

El Mundo, Inc. (WKAQ-TV Telemundo), and El Mundo Broadcasting Corp. (WKAQ Radio El Mundo) and Asociacion Puertorriquena de Artistas, Ind., Petitioner. *Case No. 24-RC-1134. May 2, 1960*

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 Juan R. Torruella, 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 this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

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. El Mundo Broadcasting Corporation, a Puerto Rico corporation, owns and operates a radio station known as WKAQ Radio El Mundo, herein called WKAQ. El Mundo, Inc., a Puerto Rico corporation, owns and operates a newspaper, not here in issue, and a television station known as WKAQ-TV Telemundo, herein called WKAQ-TV. WKAQ and WKAQ-TV are situated in San Juan, Puerto Rico.

WKAQ and WKAQ-TV are under separate managers, who retain the right separately to hire and discharge their personnel. Each station has separate payrolls and separately hired technical staffs. The training requirements for talent and technical staffs of each are different, as are their salary rates. On the other hand, WKAQ and WKAQ-TV are owned by a single stockholder, who retains control of the labor relations of both firms and who is the chairman of the board of directors and the president of both firms which, with one exception, have the same directors and officers. The studios of each are only 2 miles apart. Payrolls for both firms are processed at El Mundo, Inc. Exclusive contracts for the WKAQ-TV talent provide that such talent, when not needed by WKAQ-TV, shall also assist in WKAQ productions as needed. Thus, many members of the WKAQ-TV talent staff also work for WKAQ.

In these circumstances, including the common ownerships, interlocking officers, and the evidence of centralized control, we find that

WKAQ and WKAQ-TV constitute a single employer for the purposes of the Act.¹ Accordingly, we further find that the requested overall unit is appropriate for the purposes of collective bargaining.²

We turn now to the composition of the unit. The Petitioner would include all performing and nonperforming employees in the unit herein sought.³ The unit sought is essentially a unit of program and engineering department employees. The Employer takes no clear position as to the composition of the unit, but does not positively oppose the unit sought. Under these circumstances, and in accord with Board custom, we find a unit of these employees appropriate.⁴

Actors and actresses: WKAQ and WKAQ-TV present the following types of programs:

1. Programs produced by the stations, as sustaining or "participating" programs, or as so-called package programs for sponsors, where the stations provide the time, facilities, and talent. In such cases the stations hire the talent, place them on their payrolls, and make the usual tax and social security deductions from their pay. The parties agree that in regard to such programs the actors and actresses are employees of the stations.

2. Various other package programs where the stations provide the time and facilities, but where the talent is secured by the stations from production agencies and loaned to sponsors or other producers, or is secured directly by sponsors or producers. In such cases the sponsors, agents, or producers pay and control the actors and actresses.

As to the type 1 program, we find that the production and broadcasting thereof constitute an integral part of the stations' own broadcasting business, and that the stations have an employment interest in the talent in such instances. On the other hand, with regard to the type 2 program, we find that the stations do not have an employment interest in such talent, and the latter are excluded from the unit.⁵

Dancers, comedians, jugglers, magicians, ventriloquists, and disc jockeys: WKAQ and WKAQ-TV deny that they employ individuals as dancers, comedians, jugglers, magicians, ventriloquists, and disc jockeys, and the record supports their contention. Accordingly, we shall make no unit determination as to the placement of these categories at this time.

¹ *Musgrave Manufacturing Company and Mast-Foos Manufacturing Company, Inc.*, 124 NLRB 258

² *Florida Broadcasting Co. (WMBR-AM, WMBR-FM and WMBR-TV)*, 93 NLRB 1568; see *A. H. Belo Corporation*, 101 NLRB 268.

³ Alternatively, the Petitioner seeks separate units of radio and TV performers and nonperformers, or a unit of radio and TV performers, a unit of TV nonperformers, and a unit of radio nonperformers.

⁴ *Radio and Television Station WFLA (The Tribune Company)*, 120 NLRB 903; *Southern Radio and Television Equipment Company, Television Station WTVJ*, 107 NLRB 216.

⁵ *El Mundo Broadcasting Corp.*, 97 NLRB 1255.

