

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

KIRO TV

Employer

and

Case 19-UC-000775

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 46**

Petitioner

DECISION AND ORDER CLARIFYING UNIT

The Petitioner, International Brotherhood of Electrical Workers, Local 46, filed the instant petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to clarify the existing unit of employees it represents to include the Ignite Directors. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. A hearing officer of the Board held a hearing and the parties filed briefs. Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.¹

¹Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. Without dispute the Employer is a Seattle, Washington television station which broadcasts local and national news and advertises national brand products. See: <http://www.kirotv.com>. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the employer.
- d. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(c)(6) and (7) of the Act.

I. Issues

The Petitioner seeks to clarify the existing bargaining unit by including a position known as "Ignite operator" or "Ignite Director"². The Petitioner, contrary to the Employer, claims that the disputed position performs some or all of the duties of former bargaining unit members purportedly displaced by employees who now occupy the Ignite Director classification. The Employer moves to dismiss the petition on the ground that it is untimely because the position has existed at least since 2007 and has been historically excluded from the unit by the express provisions of the parties' last collective bargaining agreement. In the alternative, the Employer contends that the functions of this disputed classification are different from those previously performed by bargaining unit members and has no community of interest with the bargaining unit employees.

II. Decision

For the reasons set forth herein, I have concluded that the Ignite Director classification should be included in the unit. Therefore, the unit shall be clarified to include the position of Ignite Director.

III. Facts

The Employer operates a local television station in Seattle, Washington, where it is engaged in the production of news programs which are aired several times a day. Until approximately August 2007, the Employer, in producing these newscasts, utilized the following classifications of employees: Director, Technical Director, Audio Operator, Camera Operator, Graphics Operator, and Stage Manager. After the implementation of an automated system to air newscasts, the Employer eliminated the positions of Technical Director, Audio Operator and Studio Camera Operator and created the

² The position at issue is described in the Unit Clarification Petition as "Automated Studio Control Operator". The last collective bargaining agreement between the parties also referred to the position in this manner, but the parties and witnesses throughout the hearing referred to the position as "Ignite Operator" or "Ignite Director." The Employer, in the job descriptor for the position, also refers to it as Ignite Director. The term Ignite Director will be used to refer to the position at issue in this matter.

position of Ignite Director. The Petitioner filed the instant petition seeking to clarify the unit to include Ignite Director.

The record reflects that the Petitioner has represented the Employer's employees for approximately 15 years and has had a series of collective bargaining agreements with the Employer. The most recent collective bargaining agreement was effective from July 20, 2007 through September 30, 2010, and is currently still in effect since the agreement provides for an automatic renewal unless a termination notice is sent by either party.³ The parties nevertheless commenced negotiations for a new collective bargaining agreement approximately in March 2010. The agreement describes the unit as follows: "all employees of the Employer engaged in the construction, installation, operation and/or maintenance of electrical, electronic and/or mechanical equipment and supplemental equipment and apparatus used for or involved in the transmission or transference, production or reproduction of video and/or audio intelligence, including, but not necessarily limited to, persons employed in the classifications listed in Article V and any amendments thereto."⁴

Article V discusses wage compensation to unit positions. However, as noted in the unit description it does not include certain classifications that were part of the bargaining unit.

The record reflects that the Employer introduced Ignite in 2007. Essentially, Ignite is studio automation technology or a hardware and software system that allows for the automation of the newscast production functions. Ignite is a link between the control room and the newsroom. It provides a single point of management for devices used in a television control room. Ignite's combination hardware/software system

³ Pursuant to a Joint Request by the parties to correct the record transcript, the transcript is hereby corrected to reflect at page 9, lines 9 and 10: "continues in effect until today, through today because no party has sent a termination notice."

⁴ Article 1.3 of the parties' collective bargaining agreement.

enables one person to have complete automated control over the entire live production process. Through the use of event keys, operators can manage all production processes, including video switching, audio, graphic recall, deck and server playback, teleprompting and robotic cameras. Ignite allows one individual to do all the jobs of the Director, Technical Director, Studio Camera Operator and Audio Operator. Commands are inputted in a computer system that communicates with the automation hardware and executes the programmed commands. Ignite has been described as a machine that resembles the cockpit of an aircraft containing several monitors and buttons.

