

5. International Brotherhood of Electrical Workers, Local 712, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

6. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 115, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

7. The Respondents have not engaged in unfair labor practices in violation of Section 8(b) (4) (ii) (B) of the Act.

[The Board dismissed the complaint.]

MEMBER RODGERS dissenting:

As I noted in my opinion in *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Milk Drivers and Dairy Employees Local 537 (Lohman Sales Company)*, 132 NLRB 901, and *Electrical Workers Local Union No. 73 (Northwestern Construction of Washington, Inc.)*, 134 NLRB 498, the so-called publicity proviso to Section 8(b) (4) is applicable only if the primary employer, with whom the union has a dispute, produces a product or products which are distributed by another employer. One primary employer here, Industrial, is an electrical contractor. The other, Gallo, is a refrigeration installation and maintenance contractor. Neither *produces* anything. Each merely provides services, and certainly by no stretch of anyone's imagination can it be said that there is *distribution* by another employer of the results of their labors. Accordingly, I would find the proviso inapplicable here, and would hold that by handbilling Loccisano, the Respondent violated Section 8(b) (4) (ii) (B) of the Act.

---

**Booth Broadcasting Company and Oral F. Osman a/k/a Bob Fields,<sup>1</sup> Petitioner**

**Booth Broadcasting Company and National Association of Broadcast Employees and Technicians, AFL-CIO, Petitioner.**  
*Cases Nos. 7-RD-363 and 7-RC-4875. November 28, 1961*

## DECISION AND DIRECTION OF ELECTIONS

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

---

<sup>1</sup>The Petitioner's name appears as amended at the hearing.

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 [Members Rodgers, Leedom, and Fanning].

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 certain employees of the Employer.<sup>2</sup>
3. 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.
4. The Booth Broadcasting Company, a Michigan corporation, is engaged in the operation of radio stations located at Detroit, Flint, Saginaw, and Jackson, Michigan; at South Bend and Kokomo, Indiana; and at Toledo, Ohio. Only Radio Stations WJLB-AM and WMZK-FM at Detroit, Michigan, are involved herein.

In Case No. 7-RC-4875, the Petitioner, National Association of Broadcast Employees and Technicians, AFL-CIO (hereinafter referred to as NABET), seeks an election in a unit described in the petition as "all technical employees excluding sales, clerical, guards and supervisors as defined in the Act." Although NABET had requested in its petition a unit including all technical employees but excluding on-the-air personnel, it stated at the hearing that it would also accept a unit including on-the-air personnel if the Board so determined.

The Employer contends that technicians and on-the-air personnel should not be combined in the same unit. The American Federation of Television and Radio Artists (hereinafter referred to as AFTRA), Intervenor, which presently represents the Employer's announcers, took the position that it would like to appear on the ballot jointly with NABET if such a unit was determined to be appropriate by the Board.

Case No. 7-RD-363 involves a decertification petition filed by Bob Fields (legal name: Oral Osman), presently a staff announcer at Radio Station WJLB, to decertify AFTRA as the collective-bargaining agent for a unit described as "staff announcers, excluding office clerical employees, guards, supervisors as defined in the Act and all other employees." AFTRA has been the bargaining representative for announcers since 1942, and the last contract between the Employer and AFTRA expired on October 31, 1960. The Petitioner contends that the recognized collective-bargaining unit represented by AFTRA, and described in the last collective-bargaining agreement as "all an-

<sup>2</sup> National Association of Broadcast Employees and Technicians, AFL-CIO, intervened in Case No. 7-RD-363 on the basis of a showing of interest. American Federation of Television and Radio Artists, AFL-CIO, intervened in both Cases Nos. 7-RD-363 and 7-RC-4875 on the basis of a contractual interest in the employees involved in Case No. 7-RD-363.

nouncers including staff and free lance," includes English-speaking personalities but excludes foreign language special personalities. The Employer contends that the duties and special relationship to the station enjoyed by both the English-speaking and foreign language personalities make them independent contractors and, therefore, excluded from the unit as a matter of law<sup>3</sup> and Board policy. However, the Employer states that it would not object to permitting the English-speaking personalities to vote. AFTRA takes the position that originally the unit consisted of staff announcers and English-speaking personalities but excluded foreign language personalities; but that subsequent negotiations<sup>4</sup> between the Union and the Employer resulted in their inclusion in the unit. AFTRA maintains that it has represented all performers appearing before the microphone whether they be classified as staff announcers, special personalities, or free-lance announcers. AFTRA further maintains that certain individuals are economic strikers and, therefore, eligible to vote in a decertification election.

