

IN THE MATTER OF MACKAY RADIO CORPORATION OF DELAWARE, INC. and
MACKAY RADIO & TELEGRAPH COMPANY, A CORPORATION and AMERICAN
RADIO TELEGRAPHISTS' ASSOCIATION

Cases Nos. R-345 and R-346.—Decided February 26, 1938

Communications Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining:* "live traffic" employees of both Companies, on national basis, excepting messengers and supervisory employees; organization of business; stipulation as to—*Election Ordered*

Mr. David A. Moscovitz, for the Board.

Mr. Leonard P. Moore, *Mr. Howard L. Kern*, *Mr. John H. Wharton*, *Mr. James C. Phelps*, and *Mr. Louis Newman*, of New York City, for the Companies.

Mr. Michael Mignon, for A. R. T. A.

Miss Anne E. Freeling, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On July 1, 1937, American Radio Telegraphists' Association, herein called A. R. T. A., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of "Mackay Radio and Telegraph Co. (of Delaware)," herein called the Delaware 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 July 28, 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 an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice and, acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that this case be consolidated for the purpose of hearing with Case No. C-252, involving a complaint previously issued by the Board against the Delaware Company.

On July 30 A. R. T. A. filed a similar petition with the Regional Director for the Fifth Region (Baltimore, Maryland). On September 8, A. R. T. A. filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition making the same allegations as to "Mackay Radio & Telegraph Co. of California," herein called the California Company.

On September 29, the Board issued an order consolidating the two latter cases with the two cases previously consolidated, and transferring the proceedings from the Fifth and Twentieth Regions to the Second Region for the purpose of hearing. Pursuant to an amended notice of hearing, copies of which were duly served upon the Delaware Company and upon A. R. T. A., a hearing was held on September 29 and October 2, at New York City, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board and the Delaware Company were represented by counsel and participated in the hearing. It was stipulated that counsel for the Delaware Company should also represent the California Company. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. No objections to the introduction of evidence and no exceptions to rulings of the Trial Examiner were made at the hearing. It was stipulated at the hearing, and on October 9 the Board issued an order, that Case No. C-252 be severed from these proceedings and be continued as a separate proceeding.

On November 10 oral argument was had before the Board, in which the two Companies and A. R. T. A. participated. Counsel representing the two Companies stipulated with A. R. T. A. that a national unit would, in this case, be preferable to the several local units requested by A. R. T. A. in its petitions. On December 3, A. R. T. A. accordingly filed an amended petition, naming the Delaware Company as "Mackay Radio Corporation of Delaware, Inc." and the California Company as "Mackay Radio & Telegraph Company." Pursuant to an amended notice of hearing, copies of which were duly served upon both of the Companies, upon A. R. T. A., and upon Commercial Telegraphers' Union, a hearing was held on January 18, 1938, at New York City, before Joseph Maguire, the Trial Examiner duly designated by the Board. The Commercial Telegraphers' Union, a labor organization served with notice because of its possible interest in these proceedings, did not appear.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

The distinction between the Delaware and California Companies is of purely historical origin. The two Companies are now operated

as a single unit under the management of Mackay Radio and Telegraph System. However, when they first became part of this System, they could not, under laws then existing, be combined. The two Companies maintain jointly, at 67 Broad Street, New York City, their principal offices, including their combined purchasing, accounting, and legal departments. The two Companies have the same officers and an interlocking directorate. Admiral Luke McNamee is head of the System and president of both Companies. His office determines not only general questions of policy, but also all problems relating to hiring, discharging, transfers, salary adjustments, and other management and personnel matters, for both Companies. The same rates of pay and general working conditions prevail at all the stations of the two Companies throughout the country.

The two Companies are engaged in the transmission of intelligence by radio and telegraph between the States of the United States and to and from foreign countries and ships at sea. They maintain offices or stations for the transaction of such business in New York, Maine, Florida, District of Columbia, Maryland, Illinois, Indiana, Louisiana, California, Washington, Oregon, and the Hawaiian Islands. To conduct such a system of communications, the facilities of both Companies are drawn upon and are coordinated in the closest possible manner.

