

Arkansas Radio and Equipment Company, Owner and Operator of Radio Station KARK and KARK-TV and Radio and Television Engineers and Technicians, Local No. 1304, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner.
Case No. 32-RC-874. March 9, 1956

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph W. Bailey, 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 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. As the result of a Board-ordered election,¹ in November 1952, the Petitioner was certified² as the exclusive bargaining representative of all of the engineers and technicians employed at the Employer's Little Rock, Arkansas, radio station known as KARK. During contract negotiations the Employer refused inclusion in the contract unit of any television technician classifications because, at that time, the Employer was not licensed, nor did it possess the facilities for broadcasting television. On February 28, 1953, the parties entered into their current agreement which limits recognition of the Petitioner as bargaining representative of the radio engineers and technicians only. Thereafter, the Employer acquired the requisite television license and, having acquired facilities, commenced television broadcasting on April 15, 1954. Since that time, the Employer has continuously refused to recognize the Petitioner as the bargaining representative of the Employer's television engineers and technicians.

In this proceeding the Petitioner seeks an election and certification in a unit which includes not only the radio engineers and technicians, but also the television engineers and technicians who, as heretofore stated, are currently unrepresented. In support of its unit request, the Petitioner contends that both groups of employees possess similar

¹ Case No. 32-RC-558 (not reported in printed volumes of Board Decisions and Orders).

² The International Brotherhood of Electrical Workers, AFL, was first certified but, upon application made, the certification was amended to name the Petitioner, a local of the IBEW, as bargaining representative.

skills, perform related duties, and are subject to similar working conditions.³

Although the Employer does not contend that the single unit sought by the Petitioner is inappropriate, it opposes such unit, suggesting the appropriateness of two separate units: one composed of the existing unit of radio engineers and technicians; and the other composed of the television engineers and technicians. It also suggests that, in any event, the television engineers and technicians should be granted a self-determination election in which they can decide whether or not they desire to be represented by the Petitioner in the overall unit. For reasons hereinafter set forth, we agree with the Employer's contentions insofar as they relate to the holding of a self-determination election among the television engineers and technicians.

The record discloses that the Respondent's television studio and equipment and radio studio and equipment are located in adjoining rooms on the first floor of the Employer's combination studio and business office building. Each type of transmission is wired into the other so that simulcasts of television and radio can be made. On the other hand, the transmitters for each of the two types of broadcasting are separately located some miles from the studios and in opposite directions therefrom. However, most of the employees involved herein perform their duties in the studios. Currently, there are employed approximately 10 engineers and technicians in the television broadcasting department and 7 in the radio. It is clear, as testified by the Respondent's chief television engineer and assistant general manager, that the technical training and background of all of these employees are approximately the same and that on the one occasion that a radio engineer was transferred to television broadcasting, the transfer was effected without any loss of time by reason of need for additional training to enable the transferee to assume the duties required for television transmission. In addition thereto, all technicians and engineers enjoy the same benefits such as vacation and bonuses, when given. Also, they receive approximately the same hourly rate of pay, work the same workweek and shifts, and share all other working conditions. On the other hand, they are carried on separate payrolls, are separately supervised and are not interchanged except by way of permanent transfer. When the television broadcasting started, the television technicians were hired from the outside and since that time, as heretofore stated, only one transfer has been made. Nevertheless, in view of the common working conditions, wages, background and skills, and the general administrative integration of the Employer's operations, we find that the television technicians and engineers and the radio technicians and engineers may

³ As an alternative unit request, the Petitioner would accept a unit limited to television engineers and technicians. By reason of the Board's disposition of the unit issue herein, we find it unnecessary to dispose of this alternative unit request.

be grouped together in a single overall unit, which we find may be appropriate for the purposes of collective bargaining.⁴

Because the petitioner is currently the certified representative of the radio technicians and engineers, and because the Employer does not question the representative status of the Petitioner in that unit, we find that no question of representation exists with regard to the radio technicians' unit. Therefore, we deem it unnecessary to hold an election among the radio technicians and engineers and we hereby dismiss the petition insofar as it relates to them.⁵

However, because the television technicians and engineers have not been represented heretofore, it is well established that a separate election must be held among them to determine whether or not they desire to be included in the existing bargaining unit currently represented by the Petitioner.⁶ Accordingly, and as the Petitioner has made sufficient showing of interest among the employees sought to be added to its presently recognized unit, we shall direct an election in the following voting group: All engineers and technicians engaged in television broadcasting and transmission at the Employer's television transmitter and studio, Little Rock, Arkansas, excluding all other employees, guards, and supervisors as defined in the Act.

