

excluding all other employees, watchmen, guards, office and clerical employees, and 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.

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

EL MUNDO BROADCASTING CORP.¹ and GREMIO DE PRENSA, RADIO Y TEATRO DE PUERTO RICO, PETITIONER. *Case No. 24-RC-243.*
January 25, 1952

Decision and Direction of Election

Upon a petition duly filed, 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.

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

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

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

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

4. The Petitioner seeks a unit consisting of all radio artists, actors, actresses, soundmen, directors, comedians, narrators, commentators, special announcers, and special script writers, including all such employees who work on "package" programs sponsored by Procter and Gamble Commercial Co. (sic) and other sponsors, but excluding all vocalists, musicians, executive personnel, full-time program directors, office clericals, staff announcers, staff script writers, controlmen, transmitter operators,² guards, watchmen, and supervisors as defined in the Act.

It appears that programs broadcast over the Employer's facilities generally fall within one of the following types, and that the same individual talent may appear on several of the various types of programs.

1. The Employer, Station WKAQ, has certain sustaining programs, i. e., programs owned and produced by the station for the purpose

¹ The name of the Employer appears as amended at the hearing.

² The Petitioner herein was certified by the Board after consent election (Case No. 24-RC-166) for a unit of "All announcers, control technicians, and script writers working for the Employer at his WKAQ Radio Station." Radio operators are represented by another union in a unit established by Board decision (38-RC-23 unpublished).

of audience building or to fill its broadcast time. The Employer concedes that talent appearing on these programs should be included in the unit.

2. The station sells a package program complete with script and all necessary talent and direction to a sponsor for a set price. Frequently these are programs which have been broadcast previously by the station as sustaining programs for which an audience has already been built.

3. The station creates a script for a program and sells the script with broadcast time to a sponsor. As part of the negotiations, the station submits to the prospective sponsor a list of the artists and directors available for each part, a summary of their qualifications, and the salary at which each may be available. It also recommends the best choice for each position and justifies the salary suggested for each person submitted.³

4. The station broadcasts certain programs under a leased-time arrangement. Such programs are produced either by the sponsor, as in the Colgate program,⁴ or by a producer for the sponsor, as in the Pet Milk-Zerbe-Penn Program.⁵

In the second and third types of programs, the station maintains a separate budget for each package, including a separate payroll, deducts social security, etc., and produces the show, hiring all necessary incidental character actors as required by the script, and charges the sponsor for the cost of the additional actors. The station sometimes retains the package show, intact, as a sustaining program after the sponsorship ceases. All programs must meet the standards of the station as well as comply with the rules and regulations of the Federal Communications Commission.

The Employer would exclude from the unit all talent appearing on all sponsored programs. Under the circumstances of this case, we agree with the Employer only with respect to talent on type 4 programs. Indeed, we have only recently established in Puerto Rico a separate unit for such talent in the *Colgate* case.⁶ However, with

³ In these circumstances WKAQ maintains that it acts merely as agent between the prospective sponsor and the talent in reaching agreement on the choice of artists and directors and the salaries to be paid. A lead actress testified that she was approached by the station manager, and told that the station had purchased a specific script for which it was seeking a sponsor and wanted her for the lead. Pet Milk took the sponsorship and she was hired by the station manager. The occasion never arose, during the period of negotiations or the year of the program, where she had any contact with the sponsor. She dealt at all times with the station manager.

⁴ Although the record does not describe the Colgate arrangement with WKAQ, a witness testified that she acts on the Colgate program broadcast over WKAQ for which she is paid by Colgate. However, the Board takes judicial notice of that arrangement from its prior decision in *Colgate Palmolive Peet Co.*, 96 NLRB 311.

⁵ The Pet Milk program, originally a sustaining program, and later produced by WKAQ for the sponsor, is presently produced for the sponsor by Zerbe-Penn, an advertising agency in Puerto Rico. Talent on that program is now paid by Zerbe-Penn instead of by WKAQ.

⁶ See footnote 4, *supra*.

respect to types 2 and 3, we see no substantial difference between the extent of control and direction exercised by the station in producing those programs from that exercised over programs produced as sustaining operations (type 1), which the Employer concedes should be included. It is apparent that the production and broadcast of types 2 and 3 programs, like the sustaining ones, constitute an integral part of the Employer's own broadcasting business.

We accordingly find that the station has, and exercises, an employing interest in the talent appearing on types 2 and 3 programs which warrants their inclusion in the unit.

A further question arises as to whether so-called "special" script writers and "special" announcers should be included in the present unit or whether they are part of the preexisting script writers and announcers' unit. So far as the record shows, the only difference between these "special" employees and "staff" announcers and script writers who are admittedly in the preexisting unit, is that the label "special" is attached to announcers and script writers when they are assigned to work on specific package programs. We therefore find that the "special" script writers and announcers more properly belong and are included in the above-mentioned preexisting unit. Accordingly, we shall exclude them from the talent unit found appropriate herein.

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All radio artists, actors, actresses, soundmen, directors, comedians, narrators, and commentators of the Employer, including all employees who work on sponsored package programs produced by the Employer, but excluding talent appearing on programs produced by a sponsor or an independent producer who merely leases broadcast time from the Employer, and all vocalists, musicians, executive personnel, full-time program directors, office clericals, announcers, script writers, controlmen, transmitter operators, guards, watchmen, and supervisors as defined in the Act.

5. In accordance with the agreement of the parties, we find that 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.⁷

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

MEMBER HOUSTON took no part in the consideration of the above Decision and Direction of Election.

⁷ See *Colgate Palmolive Peet Co.*, 96 NLRB 311.