

In the Matter of METRO-GOLDWYN-MAYER STUDIOS, and MOTION PICTURE PRODUCERS ASSN., *et al.* and SCREEN WRITERS' GUILD, INC.

Cases Nos. R-402 to R-420, inclusive.—Decided June 4, 1938

Motion Picture Production Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union—*Employee:* screen writers, employees within meaning of the Act—*Unit Appropriate for Collective Bargaining:* persons employed as screen writers by each employer, excluding certain categories; history of collective bargaining relations in industry—*Contract:* collective, for 5-year term, no bar to certification of representatives; individual contracts of employment, no bar to collective bargaining—*Representatives:* eligibility to participate in choice: only those screen writers actually employed considered as employees; eligibility not limited by length of employment or number of screen credits obtained; screen writers assigned to other employers, to vote in unit of employer with whom they have contracted—*Election Ordered*

Mr. William R. Walsh, for the Board.

Loeb, Walker & Loeb, by *Mr. Milton H. Schwartz* and *Mr. Nathan C. Finch*, of Los Angeles, Calif., for M.G.M., Universal, Goldwyn, Republic, United Artists Studio Corporation, and the Association.

Mr. Loyd Wright and *Mr. Richard M. Goldwater*, of Los Angeles, Calif., for Selznick, Major Pictures, and Wanger Productions.

O'Melveny, Tuller & Myers, by *Mr. Walker K. Tuller*, *Mr. Homer I. Mitchell*, and *Mr. Jackson W. Chance*, of Los Angeles, Calif., for Paramount.

Mr. Alfred Wright, of Los Angeles, Calif., for Fox Film.

Mr. Herbert Freston and *Mr. Clarence M. Hanson*, of Los Angeles, Calif., for Warner.

Goldstone & Berger, by *Mr. Leon Kaplan*, of Los Angeles, Calif., for Grand National.

Mr. Sam Wolf, of Los Angeles, Calif., for Trem Carr and Monogram.

Mr. Victor Ford Collins, *Mr. Arnold M. Cannon*, and *Mr. William Manns*, of Los Angeles, Calif., for Hal Roach Studios.

Swarts and Tannenbaum, by *Mr. Seymour P. Steinberg*, of Los Angeles, Calif., for Schulberg Pictures.

Mr. Gunther R. Lessing and *Mr. Guy Knapp*, of Los Angeles, Calif., for Walt Disney Productions, Ltd.

Mitchell, Silberberg, Roth & Knupp, by *Mr. Guy Knupp*, of Los Angeles, Calif., for RKO and Walt Disney Productions, Ltd.

Faries & McDowell, by *Mr. Leonard S. Janofsky*, of Los Angeles, Calif., for the Guild.

Mr. Neil S. McCarthy, of Los Angeles, Calif., for Screen Playwrights.

Mr. Henry W. Lehmann, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 11, 1937, The Screen Writers' Guild of the Authors' League of America, Inc., herein called the Guild, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) 21 separate petitions alleging that questions affecting commerce had arisen concerning the representation of screen writers. The Companies named in the petitions are, respectively, Metro-Goldwyn-Mayer Studios; Selznick International Pictures, Inc.; United Artists Studio Corp.; Walter Wanger Productions, Inc.; Samuel Goldwyn, Inc., of California; Republic Productions, Inc.; Columbia Pictures Corp. Studios; Paramount Pictures, Inc.; RKO Radio Pictures Inc.; Universal Pictures Corp.; Twentieth Century-Fox Film Corp.; Warner Bros. and First National West Coast Studios;¹ Derr and Sullivan; Educational Studios Inc.; Grand National Films; Trem Carr Pictures, Ltd.; Chadwick Productions; Chesterfield Motion Picture Corp.; Major Pictures Corporation; Hal E. Roach Studios; B. P. Schulberg Pictures Inc.; and Darmour Studio. The Motion Picture Producers Association, herein called the Association, was named as a party in most of the petitions.

On July 12, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, and Article III, Section 10 (c) (2), 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 further ordered that, for purposes of hearing,

¹ At the hearing it was stated by counsel for Warner Bros that no motion picture producer named First National West Coast Studios existed. Inasmuch as no evidence was offered with respect to any such company, the petition and amended petition in this case are hereby amended by striking therefrom all reference to First National West Coast Studios.

the cases be consolidated and that one record of the hearing be made. On September 8, 1937, the Guild filed a similar petition with the Regional Director relative to screen writers of Monogram Productions Inc., and on September 13, 1937, it filed an additional petition relative to screen writers of Walt Disney Productions, Ltd.,² such petition naming the Association, Motion Picture Producers and Distributors of America, Inc., and Pat Casey as interested parties. On September 13 and 14, 1937, the Guild filed with the Regional Director amended petitions in each of the cases except those relating to Walt Disney Productions, Ltd., Derr and Sullivan, Educational Studios, Inc., Chadwick Productions, and Chesterfield Motion Picture Corporation. On September 14, 1937, the Board issued orders permitting the Guild to withdraw the petitions involving the four Companies last mentioned. The amended petitions amplified and otherwise changed the allegations contained in the original petitions; added as interested parties in each of the cases Motion Picture Producers and Distributors of America, Inc. and Pat Casey; and made certain other changes and additions. On September 21, 1937, the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, and Article III, Section 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation in the two cases involving Monogram Productions Inc. and Walt Disney Productions, Ltd., and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice, and further ordered that, for the purposes of hearing, these two cases be consolidated with the consolidated cases entitled "Metro-Goldwyn-Mayer Studios, and Motion Picture Producers Assn. et al."

Several of the Companies filed answers and motions to dismiss, wherein they denied that the petitions set forth questions affecting commerce; denied that screen writers are employees within the meaning of the Act; asserted that each Company constitutes a separate and distinct appropriate unit; raised certain constitutional objections to the proceedings; and pleaded as a bar to the proceedings a written agreement entered into between certain of the Companies and Screen Playwrights, Inc., herein called the Screen Playwrights, which had been named in the amended petitions as claiming to represent screen writers. Motion Picture Producers and Distributors of America, Inc., the Association, Pat Casey, and United Artists Studio Corporation, a Company named in two of the petitions, each filed a motion to dismiss wherein it was denied that such association, corporation, or individual, as the case may be, is in the business of producing motion pictures

² Walt Disney Productions, Ltd. is incorrectly designated as Walt Disney Enterprises in the petition, which is hereby amended accordingly.

or employs screen writers. In addition, the Association and United Artists Studio Corporation each filed an answer, in substance, making the same denials and allegations contained in the answers filed by the companies and in the various motions to dismiss. Screen Playwrights filed "objections to the proceedings and a motion to dismiss" and an answer, denying various allegations contained in the amended petitions, denying the jurisdiction of the Board, and raising constitutional objections to Section 9 of the Act.³

On September 17, 1937, the Regional Director issued a notice of hearing and on September 27, 1937, an order postponing the hearing, copies of each of which were duly served upon each of the Companies involved in these proceedings, upon Motion Picture Producers and Distributors of America, Inc., upon the Association, upon Pat Casey, upon the Guild, upon the International Alliance of Theatrical Stage Employees, upon Lester Hardy, an officer of the Screen Advertisers' Guild, and upon Screen Playwrights.⁴

Pursuant to the notices of hearing and postponement, a hearing was held in Los Angeles, California, on September 30, October 1, 4, 5, 6, 8, 11, 12, 13, 14, 15, 18, 19, 20, and 21, 1937, before William R. Ringer, the Trial Examiner duly designated by the Board. The Board, each company,⁵ the Association, the Guild, and Screen Playwrights were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

For the purpose of expediting the presentation of testimony, it was stipulated at the hearing that each Company there represented should be deemed to have joined in every objection or motion made on behalf of any other Company except where a particular Company specifically indicated that it did not desire to join in any such objection or motion.

At the commencement of the hearing, counsel for the Screen Playwrights renewed its various objections and its motion to dismiss the petitions. The motion to dismiss was joined in by all the Companies. The motion was overruled. A written motion to dismiss the petitions in so far as they relate to Pat Casey was presented. Objections were

³ At the hearing, the parties by stipulation waived the requirements of service of a copy of each motion and answer upon the other parties to the proceeding with respect to motions to dismiss and answers filed by Motion Picture Producers and Distributors of America, Inc., the Association, Pat Casey, and United Artists Studio Corporation, to answers filed by the Companies, and to the "objections to the proceedings and motion to dismiss," and the answer filed by the Screen Playwrights.

⁴ At the hearing, counsel for Grand National Films, Inc., and for Walt Disney Productions, Ltd., stated that these Companies had not received service. However, each counsel agreed to waive service with respect to the Company represented by him.

⁵ Except Darmour, Inc.

raised to the orders of consolidation and motions were presented to vacate such orders. All such objections were overruled and the motions to vacate denied.

Several objections to the introduction of evidence and to the introduction as exhibits of the petition and other formal papers relating to the case wherein Metro-Goldwyn-Mayer Studios was named were made. All these objections were overruled. Although the record is not clear, counsel for the various parties apparently intended to stipulate that these objections would be deemed applicable to the formal papers in each of the other cases in this proceeding, and they shall so be considered. The Trial Examiner admitted all such formal papers as exhibits in the proceeding.

Following the introduction of the formal papers, counsel for the Companies and counsel for the Screen Playwrights again presented their motions to dismiss the proceedings and their objections to the introduction of any evidence with the understanding that such motions and objections be deemed to have been presented prior to the introduction of any evidence. The Trial Examiner overruled the objections to the introduction of any evidence and reserved ruling on the motions to dismiss. At the close of the presentation of evidence by counsel for the Board and again at the close of the petitioner's case, motions to dismiss were made on behalf of the Companies, the Association, the Motion Picture Producers and Distributors of America, Inc., Pat Casey, and the Screen Playwrights. These motions were denied by the Trial Examiner. At the hearing, counsel for the Screen Playwrights made a motion that its answer be amended by substituting the term "producer" for the term "employer" wherever the term "employer" appears therein. The Trial Examiner granted this motion.

The Board has reviewed the rulings of the Trial Examiner upon the various motions and objections to the admission of evidence. Except as hereinafter otherwise specifically indicated, the rulings are hereby affirmed.

It was stipulated at the hearing that the Motion Picture Producers and Distributors of America, Inc., and United Artists Studio Corporation do not employ screen writers and no evidence was introduced at the hearing relative to these parties. The petitions in so far as they relate to these parties are, therefore, hereby dismissed. It was also stipulated that the Association and Pat Casey do not employ screen writers. In view of this stipulation and the facts discussed in Section VII below, the petitions in so far as they relate to these parties are likewise dismissed. At the hearing, Walt Disney Productions, Ltd. and the Guild, the petitioner, entered into a written stipulation asking that the petition involving Walt Disney Produc-

tions, Ltd. be dismissed⁶ and no objection thereto was raised by any party. The petitions in so far as they relate to Walt Disney Productions, Ltd. are, therefore, hereby dismissed.

