

discharge of Henry Hayes as herein found, the Respondent has discouraged membership in a labor organization and thereby by such discrimination and by interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, as hereinabove found, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act, and 8(a)(1) thereof

6 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]

Alliance of Television Film Producers, Inc.; Desilu Productions; McCadden Corporation; Lindsley Parsons Productions, Inc.; Ziv Television Programs, Inc., Hal Roach Studios; Marterto Productions, Inc.; Flying A Productions, Inc.; Mark VII, Music;¹ and Revue Productions, Inc. and Musicians Guild of America, Inc., Petitioner. *Cases Nos 21-RC-5513, 21-RC-5511, 21-RC-5514, 21-RC-5515, 21-RC-5516, 21-RC-5517, 21-RC-5518, 21-RC-5519, 21-RC-5520, and 21-RC-5512 January 8, 1960*

DECISION, ORDER, AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, hearings were held before William R Magruder, hearing officer.² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed

Upon the entire record in these cases, the Board finds

1 The Employers are engaged in commerce within the meaning of the Act

2. The labor organizations involved claim to represent certain employees of the Employer³

3 The Intervenor contends that no questions concerning representation exist herein because the musicians sought by Petitioner are not a sufficiently identifiable group who enjoy stability in employment. For reasons given in *Cavendish Record Manufacturing Company*,⁴ we find no merit in this contention

Except as indicated below, we find questions affecting commerce exist 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

¹ The name of the Employer in this case appears as amended at the hearing

² A consolidated hearing was held on all the cases except Revue Productions Inc., Case No 21-RC-5513. The latter case is consolidated with the others for decisional purposes

³ American Federation of Musicians of the United States and Canada, AFL-CIO, intervened in these cases on the basis of contractual interests. Its request for oral argument is denied as the record and briefs adequately present the issues and positions of the parties

⁴ 124 NLRB 1161. See also *Independent Motion Picture Producers Association, Inc.*, 123 NLRB 1942

4. In Case No. 21-RC-5513, the Petitioner seeks a unit of musicians employed by members of Alliance of Television Film Producers, Inc., herein called Alliance, who are engaged in the production of television films in Los Angeles County, California.⁵ By its other petitions herein, the Petitioner expresses a willingness to represent in separate units the employees of certain Alliance members. The Intervenor, which represented separate units of musicians employed by various Alliance members between 1954 and early 1959,⁶ contends that an Alliance-wide unit is inappropriate and seeks dismissal of the petition therefor; it does not request the holding of any election or elections in these cases. The Alliance, which has represented employees of its members other than musicians on a multiemployer basis, does not oppose the Petitioner's primary request for an Alliance-wide unit. At a meeting held in February 1959, Alliance members expressed a desire for representation of their musicians on such a basis. Only Ziv Television Programs, Inc., and Revue Productions, Inc., herein called Ziv and Revue, respectively, have expressly disclaimed desire for representation of their musicians as part of a multiemployer unit. Mark VII Music has a contract with the Intervenor executed on October 6, 1958, which constitutes a bar to any election among its employees as requested by the petitions filed on November 14, 1958.⁷

Under the circumstances detailed above, and upon the entire record, including the Petitioner's request for an Alliance-wide unit, the action taken by Alliance members in February 1959 favoring an Alliance-wide unit, the absence of any objection by Alliance members, except

⁵ Members of the Alliance, as used herein, include companies affiliated with, or subsidiaries of, formally enrolled members, who pay dues, or for whom dues are paid by enrolled members, and who are entitled to the services, bargaining services included, of the Alliance as if they were formally enrolled members. As disclosed by the record, the Alliance members involved in these cases, accounting for changes which have taken place since filing of petitions, are as follows (the affiliated and subsidiary companies appear in parentheses): Desilu Productions, Inc.; Revue Productions, Inc.; Mark VII, Ltd. (Mark VII Music); McCadden Productions, Inc. (Banda Productions, Inc., LHM Productions, Maple Productions, Airborne Productions, and Lormac); Marterto Enterprises, Inc.; Lindsley Parsons Productions, Inc.; Ziv Television Programs, Inc.; Hal Roach Studios; Flying A Productions, Inc. (Flying A Pictures, Inc., Champion Enterprises, Inc.); Jack Chertok Television, Inc.; Robert Maxwell Associates, Inc.; Overland Production, Inc.; Wyatt Earp Enterprises, Inc.; Brennan-Westgate Productions; Superman, Incorporated; Filmaster Productions, Inc.; Four Star Films, Inc.; Gallu Productions, Inc.; Gross-Krasne, Inc. (California Studios); The Jack Wrather Organization (Independent Television Corporation, Lone Ranger, Inc., Sgt. Preston of the Yukon, and Lassie Programs, Inc.).

⁶ Inasmuch as the Intervenor's contracts covering such employees contained union-security clauses of virtually the same type as in *Cavendish Record Manufacturing Company, supra*, this bargaining history is, as there, not entitled to weight in our unit determinations herein.

