

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

NIELSEN MEDIA RESEARCH, INC.

Employer

and

Case No. 29-RC-10333

**COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before James Kearns, Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that Nielsen Media Research, Inc., herein called the Employer or Nielsen, with an office and place of business located at 700 Kinderkamach Road, Oradell, New Jersey, has been engaged in the collection and dissemination of marketing information. During the past 12 months, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business

operations, provided services valued in excess of \$50,000 in states other than the State of New Jersey.

Based on the stipulation of the parties and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

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

5. Communications Workers Of America, AFL-CIO, herein called the Petitioner or the Union, seeks to represent a unit of all full-time and regular part-time field representatives in the local people meter (“LPM”) sample group employed by the Employer in the New York metropolitan area, but excluding all other employees, membership representatives, panel relations specialists, schedulers, guards and supervisors as defined in Section 2(11) of the Act.

The Employer contends that the petitioned-for unit is inappropriate, and should include the membership representatives, panel relations specialists and part-time schedulers in the LPM sample group in the New York metropolitan area. In support of this position, the Employer called the following witnesses: Juan Mendizabal, senior vice president for operations, Jeff Boyte, operations director, Derith Jarvis, regional manager of the New York LPM sample, and Bob Burns, human resources business partner. Other

than Jarvis, who has been in the New York area since January, 2005, the Employer's witnesses all work out of the Employer's Florida and Texas facilities.

Field representatives Kevin Suran and Peter Fowler were witnesses for the Union and Hearing Officer, respectively.

Overall Operations

Mendizabal testified that the Employer, using raw information acquired from cooperating households, produces national and local television audience estimates and ratings (known as the "Nielsen ratings"), and analyzes audience demographic information. The client base consists of "the people [who] need to know," including broadcasters, advertisers, advertising agencies, syndicators and other program producers.

According to Mendizabal, LPM is a methodology used by the Employer in the top ten local markets nationwide. It tracks the television viewing habits of cooperating household members with the use of a box, referred to as "the people meter" or "the Nielsen equipment," which is connected to each television and related device in the home. The box, in turn, is networked into the Employer's central computer system. Participating household members are asked to log in when they are watching television, so that the computer can record the programs they are watching. Households serve as "Nielsen households" for a maximum of two years.

The New York LPM sample is a separate sample consisting of 29 counties in New York, New Jersey and Connecticut, which provides ratings data for the New York market. This data is also used in compiling the nationwide ratings. The employees working on the New York LPM sample, including 29 field representatives, 19 membership representatives, two panel relations specialists and five part-time schedulers,

are dedicated exclusively to that sample. They report to the Employer's New York area regional office in Oradell, New Jersey ("the Oradell facility").

Job Descriptions

Field Representatives

The field representatives in the petitioned-for unit assist one another in performing installation work in cooperating households. This involves attaching a "people meter" to every television, VCR, satellite receiver and cable box in a participating home, and networking the "people meter" into the Employer's central computer system. During the installation, one field representative is considered the "primary" for that home, and other field representatives are assigned to assist him. The "primary" is usually the field representative assigned to the geographical area in which the home is located.

During the installation, the primary field representative has additional responsibilities, such as explaining what the installation will entail and answering questions. If the household does not include children or young adults, the primary field representative teaches the household how to use the Nielsen equipment.¹ In addition, he verifies the demographic information that was previously obtained by the membership representative.

When the installation is completed, either the field representative or the membership representative asks the head of household to update the Employer with respect to any future changes in demographic information, the number of televisions in

¹ If the household includes children or young adults, the membership representative performs this function and shares some of the ongoing responsibility for the household, as further discussed below. The record reflects that 40% of "Nielsen homes" nationwide include children or young adults.

the household, and any problems with the equipment. Towards this end, business cards for the field representative, membership representative and panel relations specialist are provided.

After the equipment is installed, the primary field representative maintains, repairs and replaces it, if necessary, sometimes with the assistance of other field representatives. If the household does not include children or young adults, the primary field representative bears sole responsibility for ensuring that household members are using the people meter properly,² and telephoning and visiting the homes that are having problems using the Nielsen equipment. In addition, every six months, field representatives assigned to a particular geographical area must visit and audit every home in that area. The audit includes checking whether the Nielsen equipment is functioning properly, and whether the household has changed with respect to demographics or the number of televisions.

Of the 29 field representatives in the New York LPM sample group, 21 are assigned to a particular geographical area. These 21 share the responsibility for their geographical areas with a membership representative assigned to the same geographical area. In some cases, one membership representative may be responsible for two geographical areas, and may work with two field representatives.

Of the eight field representatives who are not assigned to a specific geographical area, three are senior field representatives who help with installations and other scheduled calls throughout the New York region. The three senior field representatives are

² If the household includes children or young adults, the membership representative shares in this responsibility.

responsible for the training and mentoring of new field representatives and the ongoing training of other field representatives. In addition, there are five field representatives who “float between field areas” and help out where needed on installations and other field calls. These “floating” field representatives may sometimes serve as the primary on an installation.