Case No. 7-RC-4875

*Radio engineers and technicians:* On October 31, 1960, the station introduced an automated broadcast system. The system is such that an entire day's broadcasting is almost entirely automatic and pre-recorded. At present there are six full-time radio engineer-technicians employed by the Employer, including the chief engineer, Elwood Ryan. The parties are in agreement that Ryan is a supervisor as defined in Section 2(11) of the Act, and therefore, we shall exclude him from the unit. NABET contends that one of the five remaining engineers, Paul Wolfcale, should be excluded as a supervisor within the meaning of the Act. The record reveals that Wolfcale's function was that of a technician engaged primarily in the installation and maintenance of the automation machinery, that he now does work substantially like that of other engineers. He does not hire or fire employees, does not discipline other employees, and has no one working under him. Furthermore, he is directly under the supervision of Edward Clark, the Employer's vice president, and director of the automation installation. There is no probative evidence in the record to show that any responsible official of the Company has ever, at any time, held Wolfcale out to be employed in a supervisory capacity.<sup>5</sup> There-

<sup>3</sup> A bargaining unit may include only individuals who are "employees" within the meaning of Section 2(3) of the Act.

<sup>4</sup> In 1948 the language of the collective-bargaining agreement was altered by the deletion of the term "but not including foreign language announcers." The same language was carried forward for 12 years up to and including the contract which terminated October 31, 1960. AFTRA contends that this indicates that they are now included in the unit.

<sup>5</sup> NABET relied primarily on testimony of a telephone conversation in which Wolfcale allegedly stated that he was an automation engineering supervisor. There was no indication that this came from anyone representing the Company, however, and Wolfcale's own assertion cannot serve to establish Wolfcale's status as a supervisor.

fore, we find that Paul Wolfole is not a supervisor within the meaning of the Act and we shall include him in the unit.

On those occasions when the station is broadcasting from a remote location, it may be necessary to engage additional technicians for these special situations. As a source for such emergency help, the Employer maintains a list of technicians who are called in at irregular intervals, sometimes not for 6 months at a time, to work at a single remote broadcast. Only one such employee, Don Oswald, reports with any regularity. He works 8 hours a day every Saturday for the station as a technician, and has been so employed for over 3 months. The record reveals that he performs the same type of work, at least on Saturdays, as do the full-time engineers and technicians. All of these part-time employees, including Oswald, maintain full-time positions elsewhere. The Employer takes the position that Oswald is a regular part-time employee and, therefore, an eligible voter; but that the remainder of these employees are irregular part-time or casual employees. NABET contends that the Board should exclude all of these employees from the unit in that they do not have a substantial interest with the other technical employees at Station WJLB. The record is clear that Oswald is regularly employed part-time on a 1-day per week schedule, and has a reasonable expectancy of continued employment on this basis. Therefore, in accordance with the Board's usual policy,<sup>6</sup> we shall include Don Oswald in the unit. We find that the remaining part-time technicians are casual employees, and exclude them from the unit.<sup>7</sup>

*Announcers:* Prior to October 31, 1960, the staff announcers were called upon to perform the tasks of operating tape recording machines and turntables, cueing records, switching microphones for special personality performances, and telemetering. The telemetering duties involved recording the reading of meters and gauges. After the initiation of the automation system, the functions of operating turntables and recording machines and switching microphones were transferred to the technicians. The telemetering function remained with the announcers until recently, when that was also transferred to the technicians. However, because of the incomplete application of the automation machinery, announcers may be still called upon in the future to perform certain switching operations involved in remote broadcasts.

