

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 17**

FAIRWAY, KANSAS

MEREDITH CORPORATION  
Employer

and

Case 17-RC-068104

AMERICAN FEDERATION OF  
TELEVISION AND RADIO ARTISTS  
(AFTRA), KANSAS CITY LOCAL  
Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on November 15, 2011, before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to conduct an *Armour-Globe* election among the news producers employed by Meredith Corporation (herein called the Employer) at its facility in Fairway, Kansas to ascertain whether the news producers wish to be included in the existing bargaining unit of employees represented by American Federation of Television and Radio Artists (AFTRA) Kansas City Local (herein called the Union or Petitioner). Pursuant to the provision of Section 3(b) of the Act, the Board has delegated its authority to the undersigned.<sup>1</sup>

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<sup>1</sup> Upon review of 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. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The Employer, Meredith Corporation, is a State of Iowa corporation engaged in providing broadcasting, publishing and marketing services from its facility located at 4500 Shawnee Mission Parkway, Fairway, Kansas, the only facility involved herein. During the past year, the Employer, in the course and conduct of this business, annually sold and provided goods and services valued in excess of \$50,000 directly to customers located outside the State of Kansas. During the same period, the Employer purchased and received goods

## **I. ISSUE**

The Petitioner seeks an election among the nine news producers employed by the Employer at its facility in Fairway, Kansas to decide whether the news producers wish to be included in the existing bargaining unit at the facility represented by the Union. The most recent collective bargaining agreement covering the existing bargaining unit was effective by its terms from December 1, 2009 through April 30, 2011, and described the bargaining unit as being comprised of: announcers, newscasters, directors, chief directors, news photographers, multi-media journalists, news editors, and production assistants.<sup>2</sup>

The Employer, contrary to the Union, takes the position that the news producers are supervisors within the meaning of Section 2(11) of the Act who cannot be included in any bargaining unit, and the Employer therefore contends that dismissal of the petition is warranted. Specifically, the Employer asserts that news producers assign and responsibly direct the work of others and that they evaluate and effectively recommend discipline of other employees within the meaning of Section 2(11).

## **II. DECISION**

Based upon a review of the record as a whole, the parties' briefs, and the application of relevant case law, I find that the evidence is insufficient to establish that the news producers are

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and services valued in excess of \$50,000 from sources located outside the State of Kansas. The Employer has annual gross revenue in excess of \$1,000,000.00 .

c. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>2</sup> The job classifications used in the collective bargaining agreement unit description differ somewhat from the bargaining unit job classifications described at the hearing. At the hearing the parties stipulated that the existing bargaining unit includes anchors, photographers, news editors, and reporters (also called newscasters). The record evidence establishes that the existing bargaining unit also includes three of the six technical producers employed in the engineering department at the Employer's Fairway, Kansas facility. There are approximately 40 employees in the existing bargaining unit represented by the Union.

supervisors within the meaning of the Act. I also find that the news producers share a community of interest with employees in the existing bargaining unit represented by the Union and that, if the news producers so desire, it is appropriate to include them in the existing bargaining unit represented by the Union.

Accordingly, an election will be held among the news producers employed by the Employer at its Fairway, Kansas facility to determine whether they wish to be included in the existing bargaining unit represented by the Union.

### **III. STATEMENT OF FACTS**

#### **A. Overview of Operations**

The Employer operates television stations across the country including the two television stations involved herein, KCTV and KSMO, which are housed within a single station facility located in Fairway, Kansas.

The Fairway facility is divided into various departments including news, sales, creative, commercial, engineering, and administration. The existing collective bargaining unit represented by the Union is comprised of employees employed in the news department plus three technical producers employed in the engineering department.<sup>3</sup>

The news department is headed by the News Director Blaise Labbe, who, with the Assistant News Director Brenda Poor, oversees the entire news department. In addition, there are six “news manager” positions including three Executive Producer positions (assigned to morning news, evening news, and investigative functions), a Managing Editor, an Assignments Manager, and a Web Content Manager. One of the three Executive Producer positions had been vacant for

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<sup>3</sup> Three other technical producers currently employed in the engineering department constitute a separate collective bargaining unit represented by the International Brotherhood of Electrical Workers (IBEW).

about six weeks prior to the date of hearing. The parties stipulated that the News Director, Assistant News Director, and the news managers, including Executive Producers, Managing Editor, Assignments Manager, and Web Content Manager are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the bargaining unit on that basis. Inasmuch as the record supports the stipulation, I find that these individuals are supervisors within the meaning of the Act and are therefore properly excluded from the unit.