Except as indicated above, all written motions to dismiss filed by the Companies in these proceedings and all motions to dismiss presented at the hearing as to which the Trial Examiner reserved ruling are hereby denied. During the hearing, the Trial Examiner did not rule with respect to the admission of several exhibits. All such exhibits as to which no rulings were made are hereby admitted into the record. It is not entirely clear from the record whether the Trial Examiner ruled upon the admission of registration statements and reports filed with the Securities and Exchange Commission which were offered in evidence as exhibits. In any event, such statements and reports are hereby admitted into the record and are marked with the exhibit numbers whereby they were identified at the hearing.

Pursuant to notice, a hearing was held before the Board on December 1, 1937, in Washington, D. C., for the purpose of oral argument. In addition to the parties, counsel for the Screen Directors' Guild was granted leave to appear before the Board as *amicus curiae*. Paramount Pictures, Inc., the Guild, Screen Playwrights, and the Screen Directors' Guild each filed briefs to which the Board has given due consideration.

On April 20, 1938, Screen Writers' Guild, Inc., filed with the Board a petition requesting that the record in the consolidated proceedings be reopened to show a change in name of The Screen Writers' Guild of the Authors' League of America, Inc., to Screen Writers' Guild, Inc.; to show that the officers, directors, and members of Screen Writers' Guild, Inc., are the same, respectively, as the officers, directors, and members of The Screen Writers' Guild of the Authors' League of America, Inc.; and to show the incorporation of the Guild and the adoption of a new constitution and bylaws by the Authors' League of America, Inc., and further requesting that if the Board directs that an election be held, the name Screen Writers' Guild, Inc., appear on the ballot in lieu of The Screen Writers' Guild of the Authors' League of America, Inc.

Certain of the Companies filed answers wherein they denied the allegations set forth in the petition of Screen Writers' Guild, Inc., and requested that such petition be dismissed for the reasons that Screen Writers' Guild, Inc., is an entity separate and distinct from The Screen Writers' Guild of the Authors' League of America, Inc., and that such newly established organization has not filed a petition

⁶ Board Exhibit No. 115-A.

with the Board in the proceeding pursuant to Article III, Section 1, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

On April 30, 1938, the Board issued an order reopening the record for the introduction of further evidence relative to the matters covered in the petition filed by Screen Writers' Guild, Inc. On April 26, 1938, the Regional Director issued an amended notice of such further hearing to be held in Los Angeles, California, on May 5, 1938. Copies of the amended notice of hearing were duly served upon all parties to the proceeding. Pursuant to the amended notice, a hearing was held on May 5, 1938, in Los Angeles, California, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. Appearances were entered on behalf of the Board, each Company, the Association, Screen Writers' Guild, Inc., and Screen Playwrights. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the commencement of the hearing, counsel for the Companies objected to the introduction of the formal papers relative to this hearing as exhibits and to the reopening of the record in the consolidated proceedings. The Trial Examiner overruled both objections. Counsel for the Companies also raised certain objections which, in substance, constituted a renewal of objections made in the previous hearing to the introduction of any evidence. The Trial Examiner reserved ruling thereon. Such objections are hereby overruled. At the close of the hearing, counsel for Screen Writers' Guild, Inc., moved that the petitions in the consolidated proceeding be amended to conform to the proof, and specifically that the name of the petitioner be changed to Screen Writers' Guild, Inc. Counsel for Screen Writers' Guild, Inc., also moved that if an election be directed, the name Screen Writers' Guild, Inc., be designated on the ballot in lieu of The Screen Writers' Guild of the Authors' League of America, Inc. The Trial Examiner reserved ruling on both these motions. For reasons set forth hereinafter, these motions are granted. The board has reviewed the rulings of the Trial Examiner upon the various motions and objections to the admission of evidence. The rulings are hereby affirmed.

A memorandum brief relating to the issues raised in the petition of Screen Writers' Guild, Inc., to reopen the record and receive further evidence was filed with the Board. Screen Writers' Guild, Inc., likewise filed a brief relating to such issues. The Board has given due consideration to both briefs.

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

FINDINGS OF FACT

I. THE MOTION PICTURE INDUSTRY⁷

About 70 per cent of all motion pictures shown throughout the world are produced in the United States. The industry centers in Los Angeles County, California, where more than 90 per cent of the motion pictures produced in the United States are made. The Biennial Census for 1935 issued by the United States Bureau of the Census in the Department of Commerce,⁸ entitled "Motion Pictures," states that in 1935, 27,417 people were engaged in the production of motion pictures and that of these 23,179 or 84.5 per cent were employed in Los Angeles County, California, where Hollywood is located. The 1935 pay roll of the producers in Los Angeles County was \$95,725,167. In the same period, the total cost of production was \$165,064,054.⁹

Films are distributed through a system of exchanges or distributing offices. Most of the distributing companies have their main offices in New York City with exchanges located in about 35 principal cities of the United States. There are about 400 such exchanges. Prints are sent from the laboratory either to the distributing company or directly to the exchanges of the distributing company. The distributing companies through their exchanges lease or rent the film to the local exhibitors. After an exhibitor has displayed a film to the public, the print is returned to the exchange for redistribution to other theatres. The same print is used many times and may frequently cross State lines as it is leased and shipped to one exhibitor after the other. For the most part, producers have their own distribution facilities or distribute their films through producers having such facilities. Similarly, producers have acquired control of theatres as outlets for the exhibition of their pictures so that integration has affected all three branches of the motion picture industry—production, distribution, and exhibition.

⁷ In connection with the findings in this section, the Board has in part taken note of certain facts and statistics contained in the International Motion Picture Almanac, 1937-1938, a trade publication, which annually compiles information relating to the motion picture industry.

⁸ Board Exhibit No. 306. Published in December 1936, this was the most recent census available at the time of the hearing in this proceeding.

⁹ The International Motion Picture Almanac, 1937-1938, states that for 1935-1936 the motion picture companies spent \$135,000,000 in the production of motion pictures. Whatever the exact expenditure may be, it is clear that large sums are annually spent in motion picture production and that the investment in the industry is vast.

There are more than 18,000 motion picture theatres in the United States,¹⁰ and these have a weekly attendance of from 83,000,000 to 88,000,000 persons. Annually, these motion picture theatres receive from \$900,000,000 to \$1,000,000,000 for admissions.

American films also have a large foreign market. Approximately 40 per cent of the revenues received by film producers are derived from foreign sources.

Although the steps taken in the production of a motion picture vary in detail, they may be briefly summarized as follows: In the first instance, a story must be selected. The selection may be an original story expressly written for screen purposes by a writer on the staff of the producer. It may be an original purchased from a writer not employed by the producer, or an original written by a free-lance writer especially hired for the purpose of writing the particular story. The selection may be a story taken from current publications or literature. Producers employ staffs of readers whose function it is to cull different publications and to make synopses of material which they find in the course of their reading. The synopsis is submitted to the story editor who supervises the work of the readers. If the story editor believes that a story contains material suitable for screen purposes, he recommends its purchase to the producer. The producer in turn examines the synopsis and the story, and as a result of his examination may purchase the rights to the story. The prices of stories vary, and as much as \$100,000 or more may be paid for a single story.

The producer assigns the story to a writer to prepare a treatment¹¹ or a draft. Writers generally work under the general direction of the producer or an associate producer. During the course of the writing the producer and the writer may have several conferences as the result of which changes may be made. Frequently several drafts are prepared before the script is in final form. A director may be assigned to a story before the final screen play is drafted. However, no general rule is followed, and the director may not be assigned to the story until it has assumed final form. Not uncommonly, the director works closely with the writer. He may even write a portion of the play and receive screen credit¹² for his contributions to the script. The complete script contains the dialogue,

¹⁰ The Year Book of Motion Pictures (1937), another trade publication, indicates that of the 18,818 theatres in the United States, 953 are located in California

¹¹ The treatment is the outline of the plot, characters, and some of the situations of a contemplated photoplay. A treatment may be very brief or it may be longer and indicate some of the dialogue

¹² Screen credit refers to the reproduction on the title card of the names of the screen writers who have made material contributions to the particular screenplay.

the themes, and the continuity, and describes all of the action in the play and the sound effects.

After the script is completed, it is transmitted to the various departments having a function in the production of the play, such as the art, construction, paint, and property departments, to enable them to estimate what is required of the respective departments in the production of the picture. A budget meeting attended by the director and representatives of all the departments concerned is then held at which estimates are made of the costs anticipated in the picture's production. At this meeting, the director determines the properties required, the number of people needed in different scenes, and other factors upon which the cost depends. The writer usually is not present at the budget meeting.

The cast is chosen, and crews, such as a camera crew, a grip and electrical crew, a hairdresser, a make-up artist, assistant directors, are assigned to the production of the picture. Then the "shooting" or filming of the picture begins. Throughout the "shooting" of the scenes, the director keeps with him the script which serves as a blueprint of the screen play. To the script, the director adds notes and makes such minor changes as may appear necessary. Thus he may improvise dialogue on occasion. Ordinarily, the writer has completed his work on the play when the final draft of the script is approved. However, if fundamental changes appear to be necessary, the original writer or another writer may be asked to make the necessary revisions or additions. The filming takes place on the studio lot, or, if necessary, scenes may be photographed "on location." Crews are sent to other States and even abroad in order to obtain a required background. Occasionally the writer may accompany the crew "on location."

At the end of each day, the negative which has been filmed that day is developed at the laboratory and prints are made. The scenes taken the previous day are exhibited to the producer and other executives to examine the quality of the work thus far performed. When the "shooting" of the picture is completed, the film is edited and the necessary inserts or titles provided. A final cutting is made and the negative is sent to the laboratory. During the "shooting," sound is separately recorded on film. It is necessary to make a composite print of both the sound film and the photographic film. As a result of previews of the picture, changes and additions may be made to overcome deficiencies revealed at the preview. If fundamental changes are required at this stage, a writer may be called in to make them. After a final cutting, the picture is complete and ready for distribution.

At the hearing, a director testified that he uses about 300,000 or 350,000 feet of film in making a picture. On certain pictures, the amount of film used may exceed this figure.

It is to be noted in connection with the foregoing discussion and in connection with the business of the Companies set forth in detail in Section II herein, that although the raw material cost embodied in the print or negative which is sent across State lines may be very small, its great commercial value consists in the fact that it is one of a limited number of such prints or negatives on which are recorded for presentation to the public the result of all the expenditure which has gone into the making of a motion picture. The print or negative actually is the embodiment of these costs.

II. THE BUSINESS OF THE COMPANIES

Loew's Incorporated,¹³ Selznick International Pictures, Inc., Walter Wanger Productions, Inc., Samuel Goldwyn, Inc., Ltd., Republic Productions, Inc., Columbia Pictures Corporation of California, Ltd., Paramount Pictures, Inc., RKO Radio Pictures, Inc., Universal Pictures Company, Inc., Twentieth Century-Fox Film Corporation, Warner Bros. Pictures, Inc., Grand National Films, Inc., Trem Carr Pictures, Ltd., Major Pictures Corporation, Hal Roach Studios, Inc., B. P. Schulberg Pictures, Inc., Monogram Productions, Inc., and Darnour, Inc., all named in this proceeding, herein called the Companies,¹⁴ are engaged in the production of motion pictures. The studios of the Companies are located in Los Angeles County, California.

