

Booneville International Corporation d/b/a KMBZ/KMBR Radio and Broadcast Engineers Local 1259, affiliated with International Brotherhood of Electrical Workers, Petitioner. Case 17-UC-143

July 29, 1988

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND BABSON

On May 30, 1986, the Regional Director for Region 17 issued a Decision and Clarification of Bargaining Unit in the above-captioned proceeding. In his decision, the Regional Director concluded that the existing unit of all full-time and regular part-time news editors employed by the Employer¹ should be clarified to include the position of sports producer/news writer.

Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review alleging that, contrary to the conclusion of the Regional Director, the sports producers/news writers should be excluded from the unit. The Petitioner filed a statement in opposition, contending that the Regional Director's decision accreting these employees to the unit was correct. By unpublished order dated October 14, 1986, the Board (Member Stephens dissenting) granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Employer operates two radio stations: KMBZ, an AM station with a news, information, and sports format; and KMBR, an FM easy-listening music station which also broadcasts some news. In November 1985 the Employer acquired the right to broadcast Kansas City Royals baseball games and KMBZ, which had always broadcast some sports, made plans to increase its sports coverage with the beginning of the baseball season in the spring of 1986. In March the Employer announced the posting of job openings for two sports producers/news writers. Two news editors, Cook and Poor, were awarded the positions in April 1986.

The news editors, who comprise the existing unit, report to Managing Editor Holderby, who reports to News Program Director Ludlum. They work in the newsroom which they do not leave except in an emergency. Their primary responsibilities are to monitor the broadcasts of the stations

on the air, monitor the police "scanners," and "rip" the wire services, that is, tear copy as it comes from the wire service machines and place it in baskets according to topics. News editors must also record certain "audio feeds" or transmissions from the wire services and other sources. They make "beat calls" to police and fire agencies several times each shift looking for news, contact various newsmakers, and conduct telephone interviews. Coordinating this material, the news editors determine what will be heard on the air.² Generally the news editors work only 40 hours per week with their schedules being set by Holderby.

Like the news editors, sports producers/news writers Poor and Cook do interviews, but are not heard on the air. Unlike the news editors, they work throughout the studio and are not confined to the newsroom. When the Royals are playing home games, one works at the station and one at the stadium. The sports producer/news writer working at the stadium goes to the locker room and sets up equipment, discusses with the announcer who will be interviewed, and makes arrangements for the interview. Meanwhile, at the station, the other will be putting highlights of the game on tape, monitoring the game to make sure there are no breakdowns, and answering the telephone for the postgame call-in show.

The Employer presented testimony that the sports producers/news writers are supervised by Sports Director Davis who, along with his assistant, Burley, does the sports announcing. Davis is said to have the authority to make recommendations with respect to hiring and firing, but it does not appear whether he is a statutory supervisor. Poor and Cook work with Davis and Burley discussing with them what guests should be interviewed on the shows, making arrangements for the interview, selecting topics for specific programs, and supplying Davis and Burley with interesting facts and background material for the shows.

The sports producers/news writers, conferring with Davis, prepare their own schedules based on the team's schedule and turn them into Ludlum once a week. On occasion, when the team is in town, they work more than 40 hours per week. Like the news editors, they are hourly paid and receive the same benefits. When Cook and Poor became sports producers/news writers they received the same pay rate they had received as news editors with a promise of a review in 90 days.

² News editors themselves are never on the air. The Employer's on-air performers are represented by the American Federation of Television and Radio Artists (AFTRA)

¹ The Petitioner was certified to represent this unit on March 21, 1986.

At the time of the hearing, the sports producers/news writers had not as yet performed any news writer functions. According to the Employer, as news writers they will be "reporters" except that they will not be heard on the air. They will be assigned to cover nonsports news such as news conferences, hearings, and special events in the community. In addition to their news writer assignments, in the off-season they will continue to be involved in sports programming.

The Petitioner filed the instant petition seeking to clarify the existing unit of news editors to include the two sports producers/news writers.

The Regional Director granted the requested accretion, noting that when new employees are found to have common interests with members of the existing bargaining unit and would, if in existence, have been included in the certified unit, accretion is proper. Though noting that sports producers/news writers spend significant time away from the station, the Regional Director found that both the news editors and the sports producers/news writers are housed in the same facility. Both classifications provide support for on-air performers. The Regional Director relied on evidence that the Employer considered rotating the sports producer function among the news editors and eventually selected news editors to fill the positions. He also relied on Ludlum's having the actual supervisory authority over both groups and pointed out that both classifications enjoy the same wages and benefits and frequently share the same working areas. Finally he found that both classifications are instrumental in determining what will be aired and how it will be presented. Thus he concluded that there was a substantial community of interest among these employees that warranted the inclusion of both classifications in the same unit.

In requesting review, the Employer contends that the sports producers/news writers do not do news editors' work and have entirely different job functions. Further, the Employer points out that another producer, Morrison, whose duties are similar to those of the sports producers/news writers, has never been considered to have functions or interests similar to those of the news editors, and is not included in the existing unit. Morrison produces the midday program which airs each day. The record discloses that Morrison's job is "quite similar" or "about the same" as that of sports producer/news writer in that she lines up guests for interviews and arranges for them to appear on the midday show. She provides the two midday hosts with books, press releases, notes, and other material necessary for the broadcasts and some-

times suggests questions for the hosts to use in interviews.

