

**Pacifica Foundation-KPFA,<sup>1</sup> Employer-Petitioner and National Association of Broadcast Employees and Technicians, AFL-CIO,<sup>2</sup>**

**Pacifica Foundation-KPFA, and Bobbie Harms, Petitioner and National Association of Broadcast Employees and Technicians, AFL-CIO.** Cases 20-RM-1196 and 20-RD-607

November 25, 1970

**DECISION AND DIRECTION OF ELECTION**

BY MEMBERS FANNING, BROWN, AND JENKINS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Helen A. Phillips. Following the close of the hearing, and pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Regional Director transferred these cases to the Board for decision. The parties have waived the filing of briefs.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

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

1. The Union, contrary to the Employer-Petitioner in Case 20-RM-1196 and the Petitioner in Case 20-RD-607, argues that the Employer is a nonprofit, noncommercial, educational institution over which the Board should not assert jurisdiction. The record reveals that the Employer is engaged in commerce within the meaning of the Act, and for the reasons explicated below the Board finds that it will effectuate the policies of the Act to assert jurisdiction herein.

Pacifica Foundation, a California corporation which maintains its principal offices at Berkeley, is a nonendowed educational organization, having as its main purpose the ownership and operation of educational radio stations which operate on the FM band under certificates from the Federal Communications Commission. At the time of the hearing in these matters<sup>3</sup> Pacifica Foundation owned and operated three FM stations in California: KPFA in

Berkeley, which is involved in these proceedings; KPFB, a sister station to KPFA and also located in Berkeley; and station KPFK in Los Angeles. In addition, through a wholly owned subsidiary, WBAI-FM, Inc., Pacifica Foundation owns and operates station WBAI-FM in New York City, as well as a news bureau in Washington, D.C., which provides news and programming for all of the stations operated by the Foundation. All of the stations operated by Pacifica Foundation are licensed by the Federal Communications Commission, and the licenses for stations KPFB and KPFK restrict their operations to the band reserved for noncommercial, educational channels. The licenses issued to stations KPFA and WBAI-FM allow them to operate commercially, although in practice they have not done so.

Stations KPFA and KPFB are operated as a single entity, on the same premises, and with the same staff of employees.<sup>4</sup> KPFA has a broadcast range which extends outside of California into Nevada, and occasionally, depending on atmospheric conditions, into Arizona. The types of programs broadcast by KPFA, and the other stations operated by Pacifica Foundation, are (a) music, (b) news and public affairs, and (c) drama and literature, which consume, respectively, 50, 30, and 20 percent of their broadcast time. Station KPFA, like its parent Pacifica Foundation and the other stations in the system, does not operate for a profit, sells no broadcast time for advertising purposes, and except for a small stipend received from the University of California for a weekly broadcast of a medical conference, receives no compensation for the programs it broadcasts.

During the calendar year 1968, a representative period of its operations, Pacifica Foundation had a total gross income of nearly \$1 million, which was derived principally from subscriptions from listeners and contributions. During the same period the combined gross income of stations KPFA and KPFB was approximately \$225,000, and of this total approximately \$215,000 was derived from the subscriptions of listeners and the contributions of patrons. The remaining \$10,000 of gross income was derived from miscellaneous sources such as the rental of a transmission tower, sales of tapes and recordings, and paid advertising used to support the publication of a monthly program folio. The income derived by Pacifica Foundation and its member stations is tax exempt under Federal and state revenue provisions. As for expenditures, KPFA subscribes to a national

<sup>1</sup> The name of the Employer-Petitioner appears as amended at the hearing

<sup>2</sup> The name of the Union appears as amended at the hearing

<sup>3</sup> At the time of the hearing Pacifica Foundation had applied for additional licenses from the Federal Communications Commission to

operate additional educational stations at Houston, Texas, and Washington, D.C.

<sup>4</sup> Station KPFB has certain technical equipment which permits it to beam broadcast waves into the Berkeley hills, and, accordingly, it is separately licensed by the FCC.

wire service at a cost of approximately \$200 per month, obtains news and programming assistance from the Foundation's news bureau in Washington, D.C., and on a part-time basis employs reporters in other States and in foreign countries. Station KPFA, and the other stations operated by Pacifica Foundation, do not conduct educational classes or grant degrees, but do make their broadcast facilities available to students of institutions of higher learning for training purposes.

The Union contends that inasmuch as the Employer is a noncommercial and nonprofit institution engaged exclusively in the dissemination of knowledge as an integral part of the educational system, the Board should adhere to its longstanding policy and exercise its discretion to deny the assertion of its jurisdiction in these cases.<sup>5</sup> However, the Board has recently announced that it will now assert jurisdiction over private colleges and universities, though they are nonprofit, if their operations are such as to have a substantial impact on commerce.<sup>6</sup> As we have extended our jurisdiction over such private colleges and universities, there remains no substantial justification for withholding the exercise of the Board's powers over employers whose operations are adjunctive to the educational system. The evidence set forth above reveals that legal jurisdiction exists and the Employer's operations do have a substantial impact on commerce, and inasmuch as its gross volume of business meets the Board's discretionary standards for jurisdiction over like commercial ventures,<sup>7</sup> we find that it will effectuate the policies of the Act to assert jurisdiction in these cases.

<sup>5</sup> Cf. *United States Book Exchange, Inc.*, 167 NLRB 1028, and cases cited therein, which, to the extent they are inconsistent with the decision reached herein, are hereby overruled.

<sup>6</sup> *Cornell University, et al.*, 183 NLRB No. 41.

<sup>7</sup> *Raritan Valley Broadcasting Company, Inc.*, 122 NLRB 90.

<sup>8</sup> Although the bargaining agreement on its face is limited to the employees of station KPFA, its terms have nevertheless been extended to like classification of employees technically employed by station KPFB.

<sup>9</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their

2. The Union is a labor organization within the meaning of the Act.

3. The record reflects that the Union was recognized by the Employer in 1962 as the bargaining representative for certain of its employees in the unit hereinafter described, and the Employer and the Union have been parties to a series of collective-bargaining agreements, the most recent of which expired by its terms on October 31, 1969.<sup>8</sup> By its petition in Case 20-RM-1196 the Employer asserts that the Union is no longer the majority representative of its employees, and the Petitioner in Case 20-RD-607 similarly asserts that the currently recognized Union is no longer the representative within the meaning of Section 9(a) of the Act. As the Union claims to represent the employees in the bargaining unit, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. We find that the following described unit, which accords with the unit previously recognized and described in the most recent contract between the parties, is a unit appropriate for the purposes of collective bargaining:

All regular employees of the Employer performing operations, programming, and office and clerical work, excluding volunteers, bookkeepers, confidential secretaries, guards and supervisors as defined in the Act.

[Direction of Election<sup>9</sup> Omitted from Publication.]

addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 20 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.