A. *Loew's Incorporated* is a Delaware corporation. As of December 31, 1937, it took over and continued all of the motion picture producing activities of Metro-Goldwyn-Mayer Corporation.¹⁵ The facts pertaining to the operations of Metro-Goldwyn-Mayer Corporation prior to December 31, 1937, are, therefore, relevant in regard to the present activities of Loew's Incorporated.

Metro-Goldwyn-Mayer Corporation, herein referred to as M. G. M., purchased its film from three distributing companies located in California. These three companies, J. E. Brulatour, Inc., Smith & Aller, Ltd., and G. King Charney, are the exclusive distributors, respectively, of Eastman Kodak film manufactured in Rochester, New York, Dupont film manufactured in Parlin, New Jersey, and Agfa film manufactured in Binghamton, New York. Both J. E. Brulatour,

¹³ The amended petition refers to Metro-Goldwyn-Mayer Corporation. However, on December 31, 1937, Metro-Goldwyn-Mayer Corporation transferred all of its assets and liabilities to Loew's Incorporated, and became an inactive corporation. Subsequent to the hearing, all parties stipulated in writing that "Loew's Incorporated did, as of December 31, 1937, assume control of, take over, and continue all of the motion picture producing activities of Metro-Goldwyn-Mayer Corporation," and agreed that Loew's Incorporated be substituted for Metro-Goldwyn-Mayer Corporation in this consolidated proceeding.

¹⁴ As hereinafter indicated, the names of some of the companies were inaccurately given in the amended petitions. The names as they appear above are the correct names.

¹⁵ See footnote 13.

Inc., and Smith & Aller, Ltd., carry inventories of film in their California warehouses. Agfa film is shipped to a California warehouse of Agfa and there purchased by C. King Charney in amounts determined by the sales requirements of that company. Officers of the three distributors testified at the hearing as to the amount of film which each sold to the Companies. The amount of film, measured in feet, bought by M. G. M. from these distributors, during the periods of time indicated, is as follows:¹⁶

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.-----	{ 155, 700, 000 positive----- 7, 500, 000 negative----- 9, 960, 000 Canadian-----	} August 1, 1936, to August 1, 1937.
Smith & Aller, Ltd.-----	{ 19, 415, 623 positive----- 1, 056, 249 negative-----	
C King Charney-----	{ 28, 400 infra-red-----	
		} September 1, 1936, to September 1, 1937.

Among the purchases of M. G. M. and of the other Companies are other articles purchased from concerns located in California whose stock of such articles either entirely or to a substantial extent originates outside of California. Articles purchased in substantial quantities by M. G. M. from distributing companies, 75 per cent or more of whose stock of such articles originates in States other than California, are Douglas fir, white and sugar pine, and hardwood from the Globe Lumber Company, hardware from the Union Hardware & Metal Company and from the California Hardware Company, and theatrical and drapery fabrics from Dazians, Inc.¹⁷ M. G. M. also has bought photographic supplies from Eastman Kodak Stores, Inc. The manager of this company testified that all the Eastman Kodak Company supplies which his company sold came from Rochester, New York, and that, to his knowledge, all other material sold by his company is purchased from supply firms in the East, mostly in Chicago, Illinois, and New York City.¹⁸

As already indicated, crews of actors and technicians are not infrequently sent from the studios in Hollywood, California, "on location," for the purpose of filming all or parts of various motion pictures. Crews may be sent out of California. In its last fiscal year, M. G. M. sent crews to Florida, Oregon, Kentucky, Arizona, Utah, Maryland, New York, and Mexico.

¹⁶ The information set forth herein with respect to the origin of the film purchased by M. G. M. likewise applies to the film purchased by the other Companies from these same distributors.

¹⁷ The various Companies purchase these and other articles from many other distributing companies located in California. The record does not, however, disclose the ultimate source of the articles carried in stock by such distributing companies.

¹⁸ The above-named distributing companies make sales of the same articles to others of the Companies. Articles sold to such other Companies by these distributing companies likewise come from stock all or a substantial amount of which is derived from States other than California.

During the fiscal year ending September 1, 1937, M. G. M. spent approximately \$29,500,000 in the production of motion pictures. It produced 41 feature-length pictures and 43 short subjects. During the fiscal year, it made 11,230 prints of feature-length pictures of which 10,223 were shipped out of the State of California. It also made 7,547 prints of short subjects of which 6,872 were shipped out of California. Its prints were distributed by Loew's Incorporated.

B. *Selznick International Pictures, Inc.*, herein referred to as Selznick Pictures, is a Delaware corporation, having its studios in Culver City, California. Selznick Pictures rents the greater part of its equipment from RKO Radio Pictures, Inc., at the rate of \$125,000 per year. It also subleases 40 acres of land from RKO Radio Pictures, Inc., at a rental of \$4,292.50 per year. It owns equipment valued at about \$115,000. °

During its last fiscal year, Selznick Pictures purchased \$16,228.94 worth of film from J. E. Brulatour, Inc., and \$1,382.92 worth of film from Smith & Aller, Ltd. It also purchased \$111,003.02 worth of film from the Technicolor Motion Picture Corporation, located in Los Angeles, California, which obtains its film from the Eastman Kodak Company located in New York. Representatives of J. E. Brulatour, Inc., Smith & Aller, Ltd., and C. King Charney testified as follows with respect to the sales made by their respective companies to Selznick Pictures:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.....	{ 363, 000 positive.....	} August 1, 1936, to August 1, 1937.
	{ 64, 000 negative.....	
Smith & Aller, Ltd.....	{ 156, 000 positive.....	} September 1936, to August 30, 1937.
	{ 1, 000 negative.....	
C. King Charney.....	{ 800 infra-red.....	} September 1, 1936, to September 1, 1937.

Selznick Pictures also has purchased substantial quantities of the following articles: Hardware from the Union Hardware & Metal Company and from California Hardware Company; and theatrical and drapery fabrics from Dazians, Inc.

During its past fiscal year Selznick Pictures produced four feature-length films. The total cost of production for this period was \$4,726,966.92. Prints of the films are made at a laboratory selected by Selznick Pictures which may be either inside or outside of California. At such laboratory, 236 release prints for each film are delivered to United Artists Corporation which has the prints shipped to its exchanges and distributes them throughout the world. The gross receipts are divided between Selznick Pictures and United Artists Corporation on a percentage basis. During the past fiscal year,

approximately 800 prints of pictures produced by Selznick Pictures were shipped out of California.

C. *Walter Wanger Productions, Inc.*, herein referred to as Wanger Productions, is a California corporation. Wanger Productions rents the equipment which it needs in the production of motion pictures, such as building materials used in set construction and fabrics for drapery and furniture covering, from United Artists Studio Corporation.

Officers of J. E. Brulatour, Inc., Smith & Aller, Ltd., and C. King Charney testified that these companies sold film in the following amounts to Wanger Productions:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.	473,000 negative.....	August 1, 1936, to August 1, 1937.
Smith & Aller, Ltd.	254,485 negative.....	September 1936, to August 30, 1937.
C. King Charney.....	2,200 infra-red.....	September 1, 1936, to September 1, 1937.

Information furnished by Wanger Productions indicates that during its last fiscal year, Wanger Productions purchased 788,005 feet of picture film, 2,010,000 feet of sound film, and 449,718 feet of technicolor film in Hollywood, California, from sellers referred to as "Eastman" and "Dupont." Wanger Productions also purchased photographic supplies from Eastman Kodak Stores, Inc. at a cost of \$1,718.75.

Wanger Productions' total cost of production during its last fiscal year amounted to \$3,366,388.51. During this period, it produced six feature-length pictures, and shipped six feature-length negatives and prints out of California. It appears that after Wanger Productions has completed a photoplay, it selects a laboratory which may be either within or without California. After the prints of the picture have been made at such laboratory, 236 of them are there delivered to United Artists Corporation which orders the laboratory to ship the prints to its exchanges throughout the country. United Artists distributes the prints all over the world and shares in the gross receipts with Wanger Productions on a percentage basis.

D. *Samuel Goldwyn, Inc., Ltd.*,¹⁹ herein referred to as Goldwyn, is a California corporation. It has a subsidiary, United Artists Studio Corporation, from which it rents equipment. During its last fiscal year it purchased film amounting in value to \$71,974.21 from J. E. Brulatour, Inc., Smith & Aller, Ltd., and C. King Charney.

¹⁹ The name of the producing company was inaccurately given in the petition as Samuel Goldwyn, Inc., which is the name of the parent corporation. The correct name of the producing company is Samuel Goldwyn, Inc., Ltd.

Officers of the three distributing companies testified that the companies sold film in the following amounts to Goldwyn:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.	210,000 negative.....	August 1, 1936, to August 1, 1937.
Smith & Aller, Ltd.	1,398,965 negative.....	September 1936, to August 30, 1937.
C. King Charney.....	38,300 infra-red.....	September 1, 1936, to September 1, 1937.

Goldwyn also has purchased photographic supplies from Eastman Kodak Stores, Inc.

During the last fiscal year Goldwyn produced six pictures. It shipped four negatives out of California but no prints. Its prints are distributed by the United Artists Corporation with which Goldwyn divides any profits on a percentage basis. The total cost of production for the fiscal year ending July 3, 1937, amounted to \$3,460,645.66.

E. Republic Productions, Inc., herein referred to as Republic, a New York corporation, is a subsidiary of the Republic Pictures Corporation of Delaware. Republic does not own any real estate but rents the space which it requires in the production of motion pictures.

During its last fiscal year, Republic purchased \$119,519.83 worth of film from J. E. Brulatour, Inc., and C. King Charney. Officers of these two companies and of Smith & Aller, Ltd. testified that these distributing companies sold film in the following amounts to Republic:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.	{ 3,590,000 positive.....	} August 1, 1936, to August 1, 1937
	{ 1,930,000 negative.....	
Smith & Aller, Ltd.	{ 1,115,000 positive.....	} September 1936, to August 30, 1937.
	{ 105,000 negative.....	
C. King Charney.....	{ 11,385 infra-red.....	} September 1, 1936, to September 1, 1937.
	{ 645,945 superpan.....	

Republic also has purchased substantial quantities of the following articles: Hardware from the Union Hardware & Metal Company; theatrical and drapery fabrics from Dazians, Inc.; and photographic supplies from Eastman Kodak Stores, Inc.

From October 1, 1936, to September 30, 1937, Republic spent \$2,019,483.72 in the production of motion pictures. During its last fiscal year, it produced 42 feature-length pictures and 3 serials. Forty-two negatives of the feature-length pictures and 3 negatives

of the serials were sent out of California.²⁰ The negatives made by Republic are sent to Republic Pictures Corporation in New York City. This company has distribution agreements with franchise holders located in various distribution centers in the United States. The franchise holders distribute the prints on a percentage basis.

