Bell & Howell Airline Service Company *and* Charles L. Snyder, Petitioner *and* International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL–CIO, and Local 409 of the International Alliance of Theatrical and Stage Employees. Case 20–RD–629

August 24, 1970

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MILLER AND MEMBERS MCCULLOCH AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Joseph R. Wirts. On March 25, 1970, the Regional Director for Region 20 issued an order transferring this case to the National Labor Relations Board. Thereafter, the Employer and the Union[1] filed briefs.[2]

Pursuant to Section 3(b) of the Act the Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Upon the entire record in this case, including the briefs, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim 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 Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Employer is engaged, insofar as here relevant, in the servicing of motion picture projection equipment and film for in-flight showings on commercial aircraft. Film servicing is done at various locations including New York City and San Francisco on a full-time basis by employees classified as technicians, and on a part-time basis at Washington, D.C., Boston, and other locations by employees classified as on-call technicians. On May 1, 1967, the Employer and Union entered into a contract[3] in which the Union was recognized as the bargaining representative of all employees, there referred to as technicians, engaged in the care, installation of, replacement, and maintenance of motion picture projection equipment and the care, mounting, and rewinding of film.[4] Geographically, the agreement covers all airports and other locations in the United States and Canada where the Employer "services motion picture projection equipment and films. . . ."

In his petition, the Petitioner contends that a substantial number of technicians no longer wish union representation and seeks an election in a unit of "all employees covered by the present collective-bargaining agreement" between the Union and the Employer. However, the Employer contends that only separate units at each of its film servicing locations where it employs full-time employees should be held appropriate. The Employer and the Petitioner both contend, contrary to the Union, that on-call technicians, all of whom work at locations where there are no full-time employees, should not be included in any unit or units found appropriate.

With respect to the scope of the unit, the contract specifically covers in one bargaining unit all of the Employer's film servicing locations. As for the on-call technicians, they perform the same work as the full-time technicians and, thus, come within the general contractual language covering *all* employees engaged in film servicing work. Furthermore, the contract specifically provides for the employment of on-call technicians and for their remuneration on a flight-serviced basis. Thus, it is clear that the established contractual unit is multilocation[5] in scope and includes the on-call technicians[6] as well as full-time

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[1] The name of the International Union appears as amended at the hearing It is referred to as the "Union" in this decision

[2] A brief was also filed by the Association of Field Service Technicians

[3] The contract ran to December 31, 1969, and was automatically renewable thereafter on a year-to-year basis absent notice to modify or terminate Insofar as the record shows, no such notice has ever been given No party contends the contract is a bar

[4] Initial installation of equipment and basic equipment maintenance are done at Tulsa, Oklahoma, Seattle, Washington, and Miami, Florida, the home bases of customer airlines, by employees classified as technical representatives The contract does not cover the technical representatives and no party seeks their inclusion in any unit.

[5] The Employer, though conceding the agreement by its terms was companywide in application, argues that the Board can make no such finding for unit purposes because the record fails to show affirmatively that the contract was applied as written However, the Employer participated at the hearing but made no attempt to show that the contract coverage was other than that specified in the agreement Such evidence as there is on the point indicates that the contract was applied to all of the Employer's film servicing operations In these circumstances,we find the Employer's contention to be without merit

[6] We find no merit in the contention of the Association that the on-call technicians are representatives of management, nor in the contention of the Employer and the Association that the on-call technicians are independent contractors, for the evidence does not support such contentions To be sure, they work without immediate supervision, but this factor alone is not conclusive especially where, as here, their income from the job is set by the collective-bargaining agreement, their periods of work are determined by flight schedules, and in other regards they exercise no real control over the job Neither do we find any merit in the Petitioner's and Employer's contention that the on-call technicians

technicians.[7]

As the recognized contractual unit is, under settled Board policy, the appropriate unit in a "decertification" proceeding[8] we find that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All technicains, on-call technicians, and technicians-in-charge at all the Employer's film servicing locations in the United States excluding employees who work exclusively in Canada,[9] all other employees, guards, and supervisors as defined in the Act.

[Direction of Election[10] omitted from publication.]

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are casual employees It is true that some of them may service no more than one flight a day, perhaps on the average less, nevertheless, all are trained by the Employer, work on the average some 10 to 15 hours a week, and regularly perform the work, week in and week out In these circumstances, we find the on-call technicians are regular part-time employees

[7] The contract also covers technicians-in-charge, who, the parties stipulated, are not supervisors within the meaning of the Act We shall include them in the unit

[8] See *Gill Glass & Fixture Company*, 116 NLRB 1540

[9] The Employer has a film servicing operation at Toronto, Canada, employing one on-call technician who works exclusively in Canada He is, in view of its broad language, covered by the contract Nevertheless, we shall exclude him from the unit for, in such circumstances, the appropriate unit is, for purposes of this Act, the existing unit excluding persons working exclusively in foreign territory See *Detroit & Canada Tunnel Corporation*, 83 NLRB 727 That case was overruled to the extent inconsistent with *West India Fruit and Steamship Company, Inc*, 130 NLRB 343, 353, however, on the issue here involved there is no inconsistency as *West India* involved no employees working exclusively in a foreign nation Rather, the inconsistency between those cases was in the area of the effect to be given to nationality of the employee and his employing corporation in determining the coverage of the Act That problem is not presented here

[10] As the International is alone the recognized bargaining representative of the established contractual bargaining unit, we shall provide that its name alone appear on the ballot