

**Westinghouse Broadcasting Company, Inc. (KDKA-TV, Channel 2)<sup>1</sup> and Directors Guild of America, Petitioner. Case 6-RC-6897**

January 28, 1975

**DECISION AND DIRECTION OF ELECTION**

BY ACTING CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

Upon a petition duly filed on July 11, 1974, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Barry F. Bevacqua of the National Labor Relations Board on August 20-23, 1974. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 6, this proceeding was transferred to the Board for decision. Thereafter, the Employer and the Petitioner 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 Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding 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.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.<sup>2</sup>

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

4. As to the appropriate unit, there is no history of collective bargaining for the employees sought to be represented here.

The Petitioner seeks to represent a unit of all staff and freelance producer/-directors, and all associate producer/directors employed by the Employer at its television station, KDKA-TV, in Pittsburgh, Pennsylvania. The Employer contends that the proposed unit is inappropriate for collective-bargaining purposes because all employees to be included therein

are supervisors and/or managerial employees within the meaning of the Act.

The Employer, an Indiana corporation with its principal offices in New York City, is engaged in the operation of radio and television stations. Solely involved in this proceeding is the Employer's Group-W television facility known as KDKA-TV, Channel 2. KDKA is affiliated with the Columbia Broadcasting System and broadcasts a daily program schedule which includes network, syndicated, and locally produced programs.

KDKA's general manager is charged by the Employer with ultimate responsibility for the station, which is functionally divided into five departments: programming, engineering, sales, promotion, and business. A department manager oversees each division and reports directly to the general manager. The proposed unit employees here—seven producer/ directors and two associate producer/directors—work in the production department, a subdivision of programming, which is the department responsible for the actual conception, production, and broadcast of all programs of local origin. A program manager, assisted by the executive producer, is in charge of the program department, and in that position he directs the assignment of producer/directors and associate producer/directors to tasks on specific programs. The production department operations manager, inferior in authority to the executive producer, schedules the weekly studio time for each producer/ director and associate producer/director.

**Producer/Directors**

Producer/directors at KDKA are almost exclusively involved in local programming, which comprises approximately one-quarter of the station's weekly broadcast schedule. Newscasts, public affairs broadcasts, and talk shows predominate in the local program lineup. No local program has a set, individual budget. Expenditures by producer/directors for their assigned shows are subject to prior approval and/or subsequent ratification via the submission of written requests and expense records to the programming manager or general manager. In addition, the programming manager controls expenditures through his reserved right of final approval for program format and content.

Depending upon the particular program assignment, a producer/director, as the title suggests, may function as producer, director, or both. The producer is concerned with the development of program

this organization exists for the purpose of representing employees in the television industry in collective bargaining covering wages, rates of pay, hours of employment, or conditions of work, we find and conclude that the Petitioner is a labor organization within the meaning of the Act.

<sup>1</sup> Employer's name appears as amended at the hearing without objection.

<sup>2</sup> The Employer declined to stipulate that Petitioner is a labor organization. In light of the Board's decision in *Directors Guild of America, Inc. (Association of Motion Picture & Television Producers, Inc.)*, 198 NLRB 707 (1972), enf. 494 F.2d 692 (C.A. 9, 1974), and the record evidence that

content before the show is brought before the cameras for taping or live broadcasting. A producer is therefore a central figure in the selection of guests, the determination of staff and set requirements, the drafting of a program format or the more detailed program script, and the circulation of program policy memoranda. In performing these tasks, a producer generally collaborates with on-screen talent, the executive producer, and the program manager. The director's role, in contrast to that of the producer, focuses on the technical and aesthetic aspects of a production; i.e., camera movement, sound level, lighting, graphics, and artwork. Immediately before and during an on-camera program session, the director coordinates a team of studio technicians, talent, and a floor manager in executing a telecast which conforms to the timing and substance of a format, script, or established production pattern. While the cameras are operating, the director issues instructions to production crew members<sup>3</sup> via a headphone system from his control position which is surrounded by television screens, one of which depicts action as will be seen by the viewing public, and others which picture the studio set as seen from the perspective of variously situated cameras. By directing the "switching" of camera input, the director determines which among alternative views becomes the final program picture. Should any technical problems occur during a studio session, the director customarily prepares a discrepancy report about the situation for the information of the executive producer and program manager.

