

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

In the Matter of

JEFFERSON PILOT COMMUNICATIONS
COMPANY OF VIRGINIA d/b/a WWBT

Employer

and

Case 5-RC-15206

COMMUNICATION WORKERS OF AMERICA,
LOCAL 2201

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein call the Act, a hearing was held before a 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.

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 it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved 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 Section 2(6) and (7) of the Act.
5. Jefferson Pilot Communications Company of Virginia d/b/a WWBT (hereinafter "the Employer" or "the Company"), a Virginia corporation with an office and place of business located in Richmond, Virginia, is engaged in the operation of a

television station. During the past 12 months, a representative period, the Employer has derived gross revenues in excess of \$100,000. During the same period, the Employer purchased and received goods or services valued in excess of \$50,000 directly from points located outside the state of Virginia. The parties stipulate, and I find, that the Employer is engaged in commerce within the meaning of the Act.

The parties stipulated, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act. There is no history of collective bargaining between the parties for these employees.

Communication Workers of America, Local 2201 (hereinafter "The Petitioner" or "the Union") filed a petition seeking to represent a unit of all full-time and part-time non-professional (on-air support) technical employees, including but not limited to tape editors, news assistants, senior directors, associate directors, directors, master control/tape operators, news and sports photographers, production, production assistants, production specialists, senior production specialists, graphics and microwave coordinators, but excluding on-air talent, sales, traffic, programming, marketing, G&A (general and administrative), assignment editors, maintenance engineers, commercial directors, commercial producers, news producers, on-line editors, IT administrators, managers, guards and supervisors as defined in the Act. At the hearing, the Petitioner amended the petition to include "regular" to describe the part-time employees sought.

The parties stipulated at the hearing that Henry Boze, Julian Young, Paula Hersh, Ellen Shuler, Nancy Kent, Harvey Powers, Donald Richards, Bruce Tinoco, Donald Shaw, Kym Grinnage, Woody Coates, Wray Dudley, Thomas Barlow, Jeff Hoyt, Frank Jones, Henry Arcand, Dirk Warner, Toni Henderson, Willie Redd and Bonnie Talbert are supervisors as defined by Section 2(11) of the Act. The parties further stipulated that these individuals exercise all or some of the following authority: discipline, grant time off, hire, fire, transfer, suspend, layoff, recall, promote, discharge, assign work, reward, responsibly direct or adjust the grievances of employees or effectively recommend such actions.

The parties stipulated that anchors Curt Autry, Julie Bragg, Amy Cara, Gene Cox, Jim Duncan, Andrew Freiden, Ben Hamlin, Mark Hubbard, Gene Lepley, Andrea McDaniel, Colleen Reilly, Sabrina Squire, Diane Walker and Ben Woods should be excluded from the unit. The parties also stipulated that project producer Bill Poveromo, Internet editor David Dunnavant, IT administrator Keith King, and broadcast operations supervisor/air Henry Arcand should be excluded from the unit.

The parties stipulated to the inclusion of technicians Dave Caddell, Glenn Henderson, Lawrence Jones, Dave Lewis, Tammy Reynolds, John Ulrich, Clarence Brown and Billy Hott, microwave control employee Craig Harrison, and technical services director Dave Scott. The parties further stipulated to the inclusion of the following A.M. production employees: production assistant (part-time) Matthew Harrington, director Victor Nash, production assistant (part-time) Tina Pleasants, production assistant (part-time) Jeffery Piper, assistant director Ben Milewczik,

production specialist Marsha Marrow, production specialist Verlicia Bullock, senior director Christa Palmer, and P.M. production employees graphic artist Stephanie Airington, director Andrew Gulden, production specialist Ann Kimmel, assistant director Jennifer Siragusa, production assistant (part-time) Ben Arthur, graphic artist Robert Edmonds, production assistant (part-time) Eddie Middleton, director Thomas Walker, production assistant (part-time) John Carmody, director (FOX) Michael Morris, production assistant (part-time) Jim Ray, production assistant (part-time) Jason Mullis, pre-production specialist Chris Berdoz, production assistant (part-time) Joshua Kennedy, and production specialist Tammy Millsaps.¹

POSITIONS OF THE PARTIES

The Petitioner contends that the petitioned-for unit is a technical or production unit as the employees have duties dealing with equipment, operations of the on-air shows, and support of the product through the technical aspect of editing and use of machinery and equipment. The Petitioner also contends that producers, assignment editors, studio services coordinator, senior producer commercial production, and the part-time production assistant/commercial producer should be excluded as they have supervisory authority in terms of assigning, directing and hiring employees. The Petitioner further contends that the reporters and maintenance engineers should be excluded from the unit, as they do not share a community of interest with employees in the petitioned-for unit. There are approximately 57 employees in the petitioned-for unit.

