Union has been designated and selected by a majority of all employees of R. K. O. Radio Pictures, Inc., Los Angeles, California, Columbia Pictures Corp., Hollywood, California, Loew's Incorporated, Culver City, California, Paramount Pictures, Inc., Los Angeles, California, Republic Productions, Inc., Hollywood, California, 20th Century-Fox Film Corp., Los Angeles, California, Principal Artists Productions, Culver City, California, Universal Pictures Co., Inc., Universal City, California, Warner Bros. Pictures, Inc., Burbank, California, and Vanguard Films, Inc., Culver City, California, who perform extra work, but

<sup>12</sup> See *Wallace Corporation v. N. L. R. B.*, 65 S. Ct. 238, *Matter of Bethlehem-Alameda Shipyard, Inc.*, 53 N. L. R. B. 999, 1016; see also *Steele v. Louisville & Nashville R. R. Co.*, 65 S. Ct. 226, wherein the Court said:

The labor organization chosen to be the representative of the craft or class of employees is thus chosen to represent all of its members, regardless of their union affiliations or want of them. . . . The purpose of providing for a representative is to secure those benefits for those who are represented and not to deprive them or any of them of the benefits of collective bargaining for the advantage of the representative of those members of the craft who selected it.

excluding all employees who, either directly pursuant to day player, stock, or free-lance contracts or by adjustment subsequent to being employed originally for extra work, perform stunts, singing, or bits or parts involving a line or lines of essential story dialogue, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.