

4. The parties agree, and we find, that all production, warehouse, and maintenance employees at the Employer's plant in Chicago, Illinois, excluding office clerical employees, professional employees, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

5. The parties stipulated that only those employees in the unit who are employed for more than 20 hours per week should be included and be eligible to vote. However, all regular part-time employees, regardless of the number of hours worked, are necessarily included in the unit. They are also eligible to vote unless good cause is shown to the contrary. Accordingly, we do not adopt the stipulation of the parties. We find that all regular part-time employees are eligible to vote, subject to challenge on the ground that their interests and duties are not sufficient to warrant their inclusion in the unit.

[Text of Direction of Election omitted from publication.]

Member Beeson took no part in the consideration of the above Decision and Direction of Election.

MCCANN ERICKSON CORPORATION, ET AL., PUBLICIDAD BADILLO and DRY MILK CO. INC, PUBLICIDAD ASTRA, ET AL ZERBE-PENN ADVERTISING CO., ET AL., PUBLICIDAD BADILLO, ET AL. *and* GREMIODE PRENSA, RADIO, TEATRO Y TELEVISION DE PUERTO RICO, IND., Petitioner. Cases Nos. 24-RC-600, 24-RC-601, 24-RC-602, 24-RC-603, and 24-RC-626. March 5, 1954

DECISION, ORDER, AND DIRECTION OF ELECTIONS

Upon petitions duly filed and consolidated a hearing was held before George L. Weasler, 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 these cases, the Board finds:

1. The Employers are 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 Employers.
3. Questions affecting commerce exist in Cases Nos. 24-RC-600, 24-RC-602, and 24-RC-603 concerning the representation of certain employees of the Employers within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act. No questions affecting commerce exist in Cases Nos. 24-RC-601 and 24-RC-626 concerning the representation of certain employees involved therein.

4. Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Ind., the Petitioner in these cases, seeks to represent certain radio talent performing in Puerto Rico. Specifically the unit requested by it in each petition is:

All employees working for the employers on radio programs and/or radio advertising (spots), including actors, actresses, script writers, announcers, sound effects men, disk jockeys, directors, masters of ceremonies, narrators, commentators, controlmen and recorders, excluding all other employees, office clerical employees and executive, administrative and professional employees, guards, watchmen, and supervisors as defined in the Act.

Each petition names an advertising agency and certain of its clients who sponsor radio programs in Puerto Rico as the employers, except that in Case No. 24-RC-602 a radio station and an individual program director are also named as employers. Essentially the parties do not dispute the propriety of grouping the classifications of employees set out above for bargaining purposes. Their disagreement comes as to who is an employer. We shall consider the various employer relationships asserted by the Petitioner case by case.

McCann Erickson Corporation, et al., Case No. 24-RC-600:
In this case the Petitioner joined as employers with the McCann Erickson advertising agency the following clients of the agency: California Packing Corporation, Caribe Motors, Corn Products Refining Company, Coca Cola Bottling Co. of P. R., Inc., Power Electric Company, R. J. Reynolds Tobacco Company, Esso Standard Oil Co. (Puerto Rico). The sponsors named were served by regular rather than registered mail, and only two were represented at the hearing. They denied that they were employers of the employees sought. The agency likewise denied employer status but testimony given on its behalf clearly indicates that it alone is the employer of the employees sought. The record shows that the advertising agency hires the talent for programs of its clients, pays the talent with its own checks after deducting social security, makes arrangements for radio time, frequently prepares the script, and monitors the performances. The Board concludes that the client's right to give final approval of the selection of talent, of the radio station to be used, and of the program idea, is necessarily incident to its expenditure for radio advertising but does not alter the agency's position as the employer.

We find that all employees working on radio programs and radio advertising (spot announcements) for McCann Erickson Corporation at its Puerto Rico branch, including actors, actresses, script writers, announcers, sound effects men, disk jockeys, directors, masters of ceremonies, narrators, commentators, controlmen, and recorders, excluding all other employees, office clerical employees, and executive, administrative, and professional employees, guards, watchmen, 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.

