

**The Journal Co. d/b/a WTMJ-AM-FM-TV and American Federation of Television and Radio Artists, Milwaukee Local, AFL-CIO, Petitioner. Case 30-RC-1954**

July 26, 1973

### DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS  
AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Shirley A. Bednarz of the National Labor Relations Board.<sup>1</sup> Following the close of the hearing the Regional Director for Region 30 transferred this case to the Board for decision. Thereafter, the Employer and the Petitioner each filed briefs.

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 reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.<sup>2</sup>

Upon the entire record in this 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. The parties stipulated that Employer is a Wisconsin corporation engaged in the operation of a television and radio station from facilities located in Milwaukee, Wisconsin, and that during 1972 the Employer derived gross revenue in excess of \$50,000 in the course and conduct of its business and purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Wisconsin.

2. The parties further stipulated that the Petitioner, which claims to represent certain employees of the Employer, is a labor organization as defined in the Act.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2 (6) and (7) of the Act.

4. The Petitioner seeks to represent a unit of televi-

sion newsmen. Specifically, Petitioner seeks all news department employees employed by television station WTMJ-TV, including news department employees who perform news announcing, news editing, news writing, or news reporting functions, who deliver news regularly or frequently before microphones or camera, or who are otherwise regularly engaged in gathering, preparing, or presenting news before the microphones or television camera, excluding all office clerical employees, guards, watchmen, supervisors, and all other employees employed by WTJM-AM-FM-TV. Employer, however, contends that the petitioned-for employees do not constitute an appropriate unit and, indeed, are not even a readily identifiable group since Employer's news operations are consolidated under one news department for television and radio and are not separate departments as Petitioner would imply by its petition for TV newsmen. Petitioner, however, in its brief, indicated a willingness to proceed to an election in a unit which would also include radio newsmen should such a unit be found appropriate.

Employer employs approximately 230 people at facilities known as "Radio City" in Milwaukee, where telecasting, broadcasting, and production of various broadcast material takes place.

Of the total complement of employees, 68 are presently covered by labor contracts,<sup>3</sup> 32 are managerial employees, 3 are confidential employees, and 4 are guards. In addition, while Petitioner and Employer did not agree on what constituted an appropriate unit, they did agree that 23 office clerical employees and 12 sales employees should be excluded from any unit found appropriate. The remaining employees are considered by Employer to be its "production" personnel, consisting of various departments including traffic, continuity, programming, news, promotion, public affairs, community relations, graphics, and the music library. With the exception of traffic, continuity, programming, and promotion, the departments are single departments covering both radio and television operations. In addition, with the exception of the programming department and the news department, the classifications of employees are coextensive with the names of their departments. The programming department classifications include film handlers, announcers, producer-directors, a cinematographer, and a production coordinator, and the news department includes newsmen and photographers.

The various departments described have their own

<sup>1</sup> Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, intervened in this proceeding seeking to represent a unit of photographers, film editors, and laboratory technicians, but it did not appear at or participate in the hearing.

<sup>2</sup> We note that in light of the facts as developed in the record the Hearing Officer's rulings regarding the *subpoenas duces tecum* were not prejudicial

<sup>3</sup> Building maintenance employees, floormen, and engineers are presently covered, respectively, by contracts Employer has with Service Employees International Union Local 150, Local 18 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, and Radio and Television Broadcast Engineers Local 715 of the International Brotherhood of Electrical Workers

department heads who generally supervise the activities within their respective departments. They do report, however, to the manager of radio and TV who makes the final determination with respect to all hiring and salary. All full-time employees are salaried but certain employees earn money in addition to their normal salary. For example, 50 percent of the newsmen and 90 percent of the announcers receive approximately \$35 to \$40 a week on the average in extra money known as "talent" fees. The producer-directors also receive extra fees occasionally. In addition, all the employees receive overtime pay. Finally, all employees have the same vacation, holiday, and leave benefits, although administration of some leave is left to the discretion of department heads.

The newsmen, whom Petitioner seeks to represent in this proceeding, are involved in the gathering, editing, and presenting of news and sports. The record discloses that the skills required for this include an inquisitive mind and the ability to ask the proper questions, to retain information, and to read and present material on radio and TV using a pleasant manner and voice quality. Petitioner maintains that these skills demonstrate intellectual, theatrical, and verbal ability not possessed by other categories of Employer's employees and that the newsmen should therefore be separately represented. The record indicates, however, that other categories of employees perform duties in relation to news gathering, editing, and presenting which, although not exactly those of newsmen, are similar in nature and require similar abilities. For example, photographers, who are included in the news department, in addition to taking pictures, also edit them and serve as reporters. Most importantly, announcers, who are not sought by Petitioner, and who are members of the programming department,<sup>4</sup> also perform similar functions. While the basic duties of the announcers include identifying the station and airing commercials within network programs, as well as reading the news, the announcers often take their news presentations directly from the wire services with the individual announcer determining when to do this and what news item to present. Thus, they exercise an editorial function in addition to their function of presenting news on the air. They also present 5-minute news cut-ins on shows such as the Today Show. While these 5-minute cut-ins are prepared by the news department, it is clear that in this regard too the announcers exercise a news presentation function similar to the newsmen. Finally, as

noted above, most of the announcers, along with many of the newsmen, receive "talent" fees for the performance of their functions.

A distinction has been recognized for collective-bargaining purposes between newsmen and other employees who do not appear on the air and those who do appear on the air.<sup>5</sup> It has also been recognized that where newsmen perform a dual function it would be undesirable to fragment their functions into separate parts for representation purposes and that the appropriate unit in such a situation would be a single unit of all newsmen.<sup>6</sup> Where, as here, however, the dual function newsmen and the announcers perform similar function in a similar manner and are similarly remunerated, separate representation for either of the groups would constitute an arbitrary and unwarranted fragmentation of employees and would therefore be inappropriate.<sup>7</sup>

We also note that the functions performed by the newsmen, especially in gathering the news and performing the news shows, involve a great deal of integration with other categories of Employer's employees. For example, a newsman and photographer generally go out together to cover an emerging news story. Further, some of the programs presented by the Employer, such as the Morning Scene show, are jointly prepared by several departments. In addition, other classifications of employees, such as producer-directors, film handlers, and graphic arts personnel, are actively involved in the presentation of, or preparation for, the news shows.

The record further discloses that while the news department has its own specific location within Radio City, the newsmen have a great deal of contact with other departments and that some employees have changed classifications. For example, one newsman became a full-time photographer, while another became manager of community relations. Similarly, a programming department employee transferred to the news department becoming a news-person.

In sum, the contact with other employees, similarity of benefits, common supervision with other employees of the same department, interchange, and especially the similar nature of job function which the newsmen share with announcers, all display that newsmen, under the circumstances herein, do not share a community of interest separate and apart from other employees of the Employer. Accordingly, we find the requested unit of television newsmen, and the alternative requested unit of radio and television

<sup>5</sup> *National Broadcasting Company, Inc.*, 160 NLRB 1440, *Hampton Roads Broadcasting Corporation (WGH)*, 100 NLRB 238

<sup>6</sup> *Pulitzer Publishing Co.*, 203 NLRB No 105

<sup>7</sup> *Capital Cities Broadcasting Corporation, Television Station WPVI-TV*, 194 NLRB 1063

<sup>4</sup> While there was a conflict in the testimony, the weight of the record evidence discloses that the announcers are members of the programming department

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newsmen, inappropriate. As the Petitioner has not indicated a desire to proceed to an election in a broader unit, we shall dismiss its petition.

It is hereby ordered that the hearing in this matter be closed and that the petition filed herein be, and it hereby is, dismissed.