The Employer contends that the appropriate unit must include photographers, all desk assistants, assignment editor Robin Barrington, weekend assignment editor Aaron Gilcrest, all producers, studio services coordinator, senior producer commercial production, and the part-time production assistant/commercial producer, all technicians, and reporters. There are approximately 98 employees in the unit proposed by the Employer.

The Employer presented as its witnesses general manager Donald Richards, news director Nancy Kent, director of production services Donald Shaw, chief engineer Bruce Tinoco, and assistant news director Woody Coates. The Petitioner presented as its witness associate news director Jennifer Siragusa, who has been employed by the Employer for two and one-half years.

Based on the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the assignment editors, creative services managers (graphics and technical), desk assistants, directors, graphic artists, maintenance technicians, master control technicians, microwave control coordinator, news promotion specialist, pre-production specialist, photographers, production

¹ Attached to this Decision and Direction of Election is a three-page chart (1A-1C) containing the hierarchy of the television station's stipulated supervisors, news department and operations department. The Employer inadvertently omitted the following individuals from the chart: creative services manager/graphics Ray Maupin, creative services manager/technical Ray Blunt, news promotions specialist Steve Bays, and programming supervisor Joann Cardwell.

assistants, production specialists, programming supervisor, studio services coordinator, technical services director, and producers shall be included in the unit, and the senior producer commercial productions, part-time production assistant/commercial producer, and reporters shall be excluded from the unit.

THE EMPLOYER'S OPERATIONS

The Employer is in the business of commercial television and is a wholly-owned subsidiary of Jefferson Pilot Communications. The Employer serves just fewer than 500,000 households in the Richmond, Virginia area, which is the 60th largest market in the United States. There are approximately 157 total employees at the television station. Due to the relatively small size of the television station, employees may perform more than one function in the process of making a story, and are encouraged to interact with other departments in order to acquire skills that will help the station fulfill its mission. Generally, employees in the broadcast industry receive on-the-job training.

News director Nancy Kent determines the overall "look" of a particular show. Daily meetings are held at 9:30 a.m. and 2:45 p.m. to determine which spots are to be followed that day. Kent, the producers, photographers and reporters attend these meetings; the anchors attend the meeting if they are available. Because of the size of the market, each spot that is taped is run with almost no exception.

COMPENSATION, BENEFITS AND OTHER CONDITIONS OF EMPLOYMENT

The desk assistants, photographers, reporters, assignment editors, microwave control coordinator, master control technicians, maintenance technicians, directors, graphic artists, production assistants, production specialists, studio services coordinator, technical services director, senior producer commercial production and part-time production assistant/commercial producer are hourly paid employees. The creative services managers are salaried.

The desk assistants are part-time employees who work a total of 1500 hours per year; their salary range is from \$7.50 to \$11.00 per hour. The microwave control coordinator is a full-time employee and works 40 hours per week with some overtime. The maintenance technicians have a salary range from \$33,500 to \$44,000. They work 40 hours per week, with the exception of technicians Boze and Keiper who are part-time, and approximately 2-15 hours of overtime per month. The master control technicians have a salary range from \$27,000 to \$40,000. They work 40 hours per week and work approximately 2 to 10 hours of overtime per month. The master control technicians work shifts of 1:00 a.m. to 9:00 a.m., 4:30 a.m. to 12:30 p.m., 3:45 p.m. to 11:45 p.m., and 5:00 p.m. to 1:00 a.m. The master control technicians rotate on each shift except the 1:00 a.m. to 9:00 a.m. shift, which is fixed. The maintenance technicians work shifts of 4:45 a.m. to 12:45 p.m., 8:30 a.m. to 4:30 p.m., and 3:30 p.m. to 11:30 p.m. The part-time maintenance technicians' hours vary depending on need.

The graphic artists, pre-production specialist and production specialists have a salary range from \$18,000 to \$27,000. They work 40 hours per week and have very little overtime. The senior directors and assistant directors work 40 hours per week with some overtime. The senior directors have a salary range from \$27,000 to \$41,000, and the assistant directors' salaries range from \$21,000 to \$32,000 per year. The studio services coordinator earns \$44,000 per year, and the technical services director earns \$40,900 per year. Both the studio services coordinator and the technical services director work 40 hours per week with approximately 8-10 hours of overtime and work from 10:30 a.m. to 6:30 p.m. The senior producer commercial production earns \$32,000 per year and has approximately 10-15 hours of overtime per month. The part-time production assistant/commercial producer works part-time and earns \$15 per hour. Reporters and photographers work shifts of 3:00 a.m. to 1:00 p.m., 9:00 a.m. to 7:00 p.m. or 2:30 p.m. to 11:30 p.m., and sometimes more than 40 hours per week.

All of the anchors have personal service contracts, as do reporter Megan O'Donnell and senior reporter Michael Kulstad. The remaining reporters are at-will employees.

Employees do not punch a time clock or sign in. All employees, whether full-time or part-time, are eligible to receive vacation benefits. Vacation is decided on the basis of seniority and a formula, and employees receive two weeks of vacation per year. The Employer provides health insurance to employees, although part-time employees are not eligible for health benefits. There is only one life insurance plan available to all employees. The break room and restrooms are accessible and available to all employees, and there is equal access to parking. There is one employee handbook that covers employees working at the television station.

