

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, United Electrical, Radio and Machine Workers of America, and Steel, Metal and Alloy Warehousemen and Handlers' Union, Local 785 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By contributing support and assistance to Steel, Metal and Alloy Warehousemen and Handlers' Union, Local 785 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Charles Todd, thereby discouraging membership in a labor organization, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. The unfair labor practices aforesaid are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]

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AMERICAN BROADCASTING COMPANY (KGO-TV) and NATIONAL ASSOCIATION OF BROADCAST ENGINEERS AND TECHNICIANS, SAN FRANCISCO CHAPTER, PETITIONER. *Case No. 20-RC-1214. April 30, 1951*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Harry V. Bamford, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Styles].

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<sup>1</sup> The Employer moved at the hearing to dismiss the petition on the ground that many of the employees in the proposed unit are supervisors. Inasmuch as the exclusion of those individuals found to be supervisors does not substantially affect the makeup of the unit requested, we find that the Employer's motion to dismiss is without merit. Accordingly, we deny the motion. Compare *American Broadcasting Company, Inc. (KECA-TV)*, 93 NLRB 1410. The supervisory status of the employees in dispute is discussed in paragraph 4, *infra*.

Upon the entire record in this case, the Board finds:<sup>2</sup>

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks a unit of all employees in the Employer's program department at San Francisco, California, including all TV directors, program assistants, the film editor, the assistant film editor, the art director, the assistant art directors, and the program coordinator, but excluding all clerical employees and supervisors as defined in the Act. The Employer contends that its program department is divided into separate divisions and that all of the employees in the various divisions should not be grouped into one bargaining unit. The Employer would have the Board establish a separate unit for each of the following groups: (a) Program assistants who aid in the direction of programs; (b) program assistants who act in the capacity of stagehands; (c) program assistants who help in the art department, constructing and handling scenery; and (d) film department employees and the program coordinator. There is no bargaining history with respect to the employees in the requested unit.

The Employer's television operations, including its broadcasting studio, an auxiliary studio, a control room, a projection room, and a number of divisional offices, are all located in one building. Except for the work in connection with remote broadcasts and work on the construction of sets at another location, substantially all of the time of the employees included in the requested unit is spent at the TV station under the supervision of the program manager.<sup>3</sup> The program manager is ultimately responsible for all television programs broadcast by the Employer. Under the program manager, in a liaison position, is the program coordinator, who, among other functions, sees to it that studios are available for rehearsals and auditions, that technical equipment and scenery is available when it is needed, that films are scheduled for broadcast at the proper times, and that the traffic department obtains "lines" for remote broadcasts. In short, as the Employer's engineering manager stated, the program coordinator's department acts "as a coordinator of all the functions that go to make up the show."

<sup>2</sup> The Employer's request for oral argument is denied as the parties' briefs and record in the case adequately present the positions of the parties.

<sup>3</sup> Although the program manager is also nominally in charge of all AM radio programs he has turned over most of his duties in that regard to the assistant program manager. The program manager therefore devotes almost all of his time to television programs.

Each program is under the supervision of a TV director, herein referred to as a director, who is responsible for the proper production of the program. In carrying out his functions he is directly aided by a program assistant, two in the case of a live broadcast.<sup>4</sup> The program assistants help generally in seeing that all of the cast is assembled, and that the scenery, title cards, and any other necessary items are at hand. During the show one assistant acts as a floor manager. He receives instructions from the director by means of an intercommunications system and relays the instructions to the actors. The other program assistant remains in the control booth with the director and times the show to see that it is running on schedule.

The film department is charged with the responsibility of obtaining and caring for the films and video recordings. It must see that each film is cleared for broadcast and is properly screened for technical defects. It is the film department's duty to see that the films and video recordings are in the projection room for use at the proper times and are returned to the sender after they have been used. During the screening of the films, the film department personnel may notice parts of the film where commercials should be cued in and may also notice factors which could cause the director difficulty in recognizing the cues. It is then the duty of the film department to notify the director involved and point out these matters to him.

The art department is divided into two parts. In the offices at the TV station, sets are planned and designed according to the desires of the directors needing them. If there is little time within which to obtain a particular set, the art director will use his discretion to create something which will fill the needs of the show. The scenery is actually built at an office located in another building. The art director directs the placing of the scenery on the stage. In the past, program assistants who regularly aid in the production of programs, on occasion have aided in moving scenery and also in repairing any damaged scenery, if the situation demanded. However, the Employer has increased its personnel in a continued effort to departmentalize its operations as much as possible, and it did not appear that program assistants had engaged in any work on scenery within a month or two before the hearing in this case.