II. THE ORGANIZATION INVOLVED

American Radio Telegraphists' Association is a labor organization, affiliated with the Committee for Industrial Organization, which admits to membership all "live traffic" employees of the two Companies, excluding messengers and supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

Some time in August or September 1937, representatives of A. R. T. A. called on Mr. Rodman, general manager of the Delaware Company, to request recognition as the sole collective bargaining representative of "live traffic" employees in the New York metropolitan area. In the discussion which ensued, it was brought out that the two Companies and A. R. T. A. considered that the best set-up would be to bargain on a national basis. A. R. T. A. requested that the Companies agree to a nation-wide consent election. Rodman answered that he would have to take the matter up with McNamee, who, when he was consulted, took the stand, and persisted therein during all subsequent negotiations, that he would deal with his employees individually or in groups, but would not recognize any organization as the sole collective bargaining agency for all his employees, since, he contended, to do so would militate against the interests of minority groups.

We find that a question has arisen concerning representation of employees of the two Companies.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the two Companies described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and with foreign countries, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

A. R. T. A. testified during the hearing that its reason for filing the several local petitions was in order to appear consistent with its procedure in an earlier case, *Matter of R. C. A. Communications, Inc.*, 2 N. L. R. B. 1109. However, the cases are clearly distinguishable. The reasons for finding the local unit to be appropriate in the *R. C. A.* case are not applicable here. Those reasons were therein stated as follows:

In the absence of proof of a present desire on the part of the "live traffic" employees of the Company employed in the metropolitan area to be bracketed in a single unit with all other employees of the Company in the whole communications system, we are of the opinion that the policy of the Act would be best served in this case by not including the employees in the other departments and in the other geographical districts of the Company in the appropriate unit. The record does show that the ultimate goal of the A. R. T. A. is to organize all the employees of the Company throughout its whole communications system. The "live traffic" employees of the Company in the metropolitan area should not be denied the benefits of the Act until all the employees of the Company throughout the country are organized.

In the performance of their functions, the staffs of the two Companies operate as one, without regard to the legal distinction between the two entities. Perfect message transmission by radio or telegraph requires instantaneous coordination between stations. In its administration of the Federal Communications Act, the Federal Communications Commission treats the two Companies as a single unit. Despite its ruling generally prohibiting interlocking of directorates between communications companies, that Commission has permitted McNamee to act as president and director of both Companies.

For the purpose of determining the appropriate unit in this case, we find that the two Companies constitute one employer.

Counsel for the two Companies stipulated with A. R. T. A. that collective bargaining negotiations should be conducted on a nation-

wide basis, and that the appropriate unit should include "live traffic" employees of both Companies. "Live traffic" refers to the transmission and reception of messages. Employees engaged in "live traffic" include teletype and radio operators, Morse operators, telephone and arbitrage operators, all classifications of clerks, including "RQ" clerks, counter clerks, delivery clerks, service clerks, routing clerks, check clerks, and general clerks, receiving and transmitting engineers, riggers, linemen, mechanics, mechanics, ground men, installation and radio service men, but excluding messengers and supervisory employees. None of the parties maintained that messengers should be included in the unit.¹

We find that the "live traffic" employees of the two Companies, excluding messengers and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the employees of the two Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

A. R. T. A. presented proof of membership only for the stations covered in its local petitions. A. R. T. A. proved substantial membership in such stations, but did not prove that it represented a majority of all the "live traffic" employees of the two Companies. We therefore find that the question which has arisen concerning the representation of employees of the two Companies can best be resolved by the holding of an election by secret ballot.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Mackay Radio Corporation of Delaware, Inc., and Mackay Radio & Telegraph Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The "live traffic" employees of the two Companies, excluding messengers and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Rela-

¹ Cf. *Matter of Postal Telegraph Cable Company et al.*, Cases Nos. R-329, R-451, R-452 and R-453. February 12, 1938. (This decision was subsequently withdrawn.)

tions 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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Mackay Radio Corporation of Delaware, Inc. and Mackay Radio & Telegraph Company, elections by secret ballot shall be conducted as soon as convenient and beginning as promptly as is practicable after the date of this Direction, in conformity with the rules set forth hereinabove for the conduct of such elections, under the direction and supervision of the Regional Director for the Second Region, acting in the matter as agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations—Series 1, as amended, among the “live traffic” employees of Mackay Radio Corporation of Delaware, Inc. and Mackay Radio & Telegraph Company who were employed during the pay-roll period immediately preceding December 3, 1937, excluding messengers and supervisory employees and those who quit or were discharged for cause between such date and the date of election, to determine whether or not they desire to be represented by American Radio Telegraphists’ Association for the purposes of collective bargaining.