

**Belo Broadcasting Corporation, WFAA-TV and Local Union 1257 of the International Brotherhood of Electrical Workers, AFL-CIO, CLC, Petitioner.**  
Case 16-UC-70

June 29, 1976

DECISION AND ORDER CLARIFYING UNIT

BY MEMBERS FANNING, PENELLO, AND WALTHER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, in Case 16-RC-7005, a hearing was held before a Hearing Officer of the National Labor Relations Board. Thereafter, on November 10, 1975, the Acting Regional Director for Region 16 issued a Decision and Direction of Election<sup>1</sup> in which, *inter alia*, he concluded that the lighting director and assistant director at the Employer were supervisors within the meaning of Section 2(11) of the Act and therefore excluded from the unit the Acting Regional Director found appropriate.<sup>2</sup>

Thereafter, Petitioner filed a timely request for review of the Acting Regional Director's finding concerning the status of the lighting director and the assistant director. By order dated December 17, 1975, the Board ruled that ". . . the supervisory status of [the lighting director and the assistant director] . . . can best be resolved through the challenge procedure [and] the decision is amended to permit them to vote subject to challenge." Thereafter, an election was held on December 18, 1975. The tally of ballots served on the parties indicated that a majority of the employees in the unit described by the Acting Regional Director had voted for representation by Petitioner and that the challenged ballots were not sufficient in number to affect the election's results. Therefore, on December 29, 1975, the Regional Director for Region 16 issued a Certification of Representative certifying Petitioner as the exclusive representative in the bargaining unit defined by the original Decision and Direction of Election and the First Supplemental Decision and Direction of Election. As noted *supra*, this unit excluded the lighting director and assistant director.

On January 6, 1976, Petitioner filed a motion to amend the certification with the Regional Director

for Region 16 seeking to amend its certification to include the lighting director and the assistant director in the unit. That motion was denied by the Regional Director on January 8, 1976. Subsequently, Petitioner filed with the Board an appeal of the Regional Director's denial of its motion to amend the certification. However, Petitioner thereafter withdrew its appeal and filed instead the instant petition in Case 16-UC-70 with the Regional Director, in which it seeks clarification of its unit by the inclusion of the lighting director and the assistant director. Petitioner also filed with the Regional Director a motion to transfer the instant proceeding to the Board for resolution. The Employer thereafter filed a motion to protest the processing of the unit clarification petition and, in the alternative, also filed a motion to reopen the record with respect to an employee classification included in the certified unit which the Employer wished to be excluded.

Thereafter, on March 2, 1976, the Regional Director, pursuant to Section 102.63(b) and 102.67(h) of the Board's Rules and Regulations, transferred the instant proceeding, including the entire record in Case 16-RC-7005, to the Board for resolution. Both Petitioner and the Employer subsequently filed briefs in support of their various motions.<sup>3</sup>

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 in Case 16-RC-7005 and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.<sup>4</sup>

<sup>3</sup> Both Petitioner and the Employer have been afforded an opportunity to present new evidence, if any, with respect to the categories of lighting director and assistant director, but rely on the record made in Case 16-RC-7005. It is on the basis, then, of that record and the briefs filed in the instant proceeding that we have made our findings on these two categories.

<sup>4</sup> We herein are clarifying the unit in which Petitioner is certified by deciding whether the lighting director and assistant director are categories properly included in the certified unit. This was an issue left unanswered by our allowing individuals in these categories to vote subject to challenge in the election. We note that the Employer in its present brief to the Board urges that the record be reopened to permit the admission of additional evidence concerning the status of crew chiefs. In his initial Decision and Direction of Election in Case 16-RC-7005, the Acting Regional Director included this classification in the unit. As the Petitioner filed a request for review regarding the status of the lighting director and the assistant director, so too did the Employer file a request for review on the status of the crew chiefs. However, while the Board permitted the lighting director and assistant director to vote subject to challenge, thus not passing on their status, the Board denied all other aspects of the requests for review as raising no

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<sup>1</sup> As amended by a First Supplemental Decision and Direction of Election issued on November 11, 1975

<sup>2</sup> The appropriate unit was:

All employees of the Employer in studio production, including assistant lighting directors and crew chiefs, at its station WFAA-TV, Dallas, Texas, but excluding all other employees of the Employer, lighting director, assistant director, studio production directors, office clerical employees, watchmen, guards and supervisors as defined in the Act.

3. The Employer is a Texas corporation engaged in operating television station WFAA-TV in Dallas, Texas. In the course of fulfilling its function to air programming which, as required by its FCC license, is in the public interest, the station shows various types of programs. Some of these programs are supplied by the national television networks and others the station purchases from film companies and syndication companies. Additionally, the station produces certain of its own programs and a number of commercial spot announcements for various of its clients. This last responsibility is handled primarily by the station's production department. The department's specific responsibilities are to manage the facilities and crews that produce the commercials, promotional announcements, and programs for the station; to provide the facilities and crews to outside people engaged in commercial production; and to produce spots in commercials for local, regional, and national distribution. Both disputed classifications of lighting director and assistant director are within the production department.