UNDISPUTED/STIPULATED JOB CLASSIFICATIONS

DIRECTORS

There are six directors who are responsible for floor directing, audio operation, camera operation, operation of the Chyron machine, and direction of the morning newscasts. The director works with the morning producer after the scripts have been prepared, and the show is in order. The director marks the scripts in collaboration with the producer, noting the camera shots, and graphics. The director gives duties to production assistants or production specialists (or a director or assistant director, depending on who is available) who are responsible for putting the over-the-shoulder (OTS) graphics into the Pinnacle computer. The senior director performs the same duties as a director, but at a higher level based on skill. Morning production supervisor Tom Barlow supervises the morning directors; evening directors are supervised by evening production supervisor Dirk Warner. The parties stipulate, and I find, that the directors properly are included in the unit.

GRAPHIC ARTISTS

The two graphic artists interact with the producers and reporters when graphics requested are specific to a news story. The graphic artists are familiar with a computer program called Photoshop, which allows graphic arts to be displayed on television. They are responsible for the implementation of on-air graphics. The graphic artists are supervised by evening production supervisor Warner. The parties stipulate, and I find, that graphic artists properly are included in the unit.

MASTER CONTROL TECHNICIANS

There are eight master control technicians who work in the tape center and the master control area of the station. They are primarily responsible for ensuring that the programming scheduled to air does so on time. They make sure that commercials are inserted at the proper place in programming and that the sub control room is put on the air at the proper time to broadcast the news. The master control technicians are responsible for recording commercials that come to the station via satellite or videotape. The master control technicians are responsible for placing material in the automation system so that it is played out at the proper time. The master control technicians are also responsible for loading videotapes into the recorders and ensuring that all news tapes play back during the newscast. In addition, they maintain a log of what aired and when; they also maintain a transmitter log verifying that the transmitter was making the proper amount of power continuously during a specific period of time. The master control technician is also responsible for verifying correct operation of tower lights once per day.

The master control technicians work rotating shifts to cover the master control and tape center, which are their primary areas. The maintenance technicians fill in by working in the master control or tape center. The tape center houses employees involved in loading tape. Master control technicians and maintenance technicians work in the newsroom to review logs and other elements related to the production of the broadcast. Master control technicians do not appear on the air at all. They interact with the desk assistants and the producers to make sure that they have the tapes that are needed for a newscast. The master control technicians also interact with the director in that the director uses the machine that the master control technicians load with the news stories. The master control technicians interact with the microwave control coordinator and share the use of microwave equipment that is necessary in master control. The master control technicians interact with the production employees and are responsible for adjusting the video level on studio cameras that the production assistants operate.

Chief engineer Bruce Tinoco supervises the master control technicians. The master control technicians, with the exception of Lewis, Ulrich and Hott, have a FCC radiotelephone operator's license. The FCC, and the Employer, do not presently require that technicians hold this license to operate a television transmitter. Aside from the maintenance technicians, there are no other employees that have this license. The master control technicians do not wear uniforms or any special safety equipment. There is no

specific degree, education or level of training that is required for hire as a master control technician. The parties stipulate, and I find, that master control technicians properly are included in the unit.

MICROWAVE CONTROL COORDINATOR

The microwave control coordinator works in the editing bays and is supervised by news administrative supervisor Talbert. The microwave control area is where external material comes into the station and is recorded. The parties stipulate, and I find, that the microwave control coordinator properly is included in the unit.

PRE-PRODUCTION SPECIALIST

The pre-production specialist, like the graphic artists, is responsible for on-air graphics. The pre-production specialist utilizes the Photoshop computer program. He has similar pay, hours and supervision as the graphic artists. The parties stipulate, and I find, that the pre-production specialist properly is included in the unit.

PHOTOGRAPHERS

There are 13 photographers who edit teases (internal promotional pieces), edit tape, edit voice overs, and listen to police scanners. Photographers spend 80-85% of their time away from the television station, together with reporters (who are discussed below). Because of the size of the station, photographers are often assigned to cover two stories in one day. Photographers do not fill in as anchors and do not have personal service contracts. Photographers appear on the air. Photographers prepare stories with just pictures and sound without the use of a reporter. It is not uncommon for photographers to produce voice over into sound, where the anchor speaks and then the interview appears in full. Photographers are regularly sent out independently on an assignment. This occurs regularly on the weekends, but is less frequent during the week. Photographers take pictures, make notes and write stories. Photographers put together natural sound pieces, which are a sequence of interviews done on site that tell a story without the need for reporter audio. They do not have offices and are supervised by chief photographer Redd. The parties stipulate, and I find, that the photographers properly are included in the unit.

