

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Dallas, TX

**PARADIGM MEDIA, INC.**

**Employer**

**and**

**Case No. 16-RC-10229**

**INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, LOCAL 20**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as 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/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization involved claims to represent certain employees of the Employer. 3/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All cameramen, photojournalists, and satellite engineers employed by the Employer at its 10111 North Central Expressway, Dallas, Texas location.

**EXCLUDED:** All other employees including reporters, office clerical employees, guards and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION 5/**

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 issue subsequently, subject to the Board's Rules and Regulations. In this regard, Section 103.20(c) of the Board's Rules and Regulations, as interpreted by the Board, requires employers to notify the Regional Director at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Failure to do so estops employers from filing objections based on nonposting of the election notice. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person 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 shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local 20, AFL-CIO.

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the **full names and addresses** of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 16 Regional Office, 819 Taylor Street, Federal Office Building, Room 8A24, Fort Worth, Texas 76102, on or before June 20, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision 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, DC 20570. This request must be received by the Board in Washington by June 27, 2000.

**DATED** June 13, 2000, at Fort Worth, Texas.

/s/ Martha Kinard  
Martha Kinard, Acting Regional Director  
NLRB Region 16

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1. Both Petitioner and Employer timely filed briefs in this matter that were duly considered.
  2. The parties stipulated, and I find, that the Employer, Paradigm Media, Inc. (PMI), is a Texas corporation that operates a television news service doing business as "TXN" throughout the State of Texas, with an outlet in Dallas, Texas, the sole location involved in this proceeding. During the preceding 12 months, a representative period, PMI has purchased and received goods at its Texas facilities valued in excess of \$50,000 directly from sources located outside the State of Texas.
  3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
  4. PMI is a television news media network operating within the State of Texas. It has news bureaus in Austin, Dallas, Houston and in San Antonio, Texas where its headquarters are located. Each bureau is responsible for gathering news stories within a specified geographical area of the State. These stories are used on both PMI's own telecasts and on the telecasts of other television stations. PMI neither owns nor operates any television stations. It maintains contractual relationships with established television news stations that, in turn, telecast PMI-generated news stories. The Dallas bureau is housed in the facilities of KTVT, Channel 11, the CBS affiliate, with whom it has an agreement to telecast PMI's news stories. The Dallas bureau chief is Daniel James Hermosillo, who supervises all the employees employed in the Dallas bureau. Based on record evidence that Hermosillo assigns news stories and directs the work of the employees who report to him, I find that Hermosillo is a supervisor within the meaning of Section 2(11) of the Act and will be excluded from the appropriate unit found herein.

The Employer employs four reporters, four photojournalists (also known as cameramen) and one satellite truck operator/engineer (engineer) who report to Hermosillo. Petitioner seeks a unit comprised of the four photojournalists and satellite truck engineer excluding the four reporters. PMI argues that the reporters must be included in any bargaining unit found.

The record reflects that reporters are responsible for developing news stories for subsequent telecasting. They may generate their own stories or be assigned stories to develop. Their stories are developed in the field, i.e., they go to the sites where the stories are located. Reporters set up the interviews, prepare the questions to elicit the stories from those interviewed, write up the stories, orally report the stories and appear on-camera in the finished report. All voice-overs on videotape are performed by reporters. They are trained in journalism, investigations and reporting.

Photojournalists are responsible for gathering the visual elements of a story, shooting the video and editing the video to match the story reported by the reporters. Editing the video includes combining the reporter's stories and interviews with appropriate video to enhance the story. They work in the field, shooting video where the stories are found. Unlike reporters, photojournalists do not appear on camera, although in very limited situations they may conduct an interview where the subject of the interview, but not the photojournalist, is on camera. Even in this latter situation, the photojournalist's voice would not be heard in the news story. Photojournalists may also have journalism, investigative and reporting skills, but those skills are likely to have been developed on the job as a result of their exposure to reporters.

The satellite truck engineer is responsible for the maintenance and operation of the satellite truck used to transmit live reports from remote locations via satellite. In addition to the satellite, the truck contains editing facilities that can be used in preparing the stories for live telecasts. The record reveals that the satellite truck engineer also "doubles" as a photojournalist as the need arises. Although there is only one designated satellite truck operator, the record reveals that photojournalists are required to assume the responsibilities of satellite truck engineer in his absence due to vacation, illness or other absence. All Dallas employees are experienced in the television industry, with a minimum of five years experience required before being hired in their positions by PMI.

The record establishes that only employees in the reporter classification substitute for the bureau chief when Hermosillo is not in town. These absences occur at least once a month. In these situations, reporters have the responsibility for making all field assignments and are responsible for seeing that the bureau chief's work is completed.

