

IN the Matter of WESTINGHOUSE RADIO STATIONS, INC. and NATIONAL
ASSOCIATION OF BROADCAST ENGINEERS AND TECHNICIANS

Case No. 4-R-1964.—Decided July 2, 1946

Mr. John W. Steen, of Baltimore, Md., and *Mr. Lester R. Rawlins*, of Philadelphia, Pa., for the Company.

O'Donoghue, Dunn & Mills, by *Mr. Lawrence J. Mills*, of Washington, D. C., for Nabet.

Mr. Leonard B. Boudin, of New York City, for the A. C. A.

Mr. Lewis H. Ulman, 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 Nabet, alleging that a question affecting commerce had arisen concerning the representation of employees of Westinghouse Radio Stations, Inc., Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Helen F. Humphrey, Trial Examiner. The hearing was held at Philadelphia, Pennsylvania, on April 30, 1946. At the hearing the Trial Examiner granted a motion of American Communications Association, C. I. O., herein called the A. C. A., to intervene. The Company, Nabet, and the A. C. A. 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. Subsequent to the hearing the A. C. A. filed an unfair labor practice charge alleging that the Company had violated Section 8 (1) and (5) of the National Labor Relations Act (Case No. 4-C-1616). The A. C. A. moved that the petition herein be dismissed because of the pendency of that charge. The Company moved (1) that the charge of the A. C. A. be dismissed, or (2) that proceedings thereunder be stayed pending the outcome of this representation proceeding, or (3) that both pro-

ceedings be consolidated for the purpose of hearing. However, the Regional Director for the Fourth Region has administratively dismissed the A. C. A.'s charge by refusing to issue a complaint. The motions made by the Company and the A. C. A. are accordingly denied. Also after the hearing the A. C. A. moved to dismiss the petition on various other grounds. For reasons set forth in Section III, *infra*, the motion is denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Westinghouse Radio Stations, Inc., is an Indiana corporation engaged in radio broadcasting and the operation of radio broadcasting stations, including Radio Station KYW located in Philadelphia, Pennsylvania.

Radio Station KYW is operated under a license from the Federal Communications Commission and is affiliated with the National Broadcasting Company's network, which is a Nation-wide broadcasting organization. Programs of the National's network, which are broadcast through the Company and transmitted locally by Radio Station KYW, constitute 58 percent of the station's business. Approximately 60 percent of the Company's total broadcasts is received by wire from sources outside the Commonwealth of Pennsylvania. The Company receives a substantial part of its revenue from advertisers who are engaged in interstate commerce.

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

II. THE ORGANIZATIONS INVOLVED

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

American Communications Association, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has declined to grant recognition to Nabet as the exclusive bargaining representative of certain of its employees until Nabet has been certified by the Board in an appropriate unit.

On August 7, 1941, the Board certified the A. C. A. as the bargaining representative of the employees here involved after a stipulation for

Certification on Consent Comparison of Records.¹ After prolonged negotiations the Company and the A. C. A. signed a contract for 1 year on April 25, 1942. On August 21, 1943, the parties entered into a new contract for 1 year with a 60-day automatic renewal clause. The automatic renewal provision was stayed in 1944 in accordance with its terms by seasonable notice from the A. C. A. that it wished to negotiate a new contract.

Thereafter, the contract of August 21, 1943, was continued in effect with certain modifications by an oral understanding, later confirmed by a letter to the A. C. A. from the Company, dated November 7, 1945. The Company's letter stated that the 1943 contract, as modified, was to be deemed operative from "November 7, 1945, and will govern the relationships between the parties, pending the outcome of the points still in dispute. On these items in dispute, the terms of the existing agreement will continue to govern pending final agreement on the disputed issues." Previously in 1945 these disputed items had been submitted to the Third Regional War Labor Board, which had issued a Directive Order dated October 18, 1945. It later issued a second Directive Order, dated November 14, 1945.² Both parties then appealed to the National War Labor Board, which subsequently issued two Directive Orders, each dated December 21, 1945, denying both appeals and affirming the October 18, 1946, Directive Order of the Third Regional War Labor Board.