PRODUCTION ASSISTANTS

The nine production assistants are part-time employees who assist with camera operation, audio operation, pre-production, floor directing and operation of the Chyron machine, a computer that allows names and titling to be superimposed on the screen. The production assistants interact with directors, production specialists, assistant directors, senior directors, the studio services coordinator, the technical services director, the senior producer commercial production, and the part-time production assistant/commercial producer. Depending on their shift, the production assistants are supervised by morning

supervisor Barlow or evening supervisor Warner. The parties stipulate, and I find, that the production assistants should be included in the unit.

PRODUCTION SPECIALISTS

The three production specialists are full-time employees who are experienced in all aspects of production, but do not possess the skills to direct a live news show. The production specialists interact with the production assistants. They have desks in the production area. Union witness Siragusa testified that the production specialists do not have any writing responsibilities. Like the production assistants, the production specialists are supervised, depending on their shift, by morning supervisor Barlow or evening supervisor Warner. The parties stipulate, and I find, that the production specialists properly are included in the unit.

TECHNICAL SERVICES DIRECTOR

The technical services director is a senior director who is involved with the 5:30 p.m. and 12:00 p.m. shows. The technical services director also has a limited role in providing technical advice to Shaw, the director of production services, regarding new equipment. He is in charge of directing the 12:00 p.m. and 5:30 p.m. shows and is responsible for all visual elements of those shows. The technical services director handles breaking news between the time the morning staff leaves at 12:30 p.m. and the evening staff arrives at 3:00 p.m. The technical services director does research for new items that the station may want to purchase and passes the information to Shaw. The technical services director works in studio A; when he is not in the studio, he is generally in the newsroom. Director of production services Shaw supervises him. He does not perform any supervisory functions and does not issue discipline to employees. The parties stipulate, and I find, that the technical services director properly is included in the unit.

UNIT SCOPE ISSUES

In the television and radio industry either an overall program department unit or separate units of (1) employees regularly and frequently appearing before the microphone, and (2) employees who do work preliminary to the broadcasts or telecasts may be appropriate. Radio & Television Station WFLA, 120 NLRB 903 (1958). Consistent with this principle, employees directly involved in the staging and presentation of studio productions, including both those who perform on radio and television programs and those who contribute directly to such performances, constitute essentially a production and program unit. Their functional interrelationships creates a substantial community of interest and renders the combined unit appropriate. WTAR Radio TV Corp., 168 NLRB 976 (1968).

MAINTENANCE TECHNICIANS

The seven maintenance technicians are involved in installing and repairing new equipment and systems, running cable, putting connectors on, and ensuring equipment operates properly. The technicians work with production switchers, cameras, audio boards, remote trucks, live trucks, field production trucks, master control switchers and transmitters. They drive trucks to remote locations for a broadcast, raise the antenna and align the shot with the station. They set up necessary equipment, whether audio, video or cameras, to facilitate the remote broadcast. The technicians remain in contact with the control room to ensure the transmitter is on at the proper time. There is a vehicle specifically designed for electronic field production that the maintenance technicians staff use for events such as telethons, town meetings, marathons or elections. Maintenance technicians work in the field with remote broadcast news trucks covering live events. The maintenance technicians are involved in remote tape operations, as are the master control technicians, who are well-trained in tape operations.

When working in the station, the maintenance technicians are primarily performing troubleshooting functions in areas where equipment is found, such as the sub control and graphics areas. The maintenance technicians spend 75% of their day in either the sub control or master control areas. The maintenance technicians are responsible for filling in to cover master control and the tape center, as needed. Many of the maintenance technicians came from the master control area and can step in and perform tape operations and the on-air switching in master control for the news. The maintenance technicians can also substitute for the microwave coordinator when the microwave coordinator is unavailable. This happens infrequently. The maintenance technicians are not responsible for any type of reporting. The maintenance technicians have a desk with a telephone and computer services located in the shop area near the tape center. The maintenance technicians check in with the shop when they arrive in the morning.

Many of the maintenance technicians, including Pittman, Swisher and Ogburn, began their career in master control and are familiar with the duties of master control operators. The maintenance technicians install new equipment for the master control operators and sometimes train the master control operators on the new systems and equipment. Senior technician Ron Bolin has a shop area that is structured like an office with a desk. He performs repair work of the ENG (electronic news gathering) equipment, such as news cameras. Bolin has the same duties as the other maintenance technicians, but has been trained and possesses specific skills for repairing cameras and the tape machine.

Wray Dudley, systems maintenance supervisor, supervises the maintenance technicians. The maintenance technicians, with the exception of Wagner and Boze, have a FCC radiotelephone operator's license. The FCC, and the Employer, do not presently require that technicians hold this license to operate a television transmitter. Aside from the master control technicians, there are no other employees that have this license. The maintenance technicians do not wear uniforms or any special safety equipment. There is

no specific degree, education or level of training that is required for hire as a maintenance technician.

