

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

MEREDITH CORPORATION / WFSB-TV

Petitioner

and

THE NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES AND
TECHNICIANS, CWA, AFL-CIO

NABET

and

THE AMERICAN FEDERATION OF
TELEVISION AND RADIO ARTISTS,
AFL-CIO

AFTRA

Case No. 34-UC-143

DECISION AND ORDER CLARIFYING UNITS

This is a classic case of technological changes crossing swords with traditional craft lines of work at a television station in Hartford, Connecticut. AFTRA represents the “on-air” talent at WFSB, including anchors and reporters, who for many years have developed, written and performed their news stories. NABET represents the “behind the scenes” technicians at WFSB, including photographers, who for many years have done the filming and film editing of the anchors and reporters news stories. The Employer disrupted this long-standing working line between reporters and photographers by creating and implementing the “multi-media journalist” (MMJ) position at WFSB. That position, which has previously been implemented by the Employer at eleven other stations it operates, requires the MMJ not only to develop, write, and perform his news stories, but also to film and edit the entire story utilizing lighter and simpler to operate digital cameras and desktop software, all without the assistance of NABET-represented photographers. The battle lines were formally drawn after the Employer and AFTRA

agreed to include the MMJ in the AFTRA unit, and NABET filed a grievance following the MMJ's first assignment at the Travelers Championship Golf Tournament.

As a result of the apparent conflict between AFTRA and NABET over the MMJ's unit placement, the Employer filed the instant petition seeking to clarify each unit to specifically include the MMJ in the AFTRA unit and specifically exclude the MMJ from the NABET unit. Because the record reflects that the MMJ is primarily a reporter with only incidental filming and film editing responsibilities, I have decided that the Board's decisions in *WLVI, Inc.*, 349 NLRB 683 (2007) and *The Sun*, 329 NLRB 854 (1999), warrant the unit clarifications requested by the Employer.

The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the National Labor Relations Act (the Act). I find that the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; and AFTRA and NABET are each a labor organization within the meaning of the Act.

I. Facts

A. Union jurisdiction and applicable contract provisions

The Employer operates 12 television stations in various parts of the country. Solely involved in this case is WFSB-TV located in Hartford, which is a CBS affiliate. The employees at WFSB have been represented for many years by NABET and AFTRA. Each contract functionally defines the bargaining unit by the type of work performed. The NABET contract, which is effective from January 29, 2009 to November 20, 2011, covers "technicians and studio assistants" who perform the following work:

Installation, setup, operation, adjustment and electrical and electronic maintenance of the Station's television broadcast equipment, including audio and video recording and editing, the operation of cameras and associated lighting, microphones, prompting devices, graphic and display devices for closed circuit broadcasts, auditions, rehearsals, recorded and/or on-the-air broadcasts, and stage managing assignments for said broadcasts, auditions, and rehearsals, together with the handling of television properties. . . .

The following is specifically excluded from the work performed by “technicians and studio assistants”:

News, personality interviews, news conferences (the question and answer segments being an extended form of interview), background sounds (with the newscaster voice-over put together in the studio), unscheduled news statements and excerpts from speeches for use in newscasts, recorded or live on telephone or on mobile or portable audio equipment.

The AFTRA contract, which is effective from June 15, 2010 through June 14, 2013, covers “staff artists”, who are also referred to in the contract as either “anchors” or “reporters” depending upon the work they perform (herein collectively called reporters). Anchor duties set forth in the contract include the following: “appearances on-the-air as anchorpersons, sportscasters, and weathercasters on news programs”; “hosts on entertainment, variety, public affairs and other programs; “writing and producing in preparation for such appearances; and “booth announcing (including the recording of commercial, promotional and public service announcements, station breaks and identifications . . .”). Reporter duties set forth in the contract include the following: “all field work required for gathering information in the Station’s Grade A coverage area, and all initial scripting of news copy resulting from such field research and reporting . . .”; “function as field producers and otherwise work with photographers in the field, including electronic cameramen”; and “function as story producers and otherwise work editors in assembling news stories resulting from such work”. The contract permits reporters to “function as anchors” and to “appear in the studio – live or by recording – in connection with news inserts developed by them”. The contract also permits anchors to “function as reporters”, as well as to “write and rewrite scripts based upon wire services, news releases, reporters scripts or stringers scripts or copy, and may contact news sources to verify or clarify information or to initiate or arrange for news coverage by those eligible to perform field reporting”. Finally, the contract permits photographers to “conduct off-camera taped interviews with news sources when a full-time reporter or anchorperson is not available”, and that “[p]hotographers may be assigned to ask questions and record sound.”