Nabet made its demand for recognition upon the Company and filed its petition herein on January 28, 1946. Because of the conflicting demands of Nabet and the A. C. A. the Company has refused to enter a new contract with A. C. A. embodying the provisions of the War Labor Board's Directive Orders.

The A. C. A. argues that the *Allis-Chalmers* doctrine³ is applicable to the facts in this case, and that its contract of August 21, 1943, as extended, also constitutes a bar to the present proceeding.

As we have frequently pointed out, however, the principle enunciated in the *Allis-Chalmers* case is limited to situations where a newly certified union has been denied a fair opportunity to demonstrate its ability to obtain for its members the benefits of collective bargaining because of delays occasioned by its resort to the orderly processes of other governmental agencies.⁴ In the instant proceeding the A. C. A. has been the statutory representative of employees of the Company since 1941 and had enjoyed 2 full years of contractual relationship with the Company before War Labor Board proceedings were instituted. Accordingly, the *Allis-Chalmers* doctrine is not applicable

¹ *Matter of Westinghouse Radio Stations, Inc Operating KYW*, 33 N L R B 1240

² The second Directive Order was supplement to the one of October 18, 1945

³ *Matter of Allis Chalmers Manufacturing Company*, 50 N L R B 306

⁴ *Matter of Northwest Packing Co.*, 64 N L R B 54

here, as the A. C. A. was not a newly certified bargaining agent when the War Labor Board proceedings were initiated.⁵

As noted above, in 1944 automatic renewal for another year of the agreement of August 21, 1943, was forestalled by timely notice from the A. C. A. Thereafter, this contract was continued in effect by an oral understanding which was confirmed by the Company's letter to the A. C. A. Thus, no new written agreement executed by both parties, ever came into existence.⁶ Assuming, however, that the Company's confirmatory letter constitutes a written contract between the parties, extending the 1943 agreement, we nevertheless find that there is no bar to a current determination of representatives. For it is clear from the facts that the 1943 contract was extended by the Company and the A. C. A. for an indefinite period of time.⁷

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.

The Company's letter of confirmation setting forth the period during which the 1943 contract was to be extended indicates that this agreement was continued in operation for an indefinite length of time. As the Company's Manager for Industrial Relations testified, the 1943 contract was extended until a new contract could be signed.

IV. THE APPROPRIATE UNIT

In accordance with the agreement of the parties, we find that all broadcast technicians of the Company in the broadcast engineering department of Station KYW, Philadelphia, Pennsylvania, excluding technical supervisors, the chief engineer, the station manager, and all 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.⁸

⁵ See *Matter of Armour and Company*, 66 N. L. R. B. 324, and cases cited therein.

⁶ See *Matter of Ecor, Inc.*, 46 N. L. R. B. 1035.

⁷ See *Matter of The Union Fork & Hoe Company*, 63 N. L. R. B. 194.

⁸ At the hearing the Company and Nabet requested that the Board describe the unit as:

All employees in the Technical Department of the Company's Philadelphia Radio Station KYW and KYW-FM engaged in the operation and maintenance of those facilities of the Technical Department used in transmitting, converting, and/or conducting audio, FM, Facsimile, Video, and/or radio frequencies for use in broadcast, re-broadcast, audition, rehearsal, recording or any of the technical equipment used in connection with any of the above, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

However, all parties agree that this defines the appropriate unit in no different manner than we have described it above. The description we have utilized is virtually identical to that contained in the previous proceeding affecting the Company's employees (see footnote 2, *supra*).

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 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 Westinghouse Radio Stations, Inc., Philadelphia, Pennsylvania, 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 Fourth 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 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 such 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 they desire to be represented by National Association of Broadcast Engineers and Technicians, or by American Communications Association, C. I. O., for the purposes of collective bargaining, or by neither.