The Employer began training unit and non-unit employees on the Ignite system on April 16, 2007. As a result, on April 19, 2007, the Union filed a grievance against the Employer alleging that the Union had jurisdiction over the training and operation of the Ignite system.

By June the training process of implementing Ignite was on track but there was no definite date as to when the system was going to be completely implemented. As a result of the implementation of the Ignite system, the Employer expected to eliminate certain classifications. The Employer also expected to create a new classification, to be known as Ignite Director which admittedly by this time had not been created. The Employer anticipated that as a result of the future implementation of the Ignite equipment, the work of the Technical Directors and Directors was going to change in such a way that it would substantially affect the nature of their jobs.

The parties agreed on a collective bargaining agreement on July 13, 2007 which agreement was ratified by unit members on July 20, 2007. Although pursuant to its terms, the agreement became effective on the date of its ratification, it was not executed by the parties until later. The Employer signed the collective bargaining agreement on September 20, 2007 while the Union signed it on October 2, 2007.

Article 5.9 of this agreement addresses the new Ignite system. According to record evidence, this article was bargained as a transition to the implementation of the new equipment. In conformity with Article 5.9, the Employer agreed to train all Technical Directors and Directors in the operation of the equipment and would allow bargaining unit employees operating switching equipment, cameras, or audio equipment to receive Ignite training upon request. The Article further provided that the assignment of unit employees to the operation of the equipment did not constitute an expansion of the Union's jurisdiction and likewise, the assignment of non-unit employees to the Ignite system was not a contraction of the Union's jurisdiction. Also, according to the agreement, from the date that the automated studio equipment was implemented until September 23, 2010, the Employer had discretion to assign either unit members or non-unit Directors to operate the equipment. Thus, the Employer had no limitations on its ability to make assignments regarding the operation of the equipment, as long as the implementation of this system did not result in reductions of unit positions or employee work hours. The agreement specifically recognized at Art. 5.9 (4), that staffing of the Ignite equipment was subject to future contract negotiations. Consequently, on July 24, 2007, the Union withdrew the grievance regarding the training of non-unit employees on the Ignite equipment.

According to Human Resources Director Julie Kelsch, prior to full implementation of the system, employees who worked as Technical Directors, Directors, Audio Operators and Camera Operators were given an opportunity to train as previously agreed. However, after undergoing training, only Directors and Technical Directors ultimately performed the Ignite Director position. The equipment was implemented in August 2007 and was running at full capacity by mid-2008. The Employer moved gradually from doing one newscast live using Ignite until all programs were eventually

done through the Ignite system. After Ignite was fully implemented, the Employer created the new position of Ignite Director.

Kelsch further testified that as a result of the implementation of Ignite a group of approximately 10 to 12 employees were laid off. The positions affected by the lay offs were Audio Operators, Studio Camera Operators, Technical Directors and Graphic Producers.

Janet Lewis worked for the Employer as a Technical Director, Director and, during the transitional phase, Ignite Director. She testified as to the duties of these positions. According to Lewis, the Director developed cues based on prior discussion with the Producer and communicated these cues to the production crew who would then execute the Director's verbal commands at specific times while on the air. For example, the Directors would tell the Audio Operator to pull up the microphone, instructed the Technical Directors to add video to the air broadcast and prompted the Studio Camera Operator to move the camera to the female anchor. The Director did not have any technical duties to perform. In contrast, a Technical Director worked on a switcher creating visual effects and changing video sources. In order to do this, task commands would be programmed in the switcher from where the technical director executed the commands during the newscast. According to Lewis' testimony as an Ignite Director she would, for example, adjust audio and camera shots, go through graphics, put images on the air, and create effects. Lewis testified that as an Ignite Director she essentially performed various technical duties. She stated that the switcher she used on the Ignite equipment was more advanced than the one she used as a Technical Director.

At the time of the hearing, Michael Gilbert was working as an Ignite Director; he was a former Technical Director. He testified that Technical Directors followed the Directors' verbal commands and were responsible for executing the video and visual

elements of the newscast on the air. This included the mixing of live camera shots and videotape in real time and putting them on the air. By pushing buttons the Technical Director electronically routed video signals on a console, also called the switcher. The Audio Engineer, at the Directors' command, would power microphones, mix videotape sources, mix and play music and open audio sources from an audio console. The Cameraperson would have direct contact with the camera by controlling it using a headset and under the Director's guidance, adjust pedestal heights and move them around the studio, point, focus, zoom and take camera shots.