B. Reporting and filming a story or package

WFSB News Director Dana Neves was the sole witness who testified at the hearing. Neves has held a variety of positions at WFSB over the past 15 years, including associate producer, assignment editor, assignment manager, managing editor, and assistant news director. She is ultimately responsible for supervising the entire news operation, including all news content that is broadcast on television, the internet, and mobile applications.

Neves described the preparation of a typical news story - also known as a package - at WFSB. Each weekday morning Neves or the assistant news director conducts an "editorial" meeting with anchors, reporters, producers, the assignment manager, and marketing representatives. Photographers, however, do not attend this meeting. The purpose of the meeting is to determine the stories that will be covered that day. Some of the stories are pre-determined, such as covering a previously announced rally, strike or news conference. Others are considered from press releases or events that occurred overnight, including those that were initially developed by the two overnight reporters who work until about noon each day. Also considered are news stories that have been "pitched" by reporters who regularly work outside the Hartford building covering other geographical areas, including New Haven and New London. Reporters may also "pitch" news stories they personally uncovered through their own sources. A "collective" decision is ultimately made as to what stories or packages will be developed, and each reporter is then formally assigned their work for the day, typically two stories. At that time, a photographer is assigned to work with each reporter to put the packages together.

Following the meeting, the reporter will set up the interviews or other filming necessary to complete their stories. The reporter and the photographer, working as a team, travel together to complete the interviews or to take video of scenes relevant to the story. The reporter is responsible for conducting the interviews, and the photographer is responsible for filming the interviews and other video shots pursuant to the reporters direction. Although the reporter and the photographer generally work together to determine how and what to film, photographers may shoot on their own at any scene, particularly breaking news situations. Photographers may suggest or

contribute questions to ask during an interview, particularly if he/she believes that the reporter has missed something that should have been asked. Upon the completion of all necessary interviews and video, the reporter and photographer return to the station, where the reporter will immediately begin “screening” the video in preparation for completing the package. The photographer generally remains at the station in the event that he/she is needed to secure additional video that the reporter has determined is needed for the package, or to assist other reporters. After the reporter has written the story and determined which portions of the video will be needed, the photographer will perform the tape editing necessary to complete the final package. Tape editing is performed by the photographers in editing bays at the station, utilizing two machines, one holding the original tape and the other holding the edited tape. The tape editing function may also include the preparation of “voice overs” and incorporating the voice overs into the final package. However, sports reporters and sports anchors under the AFTRA contract are permitted to perform “non-linear editing”, i.e., digital desktop editing via computer. There is no evidence or claim that prior to the creation of the MMJs, any reporter or anchor ever filmed any portion of their own story.

C. Distinctions between reporters and photographers

Although it is clear from Neves’ testimony that the reporters and photographers work very closely in putting a package together, she emphasized a key distinction between them that is significant to the issue in this case. According to Neves, reporters play a key role in creating and developing their stories, including the cultivation of news sources or checking police blotters, and generally being aware of issues that might develop into a news story. This is an on-going process that extends beyond the ordinary workday, meaning that reporters don’t simply show up for work, have a couple of stories assigned, complete the stories, and go home. In contrast, photographers play no role in creating or developing stories, nor are they expected to do so. Instead, they report to work each day and receive their daily assignments from the assignment manager. The assignments include working directly with a reporter in completing a package, as described above, but may also include other photography duties as assigned. This might include working on the live truck, or being sent out to secure additional video for a story. In performing such duties, it is possible for a photographer to film an interview

without the assistance of a reporter, which requires the photographer to ask the questions at the same time as the interview is recorded. On such occasions, the photographer does not determine the questions to be asked, nor will the photographer's voice or face typically appear in the package that airs. Rather, the questions are formulated by others, including Neves or the assistant news director.