While the News Director and Assistant News Director have overall responsibility for the operation of the news department, the day to day supervision of news department employees is handled by the news managers. The Assignment Manager helps facilitate the morning shows, and coordinates assignments to reporters and to crews or teams of photographers and reporters. The Managing Editor oversees the assignment desk where assignment desk employees monitor police and fire scanners and web sites for newsworthy stories, coordinate crews in the field, and pass information between crews and news producers. The Web Content Manager is responsible for news content placed on the Employer's websites. The Executive Producers are in charge of overseeing the news programs during their assigned time periods and for investigative functions. The Executive Producers are also responsible to ensure that show content is consistent with the stations' adopted brand; to make sure the story or program message is clear and concise; to exercise editorial control over the content of news programs; and to organize the appearance and graphics used in news programs.

#### **B. Unit Employees and News Producers**

In addition to the nine news producers employed in the news department, also employed in the news department are nine anchors who present the news on air; five editors; 17 or 18

photographers; eight reporters who gather information and may also act as newscasters; two assignment desk employees; and two web producers.<sup>4</sup>

The news department is responsible for producing nine news shows each weekday and usually produces five news shows each day on the weekends. Initial planning for news shows is conducted at an editorial meeting held by the news managers at 9:30 a.m to discuss and plan which news stories to develop and present. It is mandatory that news producers attend the meetings. The editorial meetings may also include reporters and photographers who are working on the noon and afternoon news shows, and creative department employees. After the decision is made regarding which news stories to pursue, it is decided generally which shows will cover which stories, which stories are the most important and should therefore be lead stories, and crews of reporters and photographers are assigned to particular stories. News managers make these decisions after discussions in the editorial meetings with news producers, reporters, photographers and the anchors who attend. Another editorial meeting is held at 1:30 p.m. and is attended by news managers and news producers. At this second editorial meeting, the news managers and news producers discuss the development of the news stories discussed at the morning meeting and discuss additional news stories that have emerged. Information reported from the field is reviewed, and the direction of stories is discussed and decisions are finalized regarding which news stories will be included in the news programs. Another editorial meeting is held daily at 2:45 p.m. for the late evening and night news shows to discuss the content of the later shows. The 2:45 p.m. meeting is attended by the late afternoon and evening news managers, the evening news producers, and the night-side crews (reporters and photographers working on stories for the evening newscasts).

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<sup>4</sup> Assignment desk employees and web producers as well as news producers are not included in the bargaining unit represented by the Union.

At least one news manager attends the editorial meetings, and usually more than one news manager attends. Three news producers work on morning shows with the Morning Executive Producer, and six news producers work on late afternoon and evening shows with the Evening Executive Producer (the open position as of the date of hearing). The third Executive Producer is over the Investigative Unit, which is a separate unit in the News Room. The news producers report to the Executive Producers as well as to the other news managers.

After the editorial meetings which determine the lead stories, the news producers are in charge of molding and crafting the news stories, and formatting the program into the final presentation form. Reporters and photographers go out and gather information, reporters write stories and photographers take photos and video footage. These crews are assigned to work with particular news producers on their shows. As a news day or night progresses, the news stories are developed. In addition, there are often breaking news stories. It is up to news managers (often the Executive Producer or the Managing Editor at the Assignment Desk) to reassign crews if coverage of breaking news requires a reassignment. In the absence of a news manager, news producers consult with reporters and photographers and together they make reassignment decisions. If the news producer and the news crew (photographer and reporters) disagree, the news producer consults with the news manager who is on-call. The station is staffed round the clock seven days a week with news producers, and if, at night or on a week end, a news manager is not on site, a news manager is designated to be on-call. Particularly on decisions which involve the expenditure of additional resources, news producers are to consult with a news manager.