Normally, announcers are excluded from bargaining units of radio technicians, even though they operate certain equipment as incidental to their announcing functions.<sup>8</sup> In the instant case, the staff announcers are hired on the basis of their voice quality, previous radio experience, educational background, and general adaptability to the

<sup>6</sup> *Cornhusker Television Corporation*, 117 NLRB 1065, 1066-1067.

<sup>7</sup> *Rollo Transit Corporation, et al.*, 110 NLRB 1623, footnote 8

<sup>8</sup> *Radio Station KHQ and KHQ-TV*, 111 NLRB 874; *Florida Broadcasting Co. (WBMF-AM, WBMF-FM and WBMF-TV)*, 93 NLRB 1568.

requirements of the position. They are separately supervised by the program director. The technical work performed by the announcers does not require technical knowledge or training, as does that of the engineer-technicians, and the technical duties they perform are only incidental to their principal function of announcing, for which they are specially qualified. None of the staff announcers holds a technician's license from the Federal Communications Commission nor are they at any time subject to the supervision of the chief engineer who is responsible for the maintenance of the radio equipment. The record clearly establishes that the principal job of the staff announcers is announcing. Under these circumstances, and in accordance with the previous Board decisions,<sup>9</sup> we shall not include the announcers, or any other "on-the-air" personnel, in the same unit with the engineer-technicians.

Therefore, we find appropriate a unit of all regular technical employees, excluding sales, clerical, and on-the-air personnel, guards, and supervisors as defined in the Act.

#### Case No. 7-RD-363

The parties disagree as to which of the four classes of persons who appear on the air at WJLB-AM and WMZK-FM are in the existing unit, or should vote in a decertification election.

(1) *Staff announcers*: There appears to be no disagreement between the parties as to the inclusion of these employees in the recognized bargaining unit. Their employment conditions have been covered by agreements with AFTRA since 1942. At present there are three full-time staff announcers at the stations. Two of them are considered by the Employer as full-time permanent replacements for two economic strikers.<sup>10</sup> The third was at first employed part time, and later became a full-time announcer, when another part-time staff announcer resigned. At present there are no part-time staff announcers employed at the stations. We include the staff announcers in the unit.

(2) *Free-lance announcers*: Free-lance announcers differ from staff announcers in that they are not regularly employed, are free to work for other stations, and are paid on a per-job or per-program basis rather than a weekly or hourly basis. At present it does not appear that there are any free-lance announcers actually employed at the stations. However, as they have been part of the historically recognized unit, we shall include this employee classification in the unit description for the purpose of the decertification election.

(3) *Foreign language personalities*: There are presently 16 of these individuals employed by the Employer at the stations, and the Em-

<sup>9</sup> *KPOJ, Inc., et al*, 129 NLRB 727; *Pennsylvania Broadcasting Company*, 100 NLRB 254; *Radio Station KHMO*, 94 NLRB 1416.

<sup>10</sup> Stambaugh and Carnett.

ployer has a separate contract with each of them. Their programs are all broadcast in a foreign language. They are paid on the basis of a percentage of the advertising time sold by them on their programs. All of the foreign language personalities have the right to employ others for their individual programs; and they also are responsible for their own expenses, i.e., the production of these programs, the employment of guests, or the sale of advertising. They are prohibited by their contracts from having programs on competitor stations.

The record indicates that AFTRA has never made a claim to represent these individuals in past negotiations with the Employer,<sup>11</sup> and they have historically been excluded from the existing bargaining unit. The Board has held that in a decertification election the existing or recognized bargaining unit alone is the appropriate unit.<sup>12</sup> Therefore, we shall exclude the foreign language personalities from the unit.

(4) *English-speaking personalities*: The Petitioner contends these persons are staff announcers, and within the unit, because they have regular programs, and their on-the-air duties are somewhat similar to that of the regular staff announcers. They have separate contracts with the Employer similar to those of the foreign language personalities. These contracts were not negotiated by AFTRA, and, in fact, AFTRA contracts have never covered the terms under which these individuals appear on the air. They sell advertising on their programs, and are paid on a percentage of the advertising sold rather than on a weekly or hourly basis. Although the two classifications may possess some common interests, it appears from the record that the English-speaking personalities are not staff announcers, and we shall not include them in the unit as such.