The editing function is another key distinction between reporters and photographers significant to the issues in this case. In this regard, there are two types of editing. Reporters are continually engaged in editing their stories prior to the preparation of the final package, as events change and new information is received that impacts the story. Reporters also determine what portions of the video filmed by the photographer will be edited into the final package. In addition, once the reporter has preliminarily put the story together, it's reviewed by an editor who suggests further changes to the final package. In contrast, as noted above, photographers are responsible for editing the videotape into the final package prior to airing of the story. Such editing requires the photographers to "cut" the appropriate portions of the videotape (which may have been filmed by them or others, such as from a network feed) and insert those portions into the appropriate location in the package. The key point is that in contrast to reporters, the photographer plays no "creative" role in determining what portions of the video will be edited into the story. Rather, the photographer must follow the precise instructions of the producers, writers and/or reporters, who have prepared the final script for the package. As noted above, this is done in the editing bays utilizing special machines, and includes the appropriate "cutting" of the tape as well as the insertion of "sound bites" and "voice overs" into the scripted location of the package.

These distinctions between reporters and photographers are further revealed by their job descriptions. The photographer's job description (actually entitled "photojournalist/editor – vacation relief") reveals that they report to the "media manager" and includes the following job summary:

The Photojournalist serves in a support role to the on-air talent as required by photography assignment. This position provides photography hardware setup, operation and maintenance as required. The Photographer coordinates with the production of photography and distribution of digital content as required by photographer. In addition, this position: Operates Live Truck;

Edits News shows as needed; Handles photography assignments; Completes photographing assignments including but not limited to shooting and editing.

The job description further describes the “essential job functions” with the indicated “weighting” as follows:

60% - Follows instructions from the Media Manager with execution of assigned Photography and Editing.

20% - Travel based on needs of the story and see actual amount of travel below.

15% - Maintains photography equipment

5% - Processes documentation and digital images for import to Meredith Archive Library.

The minimum qualifications for the photographers as set forth in the job description include the following: “Completion of high school or GED. Associate's degree strongly preferred. Bachelor's degree in photography, design or communications arts preferred. Will substitute full time work experience as a Photojournalist for college degree if all other specific knowledge, skills and abilities are met.” The job requirements as set forth in the job description include the following:

Knowledge of digital camera hardware and software, editing software.

Proficiency with PC computer operation, Microsoft Office Suite of applications including Excel, Word and PowerPoint.

Understanding of photography lighting, stands, grip and background equipment.

Strong attention to detail.

Professional verbal and written communication skills.

Able to function well on a team during events, deadlines and breaking news.

In contrast to the photographer’s job description, the job description for reporters shows that they report directly to the assistant news director, and includes the following job summary: “Develops, writes and reports daily news stories and events and presents information live or on tape. Coordinates with assignment desk and producers. Gathers, packages and brokers information about a news topic to the general public.” The essential job functions with the indicated weighting are as follows:

50% - Receives assignments and evaluates leads/tips to develop story ideas. Develops, writes, reports and edits video news stories from concept to finish. Researches and compiles information into a written story that is ready for on-air delivery. Generates story ideas, cultivates news sources and remains knowledgeable regarding places, events and people in the news. Shoots and edits video as necessary.

30% - Provides daily story notes outlining ideas for future stories. Passes along facts uncovered concerning ongoing projects. Provides progress reports on story checks. Shares information relating to upcoming events, meetings or story developments. Presents news stories or reports via on air, live from the set, live remotes or live indoor locations.

10% - Maintains contacts within business community to report promptly on new or continuing events.

10% - Serves as community ambassador for the news department. Responds to concerns of viewers. Makes personal appearances on behalf of the station. Attends station sponsored promotion events as scheduled.

The reporter's minimum qualifications described in the job description are the following: "Bachelor's degree in Broadcast Journalism, Communications or related field, or equivalent training and/or experience. Three years experience in print or broadcast journalism. Experience reporting news at a commercial television station preferred." The job requirements include the following:

- Must possess advanced understanding of legal and ethical issues impacting journalism.
- Ability to combine words and pictures into informative and interesting news stories.
- Advanced knowledge of the locale, governing bodies, demographics and public figures.
- Ability to edit stories as necessary.
- Accepts direction well from assignment desk and management.
- Strong initiative and self motivation to turn news stories
- Ability to perform quality work in high pressure deadline situations.
- Able to balance between planning ahead and getting results.
- Must possess excellent verbal and written communication skills.
- Must possess valid Driver's License.