F. *Columbia Pictures Corporation of California, Ltd.*,²¹ herein referred to as Columbia, is a California corporation. During its last fiscal year, Columbia purchased 95,610,310 feet of film from six distributors located in Los Angeles, California. Officers of J. E. Brulatour, Inc., Smith & Aller, Ltd., and C. King Charney testified that these companies sold film in the following amounts to Columbia:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.-----	{68,308,000 positive.....	} August 1, 1936, to August 1, 1937.
	{3,737,000 negative.....	
	{10,175,000 Canadian.....	
Smith & Aller, Ltd.-----	{2,385,803 positive.....	} September 1936, to August 30, 1937
	{21,000 infra-red.....	} September 1, 1936, to September 1, 1937
C. King Charney-----	{2,064,000 superpan.....	
	{16,516,000 positive.....	

Columbia also has made substantial purchases of the following articles: Hardware from Union Hardware & Metal Company and from the California Hardware Company; theatrical and drapery fabrics from Dazians, Inc.; and photographic supplies from Eastman Kodak Stores, Inc.

During the fiscal year ending June 26, 1937, Columbia spent \$8,572,251.85 in the production of motion pictures. During the same period, it produced films of 47 feature-length pictures and of 40 short subjects. Eleven thousand prints and negatives of the feature-length pictures and 7,628 prints and negatives of short subjects were shipped out of California. All of Columbia's prints are distributed by Columbia Pictures Corporation, a New York corporation, having its principal offices in New York City.

G. *Paramount Pictures, Inc.*,²² herein referred to as Paramount, is a New York corporation. During its last fiscal year, Paramount

²⁰ Board Exhibit No. 149 from which the information was obtained makes reference to both prints and negatives. From other evidence it appears, however, that only negatives are sent out of the State of California.

²¹ The title of the amended petition also named Columbia Pictures Corporation a New York corporation, which is engaged in the distribution of motion pictures. Columbia Pictures Corporation owns all of the capital stock of Columbia Pictures Corporation of California, Ltd.

²² The amended petition named both Paramount Pictures, Inc., and Paramount Productions, Inc. Inasmuch as Paramount Productions, Inc., appears to have been merged with Paramount Pictures, Inc., within the past year, and no longer exists, the amended petition is hereby amended by striking therefrom all reference to "Paramount Productions, Inc."

purchased \$1,135,542.66 worth of film from J. E. Brulatour, Inc., \$154,341.18 worth of film from Smith & Aller, Ltd., and \$1,058.26 worth of film from Agfa AnSCO Corporation. The record does not disclose the state of origin of the film purchased from Agfa AnSCO Corporation. Officers of J. E. Brulatour, Inc., Smith & Aller, Ltd., and C. King Charney testified that these companies sold film in the following amounts to Paramount:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.....	{ 23,511,000 positive.....	} August 1, 1936, to August 1, 1937
	{ 4,768,000 negative.....	
	{ 3,524,000 Canadian.....	
Smith & Aller, Ltd.....	{ 2,961,171 positive.....	} September 1936, to August 30, 1937
	{ 2,101,323 negative.....	
C. King Charney.....	{ 123,000 infra-red.....	} September 1, 1936, to September 1, 1937
	{ 8,200 superpan.....	

Paramount has purchased the following articles in substantial quantities: Douglas fir, white and sugar pine, and hardwood from the Globe Lumber Company, hardware from the Union Hardware & Metal Company and from the California Hardware Company; theatrical and drapery fabrics from Dazians, Inc.; and photographic supplies from Eastman Kodak Stores, Inc.²³

During its last fiscal year, it sent crews to film pictures or parts of pictures "on location." In the case of one picture, a crew was sent to Illinois, Nebraska, New Jersey, New York, and Ohio, for the purpose of taking transparency background "shots." Other crews were sent to Montana, New Mexico, New York, Wyoming, and Panama.

In its fiscal year ending January 2, 1937, Paramount spent \$19,910,126.10 in producing full-length feature films and \$137,164.89 in producing films of short subjects. In that period, it produced 45 feature-length films and 8 films of short subjects. Forty-nine negative and 9,720 positive prints of feature-length films and 8 negatives of the short-subject films were shipped out of California. Paramount's pictures are distributed in the United States and in foreign countries through Paramount's exchanges and those of its subsidiary, Paramount Pictures Distributing Co., Inc. In a registra-

²³ Information supplied by Paramount indicates that of \$259,434.80 spent for building materials on set construction during its last fiscal year, articles aggregating \$254,592.51 in value, or 98.16 per cent of the total, were purchased from vendors located in California; that of \$10,000 spent for fabrics for drapery, draperies, and furniture covering, articles aggregating \$9,630.33 in value, or 96.30 per cent of the total were purchased from vendors located in California; that of \$56,799.86 spent for costumes and materials for costumes, articles aggregating \$48,377.64 in value, or 85.17 per cent of the total, were purchased from vendors located in California; and that it purchased all of its chemicals, amounting to \$107,911.27 in value, from vendors located in California.

tion statement filed with the Securities and Exchange Commission by Paramount on December 28, 1936, it is stated that Paramount's film exchanges "are located in the principal cities in the United States and Canada and in many of the principal cities throughout the world." Subsidiaries of Paramount also operate 569 motion picture theatres, as of October 3, 1936, of which 372 are located in the United States, 178 in Canada, and 19 in other foreign countries.

H. *RKO Radio Pictures, Inc.*, herein referred to as RKO, is a Delaware corporation. In its last fiscal year, which corresponds approximately to the calendar year 1936, RKO purchased 6,265,800 feet of positive film and 4,809,281 feet of negative film from J. E. Brulatour, Inc., and from Smith & Aller, Ltd. The total cost of the film which it purchased was \$259,164.19. Officers of the two above-named distributing companies and of C. King Charney testified that these companies sold film in the following amounts to RKO:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.-----	{ 355,000 positive----- 15,570,000 negative-----	} August 1, 1936, to August 1, 1937.
Smith & Aller, Ltd.-----	{ 7,283,498 positive----- 262,852 negative-----	
C. King Charney-----	23,395 infra-red-----	September 1, 1936, to September 1, 1937.

RKO has purchased substantial quantities of the following articles: Hardware from the Union Hardware & Metal Company and from the California Hardware Company; theatrical and drapery fabrics from Dazians, Inc.; and photographic supplies from Eastman Kodak Stores, Inc.²⁴ RKO also has purchased a substantial quantity of glass from W. P. Fuller & Co., located in California, which obtains 85 per cent of its stock of glass from Pittsburgh, Pennsylvania.²⁵

In its last fiscal year, RKO spent \$10,355,292 in the production of motion pictures. In that period, 38 feature-length films and 24 films of short subjects were produced. Thirty-eight negatives and 31 prints of the feature-length films and 24 negatives of the films of short subjects were shipped out of California. RKO distributes its pictures in the United States and in some foreign countries through its own distribution department and system of exchanges. In other for-

²⁴ Information supplied by RKO indicates that of its purchases of fabrics for drapery, draperies, and furniture covering, \$4,000 worth was bought directly in New York City and the remainder, amounting to \$15,365.40, from concerns located in Los Angeles, California; and that of its purchases of costumes and material for costumes, approximately \$10,000 was bought in New York City and the remainder, amounting to \$92,425.60, in Los Angeles, California.

²⁵ Glass sold by W. P. Fuller & Co. to others of the Companies likewise comes from stock 85 per cent of which W. P. Fuller & Co. obtains from Pittsburgh, Pennsylvania.

eign countries the exchanges are operated by subsidiary corporations. In still other foreign countries, no exchanges are maintained and distribution rights are sold outright. The principal offices of RKO's distribution department are located in New York City. RKO's gross income for the past fiscal year was \$27,545,072.34 and its net income amounted to \$893,580.23.

I. *Universal Pictures Company, Inc.*,²⁶ herein referred to as Universal, is a Delaware corporation. According to information furnished by Universal, during its last fiscal year ending September 30, 1937, it purchased film amounting to \$200,000 in value from J. E. Brulatour, Inc. An officer of J. E. Brulatour, Inc. testified at the hearing that from August 1, 1936, to August 1, 1937, it sold 6,440,000 feet of positive film and 4,475,000 feet of negative film to Universal. An officer of C. King Charney testified that from September 1, 1936, to September 1, 1937, this company sold 43,200 feet of infra-red film to Universal.

Universal also has purchased the following items in substantial quantities: Hardware from the Union Hardware & Metal Company and from the California Hardware Company; theatrical and drapery fabrics from Dazians, Inc.; and photographic supplies from Eastman Kodak Stores, Inc.

During the year ending September 1, 1937, Universal spent approximately \$8,000,000 in producing pictures. In this period Universal made 26 Universal, 2 Trem Carr, 7 Buck Jones, and 2 Paragon feature-length films²⁷ and 16 films of short subjects

Universal ships all prints of feature-length pictures made at its studio out of California. In its last fiscal year, it shipped 37 negatives and 248 prints of its feature-length films, and 16 negatives and 16 prints of its short subjects out of California. When a picture is completed the negative is shipped to Fort Lee, New Jersey, where prints are made for distribution. Universal conducts the distribution of its pictures through various subsidiary companies as follows: In the United States, through Universal Film Exchanges, Inc., which has its principal offices in New York City; in Canada, through Canadian Universal Film Company, Ltd.; in other foreign countries, through various other corporations.

J. *Twentieth Century-Fox Film Corporation*, herein referred to as Fox Film, is a New York corporation. During the calendar year

²⁶ In the amended petition in this case the company's name was erroneously given as Universal Pictures Corp. The correct name is Universal Pictures Company, Inc., and the amended petition is hereby amended to substitute the correct name of the Company for that given.

²⁷ The record does not disclose the arrangement under which Universal makes the pictures bearing the names Trem Carr, Buck Jones, and Paragon Pictures.

1936,²⁸ Fox Film purchased film from J. E. Brulatour, Inc., at a cost of \$697,723.68. Officers of this company, of Smith & Aller, Ltd., and of C. King Charney, testified that these companies sold film in the following amounts to Fox Film:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.....	{ 35,096,000 positive.....	} August 1, 1936, to August 1, 1937.
Smith & Aller, Ltd.....	{ 8,370,000 negative.....	
C. King Charney.....	{ 1,000 negative.....	
	30,600 infra-red.....	September 1, 1936, to August 30, 1937 September 1, 1936, to September 1, 1937.

Fox Film has purchased substantial quantities of the following articles: Hardware from the Union Hardware & Metal Company and from the California Hardware Company; theatrical and drapery fabrics from Dazians, Inc.; glass from W. P. Fuller & Co.; and photographic supplies from Eastman Kodak Stores, Inc.²⁹ In 1936, Fox Film sent five crews on location outside of California for the purpose of taking sequences of background scenes.

During the calendar year 1936, Fox Film spent \$21,868,103.20 in producing motion pictures of which \$1,480,989.10 was spent for raw materials used in such production. During this period, it produced 53 feature-length films and made 318 prints of feature-length films and short subjects at its studio. Fox Film has its own distribution department, the principal offices of which are located in New York City. During 1936, Fox Film shipped 416 prints and negatives out of California.

