

needed for repairs, and thus is authorized to grant or withhold "downtime" for the knitter.¹³

The Board has frequently found fixers to be supervisors within the meaning of the Act.¹⁴ In the present instance, the evidence establishes that the fixer has the authority responsibly to direct the work of the knitters, at least insofar as it relates to the proper functioning, maintenance, and repair of the knitting machines. Upon the basis of the foregoing and in conformity with the general practice in the industry, we find that fixers are supervisors within the meaning of the Act. Accordingly, we shall exclude them from such unit.

On the basis of the record in this case, and entirely apart from any consideration as to the extent to which the Employer's knitters may have been separately organized,¹⁵ we find that all full-fashioned hosiery knitters and helper-trainees, excluding office clericals, watchmen, guards, professional employees, all other employees, fixers, and all other 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.]

MEMBERS MURDOCK and BEESON took no part in the consideration of the above Decision and Direction of Election.

¹³ Where a knitting machine remains idle for more than 20 minutes because of damage or faulty operation, a knitter is entitled to receive his average hourly rate for the period of time it takes to restore the machine to operation.

¹⁴ *Nebel Knitting Company*, 106 NLRB 114; *Cole-Gunn Hosiery Mills, Inc.*, 108 NLRB 1144. Cf. *Mock-Judson-Voehringer Company of North Carolina, Incorporated*, 63 NLRB 96, 98.

¹⁵ See *Angelica Hosiery Mills, Inc.*, *supra*, at page 1289.

PUBLICIDAD ASTRA ET AL. and GREMIO DE PRENSA, RADIO, TEATRO Y TELEVISION DE PUERTO RICO, LOCAL 24929, AFL, PETITIONER. *Case No. 24-RC-602. October 21, 1954*

Decision, Order, and Direction of Election

On March 5, 1954, the Board in effect severed this case from a consolidated proceeding¹ involving the representation of radio talent in Puerto Rico and remanded it to the Regional Director for the taking of additional testimony "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." In that decision the Board found that certain

¹ 107 NLRB 1492

110 NLRB No. 55.

Employers named were engaged in commerce, that the petitioning labor organization claimed to represent the employees of the Employers, and that a question concerning representation existed. On May 27, the Petitioner filed an amended petition in this proceeding for the same unit of radio talent, adding as an Employer, Radio Station WNEL. Originally Publicidad Astra, Radio Station WKAQ, Colgate-Palmolive-Peet Co., Edmundo Rivera Alvarez, and The Gillette Co. were named as Employers. Service was duly made upon all parties by registered mail. Radio Stations WKAQ and WNEL, Program Director Edmundo Rivera Alvarez, and the Colgate-Palmolive Company (formerly Colgate-Palmolive-Peet Co.) were represented at the hearing. Publicidad Astra, the advertising agency, which had represented Colgate on certain programs, and The Gillette Co., another of Astra's clients, did not respond to service.

The Petitioner is seeking to represent all radio talent in various classifications employed by the parties named in its petition as amended.

We consider first the Employer status of the two radio stations. In evidence as a result of the original hearing are five contracts between Colgate and Station WKAQ. By the terms of these contracts the station undertakes to plan, design, assemble talent, and materials for, and broadcast specific radio programs, as well as to "discharge all obligations imposed upon employers" concerning persons employed on the programs. Program Director Rivera Alvarez originally testified that, in effect, he carried out the terms of these contracts by making arrangements, and hiring talent himself and receiving a lump sum payment from the station, computed on the basis of recognized rates for the principal actors, plus a specific amount for Alvarez, plus a \$50 "cushion" for incidentals. Alvarez makes a daily report of programs to the station, on the basis of which actors may be disciplined by the station. Testimony by the station's commercial manager at the reopened hearing indicates that when Station WKAQ receives a request from Colgate for a program it does not necessarily "farm out" the program to Rivera Alvarez but the station may elect to have it handled by one Tommy Muniz, Jr. Both these program directors select the talent for the programs they handle, subject to approval by the station and the advertisers after selection, and pay the talent, after deducting social security. Apparently Station WKAQ takes care of workmen's compensation insurance and hospitalization. Rehearsals are held at the station, as well as broadcasts. One program recently canceled by Colgate is being continued by the station as a sustaining program, with Rivera Alvarez continuing in immediate supervision of the program. It was admitted that for this, as for all package programs, the station "accepts supervision" for quality. Rivera Alvarez' testimony at the reopened hearing added no evidence

pertinent to the question of who actually constitutes the employer of the radio talent for Colgate shows; Muniz, Jr., did not testify.