As the English-speaking personalities have not historically been included in the bargaining unit, to include them now in the unit in a decertification election would not be consistent with the Board's established policy of not enlarging the recognized or certified unit.<sup>13</sup> Therefore, we shall exclude them from the unit.<sup>14</sup>

*Alleged economic strikers*: The change of Employer's operation to an automatic system necessitated a reduction in the number of staff announcers. AFTRA was notified in advance of the Employer's plans to reduce its staff to either three full-time or six part-time announcers. On October 18, 1960, the Union was given a last of those full-time announcers whom the Employer intended to terminate. On the same

<sup>11</sup> No claim to represent foreign language personalities was made during the last negotiation between AFTRA and Employer in October 1960, prior to the Union going on strike

<sup>12</sup> *The Root Dry Goods Co., Inc.*, 126 NLRB 953, footnote 6; *Seaporcel Metals Inc.*, 115 NLRB 960, 961; see also *Great Falls Employers Council, Inc.*, 114 NLRB 370; and *Standard Oil Company of California (Richmond Refinery, Richmond, California)*, 113 NLRB 475

<sup>13</sup> See footnote 12, *supra*.

<sup>14</sup> Since we are excluding the foreign-language personalities and English-speaking personalities from the unit, we need not pass upon the Employer's contention that they are independent contractors.

date, three full-time announcers<sup>15</sup> were given letters of termination, effective October 31, 1960. Approximately a week later, three part-time announcers<sup>16</sup> received letters of termination, which also were effective as of October 31, 1960. The number of staff announcers to be retained by the Employer after October 31, 1960, became the principal issue between the parties during negotiations. As a result of the failure of the parties to reach an agreement, the Union instituted a strike on November 1, 1960, which was still in progress as of the date of the hearing.

The Petitioner contends that the six announcers who received termination letters are economic strikers and, therefore, eligible to vote. Employer contends that they have been permanently laid off and are, therefore, ineligible to vote. It appears from the record that these six staff announcers in question were permanently discharged prior to the commencement of the AFTRA strike; that their jobs have been eliminated for economic reasons because of the new automation system; and that there is no chance of their reemployment. In addition, the three full-time staff announcers demanded and received termination pay under the provisions of the expired contract. As the six persons in question were discharged prior to the commencement of the strike, we find that are discharged employees, and are not entitled to vote in the decertification election.<sup>17</sup>

The record also reveals that there are two striking staff announcers<sup>18</sup> who have not been discharged by the Employer. All parties are in agreement that they are economic strikers. Therefore, we find that these individuals are eligible to vote as economic strikers, subject to challenge in accordance with the rules established by the Board.<sup>19</sup>

We find that the following units are appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

In *Case No. 7-RC-4875*: All regular technical employees excluding sales, clerical, and on-the-air personnel, guards, and supervisors as defined in the Act.

In *Case No. 7-RD-363*: All announcers, including staff and freelance announcers, but excluding foreign language and English-speaking personalities, office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Elections<sup>20</sup> omitted from publication.]

<sup>15</sup> Mike Smigulek, Richard Hobbs, and Anthony Caminita; a fourth announcer, Pavey, was transferred out of the unit and is not involved with this case.

<sup>16</sup> Boyles, Yates, and Rengers.

<sup>17</sup> *Sparton Broadcasting Company (WWTW)*, 122 NLRB 1191.

<sup>18</sup> Stambaugh and Carnett

<sup>19</sup> See *W. Wilton Wood, Inc.*, 127 NLRB 1675; and *Bright Foods, Inc.*, 126 NLRB 553.

<sup>20</sup> As it appears that AFTRA and NABET intervened in Cases Nos. 7-RC-4875 and 7-RD-363, respectively, solely for the purpose of appearing on the ballot if the Board found only an overall unit appropriate, and as we are directing separate elections, we shall not place AFTRA on the ballot in Case No. 7-RC-4875 or NABET on the ballot in Case No. 7-RD-363.