Gilbert testified that the Ignite Director is in control of everything; he/she is essentially the entire production team. Thus, by punching various buttons, the Ignite Director controls the audio, video graphics, cameras, and live shots. He explained that the codes for the various commands are entered into the system prior to the airing of the program. According to Gilbert, the Ignite Director works with the producer to determine what they want in the newscast. The Ignite Director spends approximately an hour per newscast with the Producer. The major part of the Ignite Director's worktime is spent inside the control room where the Ignite equipment is located.

As an Ignite Director Gilbert continues to maintain contact with other unit employees like the R-COM Operator as well as with the Maintenance Engineers. The R-COM Operator works with live crews in the field and if the newscast has a live shot, the Ignite Director interacts with him over the headset. The Maintenance Engineers work with the Ignite Director if there are problems with the equipment. Although these conversations are short they nevertheless occur on a daily basis.

IV. Legal Analysis

A unit clarification petition to accrete employees to an existing unit "is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an

existing classification which has undergone recent, substantial changes in its duties and responsibilities ...so as to create a real doubt as to whether the individuals in such classification continue to fall within the category—excluded or included—that they occupied in the past.” *Union Electric Co.*, 217 NLRB 666, 667 (1975)

The Employer contends that the Ignite director position has been historically excluded from the unit. The Board has explained that unit clarification proceedings to accrete employees are generally not appropriate when the accretion would upset an established practice concerning the unit placement of the individuals in question. *Id.* No accommodation of the collective bargaining process is warranted where the parties to a bargaining relationship have historically failed to include an existing group of employees in a bargaining unit. *United Parcel Service*, 303 NLRB 326, 327 (1991). However, the Board has permitted accretion in situations where new groups of employees have come into existence during the term of a collective bargaining agreement. *Gould, Inc.*, 263 NLRB 442 (1982); See also *United Parcel Service*, *supra* at 327.

Contrary to the Employer’s contentions, the record does not demonstrate that the Ignite director position has been historically excluded from the unit. In this case no collective bargaining agreement has ever explicitly excluded the Ignite directors. The record evidence shows, and I find that, at the time the Union and the Employer reached agreement on their last collective bargaining agreement, the Employer had admittedly not implemented the Ignite system and had not put into effect the Ignite Director position. Thus, the position could not have been expressly excluded from the collective bargaining agreement, and it was not. Instead, in view of the imminent implementation of the system but the uncertainty of the date of its final implementation and its effects,

the parties reached agreement on a transitional phase⁵. The Employer implemented the system and created the Ignite Director position in August 2007 after the parties executed the collective bargaining agreement. The lay offs that resulted from the implementation of the system did not begin until August and September 2007. The Ignite system was fully operating by mid 2008. Thus, the Union did not have an opportunity to negotiate a collective bargaining agreement with the Employer since it created the Ignite Director position and fully implemented the Ignite system in its operations. See *CHS, Inc.*, 355 NLRB No. 164 (August 27, 2010).

The Employer contends that the Union agreed to the exclusion of the Ignite Director position by withdrawing its grievance and agreeing to a collective bargaining agreement containing the language of Article 5.9 which allowed unit and non-unit employees to operate the Ignite equipment and failed to reserve the right to file a unit clarification petition. This argument does not take into account the circumstances under which the Union reached that agreement. The Union's grievance actually demonstrates that it was not acquiescing to the Employer's position that the operation of the Ignite equipment was non-unit. It is clear that the Union agreed to Article 5.9 and withdrew the grievance because the Ignite system was still being phased in. See *CHS, Inc.*, Id. slip op at p. 4. In fact, a unit clarification petition would not have been appropriate at that time since the position had not been created.

The facts show that the conclusion of the negotiations of their last collective bargaining agreement only settled the dispute temporarily or until September 23, 2010. In this regard, the collective bargaining agreement expressly provided that neither party was relinquishing its claim to the disputed classification. Thus, Article 5.9 expressly states that the staffing of such work is subject to future contract negotiations.

