

**21st Century Productions of Nashville, an Operating Division of WLAC-TV, Inc., and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local No. 46, Petitioner.** Case 26-RC-3838

January 11, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS  
FANNING AND BROWN

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Hutton S. Brandon of the National Labor Relations Board. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 26, this case was transferred to the National Labor Relations Board for decision. The Employer and the Petitioner have filed briefs, which have been duly considered.

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.

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

Upon the entire record in the case, 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 Employer.<sup>1</sup>
3. No question of representation exists within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons set forth below:

The Petitioner seeks to represent all studio, stage-handlers, carpenters, painters, and other craftsmen used in the construction of sets and scenery for television productions of the Employer.

The Employer and Intervenor contend that the petition herein should be dismissed because the unit petitioned for has not been in existence since July 1970, and the Employer has no commitments which would enable it to resume work within the unit.

The Petitioner contends that an election should be directed as the unit employees have a reasonable expectancy of recall. The Petitioner also contends that the Employer's letter of June 4, 1970, amounts to

recognition of the Petitioner as the exclusive bargaining agent for employees in the unit. It seeks the election for certification purposes.

The Employer is a corporation with an office and place of business in Nashville, Tennessee, where it is engaged in the operation of a public television station. 21st Century Productions of Nashville is an operating service of the Employer which serves as a production house for the production of television programs and commercials for use by the Employer or other parties.

Youngstreet Productions, the producer of the T.V. show "Hee Haw," contracted with the Employer to use the latter's facilities for the production of "Hee Haw." As the producer did not have any prepared sets for the show, it depended upon the Employer to have the sets built. Initially, the Employer contracted with M.O. Flatt, an independent contractor, who used his own employees to build the production sets. Flatt's employees were represented by the Carpenters. This arrangement was in effect during November and December 1969, but at the end of December the Employer itself assumed the construction of the "Hee Haw" sets, employing individuals referred to it by the Petitioner from December 1969 to July 10, 1970, when the job was completed and these employees were terminated.

In obtaining the services of the Petitioner as a labor source, the Employer agreed to pay union wages and to pay a specified sum to the Petitioner's trust fund for insurance purposes whenever it used individuals referred for employment by the Petitioner.

The Employer never requested particular employees by name, but requested individuals who could perform specified functions. The number and composition of the group of employees who worked on the set varied from day to day. These employees worked for other employers as well as for the Employer herein.

In June 1970, the Employer was requested by the Petitioner, who was engaged in a dispute with the Intervenor concerning the assignment of the work on the "Hee Haw" sets, to write a letter in which the various items agreed upon by the parties would be reduced to writing. On June 4, 1970, the Employer wrote such a letter. Said letter contained the statement that the Employer would, from time to time, employ members of the Petitioner on a per-job basis as its business judgment and discretion dictated. However, the letter also stated: "inasmuch as all employment has been and will be on a 'per-job' or 'per-production' basis, it may be that persons other than members of IATSE Local No. 46 will be used for future segments of the 'Hee Haw Series' or for any other particular

its claim that it represented employees who at one time performed the work done by the employees in the unit sought by the Petitioner

<sup>1</sup> The Middle Tennessee District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called Carpenters, was allowed to intervene at the hearing on the basis of

related or unrelated production.” The letter also contained the agreed-upon wage scale applicable to employees referred by the Petitioner, and set forth the formula for payments into the Petitioner’s insurance trust fund. In these circumstances, we do not view the Employer’s letter, which merely recites the conditions under which it agrees to employ individuals referred to it by the Petitioner, as having accorded the Petitioner representative status with respect to the unit in question or as establishing any relationship of a permanent nature. In any event, it would seem to have no relevance to the appropriateness of conducting an election at the present time.

We find no evidence that there presently exists a unit, such as the Petitioner seeks to represent, into which employees have any reasonable expectancy of recall. It is clear that, from the outset, the Employer made it known to the Petitioner that it would employ individuals referred by the latter to construct sets for the “Hee Haw” show on a per-job basis and only on such occasions as the Employer saw fit. As anticipated, all unit employees were terminated when the job was completed on July 10, 1970, and have not been recalled. Further, the Employer asserts that it does not

know whether the “Hee Haw” series will be continued, or, if it is, whether the Employer will continue to build production sets for that show. In this respect, the Employer avers that it has not engaged in any negotiations regarding future work on the “Hee Haw” series.

Moreover, the record discloses only two other occasions on which the Employer used individuals represented by the Petitioner to construct sets: a 3- to 4-day period in August 1969 in connection with the production of the “Boots Randolph” show, and 1 day in 1966, preparing for an election day show.

Based on the foregoing, we find that there are no employees presently employed in the requested unit and that there is no likelihood that there will be any employees employed in the requested unit in the foreseeable future. In these circumstances, we find no basis for directing an election in this case. Accordingly, we shall dismiss the petition filed herein.

#### ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.