Concerning the specific composition of the unit the Employer contends (1) that certain individuals employed by it as radio supervisors but who spend part of their time as masters of ceremonies on programs for clients for which they are compensated by the clients, should not be included, and (2) that certain individuals who are sports experts and appear over the radio as a panel of experts are not properly included within the classifications of employees sought. As to (1), the Board notes that the record shows that these individuals are employed by the Employer essentially in a supervisory capacity within the meaning of Section 2 (11) of the Act, and that their appearance on radio programs is incidental to their basic employment status as supervisors. Accordingly, we find that they should be excluded from the bargaining unit. As to (2), no reason appears on this record to exclude sports experts from the unit of radio talent sought by the Petitioner, whether they be considered as "commentators" or "actors" for the purpose of their radio appearances.

Zerbe-Penn Advertising Co., et al., Case No. 24-RC-603: In this case the Petitioner joined as employers with the Zerbe-Penn Advertising Co. its clients Pet Milk Sales Co., Corona Brewing Corporation, and Compania Ron Oro Nativo. At the hearing the agency stated that Compania Ron Oro Nativo was no longer one of its clients, the account having been transferred to Publicidad Badillo and the Compania included as an alleged employer in Case No. 24-RC-626, discussed below. Corona Brewing Corporation was represented at the hearing and denied it was an employer of the talent sought; Pet Milk Sales Co. was not represented although the record indicates that it had received regular mail service of the petition. The agency contends that the sponsor has control over any talent employed by it, hence that it is not an employer. In support of its position it urges a ruling of the social-security office in Puerto Rico that radio talent are employed by the sponsor when the "advertising agency or the sponsor determines the character of the program." Pursuant to this ruling the Zerbe-Penn agency, although it pays the wages to actors on its programs, has been remitting the social-security deductions made by it to its clients for payment. However salutary this ruling may be for the purposes of administering the Social Security Act, this Board believes that, for the purpose of administering the Labor Management Relations Act, employer status, as between an advertising agency and its clients sponsoring programs, must be judged by the realities of the arrangement existing between the parties.

In evidence are contracts by which the Zerbe-Penn Co. acts as advertising agent for these clients. These contracts indicate that the agency has full responsibility in arranging for

and producing radio programs for these client sponsors, including the hiring and payment of talent. The fact, therefore, that the clients reserve authority to approve the arrangements made and the type of program used, does not, in the opinion of the Board, alter the employer status of the advertising agency which in fact exercises the functions characteristic of an employer.

We find that all employees working on radio programs and radio advertising (spot announcements) for Zerbe-Penn Advertising Co., Puerto Rico, including actors, actresses, script writers, announcers, sound effects men, disk jockeys, directors, masters of ceremonies, narrators, commentators, controlmen and recorders, excluding all other employees, office clerical employees, and executive, administrative, and professional employees, guards, watchmen, 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.

Publicidad Badillo and Dry Milk Co., Inc., Case No. 24-RC-601 and Publicidad Badillo et al., Case No. 24-RC-626: The same advertising agency, Publicidad Badillo, was named as an employer in both these cases, with its client the Dry Milk Co. also named in Case No. 24-RC-601 and its clients Lever Bros., Quaker Oats Co., and Compania Ron Oro Nativo named in Case No. 24-RC-626. At the consolidated hearing special appearances were made on behalf of Lever Bros. and the Quaker Oats Co. to contest the allegation that they are employers. The Dry Milk Co. moved to dismiss the petition as to it on the ground that the only radio program it sponsored had been canceled in September 1953. No testimony was taken concerning arrangement for and presentation of Dry Milk Co. programs. No one appeared on behalf of Compania Ron Oro Nativo, but the advertising agency testified concerning its relationship with this client. The Board is of the opinion that the record made concerning the manner in which this agency and its clients procure radio advertising and the talent incident thereto does not establish that either the agency or its clients actually employ the radio talent sought to be represented. The testimony indicates that the agency itself produces no programs but purchases "package" programs for its clients from producers not alleged as employers in these proceedings. The agency merely monitors the programs, occasionally suggests personnel without actually hiring, and pays lump-sum checks to the actual producers of the programs. As the record is insufficient to support a finding that the parties alleged as employers are in fact employers of the radio talent sought to be represented, we shall dismiss the petitions in these two cases.