⁷ In so holding, we reject Petitioner's contention that Mark VII Music's contract is no bar because it is a premature extension of the contract which the Intervenor and Mark VII, Ltd., the parent company of Mark VII Music, executed in May 1956. The parties to the 1956 and 1958 contracts are not the same. But even assuming *arguendo* that both contracts were between identical parties, covering the same unit of employees, and that the 1958 contract was an extension of the 1956 contract, the Board's premature extension rule would not be applicable for the 1956 contract had run for more than 2 years when the 1958 contract was executed. Moreover, the 1956 contract, but not the 1958 contract, is one of those referred to in footnote 6 with an illegal union-security clause. See *Deluxe Metal Furniture Company*, 121 NLRB 995.

as indicated above, to the multiemployer unit sought by Petitioner, and the absence of any request by the Intervenor for elections in single-employer units, we find that the following employees of members of the Alliance, except for Ziv, Revue, and Mark VII Music, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁸ All musicians regularly employed in the production of television films, including conductors, arrangers, orchestrators, copyists, proofreaders, librarians, recording instrumentalists, sideline musicians, and rehearsal musicians, but excluding composers and supervisors as defined in the Act.⁹

As noted above, a separate petition for Revue's musicians has been filed by the Petitioner. Under all the circumstances, we find that a unit confined to Revue's musicians is appropriate and, in Case No. 21-RC-5512, we shall direct an election among the following employees of Revue: All musicians regularly employed in the production of television films, including conductors, arrangers, orchestrators, copyists, proofreaders, librarians, recording instrumentalists, sideline musicians, and rehearsal musicians, but excluding composers and supervisors as defined in the Act.

A separate petition has also been filed by the Petitioner for Ziv's musicians. However, Ziv has not employed musicians since about June 1955 and the record indicates that it has no present intention of hiring musicians. In view thereof, we shall dismiss the petition in Case No. 21-RC-5516.

5. The Petitioner proposes a voting eligibility formula of 5 days' work since January 1, 1958, in any single-employer unit held appropriate or 10 days' work during the past year if a multiemployer unit is found appropriate. The Intervenor urges that eligibility in any election directed be based on a single day's work.

We have considered all of the facts and circumstances of these cases, including the irregular nature of the musicians' employment in the television film industry and the peculiar characteristics of this industry, and find that all musicians who have been employed in either of the appropriate units herein for 2 or more days during the year preceding the date of this Decision, Order, and Direction of Elections have a sufficient interest to entitle them to vote in such unit or units.¹⁰

[The Board dismissed the petitions in Cases Nos. 21-RC-5511, 21-RC-5514, 21-RC-5515, 21-RC-5516, 21-RC-5517, 21-RC-5518, 21-

⁸ See *Western Association of Engineers, Architects, and Surveyors*, 101 NLRB 64; *Calumet Contractors Association*, 121 NLRB 80. Chairman Leedom does not join in this finding. He believes that the facts warrant a finding that each Alliance member's musicians constitute an appropriate unit. Accordingly he concurs on unit findings only to the extent that it finds appropriate a unit of Revue's employees. While he joins in the dismissal of the petition involving Ziv's employees, he does so because the dismissal is based on grounds other than unit

⁹ The internal composition of this unit requested by the Petitioner is not challenged by the parties.

¹⁰ Cf. *Oavendish Record Manufacturing Company*, *supra*.

RC-5519, and 21-RC-5520, and the petition in Case No. 21-RC-5513 with respect to Ziv Television Programs, Inc., Mark VII Music, and Revue Productions, Inc.]

[Text of Direction of Elections omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision, Order, and Direction of Elections.

Lumber and Sawmill Workers Local Union 2409; Angus L. Brisbin, its President; Montana District Council, Lumber & Sawmill Workers Unions; Robert C. Weller, Business Representative and Executive Secretary and Great Northern Railway Company. Case No. 19-CC-109. January 8, 1960

SUPPLEMENTAL DECISION AND ORDER

On February 13, 1959, the Board issued its Decision and Order¹ herein, sustaining the Trial Examiner's dismissal of the complaint. On November 23, 1959, the United States Court of Appeals for the Ninth Circuit reversed the Decision and Order of the Board and remanded the case to the Board for action consistent with the court's opinion.²

In its original Decision, the Board had adopted the Trial Examiner's finding that the Respondents' picketing of the spur track and premises of the Great Northern Railway Company at or near Roberts Street in Helena, Montana, was not primary but secondary action. However, the Board affirmed the dismissal of the complaint on the ground that the railroad was not an "employer" and its employees were not "employees" within the meaning of Section 8(b)(4)(A) of the Act. The court held to the contrary on this point and remanded the case to the Board.

In conformance with the decision of the United States Court of Appeals for the Ninth Circuit,³ the Board now finds that by the picketing herein the Respondents induced and encouraged the employees of

¹ 122 NLRB 1403.

² *Great Northern Railway Company v. N.L.R.B.*, November 23, 1959 (C.A. 9), 45 LRM 2206.

³ In accepting the court's remand in this case, Chairman Leedom and Members Bean and Fanning, with due respect for the opinion of that court, do not adopt its view that Section 8(b)(4)(A) prior to November 4, 1959, included railroads as "employers" within the meaning of that section of the Act. Since that date, however, the Labor-Management Reporting and Disclosure Act of 1959 has amended Section 8(b)(4)(A) to proscribe secondary boycotts directed at railroads and their employees. The issue is, therefore, prospectively without significance. For the reasons set forth in his dissenting opinion in *Seafarers' International Union of North America, Atlantic & Gulf District, AFL-CIO (American Coal Shipping, Inc)*, 124 NLRB 1079, Member Jenkins believes that the circuit court gave a correct interpretation to the Act as it read before the 1959 amendments.