*Lighting director:* David Calhoun is the lighting director and has been employed at the station since 1968. Calhoun's immediate supervisor is Bill Haggmann who is the station's facilities manager. Haggmann supervises the station's floor crew, including the crew chiefs, camera operators, lighting personnel, and assistant directors, and is, in turn, supervised by the station's operations manager.

With respect to the lighting director's responsibilities, the Employer introduced into evidence a job description of the position which was drawn up in 1970 and which apparently is still in effect. According to the job description, the lighting director is generally responsible for the overall planning of lighting services at the station and is also responsible for the training and development of other employees in the lighting skill. These general responsibilities are further delineated by certain specific duties which include the holding of seminars to advance the lighting employees' training; the initiation of recommendations and purchase orders for the acquisition of new lighting equipment; the supervision of the maintenance and repair of existing equipment; and the supervision of lighting plots or design for all live and tape programming, for various remote telecasts, and for in-studio and remote commercial film operations.

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substantial issue warranting review. Thus, the Board affirmed the Acting Regional Director's inclusion of the crew chiefs in the unit and rejected the Employer's argument to the contrary.

Further, it appears that the Employer incorporated its present motion to reopen the record in its initial request for review to the Board. That motion was considered and denied at that time and there is insufficient reason to reverse that determination presently. We thus deny the Employer's motion to reopen the record to take additional evidence on the crew chiefs' status

As part of his responsibility as lighting director, Calhoun is in charge of and responsible for the technical and artistic appearance of the lighting on the sets on which he is working. He is not aesthetically limited by any preexisting production policies, but he has no voice in any program policies. The Employer does not seriously contend that this technical aspect of Calhoun's job makes him a supervisor within the meaning of the Act. However, the Employer contends that certain of Calhoun's other functions are supervisory in nature.

It is clear that Calhoun has never been advised that he could hire, fire, suspend, lay off, recall, promote, assign, reward, discipline, or adjust the grievances of other employees. Calhoun further cannot authorize overtime nor can he schedule vacations. Crew shift assignments on the lighting crew are made by Facilities Manager Haggmann, and Calhoun does not have the authority to request specific individuals for assignment to a crew. He may be consulted about such an assignment, however.

At the time of the hearing, there were two other employees besides Calhoun in the station's lighting crew. Normally, at the time Calhoun would be working, one of these other employees would also be engaged in lighting work on another set. The remaining employee would work on another shift. At times, however, a lighting employee may be assigned to work with Calhoun in order that the employee might observe Calhoun's work and have Calhoun explain to the employee the work he is doing. Calhoun has also viewed tapes of other lighting employees' performances when he was not immediately available to view their work first hand and has therefore critiqued the employees' performances. Calhoun has the highest degree of understanding of lighting at the station and, in fact, has trained all those presently involved in lighting.

As noted, one of the lighting director's responsibilities is the supervision of the maintenance and repair of existing lighting equipment at the station. To that end, at a time when the operations manager was on vacation, Calhoun issued to all production department personnel a policy statement on the use of lighting equipment. In the memo, however, Calhoun noted that this policy had been set down by the operations manager; that he was reiterating that policy; and that any changes in the policy would have to come from the operations manager.

There was introduced into evidence a statement of annual goals which the station at one time had established for lighting employees. The establishment of these goals ceased in 1973. These goals were drawn up by individual members of the lighting crew and submitted to Calhoun who would then draw up pro-

posed goals for the year for the lighting crew based on his own and the other employees' goals. These goals would then be submitted to the operations manager who would decide which goals the lighting crew would then work on. The goals submitted by the employees on the lighting crew to Calhoun stress the training Calhoun was supplying them as they learned the lighting trade. Calhoun's goals, in turn, stressed to the operations manager the necessity for adequate training of the lighting personnel. Calhoun indicated that the basic desire of the employees was for opportunity to perform, which Calhoun indicated he would attempt to provide to the employees, and then critique their performance. Calhoun indicated in one of his memos to the operations manager that the section's goals as submitted were themselves suggested by members of the lighting staff. Calhoun indicated his intent to monitor the goals the employees, themselves, had set out for themselves, but such may be construed as another way of indicating that Calhoun would monitor their training.

At the request of the operations manager, Calhoun has made reports on the possibility of promoting people into a lighting crew position. Before taking any such action, however, the operations manager also inquires of studio directors concerning such an employee's performance. There has been no situation where the operations manager had to choose between Calhoun's recommendation and that of any director regarding any employee as there apparently had been a consensus on such recommendations. Calhoun did recommend certain shift changes for lighting personnel which thereafter occurred. It is clear that in at least one instance the employee shifted wanted to do so and it is unclear whether there was a pay raise in that or any shift change.

In addition to these above-mentioned duties, Calhoun has initiated purchase orders for lighting equipment, but these orders are thereafter subject to the approval of others in the Employer's supervisory hierarchy. Calhoun, at times, also functions as a grip, locating, focusing, and moving and removing lights.