D. MMJs are implemented at WFSB

According to Neves, the Employer has implemented MMJs at each of its 12 television stations, with WFSB being the last to do so.¹ Neves explained that the use of MMJs, also known in the industry as “one-man bands”, has become commonplace in the news industry for a variety of reasons, including the need for additional “content” to fill news websites and mobile applications and the availability of lightweight and compact digital video cameras that do not require the use of tape. The absence of tape is significant, according to Neves, because the editing of a taped video must be done in the editing bays utilizing special machines, in contrast to editing the video from a digital card by simply inserting the card directly into a desktop computer with the appropriate editing software. Neves also noted that the traditional camera used by the Employer’s photographers weighs 19 pounds, whereas the camera utilized by the Employer’s MMJs weighs only 2 pounds and is far smaller. Neves was personally exposed to MMJs while temporarily working at the Employer’s non-unionized television station in Springfield, Massachusetts, which employs six MMJs.

Upon being advised by her “corporate” superiors that it was time to implement MMJs at WFSB, Neves created a job description for the position. She admittedly did so by taking the reporter’s job description and adding a “photography element”, because the MMJ position has the same expectations and the same daily functions as a reporter, with the addition of the photography and editing duties. She pointed out that the Employer already had the right to have sports reporters spend as much as 50% of their time performing “non-linear editing” work. She expects that the MMJ will spend approximately 70% of their time creating and writing a story, 20% photographing the story, and 10% editing the story. Thus, the MMJ job description summarizes the job as follows:

The Multi-Media Journalist develops, writes, reports, and shoots daily news stories and events and presents information live or on tape. This position coordinates with assignment desk and producers. The Multi-Media Journalist gathers, packages, shoots, and brokers information about a news topic to the

¹ Only two of those stations are unionized. At the station in Saginaw, Michigan, NABET represents a “wall to wall” unit covering all employees, and at the station in Kansas City, AFTRA represents a unit that includes both reporters and photographers.

general public. The Multi-Media Journalist is a content provider capable of operating independently with the training and tools to produce and deliver content efficiently and seamlessly in any form and for any medium.

The job description further describes the “essential job functions” with the indicated “weighting” as follows:

70% - Develops, writes, reports, shoots, and edits video news stories from concept to finish. Researches and compiles information into a videography story that is ready for on-air delivery. Generates enterprise story ideas, cultivates news sources and remains knowledgeable regarding places, events, and people in the news.

20% - Provides story notes outlining ideas for future stories. Passes along facts concerning ongoing projects. Provides progress reports on story checks. Shares information relating to upcoming events, meetings, or story developments. Presents news stories or reports via on air, live from the set, live remotes, or live indoor locations in a professional and polished manner.

10% - Maintains contacts within business community to report promptly on new or continuing events. Serves as community ambassador for the news department. Responds to concerns of viewers. Makes personal appearances on behalf of the station. Attends station sponsored promotion events as scheduled.

The job description sets forth the following minimum qualifications for the MMJ: a Bachelor's degree in Broadcast journalism, communications or related field, or equivalent training and/or experience; three years experience in print or broadcast journalism; and experience reporting news at a commercial television station is preferred. Finally, the job description sets forth the following knowledge, skills and abilities:

Must possess advanced understanding of legal and ethical issues impacting journalism.

Ability to combine words and pictures into informative and interesting news stories.

Advanced knowledge of the locale, governing bodies, demographics, and public figures.

Must possess advanced abilities to perform videography (camera, tri-pod, microphone, lights, batteries, etc.).

Ability to edit stories as necessary.

Ability to accept direction from assignment desk and management.

Strong initiative and self motivation to create news stories.

Ability to perform quality work in high-pressure deadline situations.
Able to balance between planning ahead and getting results.
Must possess excellent verbal and written communication skills.
Must possess valid Driver's License.

In connection with her preparation of the MMJ job description, Neves testified that most photographers have a different "skill set" that would not enable them to perform the overwhelming majority of the MMJ's job duties. She noted that photographers are well-suited for performing the technical side of news gathering, including photography and sound. In contrast, reporters have broadcast journalism degrees and experience that enable them to bring a "critical eye" to the preparation of news stories, including writing skills. Neves further noted that photographers at WFSB do not set up interviews, develop news sources, maintain a news beat, investigate leads, log sound bites, attend the morning "editorial" meeting, or make public appearances, all of which are required of reporters and are expected to be required of MMJs. Nor do photographers have "personal service contracts", which most reporters and anchors have. The record further reflects that reporters are expected to look "professional and polished" every day, with certain on-air dress requirements, whereas there are no dress requirements of any kind for photographers. Neves also noted that during her tenure at WFSB, no photographer has ever become an on-air personality (reporter or anchor), even on a temporary basis.