We agree with the Regional Director's conclusion. In determining whether to grant a petition for unit clarification grounded on accretion, the Board examines whether the employees sought to be accreted not only possess a community of interest with the unit employees, but also lack a distinct identity that would warrant placing them in a separate unit.³ Here the petitioner seeks the inclusion of a new classification—sports producer/news writer—into the existing unit of news editors. Essentially for the reasons stated by the Regional Director, we find that the sports producers, who produce material for the employees who broadcast the sports shows, have a community of interest with the news editors, who produce material for the employees who broadcast the news shows. In fact, as noted above, the two employees who comprise the new job classification were historically included in the unit as two of the five news editors. On obtaining broadcasting rights to the Kansas City Royals baseball games, the station management found that it must have personnel who could devote substantial time and energy to servicing the new sports shows. Because the skills and experience required to broadcast these events were similar to those required for the broadcast of the news shows, it was quite natural for the Employer to give the new assignment to the two news editors who had expressed an interest in it. But the reassignment did not significantly change or erode the community of interest which existed between the newly dubbed sports producers and their news editor colleagues.

With respect to the Employer's suggestion that the two sports producers have a separate identity in a theoretical unit composed of them and an employee known as the midday producer—apparently a preexisting, previously excluded job classification—we find the record evidence too sketchy and insufficient to conclude, as our dissenting colleague does, that the sports producers share a "greater community of interest" with the unrepresented midday producer. Moreover, we believe that the principal authorities relied on by our colleague are distinguishable. In *Armstrong Rubber Co.*, 180 NLRB 410 (1969), the record evidence clearly demonstrated that the two units which the union sought to accrete into a third unit had a long-established and "close" community of interest with a

³ *Gould, Inc.*, 263 NLRB 442, 445 (1982); accord, *Universal Security Instruments v. NLRB*, 649 F.2d 247, 253 (4th Cir. 1981); *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468 (2d Cir. 1985). See also *Machinists Local 190 v. NLRB*, 759 F.2d 1477, 1481 (9th Cir. 1985) (the fact that the employees proposed to be accreted do lack a distinct identity does not necessarily require the accretion be granted, other factors may preclude accretion).

number of the administrative employees who were unrepresented. *United Hospitals*, 249 NLRB 562 (1980), is likewise distinguishable on its facts. There the union sought to accrete into a multiemployer service and maintenance unit (covering 21 employers) a group of admitting clerks and interviewers employed by 2 employers who were consolidating operations. The record showed that while *some* of the admitting clerks employed at one division of one of the consolidating employers were part of the multiemployer unit, the remaining clerks and interviewers working for the second division of the first employer and those working for the second employer were unrepresented. Moreover, an "overwhelming majority" of the admitting clerks and interviewers among all the 21 employing entities comprising the multiemployer association had been historically excluded from the unit. On this basis, the Board declined to accrete those previously unrepresented admitting clerks and interviewers who worked for the two consolidating employers.⁴ In contrast, the Union here is not attempting to bootstrap previously unrepresented employees into the unit. Indeed, in a sense, all that is involved is an effort by the Union to maintain continuity of representation in the existing bargaining relationship.

We affirm the Regional Director and clarify the unit to include the two employees now engaged in sports producing/news writing activity.

MEMBER BABSON, dissenting.

Unlike my colleagues, I would not clarify the existing unit of news editors to include the two sports producers/news writers. The Board has traditionally required in accretion cases that the petitioned-for employees share a very strong community of

interest with the unit employees.¹ Such is not the case here, where the record makes quite clear that the sports producers/news writers have a greater community of interest with the midday producer, a nonunit employee.²

The record shows that the sports producers/news writers and the midday producer work with hosts to produce shows centered around an interview format, while the unit employees primarily coordinate breaking news for use on newscasts. Employees in both positions deal with background material and interview aids, while the unit employees deal with news. While all three classifications work to support on-air performers, the duties of the sports producers/news writers are more similar to those of the excluded midday producer than to those of the unit employees.

On prior occasions, the Board has not permitted an accretion where the employees sought to be accreted shared a close community of interest with other employees whom the petitioner did not seek to represent. For example, in *Armstrong Rubber Co.*, 180 NLRB 410, 411 (1969), the Board dismissed the clarification petition because the tire laboratory technicians and the scheduling department employees sought to be accreted shared a close community of interest with other nonunit employees who performed similar functions. More recently, in *United Hospital*, 249 NLRB 562, 563 (1980), the Board rejected a similar attempt at piecemeal expansion of the unit.

Based on the foregoing, I would not add the sports producers/news writers to the existing unit without a self-determination election³ and, therefore, I respectfully dissent.

¹ *Safeway Stores*, 256 NLRB 918 (1981). See also *Towne Ford Sales*, 270 NLRB 311 (1984), *enfd. sub nom Machinists District Lodge 190 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985) (the Board "has followed a restrictive policy in finding accretion").

² The midday producer position predated the Union's certification, but the record does not disclose why this position was excluded from the unit. The Petitioner does not seek to clarify the unit to include the midday producer.

³ I find it unnecessary to decide whether a unit consisting of the midday producers and the sports producers/news editors is appropriate because this issue was neither raised nor litigated.

⁴ It appears that those admitting clerks and interviewers who worked for one of the divisions of one of the consolidating employers and were represented by the Union still remained in the unit, despite the fact that after the consolidation they would be working together in a single department and in the same offices with many of the unrepresented clerks and interviewers. See 249 NLRB at 562-563. In other words, the close community of interests which the represented clerks and interviewers might be expected to develop with nonunion fellow clerks and interviewers would not result in exclusion from the multiemployer unit.