From the foregoing facts, it is apparent that the program department of the Employer functions as an integrated and coordinated unit under the ultimate supervision of the program manager, with the em-

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<sup>4</sup>The Employer broadcasts live shows, video recordings, and films. Live shows may consist of studio shows produced and directed by the Employer, utilizing personnel employed by the Employer, they may consist of "package" shows produced by a "packager," utilizing personnel selected by the "packager" but directed by the Employer, or they may consist of remote shows such as sporting events.

ployees of the different subdivisions working together as a team, in order to produce finished programs. We have previously held that the program department of a television station may constitute an appropriate unit.<sup>5</sup> Accordingly we find that the employees in the Employer's program department have similar interests and may constitute a unit appropriate for the purposes of collective bargaining.<sup>6</sup>

There remains for consideration only the question as to the supervisory status of several of the categories of personnel in the program department:

*TV directors.*—The Petitioner seeks to have the directors included in the unit whereas the Employer desires to have them excluded on the ground that they are supervisors within the meaning of the Act. As indicated above, the directors supervise the production of each program and are responsible for its quality. The duties and responsibilities of the directors are greatest during the production of live shows, conceived, produced, and directed by the Employer. In these shows the director may make minor changes in the format of the show and must exercise complete control over the show to see that it is properly rehearsed and timed, and must in general see that the acting, the setting, the televising, and all other elements of the show produce the proper artistic effect. The director has at his command, in addition to his program assistants, a number of technicians from the Employer's engineering department.<sup>7</sup> By means of a combination of orders to the actors, relayed through the program assistant on the floor, orders to the cameraman as to the angles, distance, and manner in which the program should be photographed, orders to the technical director as to which picture should be broadcast over the air, and orders to the sound boom man and sound mixer as to which microphones should be activated, where the sound boom should be placed, and how the sound should be modulated, the director is able to control completely the contents of the show. During live "package shows" the director is limited more in his duties in that the effect which he strives for has been determined for him and his duty is to produce the program accordingly. During programs consisting of video recordings or films, because of the limitations of the medium, the director performs only technical functions. However, film broadcasts are usually accompanied by live commercials which the director must produce and direct in exactly the same manner as live broadcasts. In

<sup>5</sup> *KMTR Radio Corporation (KLAC-TV)*, 85 NLRB 99; *WCAU, Inc.*, 93 NLRB 1003

<sup>6</sup> In view of this holding we find it immaterial that in the future the Employer will seek to eliminate all interchange of functions between the various divisions of the program department. For, even without any interchange of functions, the various divisions together constitute an appropriate unit.

<sup>7</sup> The technical engineering employees are separately represented by the National Association of Broadcast Engineers and Technicians which has a contract with the Employer covering a system-wide technical unit.

broadcasting remote shows such as sporting or special events, the director's duties are again concerned with obtaining the proper technical effects, inasmuch as he has no control over the action being broadcast.

In addition to the duties described above, it also appears that directors have, on occasion, procured talent for broadcasts and have effectively recommended the transfer of talent from their programs when they believed that someone else could perform the task better. One director regularly hires a small amount of talent on a limited budget program. One of the directors also effectively recommended that a particular program assistant be hired. Moreover, although the program assistants are regularly scheduled, it appears that a director could request the services of a particular program assistant and the request would, if practicable, be granted. The same situation exists with regard to the use of engineering personnel, and in at least one instance a director was instrumental in seeing that a cameraman was replaced. In accord with recent cases<sup>8</sup> involving similar factual situations we find that directors<sup>9</sup> are supervisors within the meaning of the amended Act and should therefore be excluded from the unit herein found appropriate.

*The art director.*—The record contains little in regard to the duties of the art director. However, it appears that the art director hired both of his assistants and in one case effectively recommended a raise for one of his assistants. For this reason we find that the art director is a supervisor, and is therefore excluded from the unit herein found appropriate.

*The film editor.*—The film editor is in charge of the film department. She was promoted to this position from that of assistant to the former film editor. She is aided by an assistant who does a great deal of the same work and who also does a slight amount of clerical work which is incidental to her other duties. It appears that the editor effectively recommended the hiring of the assistant and has the authority effectively to recommend her dismissal. We therefore find that she is a supervisor within the meaning of the Act. We shall accordingly exclude the film editor.

*The coordinator.*—None of the parties contends that this individual is a supervisor. However, the Employer's program manager testified at the hearing that the coordinator would be permitted to effectively recommend the hiring of her assistant. Inasmuch as the coordinator is not now a supervisor, we shall include her in the unit.

<sup>8</sup> *American Broadcasting Company, Inc (KECA-TV)*, 93 NLRB 1410; *WCAU, Inc.*, 93 NLRB 1003.

<sup>9</sup> Including Adair, who, although listed as a program assistant, acts solely in the capacity of a director.

We find that all of the employees in the Employer's program department, excluding the TV directors and the program assistant who acts in the capacity of a director, the art editor, the film editor, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The Employer contends that the petition in this case is premature because of the prospective expansion of the program department. The Employer contemplated hiring six employees immediately after the hearing with a possibility of further expansion at a later date, if plans for increased programming materialize. However, the record shows that the present complement of the program department constitutes a substantial and essentially representative proportion of the expected full complement of the program department.<sup>10</sup> Under these circumstances we see no reason for departing from our usual policy of directing an immediate election.<sup>11</sup>

[Text of Direction of Election omitted from publication in this volume.]

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<sup>10</sup> This is true particularly in view of the fact that the contemplated addition of six employees presumably will have been completed prior to the election.

<sup>11</sup> Cf. *Westinghouse Electric Corporation*, 87 NLRB 463.

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HANNA MOTOR COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER. *Case No. 10-RC-1268. April 30, 1951*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before J. S. Patton, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer, an Alabama corporation, is engaged in the sale and servicing of new and used automobiles and trucks. The sales of new automobiles and trucks is made under an exclusive sales agreement granted to the Employer by the Ford Motor Company. During the calendar year 1950 the Employer made purchases in excess of \$1,400,000. Over \$1,100,000 of this amount was shipped to the Employer from points outside the State of Alabama. On the basis of the foregoing facts we find that the Employer is engaged in commerce