D. The MMJ is filled

The job posting for the MMJ position at WFSB reflects the contents of the job description described above. It was posted internally for three days in early June 2011, and then posted externally, on the Employer's website. Five individuals applied for the job, and one, Harry Cicma, was selected. Cicma's prior employment experience is as a sports reporter, and Neves was familiar with Cicma because he was previously a sports reporter and MMJ at the Employer's Springfield station. Cicma, who lives in New Jersey, was offered a "temporary" or "vacation relief" position on June 16, 2011. As vacation relief, Cicma does not have a personal services contract or any set schedule or hours, and can accept or reject any work assignments, which can be short term or long

term in nature.² However, there is no dispute that employees designated as vacation relief at WFSB are otherwise covered by the terms of the AFTRA contract, but receive no fringe benefits.³

Cicma's first assignment was the Travelers Golf Tournament from June 21 to 26 (36 hours of work). He also covered a sports-related story at Fenway Park in Boston for a portion of two days, and, according to Neves, will be utilized to cover high school sports camps beginning in late August. Although no evidence was proffered regarding the actual work performed by Cicma at the Travelers tournament and at Fenway Park, Neves testified that his final packages were aired, that she observed those packages, and that they did not differ in any way from packages developed at WFSB by a reporter/photographer team. Neves further testified that for the present time, the MMJ's at WFSB will only be used to cover sports, weather, traffic, and "Better Connecticut". Another individual, Kim Lucey, has also been hired as an MMJ, but to date she has received no MMJ assignments and will be utilized solely as a news reporter for the foreseeable future.

E. Bargaining over the MMJ position.

Through Letter of Agreement #8 to their contract, the Employer and AFTRA have agreed that anchors and reporters may be asked to perform MMJ duties, and that employees may be hired to occupy the MMJ job classification. This letter of agreement was entered into on September 20, 2010, well in advance of the implementation of MMJs at WFSB. According to the letter of agreement, the Employer may immediately fill the MMJ position with new hires and include that position in the unit, and pay them at not less than "Reporter Level 3" as found in Article 21 of the contract. However, the assignment of MMJ duties to existing AFTRA unit employees is conditioned upon "applicable NABET jurisdiction becoming non-exclusive", preferably through a negotiated resolution rather than through a unit clarification petition. The MMJ's job duties listed in the agreement are as follows: ". . . operate cameras, collect video and

² Anchors and reporters in the AFTRA unit may have personal services contracts, but none of the employees in the NABET unit have such contracts.

³ All employees, regardless of their unit placement, receive the same fringe benefits pursuant to the same eligibility requirements, including health, dental, vision, retirement, 401(k), tuition reimbursement, and matching gifts.

sound, to transmit the images and sounds they capture, to appear on-air, to voice, write and edit stories, and otherwise perform all the duties of an Anchor and Reporter.”

In December 2010, during wage reopener negotiations, the Employer asked NABET to discuss the MMJ issue, but NABET refused to discuss it at that time. The Employer also sought to bargain with NABET over the implementation of the MMJs in April 2011. At that time, a previous UC petition involving the MMJs was pending in Region 34. NABET replied to the Employer’s bargaining request by demanding the withdrawal of the then-pending UC petition before any bargaining could occur. Although that petition was withdrawn, it was re-filed shortly thereafter. As a result, there is no record evidence that NABET and the Employer ever bargained over the implementation of the MMJs. However, as noted above, NABET filed a grievance following Cicma’s initial MMJ assignment to the Travelers golf tournament. The grievance objected to the assignment of a “reporter to shoot video” at the golf tournament. Although NABET has sought to arbitrate that grievance, the Employer objected to the arbitrability of the grievance due to the pendency of the instant petition.

