

Century Broadcasting Corporation d/b/a WFMF and American Federation of Television and Radio Artists, AFL-CIO, Chicago Local, Petitioner. Case 13-RC-12609

August 16, 1972

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

On March 2, 1972, the Regional Director for Region 13 issued a Decision and Direction of Election in the above-entitled proceeding in which he found the freelance announcers sought to be represented by the Petitioner to be employees and not independent contractors. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review, contending, *inter alia*, that the Regional Director, in finding the freelance announcers to be employees, made findings of fact which were erroneous and departed from officially reported precedent.

On June 19, 1972, by telegraphic order, the request for review was granted.

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

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:¹

The Employer operates four radio stations. The only station involved in this proceeding is station WFMF in Chicago. Apart from four supervisors (general manager, engineering director, program director, and sales director) the station employs a regular staff of two office clerical employees and seven engineers.² It also utilizes the services of the 11 freelance announcers sought herein. The station's operating format consists of 54 minutes each hour of taped "adult" music, together with four breaks (totaling 6 minutes) which are scheduled for the purpose of broadcasting commercials, station identification, and news, weather, and sports headline

¹ We are of the opinion that the Employer's allegations in its request for review as to prejudicial error in the Hearing Officer's rulings are without merit

² The engineers have been represented separately for approximately 25 years by Local 1220, International Brotherhood of Electrical Workers, AFL-CIO, which intervened in this matter to protect its unit in the event the Board reached the Employer's alternate contention that only an overall unit was appropriate. The Intervenor does not seek to represent the announcers sought by the Petitioner

³ Back announcing refers to the announcement of the title and other information about a musical selection before it is played

⁴ A recording session for each announcer may involve anywhere from

announcements. Like the music, substantially all of the announcements are taped—the general manager estimated that less than one announcement per hour in each 24-hour period is live. The station's musical selections which, with the exception of a 1-hour daily segment, are not back announced³ are made principally by the general manager and the program manager so that the announcer's functions are related entirely to the commercials and other announcements.

The general manager, in auditioning for announcers, looks for individuals who have substantial broadcasting experience and are skilled in projecting a slow, deliberate, adult sounding voice in keeping with the image the station seeks to maintain. If the auditioned announcer is acceptable, a per session fee⁴ is negotiated with him and he is placed on the station's announcer list. There is no evidence that a written agreement is ever entered into between the station and the announcer.

At the beginning of each week, the Employer's traffic clerical employee calls the announcers on the list to arrange taping sessions for Thursday or Friday of the week when the station has engineers available to operate the recording equipment. The station attempts to rotate the announcers used in order to have a variety of voices. When called for a taping session, the announcers are completely free to accept or reject the work or to schedule a session on those days to suit their convenience. The announcers reject assignments offered them because of previous commitments or for several other reasons, all of which reasons are accepted by the Employer. For instance, because some announcers are identified with a particular product or sponsor, they usually refuse to tape commercials for competing products or sponsors. Also, some of these announcers have cultivated large advertising accounts in their freelance work and refuse to make announcements for smaller accounts. Furthermore, even when an announcer does agree to tape for the station, should he subsequently find more lucrative work, he is free to obtain a substitute from the station's list. In this event, he pays the substitute. Substitutes are used on 30 to 40 percent of the announcements each week.

The announcer is provided a copybook and a list of the announcements which are to be taped.⁵ In

approximately 4 to 12 commercials or "spots" The per session fee arrangement herein means the announcers are paid for the individual sessions regardless of the number of commercials or "spots" recorded during the session or the number of times they are broadcast

⁵ Most of the commercial copy is prepared and supplied by the advertising agencies or sponsors purchasing time. In some instances, the station is supplied only with facts to be utilized in the commercials and the announcer either prepares his own copy or records without copy. The copy for the 1-hour back-announced program is prepared by the announcer who records that program. The station does not review copy prepared by its announcers

preparing the tapes, the announcer and the engineer use the station's recording facilities and equipment. No supervision or direction is provided by the Employer during the taping sessions. The inflections, pauses, idiom, and mood projected on a particular announcement are left entirely to the discretion of the announcer. Upon completion of a tape, only the engineer and the announcer review the tape—the former listening for technical quality and the latter for substantive quality of the tape.

Following the taping session, each separate announcement is assigned a number and placed in the station's library. Thereafter, the engineer responsible for a given segment of broadcast time is furnished a log prepared by the Employer's regular staff which contains the tape numbers of the music and announcements in the sequence in which they are to be broadcast. The engineer pulls the appropriate tapes from the library and plays them over the air in the proper sequence.

The breaks for news, weather, and sports headline announcements require the presence of an announcer on a frequent basis. However, announcers performing the news broadcasting functions are free to tape such announcements although the taping must be relatively current. These, like other announcements, are prepared without direction or supervision. The announcer selects the news headlines which are to be broadcast.

While the announcers are compensated bimonthly, as are regular staff employees of the station, they are not carried on the station's payroll. They receive checks drawn on the station's general expense account rather than its payroll account. As previously noted, they are compensated on a per session basis but they receive no compensation if they perform no work during the pay period. The fees for the different announcers vary and they appear to result from negotiation between the announcer and the general manager. The announcers receive none of the fringe benefits available to regular employees and no deductions are made from their compensation checks for income or social security taxes. The check for the work done by one announcer is made payable to a company bearing his name.

⁶ Some of the announcers involved herein announce or perform at several other stations. One of the announcers performs such a substantial amount of commercial announcing outside this station that the Employer utilizes him only to record station breaks. Other announcers perform freelance work in Detroit and New York.

⁷ See *Strand Art Theatre, Inc.*, 184 NLRB No. 72; *American Guild of*

The announcers on the Employer's list all have substantial broadcast announcing or public speaking experience. All either hold staff positions or do extensive freelance work at other Chicago radio and television stations, advertising agencies, and public relations operations.⁶ Several of the announcers maintain business phones or answering services and advertise their talent in a local trade publication. There is no evidence the announcers are required to or do identify themselves with the station, nor is there any evidence that the station attempts to impose any limitations on their other activities. Although the general manager testified that he could terminate the announcers at will and that he could require them to retape an announcement, there is no evidence that this has ever occurred.

Having considered the entire record, especially the lack of supervision or review of the announcers' work by the Employer, their complete freedom to accept or reject assignments offered them or to select substitutes from the Employer's list, their broad latitude in scheduling taping sessions, and the absence of any restriction as to their outside work, we are persuaded the Employer exercises little, if any, control over the manner or means used by the announcers in performing their work. Although the Employer auditions the announcers before retaining them and retains the right to terminate them, such facts are not inconsistent with the conclusion we have reached but indicate merely that the Employer retains control over the ultimate result to be accomplished; i.e., to broadcast its commercial and other announcements. Accordingly, we conclude that announcers utilized by the Employer are independent contractors and not its employees.⁷ We shall, therefore, dismiss the petition.

ORDER

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

Musical Artists, AFL-CIO, 157 NLRB 735; *Radio City Music Hall Corp. v. United States*, 135 F.2d 715 (C.A. 2). In our view, those cases relied on by the Regional Director and other cases where the Board has previously found freelance announcers to be employees involve substantially more control over the manner and means of accomplishing the work than is present here.