In seeking to exclude the maintenance technicians from the unit, the Union points to the fact that they do not work in production activities or install and service equipment. These factors do not provide a sufficient basis for their exclusion. The record reveals a great deal of interchange between the maintenance technicians and the master control technicians. When working in the station, the maintenance technicians spend a significant portion of their time in the sub control or master control areas. Accordingly, I find that the maintenance technicians must be included in the unit.

REPORTERS

The Employer's 13 reporters are assigned specific areas to watch for possible news stories. When they begin their shift, they listen to police scanners and call jurisdictions to determine whether anything happened in the area that they cover. The reporters gather information, which is brought to the morning meeting also attended by the photographers and producers. During the morning meeting, those present determine which stories will be covered that day. The reporters and photographers are paired. Each pair shoots pieces together and spend 80-85% of their time away from the station. The pairing of reporter and photographer is generally done as a result of their choice, in collaboration with the assignment editor. If there is a question regarding a pairing, the assignment editor or the chief photographer determines who will work together as a pair. Assistant news director Woody Coates supervises the reporters.

Reporter O'Donnell is a five-day per week anchor for the Fox News Show and spends four minutes on-air each day. Reporter O'Donnell shoots, writes and edits material for the "Hometown Sports" feature. She spends 45 minutes to one hour preparing to appear on television. Reporter Dickerson serves as an anchor for the 12:00 p.m. newscast and spends 80-85% of his day as a reporter. He spends approximately one hour preparing to appear on television. Reporter Kulstad is a senior reporter. Union witness Siragusa testified that Kulstad fills in for weekend anchor Julie Bragg. Reporter Sullivan serves as a sports anchor on Saturdays and Sundays and works three to four days per week as a reporter. Union witness Siragusa testified that Sullivan spends half of the week doing the "Hometown Sports" feature.

Except for reporters O'Donnell, Dickerson, Sullivan and Kulstad, reporters average three and one-half to four minutes on-air during a given day. If a reporter prepares a live shot for the 10:00 p.m. newscast, there could be an additional minute and thirty seconds of time added to his or her on-air time. Reporters, unlike anchors, generally do not have personal service contracts, with the exception of reporters O'Donnell and Kulstad. The remaining reporters are at-will employees. On occasion, reporters serve as anchors, but this happens fewer than 15 times per year.

The Union argues that the reporters should be excluded from the unit as they are not technical (production) employees, but are on-air talent who appropriately may be

excluded from the unit sought. The Employer contends that the reporters share a close community of interest with photographers, producers and desk assistants, and should be included in the unit.

In Hampton Roads Broadcasting Corp., 100 NLRB 238, 239 (1952), the Board found “that when an employee regularly appears before the microphone, it is that factor, alone, and not his other duties, which gives rise to the community of interest which warrants his inclusion in the announcers’ unit.” The Board reasoned that on-air employees possess special talent such as “[v]oice, diction, personality, the ability to persuade through the spoken word – these are the tests by which announcers are judged, and these are qualifications wholly unrelated to the jobs performed by...others.” Id. In Pulitzer Publishing Co., 203 NLRB 639, 641 (1973), the Board noted the distinction between newsmen who do not appear on television and announcers or broadcasters who are generally considered talent. The Board found appropriate a unit of all staff newsmen whose “employment is for the principal purpose of delivering news on the air, on television and/or radio....” Id.

The decision regarding reporters is a close issue. Employees who regularly appear before the microphone constitute a homogeneous, readily identifiable cohesive group appropriate as a unit for collective bargaining. Hampton Roads Broadcasting Corp., 100 NLRB at 239. Here, the Employer’s reporters appear on-air on a regular basis and spend approximately three and one-half to four minutes on-air during a given day. There is no evidence that reporters must possess any specific degree, level of education or certification; most of the training received by employees in the broadcast industry is received on the job.

Based on all the foregoing, I find that the reporters regularly serve as on-air talent during the newscast and therefore may be excluded from the petitioned-for “off-air” unit.²

SUPERVISORY ISSUES

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

² KFDA-TV Channel 10, 308 NLRB 667 (1992), cited by the Employer, is distinguishable. There, the Union sought to include the news reporters and reporter/anchors in the petitioned-for unit with production employees. Had the Union in the instant case sought to include the reporters, as in KFDA-TV, they could be included in the unit. Here, however, the Union has sought to exclude on-air employees.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. Mississippi Power Co., 328 NLRB 965, 969 (1999), citing Ohio Power v. NLRB, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677 (1985). As pointed-out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also Quadrex Environmental Co., 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. Kentucky River Community Care, Inc., ___ U.S. ___ (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. New Fern Restorium Co., 175 NLRB 871 (1969).

ASSIGNMENT EDITORS

There are two assignment editors who roll tapes for feeds, edit teases, edit tape, edit voice overs, and listen to police scanners. They have additional dispatch functions over the desk assistants. The assignment editors are generally desk assistants or former photographers. News administrative supervisor Bonnie Talbert supervises the part-time weekend assignment editor and chief photographer Willie Redd supervises the assignment editor. They do not have the ability to authorize overtime. The assignment editors are part of a team, including the reporters, photographers, producers, Kent and Coates, that decide whether a story will be carried further.