After the editorial meetings, the assignment desk employees produce a document called a “show split” which notes scheduled shows, assigned news stories, the assigned news producer,

and the crews assigned to the news story. During the day, crews contact the news producer they are assigned to work with regarding updates, changes, graphics, and anything else they need. The news producers develop a “rundown”, which is an outline for their news shows or programs that lists the stories to be presented, the order of presentation, and the timing of the stories to the second. News producers create the rundown and work on it through their shift. The Executive Producer and other news managers have access to the rundowns. News producers have latitude to develop stories and show content as they think best, but a news manager may overrule a news producer’s decisions. The order of stories and which stories should lead off are discussed in the editorial meetings, and when the Executive Producer and the news producer disagree on which story should lead, the decision of the Executive Producer prevails. Each news cast is a set length, and it is the responsibility of the news producer to see that the show and the presentation of the stories are timed precisely to the overall allotted program time and to the scheduled commercial breaks.

The Employer contends that news producers “assign” work by, inter alia, deciding which news stories to be pursued; deciding which reporting crews to use; communicating new developments in news stories to reporters and photographers; making decisions regarding how news stories are to be developed by reporters and photographers; drafting scripts to be read by anchors on the air; determining graphic and video content of news programs; and creating the “rundown” of news programs showing the order of news stories presented and the times allotted to the news stories. In addition, the Employer contends that news producers responsibly direct work by telling reporters, photographers, editors, and graphic designers in the creative department what is needed or desired to develop and present news stories. There was general testimony that the Employer considers news producers to spend 35 to 45% of their time

“assigning” and “directing” the work of others, but this general testimony did not address what was meant by “assigning” or “directing”, whether such action was taken after advisement of news managers, or whether such actions involved any exercise of independent judgment.

#### **IV. ANALYSIS**

##### **A. Supervisory Indicia**

The burden of proof to show supervisory status lies with the party asserting such status. *NLRB v. Kentucky River Community Care*. 532 U.S. 706, 711-712 (2001). General assertions unsupported with specifics and contradicted by other evidence are not sufficient.

The record is clear that news producers do not hire, fire, transfer, suspend, layoff, recall or promote employees, nor do they effectively recommend such actions, and the Employer does not contend otherwise. Although the Employer argued in its brief that news producers can effectively recommend discipline of employees, the record shows that news producers, as well as other employees, may report performance problems involving their co-workers to news managers, but news managers conduct their own independent investigation of the matter and that news managers make their own independent decisions regarding whether discipline is warranted. Disciplinary actions are delivered by a news manager. Further, the record evidence establishes that news producers do not adjust employee grievances. The Employer also argues that news producers have input into performance appraisals, but again the record evidence establishes that news managers independently evaluate employee performance and write employee evaluations, and that news producers have no effective independent role in these matters. In this regard, the Employer contends that an August 2011 appraisal of a news editor shows news producer input, but the performance evaluation was written by an Executive Producer, and the record does not

establish that a news producer independently evaluated the performance of the news editor or had independent input into the performance evaluation in question. I find that the record evidence is insufficient to establish that news producers effectively recommend discipline of employees or evaluate their performance. Accordingly, the determination of whether news producers are statutory supervisors depends upon whether news producers use independent judgment to assign or responsibly direct the work of employees.

### **B. Assignment of Work**

Assigning work within the meaning of Section 2(11) of the Act is the act of designating an employee to a work at a certain place, shift or overtime, or to perform a task which involves significant overall duties. In the health care setting, charge nurses who assign and match staff working to the patients they care for over the duration of a shift are assigning significant overall tasks to employees and were found to be assigning work within the meaning of Section 2(11). *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006).