II. Analysis and Conclusions

A. Applicable Law

It is well established that a unit clarification petition is appropriate for resolving ambiguities concerning the unit placement of individuals who come within a newly created classification. *Union Electric Co.*, 217 NLRB 666, 667 (1975); *Bethlehem Steel Corp.*, 329 NLRB 241 (1999). Typically, the Board will find an accretion only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted. *E. I. DuPont Inc.*, 341 NLRB 607 (2004). Among the factors considered by the Board in applying this standard are interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective-bargaining history. *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). However, where the scope of a unit is defined by the work performed, that scope is accorded special significance beyond the traditional community of interest factors noted above. *The Sun*, supra, 329 NLRB 854, 857.

In *WLVI Inc.*, supra, 349 NLRB 683, the Board specifically addressed the unit placement of the newly created position of “video journalist”, a position remarkably similar to MMJs. The Board decided in *WLVI* that the video journalist should not be added to a “technicians” unit that included photographers and editors because the video journalist position is more similar to that of a reporter, whose work was not included in the technicians unit. In deciding that issue, the Board applied its rationale from *The Sun*, supra, which set forth a method for analyzing whether new job classifications should be included in an existing bargaining unit where the unit is defined by the work performed, as in the instant case. The relevant portion of that analysis goes as follows:

If the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Once the above standard has been met, the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate.

Id. at 859. The Board applied *The Sun* analysis to the facts in *WLVI* and found that the video journalist could not be included in the technicians unit because the unit work performed by the video journalist - photography and editing - was incidental to his primary work function - reporting. The Board found that the video journalist was first and foremost a reporter, utilizing a journalism degree and a background as a reporter to research, investigate, and write news stories. He was responsible for coming up with story ideas, gathering background information on his stories, identifying people to talk to, arranging to meet with them, conducting the interviews, and then returning to the studio to edit the story into a complete ready-to-air package. In contrast, the photographers and editors in *WLVI* had none of those responsibilities or requirements. Most importantly, the Board found that the video journalist’s shooting of video to accompany his stories, and editing those images and sounds into the final story package, was “incidental to his main responsibility of finding, investigating, and writing the news stories”, and “[t]hat the video journalist uses a camera to augment his

reporting duties does not mean that he performs significant [technician] unit duties.” *WLVI*, supra, at 685. Noting that the video journalist’s additional duties were the consequence of new technologies that enable a journalist to shoot and edit video without a photographer, the Board analogized the situation to the hypothetical example provided in *The Sun*, where “news reporters’ use of computers to prepare nearly press-ready copy would be an incidental consequence of the introduction of new technology to the pressroom and would not change their basic work.” *Id.*

In contrast to *The Sun* and *WLVI*, the instant case injects the additional factor of rival unions each justifiably laying claim to the work performed by MMJs. That factor was specifically considered by the Board in *Scrantonian Publishing Co.*, 215 NLRB 296 (1974), where the Board considered the appropriate unit placement of employees operating the new Merigraph “direct printing” process that ultimately would replace the newspaper’s “hot metal” printing process. The employer had agreed to place the employees operating the Merigraph machinery in the bargaining unit represented by the Stereotypers Union, contrary to the wishes of the Graphic Arts Union. Although the contracts with each union ostensibly encompassed the work performed by the disputed employees working under the Merigraph system, the Board found that factor was not controlling because such unit determinations are made on the basis of community of interest criteria rather than a union’s jurisdictional claims. The Board applied the community of interest criteria and decided that the disputed employees should not be accreted to either unit. However, the community of interest standard articulated in *Scrantonian Publishing* was specifically overruled by the Board in *The Sun*, in order to make it clear that the under the new standard announced in *The Sun*, community of interest criteria merely play a role, rather than being the determining factor, in unit clarification cases where the unit is described by the work performed. *The Sun*, supra, at note 17.

The Board has also made it clear that it will clarify bargaining units even where the case raises elements of a work assignment dispute between two unions, so long as the core of the controversy is the unit to which a new job classification belongs. *Monsanto Research Corp.*, 195 NLRB 336 (1972), citing *McDonnell Company*, 173 NLRB 225 (1968). See also *Steelworkers Local 392*, 293 NLRB 913, 916 (1989).

