

WTAR RADIO CORPORATION *and* AMERICAN FEDERATION OF RADIO ARTISTS, AFL, PETITIONER. *Case No. 5-RC-972.* July 15, 1952

### Decision and Direction of Election

Upon a petition duly filed, a hearing was held before John M. Dyer, 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,<sup>1</sup> the Board finds:

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

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 all persons employed at the Employer's station WTAR (AM, FM, and TV) who appear professionally and regularly before the microphone or camera. The Employer argues that a unit so limited is inappropriate, and that the only appropriate unit is an all-inclusive one consisting of all programming employees, nonperformers as well as performers.<sup>2</sup> The Employer points out that some of the nonperformers whom it would include also perform occasionally, while some of the performers whom the Petitioner seeks are at times engaged in nonperforming activities as well.<sup>3</sup> There is no history of collective bargaining with respect to the employees involved herein.

The Employer operates a combined radio and television station at Norfolk, Virginia. Its nontechnical operations are divided functionally into certain departments, such as the sales, promotion, news, traffic, music, film, and continuity departments. In addition, these operations require such nondepartmentalized employees as the producer-directors, specialists, staff announcers, and nonstaff artists. Generally speaking, employees service both radio and television programs. The supervisory hierarchy consists of the president and general manager, who has over-all supervision; managers of the sales and promotion departments; a television operations manager and his assistant; and a radio program manager and his assistant, called the

<sup>1</sup> On May 22, 1952, at Washington, D. C., the Board heard oral argument in which all parties participated.

<sup>2</sup> Neither the Employer nor the Petitioner desires to include technical or engineering department employees in the unit.

<sup>3</sup> For example, announcers occasionally write continuity or news stories; a film department employee performs semiregularly on radio and television; news department employees also broadcast the news programs they have prepared; music department employees also appear and perform on broadcasts; and salesman have also performed on programs and take an active part in preparing and rehearsing them.

chief announcer. Except for the sales and promotion departments, there appears to be no separate supervisor for any of the remaining departments or for the nondepartmentalized employees. To the extent that the functions of these employees relate either to radio or television, they are under the supervision of either the radio program manager and his assistant, or the television operations manager and his assistant, respectively. Thus, the supervision of such employees varies as their functions vary between radio and television.

The Employer contends that because all its nontechnical employees, both performers and nonperformers, work as a team to produce the shows broadcast by the Employer over radio and television, the only appropriate unit is one which includes all such employees who prepare, sell, produce or schedule the shows broadcast by the Employer. While the integration of the Employer's operations in the production of broadcasts may indicate the appropriateness of such a unit, it does not follow that it is the only appropriate unit.<sup>4</sup> On the contrary, the narrower performers' unit may also be appropriate. The fact that performers appear professional before the microphone or camera at regular or frequent times does set them apart functionally and gives them a peculiar community of interest not shared by the nonperforming employees. In its past decisions, the Board has clearly recognized this special community of interest of performers, and has established units limited to them in both the radio<sup>5</sup> and television<sup>6</sup> industries.

In the *Hampton Roads* case, the Board, in finding appropriate a unit of announcers at a radio station, said :

[the announcers] perform a kind of work, requiring a kind of talent, experience, and background which is distinguishable from that of the other program employees, and which gives rise to interests in the terms and conditions of employment which are sufficiently different from those of other employees to warrant separate representation for collective bargaining. Voice, diction, personality, the ability to persuade through the spoken word—these are the tests by which announcers are judged, and these are qualifications wholly unrelated to the jobs performed by others. . . . These special and highly individualistic qualifications necessarily serve to distinguish [those who appear before the microphone] from other employees. . . .

<sup>4</sup> See, for example, *Hampton Roads Broadcasting Corporation (WGH)*, 100 NLRB 238, issued this day; *Morand Brothers Beverage Co., et al.*, 91 NLRB 409.

<sup>5</sup> *Hampton Roads Broadcasting Corporation (WGH)*, *supra*; *El Mundo Broadcasting Corp.*, 97 NLRB 1255; *Emil Denmark Inc.*, 96 NLRB 1087; *Neptune Broadcasting Company*, 94 NLRB 1052.

<sup>6</sup> *American Broadcasting Company, Inc.*, 96 NLRB 815; *WCAU, Inc.*, 93 NLRB 162, Cf. *KTTV, Inc.*, 97 NLRB 1477; *Hearst Radio, Inc. (WBAL-TV)*, 96 NLRB No. 136 (unreported) where the Board indicated that a unit of all nonperforming employees of the program department would constitute an appropriate unit although that department also contained performers.

Although the present case involves a combined radio and television station rather than a small radio station, this fact alone, in our opinion, is not sufficient to warrant a departure from the principles enunciated in the *Hampton Roads* case. In these circumstances, and in accord with past Board precedent, we believe and find that the performers' unit sought by the Petitioner constitutes an appropriate one.