K. Warner Bros. Pictures Inc., herein referred to as Warner, is a Delaware corporation, incorporated in 1923. It employs approximately 3,500 employees. During its last fiscal year, Warner purchased all of its film from J. E. Brulatour, Inc., Smith & Aller, Ltd., and C. King Charney. The total cost of such purchases amounted to \$751,990.70. Officers of the three distributing companies testified that these companies sold film in the following amounts to Warner:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.....	{ 35,260,000 positive.....	} August 1, 1936, to August 1, 1937.
Smith & Aller, Ltd.....	{ 8,660,000 negative.....	
C. King Charney.....	{ 1,914,000 Canadian.....	
	1,300 positive.....	September 1936, to August 30, 1937.
	34,400 infra-red.....	September 1, 1936, to September 1, 1937.

Warner has purchased the following articles in substantial quan-

²⁸ In the questionnaire containing this information, the calendar year 1937 is referred to inasmuch as the calendar year 1937 had not elapsed in September or October 1937, when the questionnaire was answered, this probably refers to the calendar year 1936 for which year other data was furnished by Fox Film.

²⁹ Information supplied by Fox Film indicates that of \$1,480,989.10 spent for materials during 1936, articles costing \$6,470 were purchased outside of the State of California.

tities: Hardware from Union Hardware & Metal Company and from the California Hardware Company; theatrical and drapery fabrics from Dazians, Inc.; glass from W. P. Fuller & Co.; and photographic supplies from Eastman Kodak Stores, Inc.³⁰

In its fiscal year ending August 28, 1937, Warner spent \$20,664,-060.50 for production, \$994,101.47 for construction, and \$1,195,032.36 for other expenses. During this period, 64 feature-length films and 17 films of short subjects were produced. Four crews were sent out of California in connection with the preparation of five feature-length motion pictures. One crew went to Canal Zone and Cuba, another to Arizona and Nevada, a third to New York, and the last to Arkansas. According to information furnished by Warner in answer to a questionnaire submitted to it, 461 prints and 64 negatives of feature-length pictures and 17 prints and 17 negatives of short subjects were shipped out of California during its last fiscal year. At the hearing, it was stipulated by counsel that when the negative of a Warner picture has been completed, it is shipped to Vitograph, Inc., a wholly owned subsidiary of Warner, the offices of which are located in New York City. Prints are made by the Ace Film Laboratory in Brooklyn, New York, at the order of Vitograph, Inc., which distributes the prints thus made. Warner's subsidiaries distribute its pictures through exchanges located in 37 cities in the United States and Canada and through offices located in 33 foreign countries.

L. *Grand National Films, Inc.*, herein referred to as Grand National, is a Delaware corporation which was incorporated on March 30, 1936. An officer of J. E. Brulatour, Inc. testified that from August 1, 1936, to August 1, 1937, the distributing company sold 274,000 feet of positive film and 233,000 feet of negative film to Grand National. An officer of C. King Charney testified that this company sold 17,000 feet of infra-red to Grand National between September 1, 1936, and September 1, 1937. Grand National has also bought substantial amounts of photographic supplies from Eastman Kodak Stores, Inc.

During its first fiscal year ending April 3, 1937, Grand National's pictures were produced for it by independent motion picture producers. Fifteen motion pictures were produced for it in California and two in Great Britain. Duplicate negatives of the 17 feature-length films thus produced were sent to laboratories in New York where prints were made for distribution. Since the expiration of Grand National's first fiscal year, certain of its pictures have been

³⁰ Information supplied by Warner indicates that of \$381,007.43 spent for building materials, articles aggregating \$5,532.18 in value were purchased from vendors located outside of California, and that of \$250,621.74 spent for costumes and materials for costumes, articles aggregating \$5,894.17 in value were purchased from vendors outside of California

produced by a wholly owned subsidiary, Grand National Studios, Inc., which operates a studio and rents its facilities to outside producers. Since April 3, 1937, Grand National had distributed 23 feature-length films, of which 8 were produced directly by it or by Grand National Studios, Inc., and the remaining by other producers.

*M. Trem Carr Pictures, Ltd.*³¹ An officer of J. E. Brulatour, Inc. testified that from August 1, 1936, to August 1, 1937, the company sold 124,000 feet of positive film and 101,000 feet of negative film to Trem Carr Pictures. It was testified by an officer of C. King Charney that between September 1, 1936, and September 1, 1937, this company sold 14,000 feet of infra-red film to Trem Carr Pictures.

Although the record does not disclose the terms of the arrangement, it appears that Trem Carr pictures are produced in Universal's studio, and that during Universal's last fiscal year, two Trem Carr pictures were there produced.³² Apparently, all prints of these films are shipped out of California as are all prints of other feature-length films made in Universal's studio.

N. Major Pictures Corporation, herein referred to as Major Pictures, is a Nevada corporation. It leases a studio from General Service Studios, Inc., at a rental of approximately \$2,300 per week. It also pays a minimum of \$500 per day for camera and sound equipment when production is in progress.

During its last fiscal year, Major Pictures purchased 1,277,536 feet of film from Smith & Aller, Ltd., and the total cost of the raw negative which it purchased was \$31,052.89. Officers of J. E. Brulatour, Inc., Smith & Aller, Ltd., and C. King Charney testified that these companies sold film in the following amounts to Major Pictures:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.-----	{ 30,000 positive----- 2,600 negative-----	{ August 1, 1936, to August 1, 1937.
Smith & Aller, Ltd.-----	{ 780,000 positive----- 720,090 negative-----	{ September 1936, to August 30, 1937
C. King Charney-----	{ 3,000 infra-red-----	{ September 1, 1936, to September 1, 1937.

During its last fiscal year, Major Pictures' total cost of production amounted to \$2,074,878.91. Paramount, for which Major Pictures produces its motion pictures, furnishes the funds needed in production. Paramount's approval must be secured with respect to important decisions relating to the buying of stories, the making of long-term contracts with writers, the selection of a director and cast,

³¹ The name Trem Carr also appears in the caption of the amended petition. However, the record contains no information with respect to Trem Carr as distinguished from Trem Carr Pictures, Ltd.

³² See subsection 1 of this section.

and the budget of a motion picture. Pictures produced by Major Pictures are owned by Paramount from their inception. During its last fiscal year, Major Pictures produced 6 feature-length films. The negatives are sent to Paramount's laboratories in Hollywood, California. All subsequent operations such as printing and distribution are under Paramount's control. Paramount distributes pictures produced by Major Pictures in the same manner that it distributes its own pictures. Major Pictures obtains a percentage of any profits derived from pictures thus produced.

O. *Hal Roach Studios, Inc.*,³³ herein referred to as Hal Roach Studios, is a California corporation. Hal Roach Studios has approximately 300 employees on its pay roll. During its last fiscal year, it purchased film from J. E. Brulatour, Inc., at a cost of \$64,321. An officer of J. E. Brulatour, Inc., testified that from August 1, 1936, to August 1, 1937, Hal Roach Studios purchased 2,670,000 feet of positive film and 1,000,000 feet of negative from this company. Other articles which have been purchased in substantial amounts by Hal Roach Studios include hardware from Union Hardware & Metal Company and from California Hardware Company; theatrical and drapery fabrics from Dazians, Inc.; and photographic supplies from Eastman Kodak Stores, Inc.

During its last fiscal year, Hal Roach Studios produced 5 feature-length films and 12 films of short subjects. Its total production cost was \$3,126,784.98. Between August 1, 1936, and August 1, 1937, 3,690 prints of its feature-length films were made. Of these, 129 were distributed through an exchange in Los Angeles, California, 226 in foreign countries, and the remaining 3,235 films in States of the United States other than California. In the same period, approximately 2,000 prints and 12 negatives of short subjects were shipped out of California. Pictures produced by Hal Roach Studios are distributed by Loew's Incorporated which receives a percentage of the gross receipts obtained from such distribution.

P. B. P. *Schulberg Pictures, Inc.*, herein referred to as Schulberg Pictures, is a California corporation. Between June 1, 1936, and December 31, 1936, Schulberg Pictures purchased film from J. E. Brulatour, Inc., and from Smith & Aller, Ltd., amounting in cost to \$5,618 from the former company and to \$18,499.12 from the latter. An officer of J. E. Brulatour, Inc., testified that from August 1, 1936, to August 1, 1937, this company sold 990,000 feet of positive film and 27,000 feet of negative film to Schulberg Pictures. An officer of Smith & Aller, Ltd., testified that from September 1936, to August 30, 1937, this company sold 1,085,677 feet of negative film to Schul-

³³ The amended petition in this case inaccurately refers to Hal E. Roach Studios, which is the parent corporation and not the producing company.

berg Pictures. Schulberg Pictures has also purchased substantial amounts of hardware from California Hardware Company and photographic supplies from Eastman Kodak Stores, Inc.

From June 1, 1936, to December 31, 1936, Schulberg Pictures made three and one-half feature-length films. Paramount Pictures, Inc., distributes the films made by Schulberg Pictures.

Q. *Monogram Productions, Inc.*; a California corporation, herein referred to as Monogram, has been engaged in producing motion pictures for less than 1 year. During its last fiscal year, Monogram purchased \$3,500 worth of positive film and \$12,500 worth of negative film from Smith & Aller, Ltd. According to information furnished by J. E. Brulatour, Inc., this company sold 1,000 feet of positive film and 16,800 feet of negative film to Monogram from August 1, 1936, to August 1, 1937.

During the course of its existence, Monogram has produced 11 feature-length films. Nine negatives and 55 prints were shipped out of California. Monogram's pictures are distributed by Monogram Pictures Corporation, a parent corporation.

R. *Darmour, Inc.*,³⁴ herein referred to as Darmour, is a California corporation. During its last fiscal year, Darmour purchased film amounting to \$10,373.78 in cost from J. E. Brulatour, Inc., Smith & Aller, Ltd., and C. King Charney. Officers of these distributing companies testified that these companies sold film in the following amounts to Darmour:

Distributing company	Type and amount of film measured in feet	Period of time during which the purchases were made
J. E. Brulatour, Inc.....	{ 81,000 positive.....	} August 1, 1936, to August 1, 1937.
	{ 124,000 negative.....	
Smith & Aller, Ltd.....	256,000 positive.....	September 1, 1936, to August 30, 1937
C. King Charney.....	214,265' superpan.....	September 1, 1936, to September 1, 1937.

During its last fiscal year, Darmour produced 8 feature-length pictures. The negatives are sent out of California by Columbia Pictures Corporation which distributes Darmour's motion pictures.

