

**220 Television, Inc. and Local Union No. 4, International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 6, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, Jointly.**

**220 Television, Inc. and Local Union No. 4, International Brotherhood of Electrical Workers, AFL-CIO. Cases 14-RC-3624, 14-RC-3633, and 14-RC-5689**

July 25, 1968

### DECISION AMENDING CERTIFICATION

BY CHAIRMAN McCULLOCH AND MEMBERS JENKINS  
AND ZAGORIA

On April 13, 1967, Local Union No. 4, International Brotherhood of Electrical Workers, AFL-CIO, herein called IBEW, filed with Region 14 of the National Labor Relations Board a Petition for Certification of Representatives in Case 14-RC-5689.<sup>1</sup> IBEW filed the petition for the purpose of attaining the right for separate representation of engineers and technicians included in the bargaining unit certified by the Regional Director for Region 14 on November 2, 1959, in Cases 14-RC-3624 and 14-RC-3633 in which the IBEW and Local Union No. 6, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, herein called IATSE, were certified as joint bargaining representatives. The joint certification covered employees in the production and engineering departments of the Employer's St. Louis, Missouri, television station, including film editors, newsroom assistant, assistant director or stage manager, and technicians.

On August 23, 1967, the Regional Director issued a Decision and Order in Case 14-RC-5689<sup>2</sup> in which he found that no question concerning representation existed, and, accordingly, he dismissed the petition filed by IBEW on April 13, 1967. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, IBEW filed a timely request for review of the Regional Director's Decision and Order on the grounds, *inter*

*alia*, that he erred in applying Board precedent and that the separate unit sought by the petition was appropriate. IBEW filed a brief in support of its request for review. On March 5, 1968, the Board issued and duly served upon the parties a Notice To Show Cause why the Certification of Representative issued in Cases 14-RC-3624 and 14-RC-3633 should not be amended to provide for two separate bargaining units—a unit of engineers and technicians to be represented by IBEW; and a unit of all other employees in the unit found appropriate in Cases 14-RC-3624 and 14-RC-3633 to be represented by IATSE. IBEW filed a brief in support of the proposal to amend the certification, and IATSE filed a brief in opposition thereto.

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

The Board has considered the entire record in this case including the briefs of the parties and the replies to the Notice To Show Cause and makes the following findings:

The Regional Director dismissed IBEW's petition because he found that "Petitioner has been jointly bargaining for the overall unit and in so bargaining it has taken a position wholly inconsistent with its attempt to establish that a question concerning representation exists with respect to the employees it seeks to sever."<sup>3</sup> We disagree. As authority for his decision, the Regional Director cited *Hollingsworth & Whitney Division of Scott Paper Company*, 115 NLRB 15, and *International Paper Company*, 115 NLRB 17. In those cases, the petitioning union seeking separate representational rights engaged in joint collective-bargaining negotiations with the other parties at times following the filing of their representation petitions, thus estopping themselves from prosecuting their claim to bargain severally with the employers. Unlike those petitioning unions, IBEW did not indulge in any additional joint bargaining with IATSE and the Employer subsequent to the time it filed its RC petition with the Region on April 13, 1967. In fact, IBEW notified these parties in writing on or about March 20, 1967, that if they continued to delay the execution of the agreement proposed by the Employer and already ratified overwhelmingly by IBEW's mem-

<sup>1</sup> On August 29, 1967, IBEW filed a second petition in Case 14-RC-5773 seeking certification for the same bargaining unit as that sought herein (Case 14-RC-5689). Since the Region has held the second petition in abeyance pending the Board's determination in the instant case, our decision herein is dispositive of both cases.

<sup>2</sup> On August 3, 1967, a hearing was held before Hearing Officer Harold D. Kessler.

<sup>3</sup> We do not regard this case as raising orthodox severance issues because the Petitioner already jointly represents the engineers and technicians and seeks to continue to do so, albeit separately. Further, all of the engineers and technicians are members of the IBEW.

bers,<sup>4</sup> it intended to ask the NLRB that “the Unit be separated into two units—one for the Engineering Employees and one for the Film Department and Stagehands.” Also, on May 2, 1967, after IBEW filed its petition, it informed the Employer and IATSE that it had withdrawn its previous willingness to enter into any joint collective-bargaining agreement with them and it never did so. Accordingly, in view of the foregoing circumstances, we reject the Regional Director’s finding that IBEW’s conduct was equivocal thereby disentitling it to prosecute its RC petition for certification as the sole representative of the engineers and technicians herein.

While we have rejected the Regional Director’s disposition of the case, it is manifest that IBEW’s petition should not be processed in the normal manner so that IBEW’s certification as separate bargaining agent for the employees involved is made contingent upon the outcome of a Board election pursuant to Section 9(c)(1) of the Act. As already indicated, there exists no *bona fide* question concerning representation because the engineers and technicians are currently represented by IBEW and the question presented is one concerning the scope or structure of the collective-bargaining unit. Moreover, both IBEW and IATSE have disclaimed any interest in separately representing each other’s member-employees albeit IATSE desires to continue its status as joint representative with IBEW.

