

In the Matter of MARCUS LOEW BOOKING AGENCY and AMERICAN
RADIO TELEGRAPHISTS' ASSOCIATION

Case No. R-184.—Decided August 25, 1937

Radio Broadcasting—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize union as exclusive representative unless certified as such by Board—*Unit Appropriate for Collective Bargaining:* craft; occupational differences; community of interest; history of collective bargaining in industry and with employer; established labor organizations among employees—*Representatives:* proof of choice: application for membership in union; signature of cards authorizing union as bargaining agency—*Certification of Representatives:* upon proof of choice other than election.

Mr. Lester M. Levin for the Board.

Mr. Irving H. Greenfield, of New York City, for the Company.

Mr. Harold Katan and *Mr. Mervyn Rathborne*, of New York City, for American Radio Telegraphists' Association.

Mr. Maurice Deiches and *Mr. Murray S. Kaplan*, of New York City, for Theatrical Protective Union, Local No. 1, International Alliance of Theatrical Stage Employees and Moving-Picture Machine Operators of the United States and Canada.

Mr. Hyman A. Schulson, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On May 24, 1937, American Radio Telegraphists' Association, herein called the A. R. T. A., filed with the Regional Director of the National Labor Relations Board for the Second Region (New York City), a petition alleging that a question affecting commerce had arisen concerning the representation of the radio broadcast technicians of Marcus Loew Booking Agency, New York, New York, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 15, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article

III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to a notice of hearing, duly issued and served upon all the parties, a hearing was held in New York, New York, on July 2, 1937, before Samuel V. Gusack, the Trial Examiner duly designated by the Board. At the hearing the Board, the Company, the A. R. T. A., and Theatrical Protective Union, Local No. 1, affiliated with International Alliance of Theatrical Stage Employees and Moving-Picture Machine Operators of the United States and Canada, herein called the T. P. U., a labor organization named in the petition as claiming to represent the Company's radio broadcast technicians, were represented by counsel. Upon motion of Maurice Deiches, counsel for the T. P. U., who stated that by reason of the hearing having been advanced on one day's notice from July 8 to July 2, 1937, his witnesses were out of town and that he required a few days to prepare for the hearing and for an opportunity to produce his witnesses, the hearing was adjourned to July 6, 1937. Pursuant to notice, a hearing was held at New York, New York, on July 6, 1937, before the same Trial Examiner. The Board, the Company, the A. R. T. A. and the T. P. U. were represented by counsel.

Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. Objections to the introduction of evidence were made during the course of the hearing by counsel for the parties. The Board has reviewed the rulings of the Trial Examiner on motions and objections directed to the issues raised by the petition filed by the A. R. T. A., and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

At the beginning of the hearing counsel for the parties stipulated that in so far as the operation of Radio Station WHN is concerned the Company is engaged in interstate commerce within the meaning of the Act; and that the A. R. T. A. and the T. P. U. both claimed to represent the 18 radio broadcast technicians and have made representations upon the Company which would raise a question of representation.

On August 11, 1937, counsel for the T. P. U., the A. R. T. A., and the Company, orally argued the case upon the record before the Board in Washington, D. C.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Marcus Loew Booking Agency is a New York corporation engaged in booking, management, direction, and operation of theatres

throughout the United States, and owns and operates Radio Station WHN, located in New York City, and a transmitting station in connection therewith in Astoria, Long Island. The Company is a wholly-owned subsidiary of Loew's Inc., a Delaware corporation. Its principal office is at 1540 Broadway, New York City, and it has other offices throughout the United States. Loew's Inc. is engaged in the distribution, production, and exhibition of motion pictures, and operates about 100 theatres throughout the United States.

The officers of the Company are Nicholas Schenck, president; David Bernstein, vice president and treasurer; and Leopold Friedman, secretary. These officers occupy similar offices in Loew's Inc.

In this case we are concerned chiefly with Radio Station WHN, which is operated by the Company by virtue of a license from the Federal Communications Commission. The radio station operates on 10-10 kilocycles, at 5,000 watts during the daytime and 1,000 watts during the nighttime, within a radius of about 50 miles around the metropolitan area extending into New York, Connecticut, and Pennsylvania. Louis K. Sidney is the managing director of the radio station and Herbert L. Pettey is his associate. At Radio Station WHN the Company employs approximately 135 employees, consisting of a clerical staff engaged in stenography and typewriting at an average salary of \$27.50 per week; the radio producing department engaged in the creation, writing, and production of all radio entertainment at an average salary of \$100.00 per week; the program department engaged in the scheduling of radio programs at an average salary of \$75.00 per week; the mailing department engaged in the reading and distribution of the station's mail at an average salary of \$20.00 per week; musicians at an average salary of \$75.00 per week; the publicity department engaged in advertising the radio station and its artists at an average salary of \$35.00 per week; the accounting department engaged in keeping the books of the Company at an average salary of \$35.00 per week; radio announcers at an average salary of \$50.00 per week; the artists' booking department engaged in booking actors, artists, and musicians, for radio, club, and theatrical entertainment throughout the country at an average salary of \$50.00 per week; sustaining and commercial artists and extras receiving from \$20.00 to \$200.00 per week; and 18 radio broadcast engineers¹ engaged in the technical transmission of radio programs on the air at an average salary of \$50.00 per week.

