

WSB, WSB-FM and WSB-TV and American Federation of Television and Radio Artists, AFL-CIO, Atlanta Local,¹ Petitioner. Case 10-UC-22

May 14, 1969

**DECISION AND ORDER DENYING
PETITION TO CLARIFY
CERTIFICATION**

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

In a petition for unit clarification filed under Section 9(b) of the National Labor Relations Act, as amended, the Petitioner seeks to have included in its certified bargaining unit of staff announcers at the Employer's radio and television station in Atlanta, Georgia certain television newsfilm reporters who are presently represented by the Intervenor.² On November 25 and 26, 1968, a hearing was held before Hearing Officer William E. Caldwell for the purpose of taking testimony with respect to the issues raised by this petition. Following the hearing, on December 31, 1968, this case was transferred to the Board in Washington, D. C., pursuant to Section 102.67(h) of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Subsequently, the Employer and Petitioner filed briefs with the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, 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 filed by the parties, the Board finds:

1. The Employer is a Georgia corporation with its office and place of business located in Atlanta, Georgia, where it is engaged in commercial television and radio broadcasting. 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 Petitioner and Intervenor are labor organizations representing certain employees of the Employer.

3. The Petitioner, in December 1944, was certified as the collective-bargaining representative for a unit of staff radio announcers at the Employer's broadcasting station.³ Subsequently, in the early

¹Herein called Petitioner or AFTRA. Name appears as amended at the hearing.

²The Intervenor, International Brotherhood of Electrical Workers, Local Union 1193, AFL-CIO, herein also called IBEW, was permitted to intervene because it has represented the disputed employees since 1965 and they are presently covered by a bargaining agreement between the Employer and IBEW. Also, IBEW was certified in 1952 for a bargaining unit of the Employer's radio engineers in Case 10-RC-1953.

1950's, the Employer and Petitioner commenced including television newscasters as coming within the scope of their bargaining agreements. However, it was not until 1965 that television newscasters were specifically covered by an addendum to the contract between AFTRA and the Employer. Currently, Addendum "A" to the current contract between these parties contains provisions relating to TV newscasters.

In 1965, a group of TV newsfilm reporters and cameramen requested the Petitioner to represent them but their request was declined by AFTRA's shop steward. Thereupon, the Intervenor filed a representation petition with the Board for a bargaining unit composed of laboratory technicians who primarily process motion picture newsfilm and TV newsfilm reporters "who do not regularly appear on the air." This petition was subsequently withdrawn by the Intervenor when the Employer voluntarily recognized IBEW as bargaining agent for these employee classifications on the basis of signed IBEW authorization cards. These TV newsfilm reporters and laboratory technicians are presently covered by a separate bargaining agreement between the Employer and Intervenor. It is this category of TV newsfilm reporters which the Petitioner seeks to accrete to its existing unit of announcers and newscasters.

The Employer contends that the petition herein should be dismissed, *inter alia*, because the TV newsfilm reporters sought by the Petitioner do not constitute a normal accretion to its bargaining unit, and the bargaining history involving these employees militates against the propriety of granting the petition for unit clarification. The Intervenor does not oppose the petition and declares its acquiescence in the Board's determination of the matter.

The record demonstrates that the Petitioner is seeking to represent a group of approximately 8 television newsfilm reporters presently represented by IBEW as part of its unit of approximately 21 employees.⁴ The television newsfilm reporters normally perform most of their work on the scene in the field and away from the Employer's broadcasting premises. They usually operate in conjunction with a cameraman as a team which infrequently may also include a sound man. Nearly all of the newsfilm reporters can also perform as cameramen but this doubling of function is becoming increasingly rare. The newsfilm reporter primarily prepares or extemporaneously delivers the news story to be televised and his voice and frequently his likeness appears on the filmed segments of the newscast. These reporters often appear in this manner as part of the Employer's news programs. However, such appearances are not

³Case 10-RC-1354.

⁴The parties ostensibly stipulated during the hearing that employee D. McClellan is a supervisor within the meaning of the Act. In any event, in view of our disposition of this case, we need not resolve this issue.

definitely scheduled and vary in number from week to week. On the other hand, the Employer's television newscasters who are represented by AFTRA discharge their duties at the Employer's television station and are concerned with the preparation and presentation of live, on-the-air, regularly scheduled news programs. The newscaster has a role in writing and developing the text and format of the particular newscast, or segment thereof, to which he is usually assigned. Both TV newsfilm reporters and the newscasters work in the Employer's news department headed by the news director and they are all subject to his overall supervision.

Although the foregoing brief descriptions of the duties and working conditions of television newscasters and TV newsfilm reporters tend to indicate the existence of a community of interest between these two categories of employees, we find, in the circumstances of this case, that the newsfilm reporters cannot be properly considered to be an accretion to the Petitioner's bargaining unit.⁵

As mentioned previously, the Employer urges that clarification of AFTRA's certified unit of staff announcers to include the newsfilm reporters in issue would be inappropriate in this case. We agree. At the outset, we note that the TV newsfilm reporters are presently represented by the Intervenor and covered by a bargaining agreement which also includes cameramen and laboratory technicians.⁶ This agreement by its terms will not expire until November 30, 1969, and it expressly provides that "this agreement shall cover all newsfilm reporters who do not regularly appear on the air."⁷ As for AFTRA's bargaining agreement, it presently covers television newscasters "whose primary duties are the preparation and presentation of 'on-air' news programs."⁸ Thus, it is seen that the pertinent IBEW and AFTRA bargaining agreements when read together presently purport to describe particularly the unit placement of newsfilm reporters. It is clear that, unlike many cases of this

species, the parties herein have already consciously resolved the placement of these employees in the general scheme of representation. In addition, newsfilm reporters have been utilized by the Employer's news department for over 15 years but the Petitioner never has sought to represent them as a group prior to the advent of this petition. Further, in 1965, when a group of these employees requested that AFTRA agree to represent them, their request was declined⁹ and they came to be represented by IBEW as described, *supra*.

In view of the foregoing and the entire record herein, we find that the petition for unit clarification raises a question concerning representation which may not be resolved in this proceeding. The proper procedure for seeking the inclusion of the newsfilm reporters in the AFTRA unit is a petition pursuant to Section 9(c) of the Act seeking an election.¹⁰ Accordingly, we shall dismiss the petition.¹¹

ORDER

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

⁵See *News Syndicate Co., Inc.*, 164 NLRB No 69, particularly part of rationale disposing of issue involved in placement of the "home delivery operation"

⁶The laboratory technicians, according to the contract, are primarily engaged in the processing of motion picture newsfilm. We note the fact that the IBEW agreement covers those employees directly concerned with the Employer's TV newsfilm enterprise, namely, the reporters and cameramen who jointly produce the newsfilm and the technicians who prepare it for telecasting thus indicating a community of interest among them

⁷In view of our disposition of this case, we find it unnecessary to decide whether newsfilm reporters "regularly appear on the air"

⁸Addendum A, par 1, B, effective until December 31, 1970

⁹See *Sterlon Corporation*, 147 NLRB 219, 221 where the Board cited as adverse to the petitioning union the fact that it had formerly demanded the stripping of seniority from employees who transferred to the shipping and receiving department which it later sought to represent via unit clarification.

¹⁰We intimate no conclusions with respect to any of the issues which might be raised in such a proceeding

¹¹*Cf. Lufkin Foundry and Machine Company*, 174 NLRB No 90; *Westinghouse Electric Corporation*, 173 NLRB No. 51