In the past, the Board has in suitable circumstances treated representation petitions as motions to clarify or amend existing certifications. Fundamentally, this administrative procedure derives from the Board’s position that its certifications of bargaining representatives are properly subject to its reconsideration and that, when appropriate, it may police or maintain the logical coherence and utility of its prior unit determinations by amendment, clarification, or even revocation.<sup>5</sup> It is true that the Board more often encounters occasions calling for the clarification or amendment of certifications in cases presenting unit placement issues where only one union is involved.<sup>6</sup> However, in *Pacific Coast Shipbuilders Association*, 157 NLRB

384, the Board dismissed the RC petition and amended the certification<sup>7</sup> where it found, as we have here, that the Petitioner’s request for separate bargaining was timely and unequivocal. Consequently, the Board held that despite a recent history of multiunion or joint bargaining, the Petitioner was entitled to demand separate bargaining in the amended certified unit.<sup>8</sup>

*Separate units are appropriate.* Our consideration of the record herein convinces us that it is feasible in the circumstances of this case to amend the certification by providing for two separate collective-bargaining units. Essentially, the IATSE film editors in the film department perform their work independently of and apart from the IBEW engineers in the engineering department. The IATSE stagehands are in the operations and production department. Employees in these three departments are separately supervised by a department head. IATSE’s shop steward, who is a stagehand, testified that the functions of the engineering department and the functions of the film editors and stagehands are, for the most part, completely independent of one another.<sup>9</sup> As for the nature of the work itself, the film editors prepare the film for televising by inspecting, cleaning, and inserting or splicing in commercial messages and other announcements. The engineers and technicians take the prepared film from the editors and perform the actual telecasting. The engineering department is responsible for operating and maintaining all of the television equipment and electronic gear including the transmitters, cameras, projectors, tape machines, and audio equipment. It also provides and maintains all studio lighting. The stagehand prepares cue cards, runs the teleprompter, and constructs and emplaces production or program sets.

There is no transfer between these groups as the jobs are not readily interchangeable. In fact, if the Employer requires extra engineering personnel he notifies the IBEW unit representative. In like fashion, the Employer requests needed film editors and stagehands by notifying IATSE. Although the bargaining agreements have not expressly provided for separate seniority lists applying to the three

<sup>4</sup> On March 10, 1967, IBEW sponsored a meeting to which all employees in the certified unit had been invited for the purpose of considering the Employer’s last contract offer. Although no employee-members of IATSE attended, IBEW’s engineers and technicians voted overwhelmingly to accept the proffered contract. Execution of the contract by IATSE and the Employer had been long delayed due to a disagreement over the method of paying wage increases to IATSE members under the proposed agreement. After IBEW filed its petition herein, IATSE and the Employer eventually signed the contract.

<sup>5</sup> *The Bell Telephone Company of Pennsylvania*, 118 NLRB 371, *Independent Metal Workers Union, Local No. 1*, 147 NLRB 1573. See also *Brotherhood of Locomotive Firemen and Enginemen*, 145 NLRB 1521, where the Board reversed *Bell Telephone* and exercised its inherent power to clarify an uncertified unit.

<sup>6</sup> *Tide Water Associated Oil Company*, 101 NLRB 570, *Coca-Cola Bottling Company of New York, Inc.*, 133 NLRB 762.

<sup>7</sup> In response to the Board’s Notice To Show Cause, *supra*, IBEW requested that the certified unit be amended by providing for two separate bargaining units in lieu of processing its petition for a Board election.

<sup>8</sup> In *Shipbuilders*, *supra*, as herein, the employers’ association and one of the unions in the multiunion group contended for the dismissal of the petition on the grounds that no issue had been raised as to petitioner’s majority status and the previous history of multiunion bargaining precluded the Petitioner from insisting upon separate bargaining.

<sup>9</sup> On occasion the IATSE stagehand works with IBEW engineers when he operates the teleprompter affixed to a video camera and when on remote telecasts a stagehand handles required lighting duties.

operating departments, the established practice under the bargaining relationship shows that there is separate departmental seniority governing promotions, layoffs, shift selection, vacation choice, and overtime. The bargaining history or practice also demonstrates that the grievance and arbitration procedure is discretely oriented and implemented, i.e., IBEW and IATSE each has its own shop stewards, and grievances are processed separately without any joint participation or representation by the nonaggrieved union.<sup>10</sup> Finally, the labor agreements have included separate wage scales and progression systems for IBEW and IATSE member-employees, and members of each Union participate in their own Union's health and welfare plan.

In view of the foregoing recital of the bargaining history and practices thereunder, we find that the substantial degree of autonomy and separateness displayed by these Unions in their relationships with each other and the Employer justifies our determination that the purposes of the Act will be best effectuated by amending the certification to provide for two separate bargaining units: a unit of engineers and technicians to be represented by IBEW, and a unit of film editors and stage hands to be represented by IATSE. Our decision will not be unduly disruptive of industrial stability in these circumstances because in large measure it is reflective of an already existing situation which is fully understood and accepted by the parties.<sup>11</sup> Accordingly, we find that the IBEW is entitled to de-

mand separate bargaining in the certified unit as amended in our Order below.

### ORDER

It is hereby ordered that the petitions in Cases 14-RC-5689 and 14-RC-5773 be, and they hereby are, dismissed.

IT IS FURTHER ORDERED that the certification issued in 14-RC-3624 and 14-RC-3633 be amended so as to separate the existing joint bargaining unit into separate units as follows:

1. All engineers and technicians in the engineering department of the Employer's St. Louis, Missouri, television station, excluding office clerical and professional employees, guards and supervisors as defined in the Act, stagehands, film editors, announcers, and performers to be represented by Local Union No. 4, International Brotherhood of Electrical Workers, AFL-CIO.

2. All stagehands, film editors and all other employees presently represented by Local Union No. 6, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, excluding office clerical and professional employees, guards and supervisors as defined in the Act to be represented by Local Union No. 6, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO.

<sup>10</sup> In this context and also as an example of the autonomy exercised by IBEW and IATSE in June 1966, IBEW filed a grievance against IATSE charging the latter with conduct in violation of the labor agreement and even sought to have the complaint arbitrated

<sup>11</sup> Cf. *Pacific Coast Shipbuilders Association*, *supra*, where the retention of the petitioner's separate identity in the joint bargaining relationship was held to be a substantial factor justifying its right to demand separate bargaining status