Musicians and vocalists: The Petitioner would include certain performers hired by WKAQ if the Board finds that they are vocalists rather than musicians. As it does not appear that these performers are already represented and as the Petitioner offers no cogent reason for not including them, we include them, however denominated.

Dubbing department employees: The Petitioner would include the dubbing department employees in the unit; WKAQ and WKAQ-TV would apparently exclude them. The dubbing department includes actors and technicians engaged in producing sound tracks in Spanish which are substituted for English language sound tracks on films presented by WKAQ-TV. They perform no dubbing for WKAQ. The dubbing department is located in the building which houses El Mundo, Inc., and is adjacent to the WKAQ operations. Dubbing department employees are separately supervised and are not interchangeable in their functions with other WKAQ or WKAQ-TV employees. However, several of them also work for both stations in other capacities. Under these circumstances, as their work is closely related to the WKAQ-TV productions, and as their separate representation is not sought, we find that they possess a sufficient community of interest with other employees in the unit to warrant their inclusion therein.

Translators: WKAQ-TV has 10 to 14 translators, whom it trains and who work for it on a continuous basis. However, these translators do not receive a salary but are paid on the basis of a fixed fee per picture, plus a bonus for performing their work within a shorter time than scheduled. Nor does WKAQ-TV withhold taxes or deduct social security from the moneys paid to these individuals who consider themselves as self-employed and perform their work at their homes entirely without direction from station personnel. In these circumstances, we find that the translators are independent contractors and exclude them from the unit.⁶

Transmitter operators: The Petitioner would include the transmitter operators. The Employer appears to raise an issue as to the status of transmitter operators as professional employees, but offers no evidence in support of that position. The record merely shows that the transmitter operators, as holders of first-class FCC operators' licenses, perform the usual duties of their calling. As the record contains nothing, other than the Employer's contention, to indicate that the transmitter operators are professional employees as defined in the Act, we shall include them.⁷

Program or TV directors and technical directors: We exclude the program or TV directors and technical directors from the unit as

⁶ *Twentieth Century-Fox Film Corp*, 89 NLRB 109, at 112, footnote 5.

⁷ See *Southern Radio and Television Equipment Company, Television Station WTVJ*, *supra*.

supervisors, as uncontroverted evidence shows that they can effectively recommend the hire or discharge of employees.

Accordingly, we find that all performing and nonperforming employees (comprising in effect a program and engineering department) of stations WKAQ and WKAQ-TV in San Juan, Puerto Rico, including talent employees working on sustaining or package programs produced by the Employer, and dubbing department employees, but excluding talent employees appearing exclusively on programs by an outside sponsor, agency, or producer, and further excluding executive, administrative, and professional personnel, office clerical employees, announcers, script writers, control technicians,⁸ guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collectively bargaining under Section 9(b) of the Act.

5. The parties agree that all talent employees who hold exclusive contracts with WKAQ and WKAQ-TV are eligible for inclusion in the unit herein found appropriate as employees of those stations. The Petitioner would also include all talent employees who work more than 6 hours a year for these stations. In accord with our rule earlier established in such cases, we shall adopt a 2-day eligibility requirement in the instant case. All employees within the appropriate unit shall be eligible to vote who have had 2 or more days of employment during the 12 months immediately preceding the date of this Decision and Direction of Election.⁹

[Text of Direction of Election omitted from publication.]

⁸ These announcers, scriptwriters, and control technicians, employed by WKAQ-Radio El Mundo, are currently represented by a labor organization other than the Petitioner.

⁹ *Colgate Palmolive Peet Co.*, 96 NLRB 311, *Cavendish Record Manufacturing Company, et al.*, 124 NLRB 1161.

International Hod Carriers, Building and Common Laborers' Union of America, Local No. 1140, AFL-CIO and Gilmore Construction Company. *Case No. 17-CC-111. May 4, 1960*

DECISION AND ORDER

Upon charges filed on November 24, 1959, and December 2, 1959, by Gilmore Construction Company, herein called Gilmore, the General Counsel for the National Labor Relations Board, herein respectively called the General Counsel and the Board, by the Regional Director for the Seventeenth Region, issued a complaint dated December 8, 1959, against International Hod Carriers, Building and Common Laborers' Union of America, Local No. 1140, AFL-CIO, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within