

IN the Matter of COLUMBIA BROADCASTING SYSTEM, INC. and AMERICAN COMMUNICATIONS ASSOCIATION (FORMERLY AMERICAN RADIO TELEGRAPHISTS' ASSOCIATION)

Case No. R-813.—Decided July 22, 1938

*Radio Broadcasting Industry—Investigation of Representatives:* controversy concerning representation of employees; rival organizations; substantial doubt as to majority status—*Contract:* for 5-year period, of which one year has elapsed, no bar to investigation or certification of representatives—*Unit Appropriate for Collective Bargaining:* all radio broadcasting technicians and engineers of company, exclusive of such employees at Station KMOX and of supervisory employees; prior decision of Board finding local unit inappropriate; stipulation as to—*Election Ordered*

Mr. Mark Lauter, for the Board.

Mr. Sol A. Rosenblatt, of New York City, for the Company.

Mr. Sidney Elliott Cohn, of New York City, for A. C. A.

Mr. Nathan A. Smyth, of New York City, for A. B. T.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On April 18, 1938, American Communications Association, herein called A. C. A., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Columbia Broadcasting System, Inc., New York City, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.<sup>1</sup> On April 21

<sup>1</sup> The Board, on March 25, 1938, dismissed a petition filed by American Radio Telegraphists' Association, herein called A. R. T. A., the predecessors of A. C. A., for investigation and certification of representatives of Columbia Broadcasting System, Inc., on the ground that the bargaining unit asked for in that petition was not appropriate. *Matter of Columbia Broadcasting System, Inc. and American Radio Telegraphists' Association*, 6 N. L. R. B. 166.

and May 20, 1938, A. C. A. filed amended petitions. On May 6, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On May 20, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon A. C. A., upon Associated Broadcast Technicians, herein called A. B. T., and upon International Brotherhood of Electrical Workers. Pursuant to the notice, a hearing was held on May 26, 1938, at New York City, before Howard Myers, the Trial Examiner duly designated by the Board. The Board, the Company, A. C. A., and A. B. T. 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.<sup>2</sup>

Pursuant to notice, a hearing was held before the Board on June 30, 1938, in Washington, D. C., for the purpose of oral argument. At this oral argument the Company was represented by Sol A. Rosenblatt, A. C. A. by Sidney Elliott Cohn, and A. B. T. by Sidney A. Florea. Briefs were thereafter filed by the Company and by A. B. T., which have received due consideration.

During the course of the hearing at New York City, the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed. During the hearing, A. B. T. moved to strike from the record testimony by an organizer of A. C. A. that certain technicians and engineers employed by the Company had in writing stated that they desired A. C. A. as their bargaining representative. The organizer stated that the persons signing the communications had requested that their names be kept confidential. The Trial Examiner reserved decision on the motion to strike. We are of the opinion that the testimony is admissible on the issue as to whether an election is necessary to resolve the question concerning representation. The motion to strike the testimony is, therefore, hereby denied.

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

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<sup>2</sup> The parties stipulated at the hearing that the record and exhibits in the previous case should be included as part of the record in this proceeding without precluding in any way the right of any party so stipulating to introduce further testimony.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Columbia Broadcasting System, Inc., is a New York corporation engaged in the business of radio broadcasting, as well as business included in or incidental thereto, such as the management and booking of performers and artists for radio broadcasting. The Company owns or leases and operates the following stations:

WEEI—studio in Boston, transmitter in Medford, Massachusetts

WABC—studio in New York City, transmitter in Wayne, New Jersey

WJSV—studio in Washington, D. C., transmitter in Alexandria, Virginia

WBT—studio in Charlotte, transmitter in Pineville, North Carolina

WKRC—studio and transmitter in Cincinnati, Ohio

WBBM—studio in Chicago, transmitter in Glenview, Illinois

KMOX—studio in St. Louis, transmitter in Mattesse, Missouri

WCCO—studio in Minneapolis, transmitter in Anoka, Minnesota

KNX—studio in Los Angeles, transmitter in Van Nuys, California

The Company is affiliated with approximately 10 other stations. In addition, it has agreements with stations situated in the United States and in the Dominion of Canada, which provide that the respective stations will accept and broadcast commercial network programs offered to them by the Company. The Company delivers these programs over its leased telephone lines to such stations, which then broadcast them from their own transmitters. All the stations of the Company are licensed under the Federal Communications Act.

The Company stated that over 90 per cent of the business it handles moves across State lines. The Company admits that it is engaged in interstate commerce.<sup>3</sup>

## II. THE ORGANIZATIONS INVOLVED

American Communications Association is a labor organization, affiliated with the Committee for Industrial Organization, admitting to its membership radio technicians and engineers employed by the Company.

