

**Hearst Broadcasting Corporation d/b/a WDTN-TV
and American Federation of Television and
Radio Artists, Cincinnati/Columbus/Dayton
Local, AFL-CIO, Petitioner. Case 9-RC-14004**

24 August 1983

DECISION ON REVIEW AND ORDER

**BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER**

On 19 March 1982 the Regional Director for Region 9 issued a Decision and Direction of Election in the above-entitled proceeding, in which he directed that a self-determination election be conducted among the Employer's news producers to determine whether they desired to be included in Petitioner's existing bargaining unit on grounds that these employees share a community of interest with the unit employees and they are neither supervisory nor managerial employees. Thereafter, the Employer, in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended filed a timely request for review of the Regional Director's Decision on grounds that he made findings of fact which are clearly erroneous and departed from officially reported precedent.

By telegraphic order dated 19 April 1982, the National Labor Relations Board granted the Employer's request for review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record of this case with respect to the issues under review and makes the following findings:

The Employer is a Delaware corporation engaged in the operation of television station WDTN-TV in Dayton, Ohio. The Petitioner currently represents the following units at the station: engineers and broadcast technicians; program and production employees; porters and janitors; and producer/directors in the Program and Production Department. The Petitioner has also represented a unit of on-air artists, including reporters and anchors, since 1953 and it is to that unit that it now seeks to include three news producers for which there is no history of collective bargaining.

The Employer opposes the inclusion of the three news producers on grounds that they are supervisory and/or managerial employees; alternatively, the Employer asserts that even if the news producers are found to be employees their inclusion in the existing bargaining unit would still be inappropriate. We find, in agreement with the Employer, that

the three news producers are supervisors and therefore the petition must be dismissed.

The news department is under the overall supervision of the news director who along with the assistant news director establishes the standard format for each newscast.¹ In addition to these directors, the news department consists of an assignment editor, two assistant assignment editors, three news producers, reporters, and photographers. The news department broadcasts daily three half-hour newscasts Monday through Friday, two half-hour newscasts on Saturday and Sunday, and a weekly half-hour program entitled "Eyewitness News Conference." Each daily newscast as well the weekend newscast has its own news producer.

The news producer prepares a "rundown" for each newscast listing the stories to be covered and their order of presentation. The purpose of the "rundown" is to inform the news directors of decisions that the producers have made regarding the newscasts. Contrary to the Regional Director, it is not required that the rundowns be "cleared" before broadcast, and, on occasions when directors are unavailable, the news is broadcast without prior discussion. Additionally, the news producers are not required to adhere rigidly to the format in the "rundown" and do retain authority to change the format and lead with stories other than the news if they so decide. While the "rundowns" are pre-viewed by the news director or his assistant, the news producers frequently change the order of the newscasts without obtaining a director's approval.

News producers determine the length of each story and the format for its presentation. To this end, a producer relies on the assignment editor to assign crews to cover selected stories. It is at this juncture that news producers direct the work of those employees working under them in the newsroom. News producers, in their discretion, may change work assignments made by the assignment editors and, in any disagreements involving crew assignments, the news producer's decision prevails. The news producer also assigns employees to script stories and edits any film obtained.² If the story is covered by a reporter, that person generally writes the script. However, the news producer debriefs the reporter, tells him from what angle the story should be presented, and in what form. The news producers also dictate the length of the story and the tape or film used to visualize the story. Scripts are reviewed by news producers and may be re-

¹ This format allocates blocks of broadcast time for news, sports, weather, and commercials, and also indicates the order in which these items are presented in the newscasts.

² Contrary to the Regional Director, the record establishes that news producers generally review film that is to be broadcast.

turned for further changes. Additionally, news producers give anchor persons day-to-day instruction on the order, content, and necessity of a particular story. Other changes by news producers may be the result of a reporter's failure to incorporate the producer's directives with respect to format, angle, or length.

The record establishes that while disagreements arising between employees and news producers regarding decisions as to length or format of a story may be brought to the attention of the news directors for decision, the directors often are unavailable and the decision of the producers prevails. This is particularly the case during the 11 p.m. newscasts each weekday night and the weekend editions. In fact, employees have been specifically instructed to "respect" the news producer's decision as final.