If a majority of the employees in the above voting group cast their ballots for the Petitioner, they will be taken to have indicated their desire to constitute a part of the existing unit currently represented by the Petitioner, and the Petitioner may bargain for such employees as part of that unit, and the Regional Director conducting the election herein is instructed to issue a certification of results of election to such effect. If a majority of them vote against the Petitioner, they will be taken to have indicated their desire to remain outside the existing unit and the Regional Director will issue a certification of results of the election to that effect.

There remains the issue as to whether the maintenance supervisor, the transmitter supervisor, and the studio supervisor should be excluded on the ground that they are supervisors within the meaning of the Act. The job of the maintenance supervisor is to maintain equipment at the studio, which work requires special training and

⁴ *A. H. Belo Corporation*, 101 NLRB 268.

⁵ *Montana-Dakota Utilities Co.*, 110 NLRB 1056, 1057.

⁶ *The Zia Company*, 108 NLRB 1134.

The Borg-Warner Corporation case, cited in the dissenting opinion, is not dispositive for the reason that there we found that the new group constituted an accretion to the existing unit and that therefore the *Zia* doctrine was not applicable; while here we find the group comprising television technicians not to be an accretion to the radio technicians' unit. In the *Belo* case, *supra*, where, unlike here, there was substantial interchange between the radio and television technicians, we held that the appropriate unit consisted of both groups. This does not mean, however, that in all cases separate units may not be appropriate. In any event, in the *Zia* case itself, the Board held that a group entitled to a self-determination election of the type herein directed need not necessarily constitute an appropriate bargaining unit.

is highly technical in nature because the equipment is extremely complicated. He does not have the authority to hire, discharge, promote, or effectively to recommend the same. Nor does he have the authority to transfer employees from one work assignment to another. However, he is endowed with such authority should an emergency arise in the maintenance of the equipment which would require such transfer. In addition, he usually has a helper for some 20 to 30 hours per week. Although he directs the work of his helper in the manner in which a skilled artisan would work with a less skilled worker, he has no authority over the helper beyond that. Accordingly, we conclude that the maintenance supervisor is not a supervisor within the meaning of the Act and we include him in the unit found appropriate. We also find that the transmitter supervisor has much the same type of responsibility as has the maintenance supervisor and approximately the same limited degree of authority. Accordingly, we also include him in the voting group.

However, the studio supervisor, although an equipment man also, is vested with certain authority which would indicate that he possesses supervisory status. Thus, he makes up the shift schedule, assigning the various technicians and engineers to their jobs and to their shifts. Although the schedule must be approved by the chief television engineer, such approval would seem to be merely routine. Moreover, although he does not possess the authority to discharge without approval, his recommendation with respect thereto would be effective, if not completely conclusive. He has, in the past, made a temporary transfer of an employee from one job assignment to another. Moreover, in the absence of the chief engineer, he may grant time off and generally directs the work of the employees in the studio. Accordingly, we conclude that the studio supervisor is a supervisor within the meaning of the Act and we therefore exclude him from the voting group.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK, dissenting:

Unlike the majority I do not believe the *Zia* principle is applicable to the facts of this case. Accordingly, I must dissent from the majority decision insofar as it directs an election limited to the television technicians and engineers instead of in the overall unit including also radio engineers and technicians sought by the Petitioner.

In the *Zia* case⁷ the Board established the principle that where an incumbent bargaining representative petitions for an election in a unit consisting of the established unit plus a fringe group of employees who were in existence when the unit was established but were excluded

⁷ *The Zia Company*, 108 NLRB 1134

from that unit, the Board would ballot the fringe employees separately before adding them to the basic appropriate unit. This is not that kind of a case, however, as the television technicians and engineers were not employed when the original unit was set up. In this case, after the original appropriate unit was established, the Employer expanded its broadcasting operations to include television as well as radio. It increased its employee complement by adding a number of new employees classified as television technicians and engineers. These new employees have substantially the same training and background as the technicians and engineers who constituted the original appropriate unit. Their wages, hours of employment, benefits, and other conditions of employment are the same as the other employees in the unit. The Employer's operations are administratively integrated. These factors support the conclusion that they appropriately belong in the established unit as an accretion to that unit.