With respect to the issue of employees' hours and wages, there is some conflict in the record on whether reporters continue to be exempt employees who have no set working hours and receive a salary. However, the record establishes that PMI has historically treated reporters as exempt employees who work no set hours and are paid a salary. Photojournalists and the satellite truck engineer, on the other hand, have scheduled work hours and are hourly paid, receiving overtime pay for all hours worked in excess of forty hours per week. The Employer also maintains an on-call policy where, on a weekly basis, a reporter and photojournalist are assigned to be ready to handle any major news developments outside the regularly scheduled work hours.

Photojournalists are assigned vehicles to transport, maintain and secure their video equipment. They are responsible for their video equipment and all accessories. Reporters are not assigned vehicles and have no responsibilities for video equipment. All employees receive the same benefits package.

The record revealed that a former photojournalist also acted as a reporter on occasion. His employment, however, ceased in February, 2000 and the Employer has no current plans to employ another photojournalist who would perform both reporter and photojournalist functions at this location. Currently, none of the reporters have operated cameras (as photojournalists do) and none of the photojournalists have appeared on air (as do reporters). Further, the record establishes that photojournalists have not transferred into reporter positions, nor have reporters transferred into photojournalist positions.

Making an appropriate unit determination does not require that the petitioned-for unit be the *only* appropriate unit or the *most* appropriate unit; all that is required is that the unit be appropriate to insure to employees in each case full freedom to exercise the rights guaranteed by the Act. **Overnite Transportation Co.**, 322 NLRB 723 (1996). Moreover, a petitioner's desire as to composition of the unit is always a relevant, but not dispositive, consideration. **Marks Oxygen Co.**, 147 NLRB 228, 230 (1964). The major determinant in an appropriate unit finding is the community of interests test. **Hampton Roads Broadcasting Corp. (Hampton Roads)**, 100 NLRB 238 (1952). That test includes such factors as similarity in skills, interests, duties and working conditions, functional integration of the operation, including interchange and contact among employees, the employer's organizational and supervisory structure, bargaining history and the extent of union organization among the employees. The Board has recognized in the industry involved herein, a distinction for bargaining purposes between "off-air" employees and "on-air" employees who are generally considered "talent". **Pulitzer Publishing Co.**, 203 NLRB 639, 641 (1973); **Hampton Roads**, supra.

Although not disputed by the parties, the record establishes that photojournalists and the satellite truck engineer have a sufficient community of interest to be included in an appropriate unit. Photojournalists substitute for the satellite truck engineer in his absence and the truck satellite engineer does, on occasion perform the videotaping and video-editing tasks that photojournalists perform. Employees in both classifications are paid on an hourly basis, work scheduled hours and interchange jobs when called upon by PMI. Accordingly, these two classifications will be included in the appropriate unit.

PMI argues in its brief that the final product, i.e., the news story broadcast on television, is a collaborative effort between reporters, photojournalists (and/or the satellite truck engineer), with reporters responsible for the written word and the photojournalist responsible for complementing the written word with video. Notwithstanding this collaboration, the record establishes there is not a sufficient community of interest between reporters and the other two job classifications to

include them in the appropriate unit found herein. The Employer also argues that the Board's decision in **Panhandle Telecasting Company d/b/a KFDA-TV Channel 10 (Panhandle Telecasting)**, 308 NLRB 667 (1992) compels a finding that its four reporters must be included in any unit found appropriate herein. I find the fact in **Panhandle Telecasting** to be distinguishable from the fact in the instant matter and therefore not controlling. In **Panhandle Telecasting** the petitioner sought a unit of both "on-air" and "behind the scenes" employees. In finding the petitioned-for unit to be appropriate, the Board relied on the fact that reporters/anchors regularly ran videotape during news telecasts and regularly operated a teleprompter. The Board also relied on evidence reflecting that a reporter regularly performed the photography for his stories. Clearly, there is no such evidence in the instant case demonstrating that the distinction between "on-air" and "off-air" employees have "broken down".

Finally, contrary to the Employer's assertions, reporters are compensated differently than photojournalists (salaried, not hourly), are not paid overtime, do not interchange jobs with photojournalists, prepare and report their stories on-air, and do not otherwise operate the Employer's equipment (as do photojournalists). Their training and skills as on-air employees are clearly different than the skills and training of off-air photojournalists. **Perry Broadcasting, Inc.**, 300 NLRB 1140 (1990); **Hampton Roads**, supra.; Cf. **Panhandle Telecasting**, supra. Thus, based on the record as a whole, I find that the unit petitioned for, excluding reporters, is appropriate.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise

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