The part-time weekend assignment editor fills in when tape editors are needed, reads the wires on the weekend, and fills in for the traffic reporter. The part-time weekend assignment editor does not have any authority over other employees; he is not involved in the disciplinary process and has never given oral warnings to employees. When working weekends, the assignment editor collaborates with the producer, reporter and photographer to decide what work should be done and whether a crew should be sent

to a scene. The weekend assignment editor works in the editing bays and the microwave control area.

The assignment editor works from 2:00 p.m. to 11:30 p.m. She shoots, writes and edits the promotional spot that provides a preview of the upcoming newscast. She produces material that runs during the newscast and functions as a dispatcher, moving crews from one location to another. The assignment editor is not involved in the disciplinary process. She uses the same camera as the photographers and works with the producers in the newsroom. The assignment editor also works in microwave control and performs the same job functions that are performed by the microwave control coordinator when his shift ends. The assignment editor is a former photographer. The assignment editor, reporters and photographers work together to determine the pairing of reporters and photographers that will cover a story. Although chief photographer Redd decides which reporter/photographer pair will cover a story, the assignment editor also has an obligation, in some instances, to do so. The assignment editor does not consider the skills or the strengths and weaknesses of photographers and reporters when sending out teams. In dispatching reporters and photographers, the assignment editor considers what assignments the reporters and photographers are currently working on.

In its brief, the Union argues that the assignment editors are supervisors since they assign and direct the work of other employees and exercise independent judgment in doing so. The Employer argues that in order to find supervisory status, the Board must “distinguish between the exercise of independent judgment and the assignment of routine instructions.” KGW-TV, 329 NLRB No. 39, slip op. at 4 (1999).

The assignment editors perform the same function as desk assistants, a job classification sought by the Union, but they have additional dispatch functions. The assignment editors do not have authority to authorize overtime, are not involved in the disciplinary process, and do not issue oral warnings to employees. The part-time weekend assignment editor reports information that he reads on the wires or hears on the police scanner, and discusses it with the producer, reporter and photographer to decide what work should be done and whether a crew should be sent to cover a scene. The staff on the weekend is much smaller than the staff during the week. The assignment editor works as part of a team with reporters, photographers, producers, Kent and Coates, to determine how far a story will be pursued.

As noted above, the record testimony reveals that the decisions of the assignment editor and part-time weekend assignment editor are made in conjunction with the producers, reporters, photographers and in most cases Kent and Coates. Based on the record evidence, I find the Union has not established that the assignment editors are supervisors within the meaning of the Act. Accordingly, they are included in the unit.

CREATIVE SERVICES MANAGERS (GRAPHICS and TECHNICAL)

There are two creative services managers. The creative services manager/graphics is in charge of larger scale projects involving graphics that are being

developed on an on going basis. The creative services manager/graphics is also involved in graphics changes that are made to the news show. He receives instructions on the direction of the show from news director Kent and gathers information and develops ideas. Those ideas are presented to Shaw, the director of production services. The creative services manager/graphics discusses a schedule for completing the work with Shaw. He works in the post room, next to the graphics area, and has his own personal computer in that location. The creative services manager/graphics spends 60% of his time interacting with the graphic artists on their computers, giving suggestions or new direction.

The creative services manager/technical deals with photography and develops ongoing promotions and imaging for the news. He interacts with the anchors, Kent and Frank Jones, on ideas for segments within the show that need to be highlighted. The creative services manager/technical is a skilled photographer and lighting expert. He has been instrumental in the set elements and changes to the look.

Shaw testified that the creative services manager/graphics and the creative services manager/technical do not have supervisory authority, are not involved in issuing discipline to employees, and do not have the authority to direct the work of other employees. The Union's witness testified that the creative services manager/graphics and the creative services manager/technical are in charge of the appearance of the studio and the on-air graphics and oversee the graphics production and look. The creative services managers work with the graphic artists and periodically checks the status of the work of the graphic artists.

The Union contends that the creative services managers of graphics and technical direct the work of the graphic artists and other employees by giving them instruction in carrying out assignments. The Employer contends that the creative services managers are a part of the production and presentation of broadcasts and share a community of interest with other employees in the unit.

In arguing that the creative services managers should be excluded from the unit, the Union notes that the creative services managers are the only employees at issue who are salaried. The Union further notes that the creative services managers have their own offices. These facts, however, are insufficient to establish that these individuals are supervisors. The creative services managers meet with the director of production services to determine the availability of the graphic artists in implementing graphics and, the record testimony reveals that they do not have supervisory authority and are not involved in issuing discipline. Based on the record, there is insufficient evidence that the creative services managers have supervisory authority over other employees. I find that they should be included in the unit.