Concerning the activities of Station WNEL in advertising Colgate products, it was testified that Colgate buys package shows from the station. The station makes up the cast, pays the cast, and provides the director for these shows. One of the contracts in effect between WNEL and Colgate was introduced in evidence. Essentially its provisions are identical with those of the five contracts already in evidence between WKAQ and Colgate. Testimony also indicated that Station WNEL has similar arrangements for package programs with the manufacturers of other nationally known products, and considers itself the employer of the talent used on all such programs.

On the amplified record now before us we find: (1) That Radio Station WNEL, as well as Radio Station WKAQ, is an Employer engaged in commerce within the meaning of the National Labor Relations Act, and (2) that both radio stations in question, by reason of the type of contract introduced in evidence by the terms of which they agree to provide package shows, are employers of the talent appearing on Colgate sponsored programs. Under these contracts the stations have specifically undertaken to discharge the obligations imposed upon Employers for the talent utilized. That they may have delegated or attempted to delegate some of their contractual responsibilities by oral agreement with program directors or producers does not change their basic responsibility as Employers under these contracts. We distinguish an arrangement such as these contracts create from the "leased-time" programs whose talent we excluded from the unit in *El Mundo Broadcasting Corp.*, 97 NLRB 1255. The contracts in evidence here do not provide for a radio show produced by the sponsor or "by a producer *for* the sponsor." Clearly they provide for shows produced by the radio stations themselves. We also find, on this record, that both radio stations employ, on additional programs not sponsored by Colgate, talent sought to be represented by the Petitioner.

There remains for consideration the Employer status, concerning the talent sought, of the other parties named. At the reopened hearing testimony for Colgate indicated two changes in its method of handling radio advertising in Puerto Rico: (1) That it had canceled its contract with the Astra agency in November 1953, and (2) that in that same month it had contracted directly with Rivera Alvarez to do live and recorded commercials for it. As to the latter change, although the arrangement for commercial announcements between Colgate and Rivera Alvarez would seem to be that of Employer and employee, it appears to be incidental to Rivera Alvarez' basic employment as agent of or supervisor for Radio Station WKAQ. We do not on the basis

of it find Colgate to be an Employer of any of the radio talent sought by the Petitioner.

Nor do we, on this record, find Publicidad Astra or The Gillette Co. to be employers of the radio talent here sought. The Petitioner made no contention to the contrary at the reopened hearing. The sum total of the testimony at both hearings indicates that The Gillette Co. sponsored a United States professional baseball rebroadcast in 1953 using a local announcer, but that no specific arrangements had been made to repeat the program in 1954. As to Astra, the record deals only with its Gillette client as outlined, and with its arrangement with Colgate that has been canceled.

Likewise, on this record, we do not find that Edmundo Rivera Alvarez is an Employer, within the meaning of the Act, of the radio talent here sought based upon the apparent delegation of hiring and directional authority to him by Radio Station WKAQ. Moreover, so far as this record indicates, Alvarez performs no functions in connection with other radio programs which in any way indicate he is an Employer within the meaning of the Act.

We shall dismiss the petition as to Colgate, Astra, Gillette, and Rivera Alvarez.

Accordingly we find that all employees of Radio Stations WKAQ and WNEL, respectively, working on radio programs, including those on Colgate-Palmolive Company sponsored programs in the San Juan, Puerto Rico, area, as follows: actors, actresses, scriptwriters, announcers, sound effects men, disk jockeys, directors, masters of ceremonies, narrators, commentators, controlmen, and recorders, but excluding all other employees, office clerical employees and executive, administrative, and professional employees, guards, watchmen, and supervisors as defined in the Act, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[The Board dismissed the petition as to Colgate-Palmolive Company, Publicidad Astra, The Gillette Co., and Edmundo Rivera Alvarez.]

[Text of Direction of Elections omitted from publication.]

PEIRCE & COMPANY *and* LOCAL 576, FURNITURE WORKERS, UPHOLSTERERS AND WOODWORKERS UNION, INDEPENDENT. *Case No. 21-CA-1525. October 22, 1954*

Decision and Order

Pursuant to a motion filed by the General Counsel on May 13, 1954, to which no objection was taken, Trial Examiner David F. Doyle, 110 NLRB No. 73.