B. The Units should be clarified as requested by the Employer.

Having established a factual record virtually identical to the facts in *WLVI*, the Employer has clearly shown that the MMJ is first and foremost a reporter, and that his photographing duties are merely incidental to his primary reporting function. As in *WLVI*, the MMJ utilizes his journalism training and experience to research, investigate, and write news stories. He is responsible for coming up with story ideas, gathering background information on his stories, identifying people to talk to, arranging to meet with them, conducting the interviews, and then returning to the studio to edit the story into a complete ready-to-air package. To the extent that the MMJ does all his filming and editing work - due primarily to technological changes in video cameras and computer editing software, as in *WLVI* - it only amounts to about 30% of his working time, which is significantly subordinate to the time he spends performing his primary reporting function.

Having found that the MMJs photographing and editing duties are merely incidental to his primary reporting function, his placement in the AFTRA "reporters" unit is warranted so long as it would not otherwise make that unit inappropriate. In this regard, I find that the Board's traditional community of interest factors clearly warrants the MMJ's placement in the AFTRA unit with the reporters rather than the NABET unit with the photographers. MMJs utilize the same training, skills and experience as reporters to perform essentially the same job duties and responsibilities under the same or similar terms and conditions of employment and supervision. See *St. Francis Hospital*, 282 NLRB 950, 952 (1987). To the extent that the MMJ does all his own film editing work, I note that sports reporters in the AFTRA unit are permitted to perform such work as well. In contrast, the MMJs have virtually nothing in common with employees in the NABET unit, other than performing the physical act of filming and editing interviews and other scenes related to a news story. See *WLVI*, supra. In doing so, however, the MMJ utilizes different equipment than the photographers for both the filming and editing functions, and by performing his own filming and editing work, the MMJ actually has far less opportunities than reporters for any work-related contacts with the photographers in the NABET unit.

In reaching this determination, I find no merit to NABET's claim that the petition should be dismissed as premature because Cicma is a temporary employee and there is insufficient record evidence as to what work Cicma has performed as an MMJ. Temporary or vacation relief employees such as Cicma are clearly covered by the terms of the AFTRA contract. While there is admittedly very little evidence as to the actual work performed by Cicma to date, there is no dispute as to the MMJs job duties and responsibilities, that he has been assigned to perform such duties on at least two occasions, that he has produced complete packages that have been aired, and that the Employer intends to continue assigning Cicma MMJ work in the future. The fact that NABET filed a grievance alleging that Cicma shot video at the golf tournament, and has sought to arbitrate that grievance, supports the inference that Cicma performed his MMJ duties as intended in his job description. In any event, the Board has clarified units with far less evidence of the actual job duties performed by the disputed employees. *Southwestern Bell Telephone Co.*, 222 NLRB 407, 411 (1976).

I also find no merit to NABET's claim that the petition must be dismissed because there is a question concerning representation arising out of the MMJs unit placement, as demonstrated by NABET's and AFTRA's conflicting claims for the MMJ work. Two of the cases cited by NABET in support of this claim - *American Tempering*, 296 NLRB 699 (1989) and *Centac Corp.*, 179 NLRB 313 (1969) - arose in the context of alleged employer unfair labor practices, which are not present in the instant case. In the only unit clarification case cited in support of this claim - *Ronald A. Popp, Inc.*, 237 NLRB 1293 (1978) - the Board dismissed the petition because of "conflicting considerations which preclude resolution of this matter by way of unit clarification". There are no such "conflicting considerations" in the instant case. Moreover, as noted above, the Board has clarified units even in the face of conflicting union claims for the same work. *Monsanto Research Corp.*, supra.

Finally, I find no merit to NABET's claim that the petition must be dismissed because the Employer and AFTRA entered into an unlawful pre-hire agreement when it agreed, prior to creating and filling the MMJ position, that the MMJs would be included in the AFTRA unit. No unfair labor practice charge has been filed alleging such

violations, and, as acknowledged by NABET in its brief, I cannot make such a finding in this case.

Accordingly, I shall grant the Petitioner's request and clarify the AFTRA bargaining unit to include the MMJ, and clarify the NABET bargaining unit to exclude the MMJ.

Order

The AFTRA bargaining unit is clarified to include the MMJ, and the NABET bargaining unit is clarified to exclude the MMJ.

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, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at www.nlr.gov. This request must be received by the Board in Washington by September 9, 2011.

Dated at Hartford, Connecticut, August 26, 2011.


Jonathan B. Kreisberg, Regional Director
National Labor Relations Board
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