

Animated Film Producers Association for its Members and Associated Companies¹ and Writers Guild of America, West, Inc., on behalf of itself and its affiliate Writers Guild of America, East, Inc., Petitioner. Case 31-RC-2054

November 27, 1972

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND
PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Raymond M. Norton, Hearing Officer of the National Labor Relations Board. At the close of the hearing, this case was transferred to the Board for decision, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, Series 8, as amended. Thereafter, the Employer, the Petitioner, and the Intervenor² filed briefs, and the Petitioner filed a reply brief.

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 Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

Upon the entire record in this case, the Board finds that no question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act, for the following reasons:

For at least the last 20 years, Animated Film Producers Association has bargained on a multiemployer basis on behalf of the producers of animated films, or cartoons, in the Los Angeles area, with IATSE and Local 839. IATSE and Local 839 have represented, apparently jointly, the production employees of the companies associated with the Produc-

ers Association. Among these production employees are writers, known in the industry as "storymen."⁴ During the past 20 years, these respective representatives of the employers and production employees in the industry have successfully negotiated a continuous series of collective-bargaining agreements, of which the latest package of agreements is currently in effect.⁵ The Petitioner herein seeks to sever the writers or "storymen" from the existing production unit of the Employer's employees represented by IATSE and Local 839, and to represent them in a separate unit or units.

Assuming, for the purposes of this case, that animation storywriting as described in the record constitutes a true craft within the meaning of Board decisions, as asserted by Petitioner, and that the Petitioner is adequately qualified to be a bargaining representative for persons employed in this craft, an evaluation of all relevant considerations does not convince us that it will effectuate the policies of the Act to allow severance of such a unit on a craft, or any other basis.⁶

The recent history of collective bargaining with the employer group involved here is set forth above and, to the extent that a pattern for collective bargaining exists in the animated film industry as a whole, it appears to follow the same pattern. In fact, a number of animated film producers not formally associated with the Producers Association have separately subscribed and adhered to the most recent collective-bargaining agreements between the Employer and the Intervenor. The continuous series of collective-bargaining agreements and the absence of strikes for over 20 years, in an industry which experienced a series of strikes in the 1940's prior to the establishment of the existing pattern of representation, indicates that the existing pattern is relatively productive of stability in labor relations.

Consideration of the degree of integration of the production processes involved shows that the storymen write scripts of dialogue and scene directions which are converted into picture form and finally

¹ The members and associated companies set forth in the petition are DePatie-Freleng Enterprises, Inc., Filmation Associates, Hanna-Barbera Production, Inc., Metro-Goldwyn-Mayer, Inc., U P A Pictures, Inc., Walt Disney Productions, Inc., Walter Lantz Productions, Inc., and Warner Bros., Inc. At the hearing, the last five were stipulated out of the unit sought.

² International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO (herein called "IATSE"), and its affiliate, Motion Picture Screen Cartoonists, Local 839 (herein called Local 839), were permitted to intervene in the proceeding as the recognized bargaining agents of the employees in the unit sought.

³ We find no merit in the Employer's contention that the Hearing Officer exceeded his authority by subpoenaing witnesses on his own behalf. See *The Bendix Corporation, Kansas City Division*, 150 NLRB 718. In view of our disposition of the case, *infra*, we regard as moot the Employer's motion to

reopen the record for the purpose of receiving evidence not in the record because of the Hearing Officer's refusal to grant an adjournment.

⁴ Cameramen, sound technicians, projectionists, and film editors employed by the associated companies are not included in the unit of production employees. They are represented by IATSE, but are in separate local units and are not represented by Local 839.

⁵ Our disposition of the unit question herein makes it unnecessary to pass on the contentions that our contract-bar doctrine may be applicable to the instant petition, that Writers Guild of America, East, Inc., is not a proper party, or that the petition should be dismissed for other reasons.

⁶ See *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB No. 387, 397-399.

into animated cartoons by the artists and other production employees.⁷ The writers' work necessitates a certain amount of consultation with nonwriter unit employees, but not on any regular basis, and usually only when clarification, or changes for reasons of technical difficulties, are requested by other production employees. At the same time, despite some testimony to the contrary,⁸ it is evident on the record as a whole that normally the production process is dependent on the writers' work; and that the employees in the middle and later stages of production would soon exhaust the materials on which they work if the writers ceased to supply them.

Concerning the maintenance of a separate identity by the writers while being included in the broader unit, there are disputed assertions of fact in the record. These need not be resolved inasmuch as it is clear that the separate identity of these employees, whether they have been called writers or storymen, has never seriously been questioned. However, insofar as collective bargaining is concerned, the writers have participated in the representation by IATSE and Local 839 rather than dealing with the Employer separately as a group.⁹ While there is no evidence of writers' participation prior to the negotiations for the most recent contracts, writers actively participated in the latter negotiations, vigorously presented the interests of writers as a

⁷ Traditionally, the storymen drew their own pictures and presented their rough products in the form of "story boards" to be reviewed and refined at later stages of the production process. Currently, however, for reasons of economy and the unavailability of sufficient writers with drawing facility, most, if not all, stories are presented in script form. Writers also prepare brief outlines of story and cartoon series ideas for presentation to television networks.

⁸ The manager of labor relations at Walt Disney Productions, Inc., an employer which was stipulated out of the unit sought, expressed his belief that if the writers were severed from the existing unit and went on strike,

group, and were successful in obtaining significant concessions in recognition of their interests. In addition, the "storyman" classification has enjoyed over the years one of the highest minimum pay scales in the unit.¹⁰

Also entitled to some weight in support of the existing pattern of representation is the fact that some of the writers who have skills in other aspects of cartoon production are assigned to other classifications during slack periods for writers. This modest degree of interchange not only suggests a certain community of interests at least between some writers and the other production employees, but also portends some unnecessary inconvenience for the parties should these writers have to transfer in and out of bargaining units every time they accept a different assignment.

In all the circumstances, we find that Petitioner has not established that a separate unit, or units, of writers should be severed from the existing multiemployer production unit.¹¹ We shall therefore dismiss the petition.

ORDER

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

production could continue in their absence. Later he testified that in certain circumstances production would be shut down.

⁹ That individual writers have bargained for overscale pay contracts through their own agents or personally is a recognized facet of the labor relations in the industry and does not reflect on the Intervenor's status as the writers' representatives for *collective* bargaining.

¹⁰ Currently, virtually all writers are being paid overscale rates.

¹¹ In view of our decision on this issue, we also find it unnecessary to consider the other issues raised by the parties with respect to the scope and composition of the appropriate unit.