We find that Marcus Loew Booking Agency is engaged in traffic, commerce, and communications among the several States and that its employees at Radio Station WHN and the transmitting station

¹ Radio broadcast engineers also call themselves "radio telegraphists" and "radio broadcast technicians".

in connection therewith in Astoria, Long Island, are directly engaged in such traffic, commerce, and communication.

II. THE UNIONS

The American Radio Telegraphists' Association is a nation-wide labor organization which numbers radio broadcast engineers among its members. It is affiliated with the Committee for Industrial Organization. The A. R. T. A. is divided into three divisions—marine, broadcast, and point to point airways. The radio broadcast engineers of the Company are eligible to membership in the broadcast division.

The A. R. T. A. has signed agreements with about 15 radio stations throughout the United States, embracing radio broadcast technicians, licensed transmitter operators, and all those who operate, handle, and maintain equipment used for broadcasting purposes.

Theatrical Protective Union, Local No. 1, International Alliance of Theatrical Stage Employees and Moving-Picture Machine Operators of the United States and Canada is a labor organization which is affiliated with the American Federation of Labor. The T. P. U. has about 1,650 members and claims that radio broadcast technicians are eligible to membership by virtue of Article I, Section 3 of its Constitution, which reads as follows:

This union shall be composed of stage mechanics to be designated as carpenters, property men, electricians, public address men, amplification equipment men, television men, stage hands, fly men, stage front lamp and projecting machine operators, and all extra men in several mechanical departments.

III. HISTORY OF THE ORGANIZATION OF THE COMPANY'S RADIO BROADCAST ENGINEERS

In 1931 Garvan,² business manager of the T. P. U., made an unsuccessful attempt to organize all the "sound men" and radio broadcast engineers of the Company. The reason for his failure to organize these employees at that time was the lukewarm attitude taken toward this movement by the Executive Board of the International Alliance of Theatrical Stage Employees and Moving-Picture Machine Operators of the United States and Canada, herein called the I. A. T. S. E. Subsequently some of the radio broadcast engineers became members of the International Brotherhood of Electrical Workers. Thereafter the radio broadcast engineers of Radio Station WHN formed a small association known as the Association of Technical Engineers of WHN, a corporation organized under the

² The record does not disclose Garvan's first name.

laws of the State of New Jersey, which admitted to its membership all those employed as radio broadcast engineers at Radio Station WHN in New York City and at its transmitting station in Astoria, Long Island. The Association of Technical Engineers of WHN attempted several times to bargain with the Company and on one occasion won slight increases in pay for the radio broadcast engineers. It has since been dissolved.

In November 1936, the A. R. T. A. began a membership campaign to organize the radio broadcast engineers at Radio Station WHN. In response to this campaign all the Company's radio broadcast engineers employed at Radio Station WHN and at the transmitting station in Astoria, Long Island, 18 in number, joined the A. R. T. A.

IV. THE APPROPRIATE UNIT

In its petition the A. R. T. A. alleged that the Company's radio broadcast technicians employed at Radio Station WHN constitute a unit appropriate for the purposes of collective bargaining. At the hearing and oral argument it took the same position.

On the other hand, the T. P. U. contended at the hearing and oral argument that the radio broadcast engineers come under the classification of "electricians, public address men, television men, and front lamp and projection machine operators" found in Article I, Section 3, of the T. P. U. constitution and by-laws and under the classification of "every employee of a theatrical nature mechanically", to use a phrase of John C. McDowell, secretary of the T. P. U. The T. P. U. in effect claims that the appropriate bargaining unit consists of all of the employees of the Company and Loew's Inc. employed in the mechanical department of the theatrical stage and that radio broadcast engineers should be included within this classification.

We do not agree with the contentions of the T. P. U. No evidence was offered to show that the T. P. U. had recently attempted to organize the WHN radio broadcast engineers or had been chosen as their representative. The T. P. U. pressed its claims only when it realized that the A. R. T. A. had successfully organized the radio broadcast engineers and was about to enter into an agreement with the Company. John C. McDowell, secretary of the T. P. U., testified that to organize the radio broadcast engineers would necessitate the creation of a separate local with a new charter. The reason for this is that the officers of the I. A. T. S. E. recognize radio broadcast engineers as a separate craft unit and prefer to have such craft groups govern themselves separately as distinct autonomies. Moreover, the radio broadcast engineers could not be embraced in any

of the labor organizations of the other employees at Radio Station WHN because most of them, such as musicians, writers, artists, etc., belong to separate craft unions of their own of a limited craft membership. The radio broadcast engineers, desiring to organize along craft lines, therefore joined the A. R. T. A. We see no reason why their wishes should be frustrated.