Herein, the record establishes that most work assignment decisions are made in editorial meetings by news managers including the Executive Producer, or throughout the day by the Managing Editor (who supervises the assignment desk), and by the Assignment Manager. Only if a news manager is not present, does a news producer make a story reassignment decision, but even this decision is made in consultation with the news crew involved, and any disagreements are resolved by the news manager who is on call. Although there was general testimony that if a news producer found a story incomplete, or wished to change or expand the direction of the story, he or she could direct the news crew to go back and re-do an interview or the photography, the two witnesses who offered the general testimony knew of no instance where this has happened; there was no testimony of news producers being told they have such authority; and it

is not clear that such direction constituted significant overall duties or would involve the exercise of independent judgment. Moreover, there was other record testimony that news producers have not made and can not make such decisions. The record holds no examples of a news producer making a reassignment or a re-do decision independently.

Where individuals have the authority only to request rather than require that employees work in certain areas, they are not found to have the authority to assign work. *Golden Crest Healthcare Center*, 348 NLRB 727 (2006). The fact that individuals were the highest ranking employee on site during the night shift and every other week end was insufficient to confer supervisory authority in the absence of any of the primary indicia of supervisory authority. *Id.* Other cited examples by the Employer of work assignments by the news producers, such as requests made to employees in the creative department for graphic designs and contacts between the news producers and technical producers in the engineering department appear to be merely communication and coordination of work requirements and efforts by the news producers to complete their work requirements rather than assignment of work by the news producers. Moreover, the creative and engineering departments have separate supervision. I find that the record evidence of these contacts between news producers and employees in the creative and engineering departments are not sufficient to constitute work assignments by the news producers.

Although the Employer relies upon *Hearst Broadcasting Corp*, 267 NLRB 326 (1983), to support a finding that the news producers are statutory supervisors, that case is distinguishable from the situation herein. In *Hearst*, the news producer and other department personnel were told that the producers are supervisors, the news producers could authorize overtime, were required to talk to employees with work problems, and also submitted written reports which could result in discipline, in addition to being found to have made work assignments. In contrast to *Hearst*, the

news producers herein act as part of an integrated team where employees work together performing various functions and assignments independently and cooperatively in order to present news programs and stories and there is insufficient evidence herein to establish that the news producers assign work tasks involving significant overall duties using independent judgment to other employees.

Rather, herein the evidence is that the Assignment Manager makes assignments and gets the larger day crews started on their work. The Managing Editor is in charge of the assignment desk employees, and some reporters, photographers and editors report directly to the Managing Editor. The Executive Producers are in charge of time blocks of programming and the news producers and other employees report to them. Work evaluation and discipline is handled by the Executive Producers. The evidence was not sufficient to show that authority to assign work was delegated to news producers. In *King Broadcasting*, 329 NLRB 378 (1999), news producers were not found to be statutory supervisors although the news producers selected stories, decided on visual and audio presentation of stories, assigned story writing to reporters, compiled rundowns, made changes in the rundowns, and directed others in the production activities of daily newscasts, including asking reporters to revise scripts, requesting photographers to use certain segment lengths and camera angles, and having editors alter the length of videos. The Board found such that the interactions of the news producers were part of a “collaborative effort” of news producers with reporters, photographers, and others. The Board characterized the relationship of news producers to other news department employees as one of “co-workers involved in separate but sequential functions in the development of a single product”. Similarly, in *McGraw-Hill*, 329 NLRB 454 (1999), the Board held that although news producers gave direction to reporters, photographers and editors, that directions such as camera angles, video

length, and script edits were “incidental to the producers’ ability to perform their own work” and were insufficient to establish supervisory status because the directions were simply incidental to the news producer’s ability to perform their own work, and the news producers were part of an interconnected production team, with each member independently responsible for his assignment. I find that like the situation in *King Broadcasting* and *McGraw-Hill*, the evidence is insufficient to establish that the news producers herein assign work to others using independent judgment within the meaning of Section 2(11).

In addition, there is no evidence herein that news producers or other employees were told that news producers are supervisors and news producers must consult with management when coverage of a breaking story would result in the expenditure of additional resources such as overtime. Although Executive Producer Dean Travinski testified that he recently told the news producers that they are “leaders”, this falls far short of showing that news producers have supervisory authority or are considered by themselves or other employees to be statutory supervisors.