DESK ASSISTANTS

There are 13 part-time desk assistants. The desk assistants assist in the production of the newscast by cutting tape, listening to police scanners to discover new stories,

moving tape from one location to another, and cutting teases (internal promotion pieces) that are utilized for promotional purposes within newscast. The desk assistants roll feeds that come in from tape feed, crews out on a scene or a franchise source, edit pieces for photographers or reporters, and schedule appointments for interviews. On occasion, the desk assistants write script or produce material that will be used in the production of the broadcast from information received as a result of listening to the police scanner. Many employees begin as desk assistants and move to other positions within the television station. Of the eleven producers employed by the Employer, seven began as desk assistant. Desk assistants work with producers who demonstrate how the show is produced and how various elements fit into the show. The desk assistants work in the editing bays, as do the microwave coordinator, producers and photographers. They are part-time employees, do not have offices and are supervised by news administrative supervisor Talbert.

Desk assistant Patricia Plaster assists with the production of stories, finds tape in the archives, queues tape, listens to police scanners, takes telephone calls for the "12 On Your Side" phone line, and works with anchor Gene Lepley and project producer Bill Poveromo. Desk assistant Plaster spends 15% of her time doing "12 On Your Side" functions and does not perform any supervisory functions. Union witness Siragusa testified that Plaster situates the "12 On Your Side" volunteers at the telephone bank and instructs them. Desk assistant Ruth Savage spends the bulk of her time engaged in conversation with and taking information from the public. Desk assistant Savage spends 90-100% of her time doing "12 On Your Side" work. Desk assistant Magan Young edits tape and performs the same functions as other desk assistants.

The Union contends that desk assistants Plaster and Savage in the past have been designated as supervisors, and that Plaster, Savage and Young should be excluded because they perform non-technical jobs. The Employer asserts that desk assistants Plaster, Savage and Young perform the same functions as other desk assistants and should be included in the unit.

The sole evidence of the supervisory status of desk assistant Plaster was testimony from union witness Siragusa that Plaster works with non-employee volunteers and instructs them as to when they will be on camera. The witness was unfamiliar with desk assistant Savage and presented no testimony on desk assistant Young. I find that the evidence is insufficient to establish that these desk assistants are supervisors as defined in the Act. Accordingly, they are included in the unit.

NEWS PROMOTIONS SPECIALIST

The news promotions specialist is responsible for news promotions during the day. The news promotions specialist is given an idea and produces a product that requires a faster turnaround time than the creative services manager/technical. The news promotions specialist shoots, edits and assists with the writing of "topicals," recurring promotions that are created daily and are current for that day. The news promotion specialist uses equipment that is used in production and uses the DVC Pro camera. He

uses editing equipment and more sophisticated equipment for posting and editing. The news promotion specialist interacts with employees in the tape center and gives the topicals to the tape room operator for dubbing or recording to the server for air.

There is insufficient evidence in the record that the news promotions specialist is a supervisor as defined in the Act. Therefore, I find that the news promotions specialist must be included in the unit.

PRODUCERS

There are 10 producers who decide the order in which stories will run during the newscast. The producers sit in the booth with the director during production of the show and discuss time with the director. The producer interacts with the director and discusses what camera shots they would like to see. The producer and director spend approximately 80% of their time working together preparing for a newscast. The producer works on the script and necessary changes, talks to reporters about where they need to be, and ensures remotes are correct. The director makes sure visual elements are in place. The producers have been trained as desk assistants and fill in for desk assistants in emergency situations. This occurs about 5-10% of the time. The Employer attempts to promote morning desk assistants to producers. The morning or a.m. producers perform more tape editing functions because of the size of the staff. Photographers, reporters and assignment editors also perform tape editing functions. The weekend producer has more assignment desk responsibilities because fewer staff are on duty. Producers roll tapes, take down feeds and edit their own teases. Producers spend 40-50% of their time monitoring police radios and answering telephone calls. They work as part of a group, including reporters, photographers, the chief photographer, assignment editors, and the news directors, to determine whether a story will be pursued.

Union witness Siragusa testified that producers work with reporters and photographers to determine which stories will be covered. If a reporter is not sure of a direction for a particular story, the producer will assist him or her. Siragusa testified that producers have the final say on how a story is presented, but not necessarily on the content. Producers will rewrite or "tweak" the story to fit in a smaller block of time. During a newscast, the producer deals with the on-air talent and instructs the talent, reporters and other employees on what needs to be done. The producer determines whether a shot will be done live or taped. Executive producer Frank Jones supervises the producers. The producers do not have the authority to assign work and are not involved in the disciplinary process. Employer witness Kent testified that producers may report an incident, but have no final say in whether an individual is disciplined. Kent decides whether discipline will be issued.

The Union contends that the producers are supervisors based on their exercise of judgment and discretion in assigning and directing the work of others. The Employer contends that the producers are not supervisors, and that they share a close community of interest with the employees in the unit.