⁵ It is noted that the language in the contract regarding the implementation of the Ignite system is in the future tense.

Furthermore, it provides that the assignment of the work to unit employees did not constitute an expansion of the Union's jurisdiction, and likewise, the assignment of the work to non-unit employees did not constitute a contraction of the Union's jurisdiction. Certainly this language was tantamount to reservation language that was intended to reserve the Union's position to file a unit clarification petition. Therefore, I cannot find that the Petitioner agreed to exclude the Ignite Director position from the unit or that the position has been historically excluded.

Having found that the Ignite Director position has not been historically excluded from the unit, the issue remains whether the unit should be clarified to include that position. In cases where the scope of a unit is defined by the work performed, it is that scope which is central to the Board's analysis in determining whether a new group of employees should be added to an existing bargaining unit through a unit clarification. *The Sun*, 329 NLRB 854 (1999).

The Board has established the following standard in unit clarification proceedings involving bargaining units defined by the work performed: "if the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, [it] will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary functions or are otherwise an insignificant part of their work." *Id.*, at 859. Once the presumption is met it is the party seeking to exclude the employee who has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the unit would no longer be appropriate if the new group is added. *Id.* "Technological innovation [that] has affected unit work will not suffice to exclude new classifications performing that work unless the work has changed to such an extent that the unit would no longer make sense if it included the disputed employees." *Id.*

In this case the unit is described according to the work performed and not according to the classifications in the unit. Based on the record evidence I find that the Ignite Director clearly performs work that is within that unit description. In fact, the Ignite Director performs duties of at least three unit positions that were eliminated after the implementation of the new technology, that of the Technical Director, the Studio Camera Operator, and the Audio Operator. The Ignite Director operates the equipment that controls the production of the newscast; specifically, equipment that transmits and produces video and audio. As detailed above, using the Ignite equipment, the Ignite Director controls the cameras, audio, graphics, and video. In sum, the Ignite director controls every detail that permits the airing of the newscast.

In this regard, a cursory review of the unit description clearly reveals that the work of the Ignite Director fits squarely within the description of the work that the parties have historically agreed to. Based on the record evidence, once a newscast is begun the Ignite Director spends her/his entire time in the control room "pushing buttons" much like the Technical Director used to do before the advent and implementation of the Ignite equipment. Additionally, prior to the newscast, the Ignite Director, after discussing the newscast with the producer, codes the machine so that s/he could execute these commands by simply pushing a button. This work is similar to the work performed by the Technical Director prior to the implementation of Ignite.

The Ignite Director is also responsible for the operation of the audio and cameras. In the case of the in studio cameras, instead of operating them through direct contact with the cameraperson as previously done, the Ignite Director operates the camera with a joystick. While the Ignite director now performs other functions that were not unit functions, like discussing the newscast with the producer, the fact remains that many of the functions previously described are not incidental, but actually an integral

part of their work. The record plainly compels the finding that the Ignite Director's primary job functions fit within the scope of the noted bargaining unit description.

I also find that the Employer failed to show that including the new group of employees would render the unit inappropriate. While the Ignite Director does not have overwhelming interchange with other members of the unit, it is noted that certain classifications that were previously involved in the production of the newscast, mostly unit positions, were eliminated. It is noted that those eliminated unit classifications, namely Technical Director, Studio Camera Operator and Audio Operator, similarly had little interchange with other members of the unit outside the production department. Likewise, the fact that the Ignite Director does not have significant interchange with other members of the unit does not make its inclusion in the unit inappropriate. In fact, the record evidence shows that the Ignite Director continues to have interaction with other unit members on a daily basis. In any event, these facts do not involve such a drastic change in the nature and structure of the work being performed that a unit which includes the Ignite Director employees would be inappropriate. See *The Sun*, Id. at 862.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 - 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on August 15, 2011, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are

encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁶ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on File Case Documents, enter NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated August 1, 2011.



A handwritten signature in cursive script that reads "Marta M. Figueroa".

Marta M. Figueroa, Acting Regional Director
Region 19, National Labor Relations Board
915 2nd Avenue, Room 2948
Seattle, WA 98174-1078
Website: www.nlr.gov

⁶ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

⁷ This case was transferred pursuant to the interregional assistance program for decision writing only.