In addition to their particular program assignments, producer/directors collectively participate in several programming department or stationwide activities. They attend weekly production meetings, conducted by the executive producer and occasionally attended by the program manager, at which all aspects of programming department functions are discussed. They also prepare for the program manager their own annual "goals and objectives" memoranda, which are evaluation forms critically assessing the individual producer/director's past, present, and projected involvement with KDKA and including whatever recommendations the author may wish to make. Finally, producer/directors participate in the station's community ascertainment program, which is required by the Federal Communications Commission as a prerequisite to license renewal.

<sup>3</sup> The floor manager uses hand signals to relay the director's instructions to on-screen talent.

<sup>4</sup> *Westinghouse Broadcasting Company, Incorporated/KYW-TV*, 209 NLRB 788 (1974), enf. 503 F.2d 1055 (C.A. 2, 1974); *Westinghouse Broadcasting Company, Inc. (WBZ-TV)(WJZ-TV)*, 215 NLRB No. 26

The initial question presented herein is whether KDKA producer/directors are supervisors within the meaning of Section 2(11) of the Act. We note that the facts and issues in this case are similar to those in three other representation cases involving petitions by Petitioner herein for units of producer/directors at television stations owned and operated by Westinghouse.<sup>4</sup> In each of these cases, we found that the activities of the producer/directors did not indicate actual authority to independently make or effectively recommend any of the personnel changes delineated in Section 2(11); nor did we find that the act of stage direction common to all directorial personnel in local television productions at these stations constituted "responsible direction" within the meaning of the Act. Therefore, we concluded that the employees involved were not supervisors. A close examination of the record in this case necessitates the same conclusion.

The authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline station employees, or to adjust their grievances, clearly belongs to KDKA's general manager. Technicians who man studio crew positions are members of the engineering department, subject to the supervision of authorities therein, and insulated by unit contract from any programming department supervision involving personnel changes such as are enumerated in Section 2(11).<sup>5</sup> Personnel action affecting employees in the programming department is often made upon the effective recommendation of the program manager and executive producer. The Employer cites testimony by its program manager which suggests that in a very few specific instances producer/directors have successfully recommended the hiring, assignment, reward, or discharge of other employees. The evidence is not conclusive as to whether the actions referred to were taken in reliance on a producer/director's recommendation or whether independent sources of information and recommendations by recognized supervisors dictated the result; nor does it appear that the sum of all personnel changes allegedly imputable to producer/directors' authority indicates anything more than sporadic or irregular exercise of supervisory authority for which the Board will not exclude employees from representation in a unit.<sup>6</sup>

Record testimony did reveal that producer/directors, acting in the capacity of producer for a particular program, book guests for single-show appearances. Travel and accommodation expenses

(1974).

<sup>5</sup> The evidence indicated that discrepancy reports filed by producer/directors had no material effect on personnel within the engineering department.

<sup>6</sup> *Meijer Supermarkets, Inc.*, 142 NLRB 513 (1963).

have been paid for some guests, while others have contracted to perform at the lowest acceptable rate of compensation, which varies between minimum standards set by AFTRA contract and a \$400 maximum imposed by the station's general manager. Although every individual booking made by these producers does not require prior authorization by supervisors if made within strictly defined limits, guest performances and compensation do, in fact, require and receive independent scrutiny and final approval by the program manager and/or general manager before they can be initiated as a practice in any program. Furthermore, the record showed that a producer exceeding his booking authority by proffering unauthorized compensation was liable to reprimand by the program manager. Under the circumstances as described, we do not believe the limited booking of program guests on a paid or expense-allowance basis equals the supervisory authority to hire within the meaning of the Act.<sup>7</sup>