### **C. Responsible Direction of Work**

An individual directs work within the meaning of the Act when they direct what job shall be done next or who shall do it, provided that the direction is both “responsible” and carried out with independent judgment. Responsible means that there must be a prospect of adverse consequences to the person directing the work if the work is not performed properly. When the individuals in question are not held accountable for the work of those they direct, the evidence is insufficient to show responsible direction in the meaning of the Act. *Oakwood Healthcare, supra; Golden Crest, supra.*

The Employer contends that news producers assign and responsibly direct the work of unit employees such as reporters and photographers. The record establishes that after a news show airs, a discrepancy report issues listing any errors or omissions by any employee involved in the preparation and presentation of the news program. The Executive Producer discusses this report in the first instance with the news producer, but if the problems or errors are the result of the work of others, for example a reporter, a photographer or an editor, the person whose work caused the problem is the individual held responsible. News producers are not held responsible for the work of the reporters, photographers, newscasters and anchors who work with them on news shows and programs. Rather, the news producers are held responsible for their own work: to see that the news stories are accurate, that their shows are timed correctly, and that the proper graphics are used. They are responsible for cutting and pasting graphics from show to show, for outside interviews that they schedule, and that important stories are covered on their shows. The record evidence shows that the news producers are responsible for their own work but are not held responsible for the work of others. Because the record evidence does not establish that news producers are held responsible for the work of others, the evidence fails to show responsible direction within the meaning of Section 2(11).

Finally, the Employer cites *Meredith Corp v. NLRB*, 679 F.2d 1332 (1982), wherein the Tenth Circuit Court of Appeals confirmed the Board's decision that directors (currently called technical producers) were not statutory supervisors. The Employer asserts that the court's decision supports a finding that its news producers are Section 2(11) supervisors. In the *Meredith* case, the court contrasted the functions performed by the directors with the putative supervisory functions performed by the news producers, to find that the directors were not statutory supervisors. However, the supervisory status of news producers was not directly at issue or

decided in the case and there is no basis to assume that the functions of news producers are the same as they were when the *Meredith* case was decided in any event. Accordingly, the *Meredith* case does not offer guidance regarding the supervisory status of the Employer's current news producers at the facility.

#### **D. Community of Interest**

At the hearing the Employer acknowledged that the news producers shared a community of interest with employees in the existing bargaining unit represented by the Union. News producers spend most of their time working with other news department employees who are in the existing bargaining unit including reporters, photographers, assignment editors, and anchors. They work together as part of an integrated production team to produce news shows and programs that are broadcast on the Employer's television stations. Their skills and responsibilities join in a collaborative effort with other bargaining unit employees to develop and coordinate a single final product. The news producers work in the same department as the vast majority of the current unit employees and they share common supervision with existing bargaining unit employees.

Thus, the record evidence establishes that news producers share a community of interest with current unit employees and are appropriately included in the existing unit if they vote for representation by the Union.

#### **V. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned, among the news producers of the Employer at its Fairway facility at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote

are news producers of the Employer at its Fairway Facility who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the American Federation of Television and Radio Artists (AFTRA), Kansas City Local. If a majority of valid ballots are cast for AFTRA, they will be taken to have indicated the employees' desire to be included in the existing bargaining unit of the Employer's employees represented by AFTRA. If a majority of the valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

## **VI. ELECTION NOTICES**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk. A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

## **VII. LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director for Region 17 within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make this list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, Suite 100, 8600 Farley, Overland Park, Kansas 66212, on or before **December 8, 2011**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is to be submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized. If you have questions, please contact the Regional Office.

#### **VIII. 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, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. (ET) on or before **December 15, 2011**. The request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.

SIGNED at Overland Park, Kansas, this 1<sup>st</sup> day of December 2011.



*/s/ Daniel L. Hubbel*

Daniel L. Hubbel, Regional Director  
National Labor Relations Board  
Seventeenth Region  
8600 Farley Street - Suite 100  
Overland Park, Kansas 66212-4677