During the actual broadcast news producers are seated next to production directors, whose responsibility is to instruct the technical crew in accordance with the overall script, assembled by the news producer. At this time the news producers can and do make changes in the script which are then implemented by the directors.

News producers are considered by the employees to be supervisors. Assistant News Director Frank Graham testified that news producers are told that they are supervisors and that reporters and other news department personnel are informed of the producers' supervisory status. Additionally, supervisory ability is an essential prerequisite of the news producer position as set forth in postings for openings for news producers. News producers discipline and effectively recommend discipline as evidence by a news producer suspending an employee.³ They possess authority to authorize overtime and have authorized overtime with the exception of those periodic occasions during which the station undergoes budgetary constraints. And even during budgetary crises, they can authorize overtime on an emergency basis.

In finding that the Employer's news producers were not supervisors or managers, the Regional Director relied on *Westinghouse Broadcasting Co. (WBZ-TV)*, 215 NLRB 123 (1974), *Post-Newsweek Station-WPLG-TV*, 217 NLRB 14 (1975), and *Golden West Broadcasters-KTLA*, 215 NLRB 760 (1974). Each of these cases is clearly distinguishable. In *Westinghouse*, the Board determined that producer/directors were not supervisors on grounds that they functioned as a part of an inte-

grated production team, each member of which was independently capable of executing his assignment. There the Board noted that the producer/directors were primarily involved in the representation of local programming, which consisted of not only news but also sports, regular features or "specials" in the area of public affairs, community interest, and children's entertainment. The Board concluded, *inter alia*, that producer/directors' direction of the work of other employees was routine in nature or motivated by the artistic nature of the job; that participation by producer/directors in making or effectively recommending personnel decisions was done only on a sporadic basis; that other employees earned higher wages; and that producer/directors did not consider themselves to be supervisors.

In *Golden West Broadcasting*, the petitioner sought a unit of staff directors employed at the employer's television station. The staff directors were divided into three categories: (1) "A" board directing, that involved the use of an electronic and mechanical console which set forth in sequence the images to be broadcast to the transmitter; (2) studio directing, that basically involved directing live and videotape programs and commercials; and (3) directing remote telecasts, primarily sports and special events, which occurred away from the studio premises. In each category, the directors were limited by station policies and a detailed log or routine. The Board concluded that as in *Westinghouse*, the directors functioned only as part of an integrated production team, and neither responsibly directed the work of others, nor considered themselves to be supervisors.⁴

All of the cases cited by the Regional Director involved employees who worked within rigid, inflexible formats and whose instructions to employees were routine in nature, involving little independent authority. These characteristics are not present in the case before us. Here, the news producers are more than a part of an integrated team. They have responsibility for the rundown for each broadcast and are not required to adhere rigidly to the format established by the news directors. They have final authority to change work assignments made by the assignment editors, to debrief reporters and instruct them regarding the form and angle of the story, and to determine the length of the story and the tape or film use in connection with it. The news producers and other department personnel are told that the producers are supervisors. In

³ While the Regional Director correctly noted that "discrepancy reports" are written by news producers following a broadcast detailing technical or personnel policies, he failed to note that news producers are required to talk to employees regarding problems and have submitted written reports which have resulted in the discharge of at least one employee.

⁴ The *Post-Newsweek*, case also involved producer/directors. The Board concluded that they were similar in all material respects to those in *Westinghouse* and found them to be employees for the reasons stated in that case.

this regard, they can authorize overtime, are required to talk to employees with work problems, and submit written reports which can result in discipline.

For these reasons, we conclude that the news producers function in a manner more closely akin to that of the news producers whom the Board found to be supervisors in *Westinghouse Broadcasting Co.*, 195 NLRB 339 (1972), and *Westinghouse Broadcasting Co.*, 188 NLRB 157 (1971). In those cases the Board stressed that the producers were responsible for the content of the news programs, reviewed scripts and film to be used, made work assignments, authorized overtime, and were considered by the employees to be supervisors. As set

forth above, many if not all of these factors are present here and we find these cases to be controlling.

Based on the foregoing and the record as a whole, we are persuaded that news producers responsibly direct the work of other employees and that they possess sufficient indicia of supervisory authority to warrant their exclusion. We therefore conclude and find that they are supervisors within the meaning of Section 2(11) of the Act.

Accordingly, we shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.