Though my colleagues find that the television technicians and engineers do not constitute an accretion, they apparently concede that these employees do not constitute a separate appropriate unit, as indeed they must. For it is quite obvious that the television operations do not constitute a new department or a new plant.⁸ Herein lies the **error in the direction of a self-determination election** for these employees. Such elections are commonly directed by the Board where an employer has expanded its operations, only where the expansion is the result of the establishment of a new plant or a new department, the employees of which may constitute either a separate appropriate unit, or appropriately be included in an existing unit. Where the expansion in an employer's operations is the result merely of an extension of the operations of an existing department, as here, the employees constitute an accretion to the existing unit.⁹ As an accretion they automatically fall within the scope of the historical unit and are not entitled to a self-determination election.¹⁰ Indeed by affording these employees a self-determination election, the majority is acting in direct contradiction to the Board's decision in the *Borg-Warner* case wherein the Board, in overruling a Trial Examiner's contrary conclusion, explicitly stated that the *Zia* principle did not apply to situations involving accretions to an established unit. In accordance with the *Borg-Warner* decision, the Employer and the Petitioner could

⁸ *Hawthorne-Melody Farms Dairy of Wisconsin, Inc.*, 99 NLRB 212.

⁹ *Borg-Warner Corporation*, 113 NLRB 152, *Saco-Louell Shops*, 107 NLRB 590. The mere fact that there has not been substantial interchange of employees between the radio and television broadcasting operations does not negate the conclusion that the television technicians and engineers constitute an accretion to the existing unit. The integration of the Employer's operations, the similarity in the wages, hours, and working conditions, the similarity in the training and background of the employees, and the fact that the permanent transfer of a radio engineer to television broadcasting was effected without any loss of time or efficiency prove the interchangeability of the employees. See *Hawthorne-Melody Farms Dairy of Wisconsin, Inc.* *supra*.

¹⁰ *Borg-Warner Corporation*, 113 NLRB 152

have voluntarily included the television technicians and engineers in the existing unit even in the face of an opposing claim of representation, because no one could successfully question the appropriateness of the unit resulting from such action. As such overall unit is clearly appropriate, and as the Employer refuses to recognize the Petitioner as the representative of such unit despite Petitioner's claim of majority representation, Petitioner is clearly entitled to an election in the expanded unit and, if it wins, a certification as the exclusive bargaining representative of the employees in that unit. This the majority's action does not guarantee.

Accordingly, for the reasons stated above, I would not apply the *Zia* principle herein, but would direct an election in the expanded unit which I find to be appropriate.

Paramount Cap Manufacturing Company and United Hatters, Cap & Millinery Workers International Union, AFL-CIO, Petitioner. Case No. 14-RC-2805. March 9, 1956

SUPPLEMENTAL DECISION AND ORDER

On August 26, 1955, the Board issued its Decision and Direction of Election herein,¹ pursuant to which an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Fourteenth Region among the employees in the unit found appropriate. Following the election, the parties were furnished a tally of ballots. The tally shows that of the approximately 126 eligible voters, 123 cast ballots; of these, 27 were for the Petitioner,² 83 were against the Petitioner, and 13 ballots were challenged. The challenged ballots are not sufficient to affect the results of the election.

On September 28, 1955, the Petitioner filed timely objections to conduct affecting the results of the election. In accordance with the Board's Rules and Regulations, the Regional Director caused an investigation to be made of the issues raised by the objections, and on November 2, 1955, issued and duly served upon the parties a report on objections. In his report, the Regional Director found that there was a direct credibility conflict between statements by employees and statements by the Employer's vice president and general manager as to alleged acts of the Employer, which he found raised substantial and material issues with respect to the conduct of the election; and the Regional Director therefore recommended that the conflicting statements be resolved by taking sworn testimony at a hearing. These

¹ Not reported in printed volumes of Board Decisions and Orders

² The AFL-CIO having merged since the hearing in this case, we are amending the identification of the Petitioner's affiliation as indicated in the caption