

Association of Motion Picture and Television Producers, Inc.¹ and Composers and Lyricists Guild of America, Petitioner. Case 31-UC-58

July 29, 1975

**DECISION AND ORDER DENYING
PETITION TO CLARIFY UNIT**

BY MEMBERS FANNING, KENNEDY, AND PENELLO

Upon a unit clarification petition duly filed by the Petitioner under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on various dates between September 16 and December 16, 1974, before Hearing Officer Zane Lumbley. On December 31, 1974, the Acting Regional Director for Region 31 issued an order transferring this case to the Board. Thereafter, the Petitioner and the Employers filed timely briefs with the Board.

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. Those rulings are hereby affirmed.

Upon the entire record in this case, including the briefs filed by the parties, the Board finds:

1. The Employer, a multiemployer bargaining association (hereinafter called the Association) is composed of some 70 producers of motion pictures and television shows who are engaged in commerce within the meaning of the Act to an extent clearly warranting a finding that it will effectuate the purposes of the Act to assert jurisdiction. We so find.

2. The Petitioner (herein called the Guild) was organized to represent the interests of composers of music and/or words who fall roughly into two categories: staff composers and freelance composers. Apparently all those who are currently Guild members are freelance composers whose status as either "employees" or "independent contractors" within the meaning of the Act's definition of those quoted terms in Section 2(3) is here tendered for the Board's determination via the unit clarification route. The Guild

stated on the record herein that only if the Board finds the freelance composers to be "employees" will it claim to represent them as a "labor organization" within the meaning of Section 2(5) of the Act. For the reasons hereafter set forth, we find that the Board's unit clarification process, invoked by the Guild through the petition herein, is not an appropriate method for determining the questions presented concerning the statutory status of the composers. We therefore neither reach nor pass upon the statutory status of the Guild as a "labor" organization.

3. As a predicate for invoking the Board's unit clarification procedures herein, the Guild presents a certification granted to it by the Board in 1955, following the conduct of an election held pursuant to an agreement for consent election in which the parties expressly agreed to define the unit as follows:

Composers of music and/or words in connection with music employed in the County of Los Angeles, California by Allied Artists Productions, Inc., Columbia Pictures Corporation, Loew's, Incorporated, Paramount Pictures Corporation, Republic Productions, Inc., RKO Radio Pictures, Inc., Twentieth Century-Fox Film Corp., Universal Pictures Company, Inc., and Warner Bros. Pictures, Inc., excluding arrangers, orchestrators, copyists, proofreaders, librarians, and all other classifications of employees covered by existing collective-bargaining agreements with the American Federation of Musicians, and all supervisors and independent contractors.

The parties thereafter bargained pursuant to that certification and concluded a number of contracts respectively dated in 1960, 1965, and 1967. Their latest agreement expired on November 30, 1971. The history of their relationship since that date has been critically affected by adamant positions each has taken and continuously maintained on a demand, first asserted by the Guild at the bargaining table in 1971, that the producers release their ownership of the copyrights to the individual composer-members of the Guild who had respectively composed the copyrighted product. In 1972, having lost a strike called in aid of the demand, the Guild's composer-members instituted antitrust proceedings in the Federal District Court for the Southern District of New York on the theory that the composers were independent contractors and that the producers were acting in violation of the antitrust laws by banding together to maintain the ownership of the copyrights, *supra*. When a decision, issued by that court in June 1974, dismissed the suit on grounds that the basic underlying dispute was arguable one over employer-employ-

¹ Also parties to the cases are the following Employers: RKO; Columbia Pictures Industries, Inc.; Metro-Goldwyn-Mayer, Inc.; Paramount Pictures Corp.; Twentieth Century-Fox Films, Inc.; Universal City Studios, Inc.; Warner Bros., Inc.; Walt Disney Productions, Inc.; Allied Artists, Inc.; and Republic Pictures, Inc. The Petitioner also listed certain additional companies as Employers, but the Regional Director dismissed the petition as to most of them on the basis of the Petitioner's stipulation that it was not recognized by them and had no contract right to represent their employees. The Petitioner did not appeal these dismissals.

ee matters under the Act, and hence within the Board's exclusive jurisdiction,² the Guild then filed the instant clarification petition seeking a determination as to whether the composers are within the scope of the unit definition in the 1955 certification, *supra*, as "employees" or outside the unit under its specific exclusion of "independent contractors."

At the hearing on the unit clarification petition, the Guild, as noted, refused to stipulate either that it was or was not a labor organization representing employees under the Act. But it did stipulate that it has made no effort to bargain on behalf of the composers either with the Association itself or with any Association producers since early 1972. And it further stated that it would make no representation or bargaining claims under the Act on any employer if the Board affirms its position that the freelance composers are independent contractors. The producers, in turn, declared that they were there and then formally withdrawing recognition from the Guild as the bargaining representative of composers engaged by them, asserting a good-faith doubt of the Guild's majority status among those composers. This withdrawal was applied by the producers irrespective of a determination the Board might make on the basis of the unit

questions raised by the Guild.

Upon the basis of the foregoing facts, and taking into consideration the record as a whole, we conclude that the Guild's petition is inappropriate in the present circumstances and accordingly should be dismissed. It is well settled that the purpose of a unit clarification petition is to define the unit status of specified employees in order to aid the parties in their current collective-bargaining relationship. Here, however, there is no current collective-bargaining relationship which a unit clarification would possibly aid.³ The producers have withdrawn recognition from the Guild, there have been no bargaining meetings or even bargaining requests for over 3 years, and the Guild itself refuses to stipulate that it is a labor organization or represents employees under the Act. Since no purpose would be served by entertaining the Guild's petition, we shall dismiss the petition, and we therefore deem it unnecessary to pass on the merits of the Guild's contention that its freelance composer-members are independent contractors rather than employees under the Act.

ORDER

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

² *Bernstein v Universal Pictures, Inc.*, 379 F.Supp. 933 (D.C.N.Y., 1974), reversed and remanded 89 LRRM 2471, 77 LC ¶ 10, 889 (C.A. 2, 1975)

³ *Manufacturing Woodworkers Association of Greater New York, Inc.*, 179 NLRB 538 (1969)