<sup>3</sup>This statement of the business of the Company is identical with that in the earlier decision. The parties stipulated at the hearing that this statement is true and accurate and that the Company is engaged in interstate commerce.

Associated Broadcast Technicians is an independent labor organization, admitting to its membership radio technicians and engineers employed by the Company.

### III. THE QUESTION CONCERNING REPRESENTATION

For about 4 years the Company has recognized A. B. T. as the bargaining agent for the radio technicians and engineers employed at all the Company's stations throughout the country, except Station KMOX.<sup>4</sup> The Company has negotiated several written contracts with A. B. T. concerning wages, hours, and working conditions. On June 18, 1937, while negotiations were being conducted between the Company and A. B. T. for a new contract, a majority of the technicians and engineers employed at Station WABC voted to dissolve their A. B. T. local. At that time there were approximately 80 technicians and engineers employed at Station WABC, including those at the studio in New York City and at the transmitter in Wayne, New Jersey, all of whom had been members of A. B. T. Approximately 60 of these former members of A. B. T. became members of A. R. T. A. The remaining technicians and engineers at this station reorganized the New York local of A. B. T.: A. R. T. A. gave the Company written notice that it represented a majority of the technicians and engineers employed by the Company in the New York metropolitan area, which, it contended, was an appropriate unit for the purposes of collective bargaining. The Company, however, continued to negotiate with A. B. T. and, on or about June 28, 1937, consummated another written contract on the national-unit basis. A. B. T., at the time this contract was entered into, represented more than 130 of the 206 technicians and engineers employed by the Company. A. C. A. claims that it now represents a majority of such employees. The Company at the present time refuses to recognize A. C. A. as the exclusive bargaining representative of the technicians and engineers employed by the Company.

The contract entered into between the Company and A. B. T. on June 28, 1937, provides that it shall be in force and effect until October 1, 1942, but that either party may, by written notice on or before August 1 of each year after 1937, obtain a reconsideration of the terms of the contract. The contract constitutes no bar to an investigation or certification of representatives. We do not here pass upon the question whether the Board will, during the first year of a contract such as the present one, investigate and certify representatives. However, we are of the opinion that it would be contrary to the policies and purposes of the Act to refuse to order an election

<sup>4</sup> For about 4 years before the Company acquired this station, it had been operating under an agreement with the International Brotherhood of Electrical Workers. This agreement had been negotiated jointly by all the broadcasting stations in St. Louis, and was continued in effect after the Company took over the station.

or certify representatives on the basis of a contract which has already been in effect for a period of more than a year.

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

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

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

#### V. THE APPROPRIATE UNIT

During the hearing the parties stipulated that all the radio broadcasting technicians and engineers of the Company, exclusive of such employees at Station KMOX and of supervisory employees, constitute an appropriate unit. The Board pointed out in detail, in its earlier decision, the considerations in favor of a national unit.<sup>5</sup>

In view of those considerations and the stipulations of the parties, we find that all the radio broadcasting technicians and engineers of the Company, exclusive of such employees at Station KMOX and of supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the employees of the Company the full benefit of their right to self-organization and collective bargaining, and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

The pay roll of the Company of May 28, 1938, contains the names of 208 technicians and engineers within the unit which we have found appropriate. The parties stipulated at the hearing that eligibility to vote should be based on this pay roll if the Board ordered an election.

A. B. T. introduced in evidence dues cards showing a paid-up membership through May 1938 of more than 120 employees of the Company. It also submitted more than 120 slips signed by such employees during May 1938 designating A. B. T. as bargaining representative. A. C. A. introduced in evidence about 80 membership cards of employees of the Company, all of whom are employed at Station WABC or at Station WJSV in Washington, D. C. An organizer of A. C. A. testified that numerous technicians and engineers

<sup>5</sup> 6 N. L. R. B. 166.

employed by the Company at its various other stations had stated orally and in writing that they desired representation by A. C. A., but that they had requested that their names and communications be kept secret. Under all the circumstances we find that the question which has arisen concerning the representation of employees of the Company can best be resolved by the holding of an election by secret ballot.

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

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Columbia Broadcasting System, Inc., within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the radio broadcasting technicians and engineers of the Company, exclusive of such employees at Station KMOX and of supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

#### DIRECTION OF 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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Columbia Broadcasting System, Inc., an election by secret ballot shall be conducted as soon as convenient and beginning as promptly as practicable after the date of the Direction, in conformity with the rules set forth hereinabove, for the conduct of such election, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations—Series 1, as amended, among the radio broadcasting technicians and engineers of Columbia Broadcasting System, Inc., who were employed during the pay-roll period of May 28, 1938, at all its stations, except KMOX, excluding supervisory employees and those who quit or were discharged for cause between such date and date of election, to determine whether they desire to be represented by American Communications Association, by Associated Broadcast Technicians, or by neither, for the purposes of collective bargaining.