III. THE ORGANIZATIONS INVOLVED

Screen Writers' Guild, Inc.³⁵ is a labor organization affiliated with the Authors' League of America, Inc., admitting to active membership the following: (a) All persons who on March 1, 1938, were active members of The Screen Writers' Guild of the Authors' League

³⁴ Most of the facts set forth in this subsection are contained in a stipulation which all parties to the proceeding agreed to make part of the record

³⁵ For reasons set forth herein in Section VIII, Screen Writers' Guild, Inc is, for the purposes of this proceeding, substituted for The Screen Writers' Guild of the Authors' League of America, Inc., the original petitioner.

of America, Inc.; (b) upon the recommendation of the Executive Board of Screen Writers' Guild, Inc., any member of the Authors' League of America, Inc. as soon as he becomes employed or otherwise engaged as a writer in the motion picture industry; (c) all persons who, within the period of 2 years prior to the date of their filing an application for membership in Screen Writers' Guild, Inc., shall have received either one screen credit for screen writing on a feature-length picture, or three screen credits for screen writing on short subjects, or who have been employed during such time as a screen writer for a period of 3 months consecutively or non-consecutively. The Executive Board of Screen Writers' Guild, Inc. may make eligible to associate membership therein any person not meeting the qualifications of active membership who applies for associate membership.³⁶

Screen Playwrights, Inc. is a labor organization which, upon approval by 75 per cent of its Board of Directors, admits to its active membership any person applying for such membership who has written or participated in the writing of three screen plays and received screen credit therefor, or who has served 2 years as a writer of feature screen plays in the employ of any studio, or studios. It admits to associate membership any person applying for such membership who has written, or participated in the writing of, literary material for a screen play and whose application is approved by 75 per cent of the Board of Directors.

IV. THE STATUS OF SCREEN WRITERS

Screen Playwrights and the Companies contend that screen writers are not employees within the meaning of Section 2 (3) of the Act, and therefore do not come within the jurisdiction of the Board. They state in support of their contention that the services performed by screen writers are creative and professional in character, whereas the Act applies to the more standardized and mechanical employments. They urge that screen writers receive high salaries, whereas the Act is intended for the protection of wage earners in the lower income brackets.³⁷ They further urge that screen writers perform their serv-

³⁶ Testimony with respect to The Screen Writers' Guild of the Authors' League of America, Inc indicates that this was a labor organization, which admitted to active membership any person who worked as a screen writer within the 2-year period preceding his application for membership in the Screen Writers' Guild, or who received screen credit either for one feature-length picture or for three short-length pictures. The Guild likewise made provision for the existence of a class of associate members. The record does not disclose what were the terms of eligibility for admission to associate membership.

³⁷ Screen writing is a relatively high-paid occupation. Figures of salaries appearing in the record vary from \$30 to \$2,000 per week or more, and salaries in the higher brackets are common. The amount of the salary which a screen writer receives, in large measure, depends upon the screen credit which he has obtained for his work as a writer.

ices free from the control of the Companies and must, therefore, be considered as independent contractors rather than employees. As proof of such freedom of control, evidence was adduced to show that screen writers are not required to observe regular office hours or to maintain office discipline; that they are not required to produce any fixed amount of work; and that they are free to develop screen material in accordance with their own ideas.

The conditions under which screen writers render their services and the nature of their work and of the obligation arising in connection with their work are normally set forth in a written contract between the screen writer and a particular company.³⁸ Some writers are employed under contracts which provide that the writer shall render service for a definite term. A number of writers are employed on a free-lance basis under contracts providing for a week-to-week continuation of the employment or for the completion of a certain piece of work at a specified aggregate compensation. It was testified that there is no essential difference between a free-lance writer and a writer working under contract for a term in the manner in which they performed their work and that the only difference between the two is one of length and tenure of employment.³⁹

The evidence introduced at the hearing shows that under the contracts the screen writers work under the direction of a producer or an associate producer who makes assignments to the screen writers.⁴⁰ The producer may assign several writers to the preparation of one play at the same time. Each may work on a different part of the play. Writers may be and are taken off work to which they have been assigned, and given other work. There is evidence in the record that at some studios, screen writers have a voice with respect to their assignments, and that they, in many instances, are not required to take assignments which they do not like. The detail with which the producer instructs his writers when making assignments varies. A writer may be given only a title or type of character and told to write a story around such title or character. Again, he may be given the result of another writer's work in developing a story and be

³⁸ It is customary for a screen writer to hire an agent who endeavors to obtain a contract for the screen writer from a motion picture company and who is charged with looking after the interests of his principal during the life of the contract. As remuneration, the agent receives 10 per cent of the salary earned by the screen writer.

³⁹ A person may write screen material which he subsequently sells to a company. At the hearing, the Guild conceded that such persons, as distinguished from those engaged by the Companies to perform services as screen writers, are not to be considered as employees. The term "screen writers" as used herein shall not be deemed to include such persons.

⁴⁰ There is evidence indicating that a scenario editor is in charge of the writers' department in some companies. The division of function between the producer and scenario editor in supervising screen writers does not clearly appear.

required to write a screen play along the lines set forth in such development.

Although the practice varies, it appears that the writer works closely with the producer. It is customary to consult with the producer with respect to the different sequences of a story, and it was testified by one writer that only rarely will a screen writer finish a piece of work without holding any conferences with the producer. There is no fixed practice, however, as to the frequency with which the writer and the producer confer.

At the conferences, changes are suggested and it is the function of the writer to embody into the script the changes determined upon by the producer. Although the producer may concede points to the writer when differences arise between him and the writer with respect to a piece of work, the producer appears to have the authority to require the writer to rewrite material in accordance with the producer's suggestions. It was testified that often a producer has very definite ideas as to the changes to be made in a script. From all the evidence, it is clear that the writer's work is subject to the critical examination and close scrutiny of the producer and that the producer's word is usually final as to the contents and ultimate form of the script.

The extent to which writers are expected to observe regular office hours appears to vary. In some of the studios, regular hours are maintained to which the screen writers are expected to conform, and at such studios, appreciable disregard of the established hours leads to official comment and criticism. Other studios do not appear to enforce rules with respect to established office hours but the writers are allowed wide latitude and freedom in determining when and where they shall do their work. One witness, himself a producer, testified that within his experience there was no fixed rule when a creative artist must do his work "just so he comes within the general schedule outlined by a producer." This same witness and certain writers who testified stated that some screen writers go to their offices only occasionally to attend conferences or to obtain their mail, and do most of their writing at their homes. Some even leave Hollywood and do their work at a resort, or in the country. However, the afore-mentioned producer stated that he "wouldn't say that they may do it. It is done with the consent of the company, when they make these trips and work where they please." Screen writers working on a free-lance basis tend to have somewhat more latitude with respect to the time when they work and are in the office than screen writers working under contract for a term.

The company usually supplies the writer with an office, with the necessary supplies such as writing material, and with a stenographer who is subject to the writer's order. The writer, however, has no

authority to hire or discharge the stenographic help put at his disposal.

Three writers' contracts⁴¹ were submitted with the record as exhibits.⁴² No evidence was advanced to indicate that the provisions which are contained in the contracts are unusual or unique in any way. All three contracts⁴³ contain provisions which give the motion picture companies named as parties to these contracts broad powers to control and direct the manner in which the screen writer party thereto is to perform his services. One contract states that "The Corporation hereby employs the writer * * * to write and compose original stories * * *, and generally to perform such other services, as a motion picture writer, as the Corporation may direct * * *, at its studios at Hollywood, California, and/or at such other studios and/or on such locations as the Corporation may from time to time designate." Moreover, the contract provides that the writer "agrees to devote his entire time and attention and best talents and abilities exclusively to the service of the Corporation and/or such other person, firm, or corporation as, when, and where the Corporation may direct for the term" of such employment. Another contract declares that the writer's services "shall be rendered as and when required by the Producer * * * and same shall be rendered either alone or in collaboration with such other person or persons as may be assigned by the Producer from time to time." Another paragraph of the same contract states that the writer's services "shall be rendered in such manner as the Producer may direct under the instructions and control and in accordance with the ideas of and at the times and places as required by its duly authorized representatives * * *." By the terms of this contract, the writer specifically agrees "to abide by all reasonable rules and regulations of the Producer, including studio rules and studio hours, as are customary at the Producer's studio for its writers." The third contract contains provisions very similar in content and language to those quoted from the contract just discussed. In it the writer agrees to perform his services either "alone or in collaboration with

⁴¹ The three contracts are of recent origin. One was signed April 30, 1937, and is a contract terminable at will; the second was signed January 20, 1936, and by its terms continued for the period of 1 year; and the third was signed March 9, 1937, and extends for a 2-year period.

⁴² At the hearing, counsel for the Guild also offered into the evidence as an exhibit a fourth screen writer's contract, exclusive of those provisions embodied therein setting forth the salary agreed upon under such contract. The Trial Examiner refused to allow the admission of only part of a contract into the evidence. It is not necessary here to pass upon the correctness of this ruling inasmuch as the provisions material to the above discussion do not differ substantially from the provisions of the other contracts above considered.

⁴³ Each contract is with a different motion picture company. All three companies, parties to these contracts, are motion picture companies named in this proceeding.

another or other artists, in such manner as the producer may direct, under the instruction and control, in accordance with the ideas of, and at the times and places required by its duly authorized representatives * * *," and further that "the services of the artist and the manner of rendition thereof are to be governed entirely by the producer." Moreover, the artist "agrees to faithfully observe and be governed" by such rules of conduct as the producer may establish for observance by its employees. One witness at the hearing, a producer, thought that most contracts made by the company for which he worked (one of the Companies named in this proceeding) contained a provision whereby the screen writer agreed to abide by studio rules.

An apparently standard clause contained in all three contracts provides that all literary material created by the writer during the term of the contract "shall automatically become the property of the producer who, for this purpose, shall be deemed the author thereof." All three contracts give the motion picture company exclusive rights to any literary material written by the writer pursuant to the contract.

Upon the basis of all the evidence, we find that persons engaged by the respective Companies to perform services for them as screen writers are employees within the meaning of the Act.

V. THE QUESTION CONCERNING REPRESENTATION

In May 1927, the Academy of Motion Picture Arts and Sciences, herein called the Academy, was founded to coordinate the various branches of the motion picture industry. The Academy also appears to have functioned as an instrument for bargaining between the various branches of the industry. Shortly after it was founded, conferences were held between committees of the Producers' Branch and of the other Branches of the Academy with respect to a proposed 10-per cent reduction in salaries. This reduction was not put into effect. On April 21, 1932, the Academy adopted a code of practice governing relations between writers and motion picture companies. On October 15, 1935, it approved an amended "Writer Producer Basic Agreement and Revised Code of Practice," previously approved by members of the Producers' Branch and of the Writers' Branch and signed by eight motion picture companies, presumably members of the Producers' Branch of the Academy. The agreement provided that it shall continue for a period of 5 years from its effective date, and it set up standards with respect to the giving of screen credits, the giving of notice as to termination of employment on a week-to-week basis, and other conditions of employment and practices among screen writers.

In 1933, The Screen Writers' Guild, which was organized in December 1920, as a branch of the Authors' League of America, and which was incorporated under the laws of California in 1921, became active in connection with the adoption of the Motion Picture Code under the National Industrial Recovery Act. The Deputy Administrator of that Code appointed members both of the Guild and of the Academy on a committee to formulate provisions of such Code. Differences between the Guild and the Academy appear to have developed so that in 1933 the Guild requested its members to resign from the Academy. In May 1936, the membership of the Guild voted to make certain changes in its constitution providing for the dissolution of the Guild corporation and the closer amalgamation of the resultant voluntary association with the Authors' League of America. Opposition to these changes developed among certain members who resigned from the Guild. In the summer of 1936, Screen Playwrights, Inc., was formed.

