

American Broadcasting Company, a Division of the American Broadcasting Companies, Inc. and National Association of Broadcast Employees and Technicians, AFL-CIO, CLC, Petitioner.¹ Case 31-RC-2778

March 6, 1975

**DECISION ON REVIEW AND
DIRECTION OF ELECTION**

**BY MEMBERS FANNING, JENKINS, AND
PENELLO**

On August 5, 1974, the Regional Director for Region 31 issued a Decision and Order in the above-entitled proceeding in which he dismissed the petition on the ground that the requested unit of film processors was inappropriate in view of their history of bargaining as a part of a broader unit, and that no compelling reasons exist to warrant severance therefrom. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's decision on the grounds, *inter alia*, that he made erroneous factual findings and departed from officially reported precedent.

By telegraphic order dated November 20, 1974, the request for review was granted. Thereafter, the Petitioner filed a brief on review.

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, including the Petitioner's brief on review, and finds that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

NABET contends, contrary to the Regional Director, that the record does not establish that the requested film processors have been part of a broader unit. We agree.

¹ The Petitioner and the Employer are sometimes referred to herein as NABET and ABC, respectively.

² Employees in this group are referred to hereinafter simply as film editors.

³ Local 776 did not intervene herein but its business agent testified at the hearing as a witness for the Petitioner and indicated that Local 776 has no objection to the representation of ABC's film processors by NABET. A number of other groups of employees in the news department at the center are represented by different labor organizations, among others, NABET and two other IATSE locals.

⁴ Counterpart film processors at CBS are also represented by Local 776;

ABC, which is engaged in local and national television broadcasting, operates a TV center in Los Angeles, California. The requested film processors, four full-time and one part-time, are part of the news department and are located in the technical building at the center. They work in the basement which has restricted access and devote their time to the processing of exposed film. After the film is processed, it is sent upstairs to the newsroom where it is edited and commercials are spliced into it. Working in the newsroom are 10 film editors and an unspecified number of ancillary employees. The film is then sent to another building at the center for inclusion in news broadcasts.

Both the film processors and the group of film editors and related employees² working in the technical building have been represented by Motion Picture Film Editors Local No. 776, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO (herein called Local 776, IATSE).³ The film editors employed in the news departments of the Columbia Broadcasting System (CBS) and National Broadcasting Company (NBC) at their West Coast facilities are also represented by Local 776.⁴

For a number of years, the three networks have negotiated jointly with Local 776 concerning the film editors at their respective West Coast facilities, and each network has executed with it a series of separate 3-year agreements, essentially similar in their terms.⁵ The last Film Editors Agreement expired July 31, 1974.⁶

Although not entirely clear from the record, it appears that around December 1966, when ABC established its own color film processing laboratory at the TV center and created the film processor classification in its present form, ABC and Local 776 agreed by letter that the terms of the Film Editors Agreement would apply to the film processors, except that wage rates would be the same as those provided for film processors in the large film laboratories of the motion picture industry under the Basic Film Agreement between IATSE and a number of its locals⁷ and the Association of Motion Picture and Television Producers (AMPTP). When the 1968 Film Editors Agreement was executed, a

those at NBC are represented by NABET.

⁵ The agreement with ABC is entitled "ABC-Film Editors and Cutters Collective Bargaining Agreement," hereinafter referred to as the Film Editors Agreement. The contracts with each network contain minor variations to reflect slightly different fringe benefits. It is not clear—and we need not here determine—whether or not a multiemployer unit was established.

⁶ At the time of the hearing the agreement had not expired.

⁷ Under that agreement, Local 683 represents laboratory technicians, including film processors, and apparently Local 776 represents film editors.

side letter pertaining to ABC's film processors was attached which stated: "Except for rates of pay such employees operate under and are covered by all provisions of the local agreement between us." The letter also sets forth as their pay rates those contained in the existing Basic Film Agreement. A similar side letter was attached to the 1971 Film Editors Agreement. At that time the Basic Film Agreement, which again governed the rates to be paid ABC's film processors, was not due to expire until January 31, 1973. During the negotiations leading to the 1971 Film Editors Agreement, Local 776 made certain demands with respect to the film processors and proposed that the unit description in the Film Editors Agreement be modified to include specifically the film processors. However, ABC rejected the proposal, claiming the proposed changes were tied to wage rates which were not subject to reopening until January 31, 1973. Negotiations for a new agreement on film processor wage rates did not commence until January 1974. No new agreement has been reached between Local 776 and ABC as to such rates and the film processors are still being compensated at the rates provided under the expired Basic Film Agreement.⁸

In view of the foregoing, we are not persuaded that ABC and Local 776 have manifested their intent, either by the language of their agreements⁹ or by their conduct, to merge ABC's film processors and film editors into a single unit. In so concluding, we

⁸ A new agreement was reached regarding rates of pay for film processors at CBS. While not entirely clear from the record, it appears that the delay in negotiating a new wage rate for ABC's film processors is at least partially attributable to difficulties encountered by the parties to the IATSE-AMPTP negotiations regarding appropriate pay rates for film processors and other covered employees. Several IATSE locals, including Locals 776 and 683, apparently declined to ratify the proposed agreement but allowed employees represented by them to be paid according to rates established thereunder despite their disagreement.

⁹ We do not view language therein making all terms and conditions other

rely primarily on the facts that the three major networks have bargained jointly with Local 776 concerning their respective film editors; the Film Editors Agreement by its terms covered a unit comprised only of the film editors; the side letter agreements between Local 776 and ABC do not specifically state that the film processors shall be included in the same unit with the film editors; and the agreed wage rates for the film processors were in fact "tracked" to the Basic Film Agreement above referred to which had an effective period different from that of the Film Editors Agreement.

Accordingly, as we have concluded that the film processors have a history of representation by Local 776 in a separate unit apart from the film editors, we shall direct an election among them, as requested by NABET, in the unit described below, which we find to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time¹⁰ film processors employed by the Employer at its facility at 4151 Prospect Avenue, Los Angeles, California, excluding all office clerical employees, professional employees, guards and supervisors¹¹ as defined in the Act.

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

than wages applicable to the film processors as sufficient, in itself, to establish an intent to create a single unit of film editors and film processors.

¹⁰ At the time of the hearing Dick Dow had been employed as a regular substitute for a processor who had been absent for a period of 3 months due to illness. The record shows that Dow is called on a regular basis to fill in for film processors who are absent for vacation and illness. There appears to be no dispute as to his inclusion in the unit. Accordingly, he is included.

¹¹ The parties stipulated at the hearing that Axel Dag, referred to as the supervising processor, is not a supervisor as defined in the Act. Accordingly, he is included in the unit.