clean. In addition they directly assist the operators by preparing materials used by the operator, and subject to the direction of the latter, keeping all equipment sterilized.

It is true that the licensed personnel, unlike the receptionist and maids, are required to complete a certain period of training pursuant to State law. But we do not believe that this fact creates a sufficient disparity between their employment interests and those of the receptionist and maids with whom they work so closely to warrant excluding the latter from the unit. Nor is there merit to the Petitioner's contention that the receptionist and maids should be excluded because the Petitioner's bylaws restrict union membership to licensed personnel. This Board has often held that a union's jurisdictional limitation on membership is not a valid reason for excluding employees from a unit, who would otherwise be included.[5]

We find therefore that all employees employed in the San Francisco I. Magnin & Co. beauty salon of Charles of the Ritz Operating Corporation, excluding supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

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

[5] *Denton's Inc t/a The Robinson-Schwenn Store,* 83 NLRB 35.

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COLGATE PALMOLIVE PEET CO. *and* GREMIO DE PRENSA, RADIO Y TEATRO DE PUERTO RICO, PETITIONER. *Case No. 24–RC–153. September 21, 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 Philip Licari, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

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 [Members Houston, Reynolds, and Styles].

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

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

[1] The name of the Petitioner appears as amended at the hearing.

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 actors, actresses, and narrators employed by the Employer on its four Puerto Rico radio programs. The Employer primarily contends that these individuals are independent contractors and not employees within the meaning of the Act.

The Employer is a Delaware corporation with its principal office in Jersey City, New Jersey, where it is engaged in the manufacture of soaps and related products. The Employer maintains a branch office in Puerto Rico, where its annual sales approximate three million dollars. The Puerto Rico branch is the only branch involved in this proceeding.

The Employer advertises its product in Puerto Rico through four radio programs or dramas which appear daily under the titles of Fab Drama, 2:00 to 2:30 p. m.; Octagon Drama, 2:30 to 3:00 p. m.; Palmolive Theatre, 6:30 to 7:00 p. m.; and Colgate Theatre, 9:00 to 9:30 p. m. In order to guarantee top talent for these four programs, the Employer maintains within its organization a Radio Artists Department, complete with director, actors, actresses, sound-effects men, recorders, and others needed to produce full programs without outside help. Regular or fixed actors receive a weekly salary, depending upon the number of times they appear on the different programs. They receive a minimum of $7 per program when they work, and $5 when they are not required to appear. Nonfixed actors are paid only for the times they are actually required to appear on the program. Some of the actors who appear on the Employer's programs also work for other sponsors and radio stations, but they may not appear on any program sponsored by a competitor of the Employer or within 15 minutes before or after one of the Employer's programs. At all times when they are in the Employer's service, they are subject to the immediate direction of the Employer's program director. There is no indication that the radio station has any control over any of the persons appearing on the Employer's programs. The record does not indicate any bargaining history for these employees.

Under the foregoing circumstances, we are of the opinion that actors, actresses, and narrators who perform on the Employer's four radio programs are not, in their relationship to the Employer, independent contractors, but are employees of the Employer within the meaning of Section 2 (3) of the Act.[2] We further find that they may

[2] *The Fuller Automobile Company d/b/a The Fuller Automobile Company and Fuller Manufacturing & Supply Company*, 88 NLRB 1452, 1456.

constitute a unit appropriate for the purposes of collective bargaining.[3]

Subject to these contentions of the Employer, the parties agree that actors, actresses, and narrators should be included in the unit. They further agree that commentators, commercial announcers, and recorders should be excluded from the unit. They disagree as to the unit placement of sound-effects men, master of ceremonies or disk jockey, nonfixed actors, and the program director.

Two *sound-effects* men simulate sounds such as walking, opening doors, breaking glass, or whatever the acting situation requires. Sometimes they use mechanical devices to accomplish the desired results. The master of ceremonies, or *disk-jockey* in this case, tells jokes and anecdotes and plays records whenever called for. He also transmits news at various points in the program, and presents other persons such as guests. The *nonfixed* actors, as indicated earlier, perform the same duties as regular actors, except that they are part-time employees who are paid only when needed. From the foregoing, we conclude that the interests and duties of the sound-effects men, the master of ceremonies or disk-jockey, and the nonfixed actors are sufficiently similar to those of regular or fixed actors and actresses to warrant their inclusion in the same unit.[4]

The *program director* is responsible for the rehearsal and direction of each program, and sees that it is transmitted over the air in a well integrated manner. He receives a regular salary of approximately $200 a week. He may request certain actors or actresses for certain parts on the programs, and usually his recommendations are followed. He may not discharge an actor, but his recommendations carry considerable weight. We find that the program director is a supervisor within the meaning of the Act, and we shall exclude him from the unit.[5]

We find that all actors, actresses, and narrators employed by the Employer at its Puerto Rico branch office, including nonfixed actors, sound-effects men, master of ceremonies, and disk-jockey, but excluding commentators, commercial announcers, recorders, all other employees, the program director, and other supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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[3] *Television Film Producers Association, et al.*, 93 NLRB 929.

We likewise find no merit in the Employer's further contention that actors, actresses, and narrators are professional employees. Although actors and actresses must, of necessity, have certain talent in order to properly perform their parts, there is no showing that any of the persons involved herein have received specialized training. Moreover, their work is performed under the direction of the Employer's program director and is generally of a routine nature which does not involve the "consistent exercise of discretion and judgment in its performance." *West Central Broadcasting Company*, 77 NLRB 366; Section 2 (12) (ii) of the Act.

[4] *The Valley Broadcasting Company*, 87 NLRB 1144; Cf. *KMTR Radio Corporation (KLAC-TV)*, 85 NLRB 99.

[5] *Neptune Broadcasting Company*, 94 NLRB 1052; *WWEZ Radio, Inc.*, 91 NLRB 1518.

5. The Petitioner would permit any employee in the unit who has worked one full day or 8 hours for the Employer during the past year to vote in the election. The Employer takes no position on this matter. Although the periods of employment afforded many of the nonfixed actors involved herein are relatively brief, we believe that a single day's employment is too casual to establish the collective bargaining interest of a prospective voter. We shall therefore adopt a 2-day eligibility requirement. All employees within the appropriate unit shall be eligible to vote who have had 2 or more days or 16 hours of employment during the 12 months immediately preceding the date of this Decision and Direction of Election.[6]

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

[6] Cf. *Television Film Producers Association, et al., supra.*

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AUTOMATIC ELECTRIC COMPANY *and* ENGINEERS, DRAFTSMEN AND TECHNICIANS ASSOCIATION, LOCAL 144, INTERNATIONAL FEDERATION OF TECHNICAL ENGINEERS, ARCHITECTS AND DRAFTSMEN'S UNIONS, AFL, PETITIONER. *Case No. 13–RC–2025. September 21, 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 Irving M. Friedman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

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

2. The labor organizations involved claim to represent certain employees of the Employer.

3. The Intervenor, Technical Engineers, Architects and Draftsmen's Association, Local 90–A, which was certified by the Board on January 17, 1950, claims that its contract with the Employer of January 25, 1950, with supplements executed January 27, 1950, November 2, 1950, and November 28, 1950, and automatically renewed for 1 year on March 2, 1951, is a bar to this petition. The Petitioner disagrees, alleging that a schism exists. The Employer is neutral.

The Intervenor is a so-called amalgamated local, having members among employees in various plants, including the Employer's. The Intervenor has organized its members in the Employer's plant as Chapter 8, which chapter elects its own officers and holds regular meetings for the conduct of its affairs in relation to the Employer.