

In the Matter of R. C. A. COMMUNICATIONS, INC., and AMERICAN RADIO TELEGRAPHISTS ASSOCIATION and INDEPENDENT EMPLOYEES ASSOCIATION OF R. C. A.-C.

In the Matter of R. C. A. COMMUNICATIONS, INC. and AMERICAN RADIO TELEGRAPHISTS ASSOCIATION

Cases Nos. R-747 and R-748, respectively.—Decided
November 17, 1938

Communications Industry—Investigation of Representatives: controversy concerning representation of employees; controversy concerning appropriate unit; rival organizations—*Unit Appropriate for Collective Bargaining:* all employees, excluding executives, managers, confidential employees, and supervisory employees with the power to hire and discharge; functional coherence; organization of business; system-wide; prior finding as to, by Board—*Election Ordered*

Mr. Albert Ornstein, for the Board.

Mr. Manton Davis, *Mr. Frank W. Wozencraft*, and *Mr. John F. Gibbons*, of New York City, for the Company.

Mr. John F. X. Masterson, of Brooklyn, N. Y., for the I. E. A.

Boudin, Cohn & Glickstein, by *Mr. Sidney E. Cohn*, of New York City, for the A. C. A.

Mr. Vincent A. Burns, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On April 1, 1938, Independent Employees Association of R. C. A. Communications, Inc., herein called the I. E. A., and on April 7, 1938, American Radio Telegraphists Association, herein called the A. R. T. A.¹ filed with the Regional Director for the Second Region (New York City) separate petitions, each alleging that a question affecting commerce had arisen concerning the representation of employees of the R. C. A. Communications, Inc., New York City,

¹ After the petition was filed but prior to the hearing, by a referendum vote of its membership, the American Radio Telegraphists Association changed its name to American Communications Association, herein called A. C. A.

herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On April 27, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. The Board, acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that the cases be consolidated for the purpose of hearing.

On May 9, 1938, the Regional Director issued a notice of hearing, copies of which were duly served on the A. C. A., the I. E. A., and the Company. Pursuant to notice, a hearing was held on May 16, 17, 19, and 20, 1938, at New York City before William Seagle, the Trial Examiner duly designated by the Board. All the parties were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. During the course of the hearing the Trial Examiner made several rulings on motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. Subsequent to the hearing, the I. E. A., through its counsel, filed a brief to which the Board has given consideration.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

R. C. A. Communications, Inc., is a Delaware corporation engaged in the receipt and transmission by radio and telegraph of national and international communications. The Company is a wholly owned subsidiary of Radio Corporation of America. Its principal office is in the city of New York and it has other offices in Boston, Massachusetts; Philadelphia, Pennsylvania; Baltimore, Maryland; Washington, D. C.; Detroit, Michigan; Chicago, Illinois; Seattle, Washington; New Orleans, Louisiana; San Francisco and Los Angeles, California; and Honolulu, Hawaii. It has receiving stations in Riverhead, Long Island; Koko Head, Hawaii; and Point Reyes, California, and transmitting stations in Rocky Point, New York; Tuckerton and New Brunswick, New Jersey; Bolinas, California; Kakuku, Hawaii; Leroy, Indiana; Marion, Massachusetts; Norco, Louisiana; and Tacoma, Washington. These stations are definitely correlated with certain offices of the Company as, for instance, New York City

uses as a receiving station Riverhead, Long Island, and as transmitting stations Rocky Point, New York, and Tuckerton and New Brunswick, New Jersey. In the course and conduct of its business at these offices, the Company receives and transmits radio and telegraph messages from and to States and territories of the United States and foreign countries. Its business is thus that of the continuous transmission of intelligence among the States of the United States, its territories and foreign countries by means of a highly developed and integrated communications system.

The vice president and general manager in charge of operations of the Company is William A. Winterbottom, whose office, and that of the president, David Sarnoff, are in New York City. The total number of employees of the Company throughout its entire system is approximately 1,360.

We find that the Company is engaged in trade, commerce, and communication among the several States and among the United States, its territories, and foreign countries, and that the employees of the Company are directly engaged in such trade, commerce and communication.

II. THE ORGANIZATIONS INVOLVED

American Communications Association, formerly called American Radio Telegraphists Association, is a nation-wide labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all communications employees in the following industries: Marine, Telegraph, Telephone, Broadcast, Point-to-Point Radio and Cables, Aviation, and Marine Coastal Stations.

Independent Employees Association is an unaffiliated labor organization, admitting to its membership all employees of the Company, exclusive of management.

III. THE QUESTION CONCERNING REPRESENTATION

The Board has already had under consideration the question of the representation of the employees of the Company.² It was stipulated at the hearing that the record of the previous proceedings should be made part of the record in the present proceeding, subject to the right of any of the parties to offer testimony to modify, amplify, or contradict any testimony given in such previous proceedings. As a result of these proceedings the A. R. T. A. was certified by the Board on July 30, 1937, as the representative for the purposes of collective bargaining of "the 'live traffic' employees, including clerical employees in the 'live traffic' department employed by the Company in the New York metropolitan area, which includes the principal office at 66 Broad

² *Matter of R. C. A. Communications, Inc. and American Radio Telegraphists Association*, 2 N. L. R. B. 1109.