Publicidad Astra et al., Case No. 24-RC-602: In this case the Petitioner joined with the Publicidad Astra advertising agency the following: The Colgate Palmolive Peet Co. which engages the services of the advertising agency in connection with two of the radio programs it sponsors in Puerto Rico, Radio Station WKAQ over which Colgate-sponsored programs

are broadcast, Edmundo River Alvarez who directs theatrical programs sponsored by Colgate in Puerto Rico, and finally The Gillette Co., another client of the advertising agency.

WKAQ did not respond to the notice of hearing sent to it by regular mail. Alvarez did appear and testified concerning his part in hiring and paying talent for and producing radio programs in Puerto Rico for Colgate. He also testified that although formerly employed for many years by Colgate as its theatrical director he currently reported only to WKAQ, and that he received flat sum payments for the programs he handled for WKAQ. Colgate also responded to notice by regular mail and introduced in evidence current contracts between it and "Station WKAQ, Radio 'El Mundo' and Associates" covering five programs to be planned, designed, assembled (including talent), rehearsed, and broadcast by the radio station for it. The Astra agency appeared and contended that it was not an employer of talent for Colgate programs but acted merely as an editor of script, monitor of programs, and conduit between WKAQ and Colgate for lump-sum payments for two of the Colgate programs. It also contended that it was not actually an employer of talent for The Gillette Co., although it admitted hiring and paying an announcer for a baseball program rebroadcast in Puerto Rico on behalf of The Gillette Co. The latter did not respond to the notice of hearing sent to it by regular mail.

The Board is of the opinion that a final determination as to who are employers of the talent sought in this case is impracticable on the record thus far made. The record suggests but does not conclusively show how Radio Station WKAQ carries out its obligations under its contracts with Colgate, nor does it show the exact nature of the station's relationship with Alvarez and with the talent on programs he directs. In these circumstances the Board deems it proper to sever this case from the group of cases involved in this proceeding and to reopen the hearing for the taking of additional testimony. However, we shall not limit the taking of testimony to the arrangements concerning Colgate-sponsored programs, inasmuch as the petition is not so limited and the scope of the hearing already held appears to have been unduly restricted by nonparticipation of WKAQ and of The Gillette Co. Accordingly we direct that additional testimony be taken concerning the arrangement for and production of radio programs for clients of the Astra Advertising agency, including Colgate and Gillette, as well as others whom the Petitioner may wish to join, and for Colgate as a client of Radio Station WKAQ, and that all parties alleged as employers originally, or by amendment of the petition, be given notice of the reopened hearing by registered mail. We shall remand this case for further action as indicated.

[The Board dismissed the petitions in Cases Nos. 24-RC-601 and 24-RC-626, and remanded the petition filed in Case No. 24-RC-602 to the Regional Director for further action.]

[Text of Direction of Elections omitted from publication.]

Chairman Farmer and Member Beeson took no part in the consideration of the above Decision, Order, and Direction of Elections.

JOHN DEERE PLANTER WORKS OF DEERE & COMPANY *and*
UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA, CIO, Petitioner.
Case No. 13-RC-3560. March 5, 1954

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Albert Gore, 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,¹ 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. 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.

The Petitioner requests an election among the Employer's production and maintenance employees. United Farm Equipment Workers of United Electrical, Radio and Machine Workers, Local 148, Intervenor, herein referred to as FE Local 148 UE, asserts that its current contract with the Employer covering these employees constitutes a bar to an election at this time. The Employer is neutral on the question of contract bar.

The contract terminates on July 22, 1955. When it was executed, employees who were members of the Union were given 15 days to withdraw. The contract provides that after this withdrawal period, any employee who was a member "of the Union in good standing, shall, as a condition of employment, maintain his membership in the Union to the extent of paying membership dues and International and Local Union general assessments uniformly levied against all Union members." (Emphasis added.) Similar provisions cover old and new employees who become union members. Because this union-security provision requires the payment of general union assessments as a condition of continuing employment, it goes beyond the permissive language of Section 8 (a) (3) of the Act.²

¹The Petitioner requested oral argument. In our opinion, the record and briefs fully present the issues and the positions of the parties. Accordingly, the request is denied.

²National Malleable and Steel Castings Company, 99 NLRB 737.