Membership Representatives

The membership representatives are responsible for recruiting and signing up households. Initially, prospective households are identified by the Employer’s statistical research department, to ensure that the New York sample is a representative cross-section. After mailings and questionnaires are sent³ to a prospective household, a membership representative appears at the door with flowers and a gift, to attempt to induce the household to cooperate in the Employer’s sampling effort. If successful,⁴ the membership representative signs up the household and obtains demographic information. The membership representatives are expected to meet target goals with respect to the number of households they sign up in a given time period.

After a household agrees to cooperate, the installation appointment is scheduled by the panel relations specialists. On the day of the installation, the membership representative introduces the lead field representative to the household. If the household has children or “dependent young adults,” the membership representatives explains the use of the “people meter” and retains ongoing responsibility for ensuring that the family

³ The record does not indicate which employees are responsible for writing these materials or sending them to prospective households.

⁴ The record does not reveal what percentage of these recruiting efforts are successful.

uses it properly.⁵ This responsibility includes follow-up visits, during which the membership representative also ascertains whether there are any demographic changes, or changes in the number of televisions. However, if the home has no children or young adults, the membership representative has no further responsibility for the household.

Panel Relations Specialists and Schedulers

Each of the two panel relations specialists is responsible for half of the geographical field areas within the New York region. Their job duties include the scheduling of household visits for field representative who are not “self-scheduling.” The field representatives receive these work assignments by means of their laptop computers. In addition, the panel relations specialists coordinate weekly conference calls between themselves and the field representatives and membership representatives, to discuss any issues that have arisen among the homes for which they are responsible.

Between conference calls, there may be additional telephone contacts between the panel relations specialists and the other two groups. For example, Fowler recalled one instance when he had difficulty contacting a household, and he asked a panel relations specialist to help him telephone the household. Although Fowler maintained that his contacts with the panel relations specialists are minimal, he acknowledged that if he were to need additional field representatives to assist him with the repair or replacement of equipment, he would call the office and speak to a panel relations specialist or scheduler.

⁵ The functions and responsibilities of field representatives and membership representatives overlap. Fowler testified that when a household is not using the equipment properly, he takes responsibility for handling the problem, even if the household includes children. Suran testified that the membership representative explains the use of the people meter, even if the household does not have children.

The panel relations specialists also telephone participating households periodically to update their demographic information and the number of televisions in the household. If necessary, they coach households over the telephone regarding the use of the people meter. In addition, they collect, analyze, maintain and file household and performance data, and prepare reports.

The part-time schedulers serve as back-ups or fill-ins for the panel relations specialists, who have training responsibilities for the schedulers. The job functions of these two classifications are substantially the same.

Qualifications

Membership representatives and panel relations specialists need a college degree or “equivalent experience.” Field representatives do not need a degree. However, Jarvis testified that applicants for field representative positions must pass an aptitude test before being interviewed. The two field representatives who testified at the hearing both had technical backgrounds, and Fowler testified that the application form for the field representative position “suggested” a technical background.

Training

Newly hired field representatives receive nine or ten weeks of formal training at the Employer’s facility in Florida. The formal training covers how to put Nielsen equipment into televisions, VCRs, cable boxes and satellite receivers, and how to use room cable to network the equipment into the Employer’s computer system. In addition, the training covers the use of computer software for ensuring “all the information to that home is accurate.” Prior to the formal training, field representatives are given a week of “pre-week,” which involves going into homes with a senior field representative. The

formal training is followed by two weeks of post-week training in the field, during which the field representatives get the opportunity to apply what they learned. Field representatives may also take work-related “Nielsen University” classes on-line.

The membership representatives are given one week of “pre-week,” three weeks of formal training at the Florida training facility, and an unspecified amount of “post-week” training. At the Florida facility, the field representatives are trained separately from the membership representatives. According to Boyte, membership representatives’ formal training includes policy and procedures, as well as role-playing exercises simulating “recruitment events.” Boyte asserted that field representatives participate with the membership representatives in some role-playing exercises, which involve “simulating a household environment and what the interaction is between the field rep, the membership rep and the household.” However, Fowler testified that during his training, the only involvement of field representatives in these role-playing exercises was to play the role of household members, and that this occurred on one day only. According to Fowler, there was no joint training between the field representatives and membership representatives.

Boyte maintained that the training for panel relations specialists is the same as for membership representatives.

The Employer also conducts quarterly training meetings in the field, at which the senior representatives meet with the field representatives and membership representatives to go over new procedures. Mendizabal acknowledged that if the quarterly training meeting is technical in nature, involving new equipment, only the field representatives attend. If the training is on techniques of signing up households, only the membership

would attend. Mendizabal did not know when such a meeting last occurred in the New York region.