Street and 11 branches in New York City, the receiving station at Riverhead, Long Island, and the transmitting stations at New Brunswick and Tuckerton, New Jersey, and Rocky Point, New York, excepting messengers and supervisory employees."

In the election of July 10, 1937, which preceded this certification, the A. R. T. A. had secured 335 votes out of a total number of 496 eligible employees. Later in July it was agreed between counsel for the Company and the A. R. T. A. that if the union presented proper proof of authority to represent all the "live traffic" employees in the system, it would be recognized as their exclusive representative. Such proof was presented by the A. R. T. A., through the New York Regional Office, which checked membership or authorization cards submitted by the union. The check showed that the A. R. T. A. represented 97 out of a possible total of 107 "live traffic" employees in the system, exclusive of those in the New York metropolitan area. Since the A. R. T. A. had received 335 out of a possible total of 496 in the election of July 10, it thus had a majority of all the "live traffic" employees in the system, i. e., 432 out of a possible 693 or 694, depending upon whether the election eligibility list is used or a special list prepared for the purpose of the check. On September 10, 1937, the Company recognized the A. R. T. A. as the exclusive representative of all the "live traffic" employees in the system. Another check similarly made of the representation of A. R. T. A. among the messengers employed in the whole system showed that the A. R. T. A. represented 167 out of 302. Thereafter, on October 22, 1937, the Company entered into an agreement with the A. R. T. A. recognizing it as the sole bargaining agency for "all its live traffic employees, including messengers but excluding employees engaged in a supervisory capacity in the continental United States and Hawaii."³

Shortly before the Board issued its Decision of June 30, 1937, the I. E. A. was organized and soon requested recognition by the Company as the exclusive representative of all of its "non-live traffic employees." As in the case of the A. R. T. A., the I. E. A. membership application cards or other authorizations were checked by the New York Regional Office, which notified the Company in a letter of October 4, 1937, (corrected by a letter of the following day) that the I. E. A. represented 200 out of its 325 "non-live traffic" employees. On October 6, 1937, the Company recognized the I. E. A. as the sole bargaining agency of its "non-live traffic" employees, and on November 17, 1937, entered into an agreement with it for "all its 'non-live traffic' employees but excluding employees engaged in a supervisory

³ The agreement provides that it shall remain in effect until November 30, 1938, and from year to year thereafter, unless notice in writing is given by either party to the other of its termination, or of any changes desired, sixty (60) days prior to the end of the current term.

capacity and excluding those engaged in a confidential capacity to management in the continental United States and Hawaii."⁴

The A. C. A. now seeks certification as the exclusive bargaining representative of all the employees of the Company, excluding executives, managers, confidential employees, and supervisory employees with the power to hire and discharge. The I. E. A. asks to be certified as such representative for the so-called point-to-point personnel, consisting of receiving and transmitting engineers, riggers, mechanics or maintenance men, and clerks at the outlying receiving or transmitting stations.

The Company, through its vice president, states that it was willing to bargain with the labor organization representing the majority of its employees or in fact any number of bargaining agencies but that it wished to maintain a strictly neutral position.

We find that a question has arisen concerning the representation of employees of the Company. We further find that this question, occurring in connection with the operations of the Company, described in Section I above, tends to lead to labor disputes burdening and obstructing trade, commerce, and communication and the free flow of trade, commerce, and communication.

IV. THE APPROPRIATE UNIT

We have noted in Section III above that the Board in its Decision of June 30, 1937, found that all the "live traffic" employees of the Company in the New York metropolitan area, including the principal office at 66 Broad Street and 11 branches in New York City, the receiving stations at New Brunswick and Tuckerton, New Jersey, and Rocky Point, New York, excepting messengers and those engaged in a clerical and supervisory capacity, constituted an appropriate bargaining unit. The Board, however, expressly stated that such finding was made "in the absence of proof of a present desire on the part of the 'live traffic' employees of the Company employed in the metropolitan area to be bracketed in a single unit with all other employees of the Company in the whole communications system" and upon the premise that "the 'live traffic' employees of the Company in the metropolitan area should not be denied the benefits of the Act until all the employees of the Company throughout the country are organized." The Board noted in its Decision that "the record does show that the ultimate goal of the A. R. T. A. is to organize all the employees of the Company throughout its whole communications system."

⁴ The agreement provides that it shall remain in effect until October 15, 1938, and from year to year thereafter, unless notice in writing is given by either party to the other of its termination, or of any changes desired, forty-five (45) days prior to the end of the current term.