As noted above, we have recently stated in other cases involving the parties and issues herein that the act of direction and issuance of stage instructions does not *per se* reflect the supervisory authority to "responsibly direct" other employees. The directions given by KDKA directors are routine technical or aesthetically motivated commands made pursuant to preconceived production guidelines which have been approved by higher authorities; the instructions are independently executed by technical personnel already acquainted with the production plan who are endowed with skills not generally native to the director. In addition, it is apparent that a director is not the sole employee capable of directing production crew members. The technician crew chiefs, members of the technicians' unit, have more authority over many aspects of a technician's studio operations than do producer/directors, and directors with technical staff problems seek their assistance.<sup>8</sup> We conclude from the facts in this case that producer/directors do not "responsibly direct" technicians, talent, associate producers, or fellow producer/directors. We also reject the Employer's contention that they are fully answerable or responsible for the performance of these individuals. The evidence clearly shows that the chief engineer for television bears the ultimate responsibility for technicians' performance, while the programming manager and

executive producer bear the ultimate responsibility for programming department employee performance.<sup>9</sup> Producer/directors function as employees in an integrated production process, exercising considerable judgment only in respect to their own responsibilities and not with respect to the direction of others who are independently capable of fulfilling their own assigned tasks.<sup>10</sup>

Having found that KDKA producer/directors lack any supervisory authority, we must decide whether they are managerial employees, as the Employer contends. KDKA producer/directors have been told they are members of management by their superiors, although no producer/director testifying believed this to be so. Furthermore they have limited influence on the Employer's budget. Producer/directors, in conducting business pursuant to specific program assignments, may incur limited restaurant or guest travel expenses on behalf of the Employer, and they must thereafter submit expense records to the programming manager for approval. One producer/director even drafted and utilized an employment contract in booking paid guests which he signed as the Employer's agent. He did so without prior knowledge or approval from any superior at KDKA. The booking procedure and rate limitations embodied by the contract, however, were established in advance of its creation and were determined by recognized managerial authorities, the general manager, and programming manager. Under the circumstances, we find no evidence that any producer/director has any real or substantial discretion to pledge the Employer's credit, absent established controls and the approval of others. We also find that, although KDKA producer/directors participate fully in the planning and production of local programs, as described above, they do so within the parameters set by the Employer's established program policy, which is determined and effectuated by the station's general manager, programming manager, and executive producer, all undisputed managerial personnel. Those individuals have the authority and independent discretion to approve or reject any policy recommendation by a producer/director. Therefore, we conclude that producer/directors do not exercise discretion in policy matters as would a

<sup>7</sup> The subsequent decision not to broadcast the taped performance of a paid guest is a program policy matter determined by consultation between the producer and the executive producer, and the resultant exclusion of the performance does not indicate any supervisory authority to discharge others. One producer/director testified that he had the paper authority to remove a guest whose performance was unsatisfactory during an actual taping session, but he has never done so.

<sup>8</sup> Crew chiefs and technicians with seniority outearn producer/directors, whose annual salaries range from \$12,800 to \$15,756. A crew chief with 4

years' experience earns \$17,966 under the unit agreement.

<sup>9</sup> It is reflective of the ultimate responsibility of the executive producer that she has insisted that her name appear in the program credits for each local production for the express purpose of identifying herself as the supervisor in charge, even though she may not have closely overseen the instant production project.

<sup>10</sup> Accord, *Post-Newsweek Stations, Capital Area, Inc.*, 203 NLRB 522 (1973).

truly managerial employee.<sup>11</sup> We conclude that KDKA producer/directors are not managerial employees within the meaning of the Act.

#### Associate Producer/Directors

The Employer contends that the station's two associate producers are producer/director trainees, perform many of the same tasks as producer/directors, and should be excluded from the proposed unit for the same reasons given for exclusion of producer/-directors. Since we have rejected the Employer's contention that producer/directors at KDKA are supervisors or managerial personnel, we do so also for associate produc-

<sup>11</sup> See *Eastern Camera and Photo Corp.*, 140 NLRB 569 (1963); *General Dynamics Corporation, Convair Aerospace Division, San Diego Operations*,

er/directors and shall include them in the unit found appropriate.

Accordingly, we find that the following employees of the Employer at its television station, KDKA-TV, in Pittsburgh, Pennsylvania, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(c) of the Act:

All staff and freelance producer/directors, and all associate producer/directors, excluding all other employees, guards, and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]

213 NLRB No. 124 (1974).