Vehicles, Equipment and Credit Cards

The field representatives use tool kits, cables and other equipment when installing people meter devices. This distinguishes them from employees in the contested job classifications.

Both the field representatives and membership representatives are supplied with company vehicles, cell phones, laptop computers and company credit cards. The panel relations specialists do not have cell phones, company vehicles or laptops, but they are issued company credit cards, which they can use for “household incentives,” according to Jarvis. The record does not reflect how often this occurs.

Work Location

The panel relations specialists and part-time schedulers sit in cubicles in the Oradell facility. The field representatives and membership representatives work out of their own homes, where they park their company vehicles. Field representatives go to the Oradell facility to attend meetings, about once a month. In addition, according to Mendizabal and Jarvis, employees visit the Oradell facility to pick up and drop off equipment. However, Fowler testified that he orders equipment on-line and has it sent to his home.

Meetings

Jarvis testified that he holds monthly meetings with employees in the New York people meter sample, to discuss market performance and market issues. Since coming to the New York region in January, 2005, he has held three such meetings with the field

representatives and one meeting with the membership representatives. In addition, there was one meeting in early 2005 with both field representatives and membership representatives, for the purpose of introducing Jarvis to the employees. Prior to January, 2005, according to Fowler, the monthly meetings he attended were usually attended only by field representatives.

Interchange

Temporary Interchange

There is no evidence that field representatives in the petitioned-for bargaining unit have ever helped membership representatives to recruit or sign up households,⁶ or that the field representatives have ever filled in or substituted for membership representatives, panel relations specialists or schedulers. Conversely, there is no evidence that membership representatives, panel relations specialists or schedulers have ever helped the New York LPM field representatives to install, maintain, repair or replace equipment, or that employees in these job categories have ever filled in or substituted for the field representatives.

Transfers

There is no evidence that a New York field representative has ever transferred into the position of membership representative, panel relations specialist or scheduler, either permanently or temporarily. There is no evidence that a membership representative, panel relations specialist or scheduler has ever transferred into the position of field representative, either permanently or temporarily.

⁶ Fowler testified that he has never been involved with the initial recruitment of households. However, on one occasion, he used a company credit card to give a cash incentive to an existing Nielsen household to remain in the program. According to Fowler, this would normally be done by the membership representatives, who are responsible for finding replacement households.

Supervision and Management Structure

The record reflects that the petitioned-for unit is separately supervised. The field representatives are supervised by the LPM field representative supervisors,⁷ the membership representatives are supervised by the LPM membership supervisors, and the panel relations specialists and part-time schedulers are supervised by the LPM market coordinator. As is the case with their subordinates, the LPM field representative supervisors and LPM membership supervisors work out of their homes, whereas the LPM market coordinator works in the Oradell office. Fowler testified that he communicates with his supervisor about once a week, regarding his inventory of equipment and any questions he may have about the households to which he is assigned.

The LPM field representative supervisors, LPM membership supervisors, and LPM market coordinator, in turn, report to the LPM regional manager, who has overall responsibility for the New York LPM sample. The regional manager, Derith Jarvis, has an office at the Oradell facility and has not been in the field since assuming his current position with the Employer. Accordingly, performance appraisals for the field representatives and membership representatives are written by their direct supervisors.

The LPM membership supervisors also report to the national LPM membership manager, who provides them with “additional support” and “a little bit of extra quality control,” according to Mendizabal. The regional managers report to either the national director of LPM operations (according to Mendizabal) or the national operations director

⁷ At the time of the hearing, the New York LPM sample had one LPM field representative supervisor and one LPM membership supervisor. Mendizabal testified that the Employer is currently trying to fill one LPM field representative supervisor position and one LPM membership supervisor position in the New York region.

(according to Boyte). The operations director, in turn, reports to the senior vice president for operations.

Centralized Personnel and Payroll Functions

The Employer's payroll and personnel records are maintained in Florida. Employees in New York enter their time into a computerized "Time Track" system, which connects to a database in Florida. The Employer's salary grades are set nationally.

Compensation

According to Jarvis, entry-level membership representatives and field representatives are paid a starting salary of \$30,000, as well as an incentive payment or commission for each successful installation. In addition, employees in the New York region, and other regions with a high cost of living, receive a locality pay differential. Fowler testified that his salary is \$1230 biweekly, with a bonus or commission for each trouble-free installment on which he is the primary field representative. He receives time and a half overtime pay.

Jarvis indicated that panel relations specialists also receive a starting salary of \$30,000, plus locality pay, but Boyte asserted that the panel relations specialists are in a higher salary grade than the field representatives or membership representatives. Boyte and Jarvis were in agreement that the panel relations specialists do not receive incentive payments.

Entry-level schedulers are paid \$13 an hour.