On February 10, 1937, Screen Playwrights obtained an agreement from the same eight motion picture companies which had signed the agreement with the Academy in 1935, establishing certain standards with respect to the giving of screen credit, the employment of free-lance writers, and other practices and conditions of employment affecting screen writers employed by the motion picture company signatories. The effective date of the agreement was April 19, 1937, and by its terms it is to continue in effect for 5 years.

On August 19, 1937, the Guild, through its president and secretary, sent letters to the Companies named in this proceeding,⁴⁴ as well as to certain other motion picture companies, and to the Association, in which the Guild claimed that it represented a majority of the screen writers in the motion picture industry and a majority employed by each of the companies to which the letter was addressed and requested the companies to bargain collectively with it as exclusive representative of the screen writers in the motion picture industry and of the screen writers employed by each of the companies. On August 26, 1937, the Guild sent another letter addressed to the same companies and to the Association in which it again requested the companies and the Association to bargain collectively with it as exclusive representative of the screen writers. Counsel for several of the Companies stated at the hearing that originals of all the letters sent were received by each of the companies to which they were addressed and by the Association. These statements were uncontroverted. The Guild, however, received no communication in answer to any of its

⁴⁴ One letter was addressed to Columbia Pictures, Inc, and another to Hal E Roach Studios, Inc. As already indicated, the correct names of these motion picture companies are, respectively, Columbia Pictures Corporation of California, Ltd., and Hal Roach Studios, Inc

requests to bargain collectively from any of the companies or from the Association.

In each of the amended petitions filed in this proceeding, the Guild alleged that it had requested the motion picture Company or Companies, as the case may be, named in such petition, through the Association of Motion Picture Producers, Inc., through the Motion Picture Producers & Distributors of America, Inc., through Pat Casey, and directly, to recognize it as the exclusive bargaining agency for the employees of the unit described in each such petition. The Guild further alleged that in the case of each petition, such requests were refused.

We find that questions have arisen concerning representation of screen writers employed by each of the Companies named in this proceeding.

VI. THE EFFECT OF THE QUESTIONS OF REPRESENTATION UPON COMMERCE

We find that the questions concerning representation which have arisen, occurring in connection with the operation of each of the Companies described in Section II above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VII. THE APPROPRIATE UNITS

In each of the amended petitions the Guild claims that the appropriate bargaining unit with respect to the particular company consists of "all individuals who, within two years prior to the date of the filing of the amended petition herein, have been employed as screen writers for a period of 12 weeks (consecutively or non-consecutively) or have received within said two years at least one screen credit for screen writing on a feature length photoplay or other motion picture, or have received within said two years at least three screen credits for screen writing on short subjects excepting however, such individuals who, upon the date of the filing of the original petition herein, were, or at any time subsequent thereto have been, executives, producers, associate producers, supervisors, story editors, scenario editors, and any other persons having executive or supervisory powers."

In its brief filed subsequent to the hearing, the Guild departs somewhat from its previous position and urges that there should be a single bargaining unit for all companies which are members of the Association of Motion Picture Producers, Inc., and separate units for

each Company which is not a member of the Association.⁴⁵ Screen Playwrights and the Companies contend that screen writers employed by each Company, regardless of the Company's membership in the Association, constitute a separate bargaining unit.

It was stipulated at the hearing that eight companies were members of the Association as of May 15, 1937.⁴⁶ There is no evidence as to whether any other companies are members. Furthermore, there is very little evidence as to the relationship between the Association and the companies which are members of it or as to what are the consequences attendant upon membership in the Association. The only light which the record throws upon the matter must be obtained by inference from certain bargaining which the testimony shows was carried on by the Association.

The evidence indicates that in 1937, the Academy addressed to the Association an offer to aid in the adjustment of differences arising from a 10-per cent reduction in salary among certain occupational groups in the motion picture industry and that an unidentified officer of the Association accepted the offer on behalf of the Association. Following the Academy's intervention, the president of the Association, speaking for the Association, announced at a banquet that the proposed reduction would not go into effect. Again in 1929, the Academy appears to have been active with respect to relations between motion picture companies and certain of their employees. In November 1929, an Actors' Committee requested the president of the Association for a conference between actors and motion picture producers. Pursuant to this request, a series of conferences was held between a committee of actors and a committee representing the Association⁴⁷ which culminated in an agreement ratified by the Asso-

⁴⁵ In its brief, the Guild also contends that all individuals who, within 1 year prior to the date of the filing of the amended petition, have been employed as screen writers by one or more motion picture companies for a period aggregating 6 weeks should be eligible to vote, regardless of whether they were employed as screen writers on the date when such amended petitions were filed. Since it is highly improbable that the Guild intended that persons not within the unit should vote and since the contention of the Guild regarding eligibility to vote would involve voting by persons not within the unit set forth in the Guild's amended petition, the Guild's contention would seem likewise to involve a shift by the Guild in its position with respect to the unit. Possibly the Guild intended throughout to take the position that all persons employed by a company as screen writers should be in a bargaining unit, but that only those screen writers who have worked a prescribed length of time or have a prescribed number of screen credits should vote in the election. If so, the amended petition incorrectly spoke in terms of unit rather than in terms of eligibility to vote.

⁴⁶ These eight companies are: Metro-Goldwyn-Mayer Corporation; Universal Pictures Company, Inc.; Twentieth Century-Fox Film Corporation; RKO Radio Pictures, Inc.; Columbia Pictures Corporation; Warner Bros. Pictures Inc.; Paramount Pictures, Inc.; and Hal Roach Studios, Inc.

⁴⁷ This account of the participation of the Association in negotiations with the Actor's Committee is contained in a copy of the Annual Report for 1930 of the Academy of Motion Picture Arts and Sciences which counsel for the Guild offered as an exhibit. The Trial Examiner rejected the offer. Inasmuch as this information is relevant to an appraisal of the Association's status as an employer within the meaning of the Act, the

ciation and signed by motion picture companies which held membership therein.

In July 1933, a committee of the American Society of Cinematographers, an organization of cameramen, proposed an agreement to the president of the Association. The evidence indicates that a representative of the American Society of Cinematographers appeared before the Association and was there told that those producers who were present would negotiate an agreement. The companies represented were not identified. Nor was it shown that they were members of the Association. The following month, a cameramen's committee met at the offices of the Association with a group of studio executives and with Pat Casey.⁴⁸ Subsequently, an agreement appears to have been signed by certain companies. A revision of parts of the agreement was later signed for the Association by a "Producer's Committee" consisting of three individuals.

On May 15, 1937, an agreement was executed at the M. G. M. offices between the Screen Actors' Guild, Inc., and eight companies, all members of the Association,⁴⁹ in which the eight company signatories agreed to recognize the Screen Actors' Guild, Inc. "as exclusive collective bargaining agent for all actors in the motion picture industry." Negotiations leading to this agreement began between Pat Casey and the executive secretary of the Screen Actors' Guild, Inc., at Pat Casey's office, one of the offices of the Association. Casey stated that "the producers would recognize the Guild as the bargaining agent for actors in the motion picture industry; that a committee would be appointed to meet with the Guild's representatives for the purpose of negotiating working conditions." At two other meetings, an actor's committee discussed the actors' proposals with Pat Casey. Subsequently the actor's committee met with a committee representing certain motion picture companies. It does not appear whether on May 15, 1937, when the agreement was signed, any companies other than the eight signatories of the agreement were members of the Association. On the following day, signatures on behalf of other companies, namely, of Walter Wanger, Selznick, Major Pictures, B. P. Schulberg, and Goldwyn, were affixed to the agreement. Between that time and the date of the hearing in this case, further signatures were added to the agreement so that

Report containing this information should have been admitted into the record. The Trial Examiner's action in this regard is overruled, and the Report, which was forwarded to the Board with the record in this proceeding to permit the Board to consider the propriety of the Trial Examiner's ruling, is hereby admitted as Petitioner Exhibit No. 7.

⁴⁸ The record does not disclose the position occupied by this individual or his authority, although it does appear that his offices are located with those of the Association. His name also appears on a copy of a wage-scale agreement, dated June 14, 1937, between the International Association of Machinists and 11 companies, which Pat Casey apparently signed as the representative of such companies.

⁴⁹ See footnote 46 herein for the names of these companies.

by the time of the hearing, the agreement had been signed on behalf of 39 companies.

Counsel for the Guild also cites in his brief two agreements, both heretofore mentioned, the "Revised Basic Agreement and Writer-Producer Code of Practice," dated October 15, 1935, and the agreement of April 19, 1937, signed by Screen Playwrights and by eight companies, in support of its contention that screen writers employed by such companies as are members of the Association constitute a single bargaining unit. Both agreements were signed by the same eight companies and seven of these were members of the Association on May 15, 1937.⁵⁰ The evidence does not indicate whether the eighth motion picture company signatory was a member of the Association, nor whether the Association negotiated these agreements on behalf of the producer signatories.

The foregoing shows that, in certain instances, the Association has negotiated on behalf of various motion picture companies as regards the employment conditions of certain occupational groups in the motion picture industry. The evidence does not disclose whether in negotiating particular agreements the Association represented companies other than those constituting its membership or whether it represented its entire membership. Nor is the extent or the character of the Association's participation revealed in most instances. The record does not show that the Association is authorized generally to control labor policies or to handle employment problems of members of the Association. Clearly, it cannot be concluded on the basis of the evidence now before the Board that the Association is an employer within the meaning of the Act or that screen writers employed by companies which are members of the Association should be included within a single bargaining unit.

The amended petitions and briefs filed by the Guild indicate that the Guild may desire that the bargaining units be limited to persons who have been employed as screen writers for a prescribed length of time or who have obtained a prescribed number of screen credits.⁵¹ However, all the screen writers employed by the companies have a community of interest with respect to their employment conditions regardless of their period of employment or the number of their screen credits. Although more experienced writers may receive higher salaries and have privileges not accorded those employed for but a brief period as screen writers, nevertheless all alike are faced with the same problems relating to screen credit, notice of termination of contracts, and other employment conditions. We conclude, there-

⁵⁰ The eight companies are Columbia Pictures Corp.; Twentieth Century-Fox Film Corp.; Paramount Pictures, Inc; Universal Pictures Co., Inc; First National Pictures, Inc.; Metro-Goldwyn-Mayer Corp; RKO Radio Pictures, Inc.; and Warner Bros. Pictures, Inc.

⁵¹ See footnote 45 herein.

fore, that all screen writers employed by the Companies should be included within the respective units.

In each of the amended petitions, the Guild alleged that executives, producers, associate producers, supervisors, story editors, scenario editors, and other persons having executive or supervisory powers should be excluded from the bargaining unit. The individuals employed in each of these classifications have supervisory or executive functions. No objection was raised by any party to the exclusion of these occupational groups. We find, therefore, that executives, producers, associate producers, supervisors, story editors, scenario editors, and other persons having executive or supervisory duties should be excluded from each of the bargaining units found to be appropriate.

