

tion against him. It appearing that Gaulke's employment would have ended at a later undetermined date for nondiscriminatory reasons, reinstatement will not be recommended. Said loss of pay, based upon earnings which Gaulke normally would have earned from the date of the discrimination against him, June 9, 1955, to the date his employment would otherwise have terminated, less net earnings, shall be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. See *N. L. R. B. v. Seven-Up Bottling Co.*, 344 U. S. 344.

Having found that the contracts between Respondents contain unlawful union-security provisions, and there being no violations of Section 8 (a) (2) alleged in this proceeding, it will only be recommended that Respondents be ordered to cease giving effect to the unlawful union-security provisions of the contract or to any other provisions which impose a degree of union security in excess of that permitted under the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Mountain Pacific, Seattle, and Tacoma Chapters of the Associated General Contractors of America, Inc., and Joe A. Jussel, are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Local No. 276, International Hodcarriers, Building and Common Laborers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By maintaining and enforcing a contract containing unlawful union-security provisions, thereby encouraging membership in Respondent Union, Respondent Associations and Jussel have engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By discriminating in regard to the hire and tenure of employment of Roy H. Gaulke, thereby encouraging membership in a labor organization, Respondent Associations and Respondent Jussel have engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

5. By the foregoing conduct, Respondent Associations and Respondent Jussel have interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. By causing an employer to discriminate against Roy Gaulke in violation of Section 8 (a) (3) of the Act, and by maintaining a contract containing unlawful union-security provisions, Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

7. By the foregoing conduct, Respondent Union has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

The Evening Star Broadcasting Company, Petitioner and National Association of Broadcast Employees & Technicians, AFL-CIO¹ and American Federation of Television and Radio Artists, AFL-CIO.² Case No. 5-RM-345. April 23, 1957

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William C. Humphrey, hear-

¹ Herein called NABET.

² Herein called AFTRA.

ing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

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 organizations involved claim to represent employees of the Employer.
3. No 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, for the following reasons:

Following a consent election in 1953, NABET was certified as the representative of the Employer's newsroom employees. Subsequently, NABET requested that the Employer bargain with respect to employee Malkie, who was not an employee of the Employer at the time of the 1953 certification. The Employer declined and filed the instant petition alleging, *inter alia*, that a question concerning representation existed with respect to its newsroom employees. At the hearing NABET contended that Malkie should be considered as an accretion or extension of its existing unit, and that if any election is directed, it should be held in a single unit including both Malkie and the newsroom employees. The Employer and AFTRA take the position that Malkie is not an accretion and, moreover, cannot properly be included in such unit. As an alternative, the Employer requests that a self-determination election be held for Malkie alone if it is decided that he could properly be included in the existing newsroom unit. It was made clear at the hearing that no party either seeks an election in the basic newsroom unit or questions NABET's representative status with respect to employees in such unit.

The employees in the basic unit work in the newsroom and write and rewrite news for use on radio and television. Only in an emergency do they work outside the newsroom gathering news. They seldom do any broadcasting. All of them have the same immediate supervision and work regular shifts so arranged that at least one is on duty at all times between 6 a. m. and 11 p. m. Malkie, on the other hand, works mostly on his own as a roving reporter. He is equipped with a station wagon, two-way telephone, camera, and tape recording machine in order to do on-the-spot reporting of events happening in the Washington, D. C., area. He spends little time in the newsroom; he is not under the same supervision as the employees who regularly

work there; and he has no regular hours, his time on the job being dictated apparently in large part by the occurrence of the events he covers. Malkie also broadcasts regularly for 5 minutes each weekday and for 15 minutes on Saturday, and the material he uses on his programs is primarily what he himself has gathered. Thus, it is clear that such work as Malkie may do in the newsroom is merely incidental to his principal duties as an outside roving reporter and broadcaster. Consequently, we find that there is not such community of interest between Malkie and the newsroom employees as would warrant his inclusion in the established unit.³ In view of the foregoing and as no question concerning representation exists with respect to the representative status of NABET in the established newsroom unit, we shall dismiss the petition.⁴

[The Board dismissed the petition.]

³ *South Bend Broadcasting Corp*, 116 NLRB 1166, *Westinghouse Radio Stations, Inc.*, 107 NLRB 1407, 1410

⁴ Following the close of the hearing, the Employer sent a letter to both the Board and parties relating certain alleged bargaining demands presented to it by NABET and AFTRA with respect to Malkie and Commentator McCaffrey, and apparently requests the Board also to make a unit determination with respect to McCaffrey. As it does not appear from this record that NABET has made a demand that McCaffrey be included in its existing unit and as McCaffrey's status was not fully litigated at the hearing, we shall not pass upon his unit placement in this proceeding. Moreover, it appears from such evidence as is in the record that McCaffrey's newsroom work is at most incidental to his principal duties as a commentator

The Great Atlantic and Pacific Tea Company and Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, Petitioner

The Great Atlantic and Pacific Tea Company and Retail Clerks International Association, AFL-CIO, Petitioner. *Cases Nos. 11-RC-929 and 11-RC-932. April 23, 1957*

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Lewis Wolberg, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Members Murdock, Rodgers, and Bean].

Upon the entire record in these cases, the Board finds:

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