The parties have stipulated that the following performers shall be included in the appropriate unit:

- (a) The announcers, some of whom are also disc jockeys;
- (b) the specialists such as the women's director and the home economists;<sup>7</sup>
- (c) the film department employee who performs on a semi-regular schedule on radio and television;<sup>8</sup>
- (d) the news department employees, who regularly broadcast over radio;<sup>9</sup> and
- (e) certain nonstaff artists who, it is agreed, are employees of the Employer.<sup>10</sup>

All that remains for consideration are the producer-directors, whom the Petitioner would exclude because they are supervisors, and the remaining nonstaff artists, whom the Employer would exclude because they are allegedly not its "employees."

Although some of the producer-directors are performers, they all produce and direct television programs. They write or work from a completed script of a particular program, assemble the necessary performers and props, rehearse the program, and direct the performers in rehearsals. When the show is on the air, the producer-directors direct the performers and cameras from a control booth and see to it that the program is properly broadcast over the air. In the light of the foregoing, and in accord with past Board precedents in similar circumstances, we all find that the producer-directors responsibly direct the activities of all participants in the broadcast, and that therefore they are supervisors within the meaning of the Act.<sup>11</sup> We shall exclude them from the unit.

Among the remaining nonstaff artists, three composed a trio,<sup>12</sup> who are under contract to appear as part of a regular television program, produced by the Employer and sold as a package to the sponsor. The trio receives a program rate of pay established by the Employer, who

<sup>7</sup> Alice White, Lucille Clark, and Madeline Weaver.

<sup>8</sup> Harry Nicholas.

<sup>9</sup> Gilbert McLeod, Clayton Edwards, and John Patterson.

<sup>10</sup> Betty Sherry, Marlan Carle, and Marle Frances Morrisetta, who are singers, and Warner Twyford and Sandusky Curtis, who conduct regular weekly music and religious programs, respectively.

<sup>11</sup> *Hearst Radio, Inc.*, *supra*; *Neptune Broadcasting Company*, *supra*; *American Broadcasting Company, Inc. (KECA-TV)*, 93 NLRB 1410; *National Broadcasting Co., Inc.*, *supra*.

<sup>12</sup> Pearce, Tatum, and Trotman.

is reimbursed by the sponsor. In these circumstances, and in accord with similar past Board precedents, we all find that the Employer has a sufficient employing interest and control over this trio to warrant their inclusion in the performers' unit found appropriate herein.<sup>13</sup> Accordingly, we shall include them.

The two remaining nonstaff artists, William Diehl and Pete Glaser, broadcast weekly television shows.<sup>14</sup> However, both are hired and paid by their respective sponsors, rather than by the Employer. The sponsors pay the Employer only for the time purchased for these broadcasts. Although the Employer supplies the studio as well as the camera and prop men, the record does not show any participation in the production of these shows by the Employer. It exercises virtually no control over Diehl and Glaser, except to prevent any violation of station policies or standards of public decency. In these circumstances, a majority of the Board believes and finds that the Employer does not have such an employing interest and control over Diehl or Glaser as to warrant their inclusion in the unit found appropriate.<sup>15</sup> Accordingly, we shall exclude them from the unit.

We find that all employees at the Employer's radio and television station WTAR (AM, FM and TV), at Norfolk, Virginia, who appear regularly or frequently before the microphone or camera, including but not limited to staff announcers, disc jockeys, specialists, news broadcasters, and nonstaff artists, but excluding all other employees,<sup>16</sup> nonstaff artists Diehl and Glaser, 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.]

**CHAIRMAN HERZOG and MEMBER MURDOCK, dissenting:**

For the reasons fully set forth in our dissenting opinion in the *Hampton Roads* case, we would find that a unit of all programming employees, nonperformers as well as performers, is the appropriate one, and would direct an election only in that unit.

<sup>13</sup> See *El Mundo Broadcasting Corp., supra*; *Neptune Broadcasting Company, supra*.

<sup>14</sup> Diehl, regular sports editor for a Norfolk newspaper, has a show called "Teen Age Doin's." Glaser has a program called "Sports Page."

<sup>15</sup> Chairman Herzog and Members Murdock and Peterson would exclude, and Members Houston and Styles would include both Diehl and Glaser.

<sup>16</sup> Also excluded are music department employees, Leona Weaver, who has appeared on annual Christmas programs and occasionally a local lodge program; and Clyde Moser, who regularly appears as a piano or organ accompanist. Weaver does not appear with sufficient degree of regularity or frequency; while Moser, as an instrumentalist, has distinct interests and skills, separate and apart, from the performers involved herein.