The present record shows, as set forth in Section III above, that both the A. C. A. and the I. E. A. have organized employees throughout the whole communications system of the Company and that both organizations seek bargaining units composed of employees throughout the whole system. The situation here presented thus differs from that presented at the time of the earlier Decision of the Board.

The business of the Company, as set forth in Section I above, is that of the continuous transmission of intelligence among the States of the United States, its territories and foreign countries by means of a highly developed and integrated communications system. The principal office of the Company is in New York City. At this main office the general management problems and policies covering the entire system are determined. All wage changes are passed upon at this office. We have held in similar situations that a system-wide unit is that most appropriate for the purposes of collective bargaining.⁵ We are of the opinion, moreover, that all the employees of such system, excluding supervisory and confidential personnel, are in the absence of special circumstances appropriately included within one unit where, as in the instant case, there is a labor organization seeking to represent such employees.

The I. E. A. states that a number of factors are here present which make inappropriate the bracketing of the "point-to-point" personnel⁶ in the same unit with other employees of the system and that make appropriate the establishing of a separate unit for such employees. It asserts with respect to this contention that the "point-to-point" personnel are distinguished in function, technical education, and training from the other employees; that such employees are in the plant division of the engineering department and are engaged primarily in the operation and maintenance of the transmitting and receiving stations, whereas the other employees are in the traffic department and are engaged principally in work connected with the transmitting and receiving of messages; and that such employees live chiefly in outlying districts and small communities, whereas the other employees for the most part live in large cities. It should be noted with respect to these contentions of the I. E. A. that in addition to the point-to-point personnel a number of employees such as research engineers and janitors whom the I. E. A. does not ask to be included in the separate unit are employed in the engineering department;

⁵ *Matter of Columbia Broadcasting System, Inc and American Communications Association (Formerly American Radio Telegraphists' Association)*, 8 N. L. R. B. 508.

⁶ As noted heretofore, this group would include the receiving and transmitting engineers (so-called shift engineers), riggers, mechanics or maintenance men, and clerks at the outlying receiving and transmitting stations. With the exception of the station clerks, all the employees were included within the group referred to in the Board's previous Decision as the "live traffic" employees.

that the bargaining unit which the I. E. A. seeks would not include all the employees in the outlying stations; that the shift engineers which the I. E. A. would include within the separate unit are required to have a radio telegraph operator's license and at times perform duties similar in character to those of radio operators whom the I. E. A. would exclude; and that there is little similarity in the duties performed and the training required as regards many of the employees in the unit claimed as appropriate by the I. E. A.⁷ We are of the conclusion, on the basis of the entire record, that the facts do not justify the establishing of the "point-to-point" personnel as a separate bargaining unit and that all the employees of the Company, excluding executives, managers, confidential employees, and supervisory employees with the power to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining.

We find that all the employees of the Company, excluding executives, managers, confidential employees, and supervisory employees with the power to hire and discharge constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

There was introduced at the hearing evidence that the Company employs approximately 1,300 persons within the unit which we found to be appropriate. Each labor organization submitted in evidence a number of membership or authorization cards of employees within the so-called "point-to-point" group, but neither introduced cards pertaining to the other employees of the Company. We have noted in Section III above that during September and October 1937 the Regional Director made checks relative to certain membership and authorization cards submitted by the two organizations; but the results of these checks do not show representation by either of a majority of the employees of the Company at that time within the appropriate unit. Furthermore, since the checks were made approximately a year ago, they may not reflect the present desires of such employees or represent the desires of the employees of the Company at this time within the appropriate unit. We find, therefore, that the question which has arisen concerning representation can best be resolved by an election by secret ballot.

It was stipulated by all parties that in the event the Board directed the holding of an election eligibility to vote might appropriately

⁷ For example, as between the shift engineers on the one hand and the riggers and maintenance men on the other hand.

be determined on the basis of the employees of the Company during the pay-roll period next preceding the issuance of such direction. We shall direct that an election be held among all the employees of the Company within the appropriate unit who were employed by the Company during said pay-roll period, to determine whether they desire to be represented by the A. C. A. or by I. E. A., for the purposes of collective bargaining, or by neither.

Since the unit which we found appropriate differs substantially from that contended for by the I. E. A., it is not entirely clear whether that organization desires that its name appear on the ballot. We shall, therefore, amend the Direction of Election to delete the name of the I. E. A. from the ballot if it notifies us within ten (10) days of a desire for such amendment.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of R. C. A. Communications, Inc., New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company, excluding executives, managers, confidential employees, and supervisory employees with the power to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the R. C. A. Communications, Inc., New York City, an election by secret ballot shall be conducted within twenty-five (25) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the R. C. A. Communications, Inc., who were employed by the Company during the pay-roll period next preceding the date

of this Direction, excluding executives, managers, confidential employees, and supervisory employees with the power to hire and discharge, to determine whether they desire to be represented by American Communications Association, affiliated with the Committee for Industrial Organization, or by Independent Employees Association, for the purposes of collective bargaining, or by neither.