In concluding that Calhoun was a supervisor, the Acting Regional Director found that Calhoun effectively recommended the advancement in pay and grade of subordinate employees and responsibly directed the training and development of various employees. We reach a different conclusion from that of the Acting Regional Director based on our independent evaluation of the record. Based on that analysis, we conclude that Calhoun has not made effective recommendations on employee advancement inasmuch as such recommendations as have been requested of him have been independently investigated by the operations manager's also inquiring of the di-

rectors concerning an employee's skill. With respect to the direction Calhoun gives the employees, this apparently is not carried on while the employee is on the job but consists primarily of critiques of the employees' performance in their training capacity. The relationship between Calhoun and the other lighting employees in such circumstances is more akin to a skilled employee aiding a less skilled employee than it is to a supervisor responsibly directing an employee.

Calhoun's involvement in the reiteration of the Employer's policy on the use of the lighting equipment and in the formulation of goals for the lighting department also does not persuade us that he is a supervisor within the meaning of the Act. Control over equipment does not indicate here a supervisory status and, in the formulation of goals, Calhoun appears to have been primarily a conduit, as the actual goals for the lighting crew were finally decided on not by Calhoun but by the operations manager. While Calhoun's recommendations on employee shift changes may have been acted upon, the result of such changes is unclear and in such circumstances cannot be relied upon to establish supervisory status. In essence, Calhoun appears to be a trusted nonsupervisory employee who is looked to for a large training function because of his expertise and who was also looked to for suggestions on certain areas of employee development but who did not responsibly recommend employee advancement or responsibly direct employees within the meaning of the Act.

*Assistant director:* The position of assistant director is filled by Clyde Chappel. Chappel spends 60 percent of his worktime operating a television camera. The balance of his time is spent acting as the director for WFAA-TV's weekend news programs and for "Peppermint Place," a children's program. Additionally, Chappel has substituted for other directors on other shows. As director, Chappel does not draw up program policy or statements thereon. Rather, he is responsible for the "look" of a particular show. He cannot overrule a producer on a program's content, but he can do so on a technical aspect which affects the show's quality. He is given a script or format for the shows which he directs, e.g., the newscast script is verbatim and the children's show has an extensive outline. As a director, Chappel gives the studio technical crew instructions on lights, camera positions, set construction, audio requirements, timing and procedure, and the switching of cameras. The crewmembers are supplied with the program's script and because of this and because of their experience are often able to anticipate Chappel's instructions. These instructions, relating to the look of the show, relate to aesthetic considerations.

Chappel does not have the authority to hire, fire, transfer, suspend, lay off, recall, or promote employees; grant time off; instruct employees to work overtime; reward or discipline employees; assign them to shifts; or receive or adjust their grievances or complaints. As a director of certain shows, he gives appraisals of employees' performance to the station's operations manager or facilities manager. He does not directly critique or criticize any employee's deficient performance but simply refers the matter to his supervisor. He is not aware of whether his appraisals have had any significant influence on the employees' careers, and it appears his suggestions on an employee's performance are considered along with others supplied by other personnel.

It was unclear at the time of the hearing whether Chappel's duties are to remain at the ratio of 60 percent camera work to 40 percent direction responsibilities. The two assistant directors prior to Chappel did not do camera work. Chappel began his camera work at the percentage quoted in April 1975 when cutbacks decreased his direction work. While the Employer indicated a desire to restore Chappel to full-scale direction work, it admitted that it had never told Chappel this fact and Chappel indicated that he had not been presented with a goal of increased direction responsibilities.

In excluding Chappel from the unit, the Regional Director concluded that Chappel responsibly directed and coordinated the activities of the production crew in the preparation for transmission of the weekend newscast and the children's show, citing *Great Western Broadcasting Corp. d/b/a KXTV*, 192 NLRB 1203 (1971), for support. That case is inapposite here since the individuals considered therein had full responsibility for shows "from the planning stage through the presentation over the air."<sup>5</sup> Here, by

contrast, Chappel's direction duties are confined only to the actual show. Further, his directions are either routine in nature or motivated by artistic effect. As Chappel is limited by preexisting production policies or the detailed guidelines of a script, we conclude that he does not use the requisite independent judgment necessary to find him a supervisor and is akin to a conduit, issuing orders which crewmembers, each supplied with a script, can already anticipate.

It is true that Chappel offers critiques to higher management about the work of those serving on crews while he is director. Others offer critiques on employees also. We conclude that the record does not show whether Chappel's reports have had any significant influence on the station's personnel policy.

The Employer attempted to show that Chappel was being groomed to become a permanent studio production director, a category excluded from the unit. There is not any record evidence of substance setting out the duties of the studio production director. It is also unclear from the record when, if ever, the Employer's hoped-for progression of Chappel to a full-fledged director would take place. In such circumstances, where the facts otherwise warrant a finding that Chappel is not a supervisor within the meaning of the Act, we will not exclude him from the unit on this last basis proposed by the Employer.

#### ORDER

It is hereby ordered that the certification in Case 16-RC-7005 heretofore issued to Local Union 1257 of the International Brotherhood of Electrical Workers, AFL-CIO, CLC, be, and it hereby is, clarified by specifically including therein the categories of lighting director and assistant director.

<sup>5</sup> 192 NLRB 1203, 1204