Work Schedules

Jarvis testified that the part-time schedulers work an average of 25 hours per week, usually four to six hours each day, with staggered shifts through the day. It appears from the record that the field representatives, membership representatives and panel relations specialists are paid a set salary on the basis of a 40-hour week. However, Fowler testified that his actual working hours vary. No further specifics were provided with respect to employees' work schedules.

Benefits

The record reflects that all full-time employees receive the same company benefits. The part-time schedulers do not have benefits.

Attire

Jarvis testified that all employees have the same dress code, and wear the same ID badges.

DISCUSSION

It is well-established that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enfd on other grounds*, 190 F.2d 576 (7th Cir. 1951). Accordingly, in making unit determinations, “the Board first considers the union’s petition and whether that unit is appropriate.” *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). If it is “not appropriate, the Board may examine the alternative units suggested by the parties, and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. The Board

generally attempts to select a unit that is the ‘smallest appropriate unit’ encompassing the petitioned-for classifications.” *Overnite Transportation Company*, 331 NLRB No. 85 (2000).

The criteria applied by the Board in making unit determinations include “distinctions in skills and functions of particular employee groups, their separate supervision, the employer’s organizational structure and differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts.” *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *see also Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Additional relevant factors include fringe benefits and other working conditions, work location, degree of centralized control over the employer’s day-to-day operations and personnel policies, and previous bargaining history (or lack thereof) at the Employer. *See J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679 (1980).

By weighing these various factors, the Board determines whether the employees in the proposed unit “share a sufficiently distinct community of interest from other employees as to warrant a separate unit,” *Transerv*, 311 NLRB at 766, or conversely, whether other employees share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766. In accordance with this test, the Board has found bargaining units consisting exclusively (or predominantly) of technicians to be appropriate, without the inclusion of sales employees, customer service representatives, plant clerical employees, dispatchers and other employees who do not perform technical work. *See Deposit Telephone*

Company, Inc., 328 NLRB 1029, 1031 (1999); *Audiovox Communications Corp.*, 323 NLRB 647 (1997); *Harron Communications, Inc.*, 308 NLRB 62 (1992); *Cablevision Systems Development Company*, 251 NLRB 1319 (1980), *enforcement granted*, 671 F.2d 737 (2d Cir. 1980), *cert. denied*, 459 U.S. 906 (1982). A group of technicians who are not “technical employees” as defined in the case law may nevertheless comprise an appropriate unit. *Audiovox*, 323 NLRB at 647.

In the instant case, the field representatives in the New York LPM group are separately supervised, and the regional manager holds separate monthly meetings for them. There is no evidence that they have transferred into other job classifications, or filled in or substituted for other employees. In contrast with the membership representatives, the field representatives do not recruit or sign up households. Unlike the panel relations specialists or schedulers, they do not schedule other employees, prepare reports, or collect, analyze and maintain data.

Moreover, the field representatives are the only employees who use tools to perform the technical work of installing, maintaining, repairing and replacing the Employer’s “people meter” equipment. They are trained by the Employer to perform this type of work. The training they receive is distinct from that of the other employees, and longer in duration. Unlike the membership representatives and panel relations specialists, they are not required to have college degrees, but are required to pass an aptitude test. A number of field representatives have technical backgrounds. Employees in other job classifications have not transferred into field representative positions, or substituted for them.

Finally, whereas the field representatives work in the field, the panel relations specialists and schedulers work in the Oradell office. The latter employees do not receive commissions, and are not given company vehicles, laptops or cell phones. The schedulers work on a part-time basis, earning substantially less than the field representatives, and do not receive benefits.

The Employer emphasizes that there are some overlapping job functions and contacts among employees. In addition, the field representatives, membership representatives and panel relations specialists receive common benefits. Moreover, the Employer's payroll, personnel, and management functions are centralized. However, this evidence is not sufficient to eliminate the separate group identity of the field representatives. Based on all the relevant factors, the absence of any history of collective bargaining involving the employees involved herein and the applicable case law, I find that the field representatives in the Employer's New York LPM group share a sufficiently distinct community of interest from other employees as to warrant a separate unit.

I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a)(1) of the Act:

All full-time and regular part-time field representatives in the local people meter ("LPM") sample group employed by the Employer in the New York metropolitan area, but excluding all other employees, membership representatives, panel relations specialists, schedulers, guards and supervisors as defined in Section 2(11) of the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible

to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by Communications Workers Of America, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of

the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **March 21, 2005**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C.
20570-0001. This request must be received by the Board in Washington by 5 p.m., EST
on **March 28, 2005**. The request may be filed by electronic transmission through the
Board's web site at NLRB.Gov but **not** by facsimile.

Dated: March 14, 2005, Brooklyn, New York.

Alvin P. Blyer
Regional Director, Region 29
National Labor Relations Board
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