The record discloses that the Company considered and treated the radio broadcast engineers as a homogeneous group and as a collective bargaining unit during the existence of the Association of Technical Engineers of WHN. In the radio broadcasting industry radio broadcast engineers have been regarded as a unit by a number of broadcasting stations organized thus far. In determining the appropriate unit we also take into consideration the fact that the Company's radio broadcast engineers have organized along the lines proposed by the A. R. T. A. and have shown a desire for self-organization by becoming members of the A. R. T. A.

The radio broadcast engineers are technical employees engaged in work of a highly skilled nature, have qualifications and duties different from those of the other employees, and are required to hold federal licenses. It requires years of study in a school for radio engineering, technical training of a distinctive type, and some experience before one can procure such a license. Their salaries average about \$50.00 per week. They work eight hours a day and six days a week. Their interests are mutual and alike and they have very little in common with the other groups of employees. They constitute a distinct unit.

We therefore find that a unit composed of all the radio broadcast engineers employed by the Company at Radio Station WHN in New York City and at the transmitting station in connection therewith in Astoria, Long Island, would insure to them the full benefit of their right to self-organization and collective bargaining, and otherwise effectuate the policies of the Act, and constitutes a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

V. THE QUESTION CONCERNING REPRESENTATION

By stipulation the Company admits that a question concerning representation of its 18 radio broadcast engineers at Radio Station WHN has arisen. The A. R. T. A., having received signed applications for membership and the payment of dues from all the radio broadcast engineers at Radio Station WHN, claims to be their sole and exclusive representative for purposes of collective bargaining. On May 15 and 19, 1937, the Company was about to recognize and

to bargain with the A. R. T. A. when it received the following telegram³ from James J. Brennan, president of the T. P. U.:

MAY 21ST, 1937

MR. L. K. SIDNEY

LOEW'S

1540 BROADWAY

NEW YORK CITY

I A T S E STRONGLY PROTESTS YOUR DEALING WITH MINORITY GROUP
IN THE ORGANIZATION OF STATION WHN STOP WE REPRESENT OVER-
WHELMING MAJORITY LOEW EMPLOYEES AND DEMAND RECOGNITION
AS BARGAINING AGENT FOR WHN WHICH IS PART OF LOEW INCOR-
PORATED

JAMES J. BRENNAN

In addition, Sidney also received similar protests from representatives of the Moving-Picture Machine Operators Union, Local No. 308; American Federation of Musicians, Local No. 802; the Theatrical Stage Employees Union; and the Projectionists Union; organizations with which both Loew's Inc. and the Company have signed closed shop agreements. The Company, finding itself in the center of this dispute, refused to negotiate with the A. R. T. A. unless the latter should be certified by the Board.

At the argument before the Board on August 11, 1937, the president of the A. R. T. A., and counsel for the T. P. U. and I. A. T. S. E. both expressed their willingness to have the question of representation decided by the Board, and to abide by the decision.

We find that a question affecting commerce has arisen concerning the representation of the Company's radio broadcast engineers at Radio Station WHN in New York City and the transmitting station in connection therewith at Astoria, Long Island.

VI. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question of representation, which has thus arisen, tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VII. THE EXCLUSIVE BARGAINING AGENCY

The bargaining unit stated above included at the time of the hearing 18 employees. At the hearing Harold Kane, a radio broadcast engineer at Radio Station WHN, testified that at a meeting of the 18 engineers on April 12, 1937, all had agreed to become mem-

³ Board's Exhibit No. 3.

bers of the A. R. T. A. provided that each engineer signed an application for membership. On about April 19, all the engineers signed membership cards and turned them over to Kane. Kane forwarded these cards to Harold Katan, organizer of the broadcast division of the A. R. T. A. Photostatic copies of the 18 signed membership cards and dues cards, which were kept by Geraldine Shandcross, secretary of the A. R. T. A., were produced at the hearing.⁴ Each card carried the following statement:

I hereby apply for active membership in the American Radio Telegraphists' Association.

In affixing my signature to this application, I hereby authorize the American Radio Telegraphists' Association to represent me as my sole bargaining agency in any and all negotiations with my present or future employers, and to represent me in promoting beneficial legislation.

Upon the basis of the 18 signed membership cards the A. R. T. A., on April 19, 1937, appears to have become designated by all of the radio broadcast engineers as their representative for purposes of collective bargaining. No secret ballot is necessary, and we will certify the A. R. T. A. as the exclusive representative of all the employees in the appropriate unit.

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. All the radio broadcast engineers employed by Marcus Loew Booking Agency at Radio Station WHN in New York City and at the transmitting station in connection therewith in Astoria, Long Island, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of the employees in the aforesaid unit, within the meaning of Section 9 (c) of the National Labor Relations Act.

3. American Radio Telegraphists' Association, having been selected for the purposes of collective bargaining by the majority of the employees in the aforesaid unit, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment,

⁴ Board's Exhibits Nos. 4a-4r, inclusive.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that American Radio Telegraphists' Association has been designated and selected by a majority of the radio broadcast engineers employed by Marcus Loew Booking Agency at Radio Station WHN in New York City and at the transmitting station in connection therewith in Astoria, Long Island, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, it is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.