In his brief filed subsequent to the hearing, counsel for the Guild contends that composers, lyricists, readers, and directors should likewise be excluded from the unit or units found to be appropriate herein. The agreement between Screen Playwrights, and the eight motion picture companies signatory thereto, dated April 19, 1937, expressly excludes from its application "directors, * * * composers, lyricists, or other employees whose participation in writing may be incidental to their bona fide employment in other capacities." The readers, whose function it is to examine and make synopses of material which may prove suitable for motion picture production, appear to perform work which would differentiate their interests from those of the screen writers. Furthermore, neither the Guild nor the Screen Playwrights appear to claim jurisdiction over the above-named occupational groups.

We find that all screen writers employed as such by the Companies, exclusive of executives, producers, associate producers, directors, supervisors, story editors, scenario editors, and other persons having executive or supervisory powers and exclusive of lyricists, composers, and readers, constitute, in the case of each Company, a unit appropriate for the purposes of collective bargaining, and that said units will insure to employees of each of the Companies, respectively, the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VIII. THE DETERMINATION OF REPRESENTATIVES

It is asserted that the basic agreement of April 19, 1937, between seven of the Companies involved in this proceeding, First National Pictures, Inc., and Screen Playwrights precludes action by the Board at this time with respect to screen writers employed by such Companies. This agreement, which establishes certain standards with respect to practices and employment conditions of screen writers employed by the eight Companies, is for a term of 5 years. A year has already expired and the evidence raises a substantial question

as to whether the employees involved desire the Screen Playwrights to continue to represent them. We do not believe that, under the policies and provisions of the Act, employees should be precluded from having the opportunity to select new representatives for collective bargaining for a period as long as 5 years because of a contract running for that length of time. We therefore do not consider that the agreement of April 19, 1937, bars the certification of representatives at this time.

Nor do we find merit in the contention that the individual contracts under which a majority of the screen writers are employed preclude the certification of collective bargaining representatives. The fact that the agreement of April 19, 1937, just mentioned, has existed concurrently with the individual contracts demonstrates conclusively that the latter constitute no bar to collective bargaining.

No evidence was introduced at the hearing upon the basis of which we could make a finding that a majority of the employees in the units found to be appropriate have designated and selected any representatives for the purposes of collective bargaining. We therefore find that an election by secret ballot is necessary to resolve the questions concerning representation.

As already indicated, the Guild alleged in each of its amended petitions that individuals who, within 2 years prior to the date of the filing of the amended petition, have been employed as screen writers for a period aggregating 12 weeks, or who, within such period, have received at least one screen credit for writing one feature-length film, or three screen credits for writing short subjects should be eligible to vote.⁵² However, in his brief, counsel for the Guild contends that individuals who, within 1 year prior to the date of the filing of the amended petitions, have been employed by one or more motion picture companies as screen writers for a period aggregating 6 weeks should be eligible to vote, regardless of whether they were employed as screen writers on the date when such amended petitions were filed. It is the position of the Companies and Screen Playwrights, however, that inasmuch as the Act provides that the Board may take "a secret ballot of employees," only screen writers who are employed as screen writers on the date of the election should be eligible to vote.

In support of its contention that screen writers, although not employed at the time of the election, should be permitted to vote if they have been employed 6 weeks within the year preceding the date when the amended petitions were filed, the Guild cites the irregularity of employment among screen writers, especially of those who operate on a free-lance basis,⁵³ and the frequency with which they

⁵² See footnote 45 herein

⁵³ At the hearing, one witness estimated that approximately 30 per cent of screen writers worked on a free-lance basis.

change their place of employment. It urges that if only those screen writers who are employed as such at the time of the election, or on some other set date, are permitted to vote, a large number of screen writers, at that time unemployed, will thereby be deprived of the right to participate in the elections. Cases of the Board are cited which it is claimed serve as precedent for the ruling urged by the Guild. In *Matter of McCabe, Hamilton and Renny, Limited* and *Honolulu Longshoremen's Association, Local 38-136 of the International Longshoremen's Association*,⁵⁴ it was found that "those longshoremen who have been employed by the Company for not less than 75 hours during the last six months" constitute the appropriate unit. In *Matter of International Mercantile Marine Company and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 22, et al.*,⁵⁵ it was found that the appropriate unit consisted of "all the workers, exclusive of foremen, employed by the two companies, * * * who have worked 24 days for either or both companies during the preceding three months * * *."

The facts in these two cases are, however, distinguishable from the facts in the instant proceeding. In both cases, the problem was to define "regular employee" in order to exclude from the appropriate unit persons working for the companies at infrequent intervals. Although individuals not actually working at the time of the elections were allowed to vote, the facts there presented showed that the individuals occupied the status of employees. In the instant case, there exists no definite expectancy of regularly recurring employment of a screen writer with the employer for whom the screen writer previously performed services. It must be concluded, therefore, that only those screen writers actually employed by the Companies may be considered to be employees of the respective Companies.

We conclude also that the additional limitation that a screen writer to be eligible as a voter must either have been employed an aggregate of 6 weeks within the year preceding the date of the filing of the amended petitions or have received one screen credit for a feature-length film or three screen credits for writing short subjects should not be imposed. We found above that all screen writers employed by each respective Company, regardless of the length of employment or the number of screen credits obtained, constitute an appropriate unit. The considerations which led to that conclusion are equally applicable here.

We now turn to a consideration of the date to be used in determining the eligibility of screen writers to participate in the elec-

⁵⁴ 3 N. L. R. B. 547.

⁵⁵ 3 N. L. R. B. 751.

tions. Inasmuch as screen writers frequently shift their employment from one company to another, it is desirable to select a date for determining eligibility which will most closely reflect the employment situation at the time of the election. Eligibility to vote in the elections will, therefore, be extended to screen writers within the appropriate unit employed by the Companies on the date of the issuance of the Direction of Elections hereinafter provided for.

The contracts between individual screen writers and the Companies in some instances provide that the employing Company may assign the services of the screen writer, if it so desires, to another Company, and the record reveals that screen writers are, on occasion, so assigned. Although a screen writer may perform services for another company under such an arrangement, nevertheless his employment is still actually with the company with which he has his contract. His duties and obligations are still regulated by the contract under which the assignment of his services is made. We therefore find that any writer who, pursuant to such an assignment, is rendering service on the date which determines the eligibility of voters, to a company other than that with which he has his contract, shall be permitted to vote with the screen writers employed by the Company with which he has contracted. Such a writer shall not, however, participate in the election among screen writers employed by the company to which he has been assigned at such time.

As heretofore indicated, Screen Writers' Guild, Inc., in its petition to reopen the record and receive further evidence, requested that if an election be held the name of Screen Writers' Guild, Inc., be designated on the ballot in lieu of The Screen Writers' Guild of the Authors' League of America, Inc. At the second hearing, Screen Writers' Guild, Inc., entered into the record a copy of its Articles of Incorporation⁵⁶ filed with the Secretary of the State of California on March 1, 1938, which, among other matters, recites that the name of the unincorporated association which is being incorporated is "The Screen Writers' Guild of the Authors' League of America, (Inc.)," that the persons who at that time were acting as the officers, directors, and alternate directors of the Guild are to act, respectively, as the officers, directors, and alternate directors of Screen Writers' Guild, Inc., until the election and qualification of their successors, and that "all persons who are entitled thereto as a matter of law or who fulfill the qualifications set forth in the By-Laws of the corporation shall be members of the corporation." An attached affidavit recites that on February 14, 1938, The Screen Writers' Guild of the Authors' League of America, (Inc.), adopted a resolution which authorized the president and secretary to incor-

⁵⁶ Screen Writers' Guild, Inc., Exhibit No. 1.

porate the Guild. There was also entered into the record a certificate signed by the secretary of Screen Writers' Guild, Inc., stating that the attached document entitled "Constitution and By-Laws of the Screen Writers' Guild, Inc." is an exact copy of the constitution and bylaws adopted by Screen Writers' Guild, Inc., at a special membership meeting held on May 4, 1938. Attached to this exhibit is likewise an extract copied from the minutes of such meeting which states that more than a majority of the members of Screen Writers' Guild, Inc., approved at this meeting the resolution set forth in the exhibit adopting such constitution and bylaws.⁵⁷

At the second hearing counsel for Screen Writers' Guild, Inc., cited Section 605-B of the State of California Civil Code which reads as follows: "If an unincorporated association is incorporated hereunder, the members thereof shall be members of the corporation so created, unless they file their dissent in writing with the secretary thereof." The secretary of Screen Writers' Guild, Inc., testified that she remembered one resignation between November 1, 1937, and March 1, 1938, from the Guild or from Screen Writers' Guild, Inc., and that there had not been more than four between these dates. The secretary further stated that subsequent to March 1, 1938, she had not received any resignations.

The Companies, relative to the issue as to whether Screen Writers' Guild, Inc., is composed of the same persons who were members of The Screen Writers' Guild of the Authors' League of America, Inc., requested the Trial Examiner to issue a subpoena duces tecum requiring the secretary of Screen Writers' Guild, Inc., to produce records listing the names of the members of Screen Writers' Guild, Inc., as of the date of the hearing and the names of the members of The Screen Writers' Guild of the Authors' League of America, Inc., as of October 28, 1937. The Trial Examiner denied this request. In view of the provisions of the California law and the other facts above set forth, we find that the ruling of the Trial Examiner was correct, and it is hereby affirmed.

We find on the basis of the entire record that Screen Writers' Guild, Inc., may properly be substituted for the purposes of the present proceeding for The Screen Writers' Guild of the Authors' League of America, Inc., and, pursuant to the petition of Screen Writers' Guild, Inc., it is hereby so substituted. Accordingly, the name Screen Writers' Guild, Inc., shall be placed on the ballot in lieu of The Screen Writers' Guild of the Authors' League of America, Inc.

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

⁵⁷ These documents constitute Screen Writers' Guild, Inc., Exhibit No. 2

CONCLUSIONS OF LAW

1. Questions affecting commerce have arisen concerning the representation of employees of each of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. Persons employed as screen writers by each of the Companies, exclusive of executives, producers, associate producers, directors, supervisors, story editors, scenario editors, and other persons having executive or supervisory powers, and exclusive of lyricists, composers, and readers constitute, in the case of each Company, a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

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, 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 investigations authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted within twenty-five (25) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all persons who are employed as screen writers on the date of issuance of this Direction of Election by Loew's Incorporated, Selznick International Pictures, Inc., Walter Wanger Productions, Inc., Samuel Goldwyn, Inc., Ltd., Republic Productions, Inc., Columbia Pictures Corporation of California, Ltd., Paramount Pictures, Inc., RKO Radio Pictures, Inc., Universal Pictures Company, Inc., Twentieth Century-Fox Film Corporation, Warner Bros. Pictures, Inc., Grand National Films, Inc., Trem Carr Pictures Ltd., Major Pictures Corporation, Hal Roach Studios, Inc., B. P. Schulberg, Inc., Monogram Productions, Inc., and Darmour, Inc., respectively, exclusive of executives, producers, associate producers, directors, supervisors, story editors, scenario editors, and other persons having executive or supervisory powers, and exclusive of lyricists, composers, and readers to determine whether such employees desire, in the case of each Company, to be represented by Screen Writers' Guild, Inc., or by Screen Playwrights, Inc., for the purposes of collective bargaining, or by neither.