The producers work as a team with various employees to determine the content and production of a newscast. The producers attend the morning meeting with reporters and photographers. The news director determines the overall look of a particular show, and the executive producer determines which spots will run. At that point, the producers merely determine the arrangement of the stories for the show. The producers do not work as a separate unit, but are part of a group of employees, including directors, graphic artists, reporters, photographers and desk assistants, that is responsible for the production of the broadcast of the news. Although Union witness Siragusa testified that the producers “instruct” talent, she provided no concrete examples of any such instruction, and did not explain what she meant by that term. The Union has not met its burden of establishing that the producers exercise any of the statutory indicia of supervisory status, including the ability to responsibly direct employees. See NLRB v. Kentucky River Community Care, Inc., ___ U.S. ___ (2001). Accordingly, I find that the producers are not supervisors within the meaning of the Act and must be included in the unit.

PROGRAMMING SUPERVISOR

The programming supervisor is in charge of all programming content specific to long form programming. She deals with NBC to determine show content and scheduling changes, and ensures that the daily log is current so that when commercials are sold, the station will know where to place them. The programming supervisor also takes viewer calls and complaints. She is in charge of producing the Children’s Miracle Network broadcast. Her work area is in the creative services area, and she has an office in which she spends 70% of her time. The programming supervisor interacts with technician Hott, who is responsible for recording all of the shows and long form programs that the programming supervisor schedules. The technician ensures that the programming supervisor is aware of the programs, whether they are recorded correctly, the exact times, and if the correct information was received from NBC or other locations. The technician also informs the programming supervisor that the program is ready to air. There is insufficient evidence that the programming supervisor is a supervisor as defined in the Act, and I find that she must be included in the unit.

STUDIO SERVICES COORDINATOR

The studio services coordinator works on production crews, directs and operates cameras, does audio operator work, and works on studio activities that are related to the production process. He is responsible for the microphones, making sure the light levels are correct, ensuring broken equipment is reported to the maintenance department, and filling in on specific shows. He regularly works on the 5:00 p.m., 5:30 p.m., and 6:00 p.m. shows. When filling in, the studio services director works as a floor director, camera or audio operator. The studio services coordinator assists and fills in when there are schedule changes based on illness or other reasons. The studio services coordinator works in studio A; when he is not in the studio, he is generally in the newsroom. He is supervised by director of production services Donald Shaw and has his own office off of the production area. He is not involved in the process of evaluating employees, does not determine whether or what type of discipline should be issued to an employee, and does

not issue warnings to employees. He does not provide time off, vacation or sick time to employees. Union witness Siragusa testified that if employees are running late or are sick and cannot contact their immediate supervisor, they call the studio services director and he passes the information on to someone else.

The Union seeks to exclude the studio services coordinator by maintaining that he performs an “administrative” function and previously served as a supervisor. He frequently interacts with production assistants regarding audio and video functions. Despite the Union’s assertion that the studio services coordinator grants time off, there is no evidence that this is the case. Union witness Siragusa testified that she was unaware of any role the studio services coordinator had regarding approval of time off. In addition, she testified that if employees could not reach their immediate supervisor regarding lateness or absence, the studio services coordinator passes the information on to someone else. There is insufficient evidence that the studio services coordinator performs any supervisory functions. Accordingly, I find that he must be included in the unit found appropriate.

SENIOR PRODUCER COMMERCIAL PRODUCTIONS PART-TIME PRODUCTION ASSISTANT/COMMERCIAL PRODUCER

The senior producer commercial production and the part-time production assistant/commercial producer work on the second floor of the station and utilize studio A during their productions. The senior producer commercial production produces, shoots, edits, and writes all the commercial content that is produced in-house. Commercial production involves producing a specific commercial message for a client to be played on air. The senior producer commercial production or the part-time production assistant/commercial producer meets with the client and the sales representative in order to determine what the client wants to say and sell. They then write a script and, after receiving client approval, schedule a time to shoot the piece. Union witness Siragusa testified that the senior producer for commercial production hires either employees willing to perform extra work or outside freelancers to assist with creating commercials. In addition, the part-time production assistant/commercial producer sometimes hires talent to appear in commercials. The part-time production assistant/commercial producer writes, schedules, shoots and edits commercial productions. She works anywhere from five to fifteen hours per week, depending on the project, but on average she works two to three hours per week. Director of production services Shaw supervises the senior producer commercial production and the part-time assistant/commercial producer.

The Union seeks to exclude the senior producer for commercial production and the part-time production assistant/commercial producer, asserting that they have extensive discretion in managing production of commercials, and that they possess and have exercised hiring authority. The Employer asserts that these employees should be included in the unit based on their interaction with production assistants and other employees under the supervision of the production supervisors.

The record testimony reveals that the senior producer commercial productions and the part-time production assistant/commercial producer, as a regular responsibility of their jobs, hire outside freelance employees, or employees of the station who wish to perform extra work.³ In Union Square Theatre Management, Inc., 326 NLRB 70, 72 (1998) (quoting Detroit College of Business, 296 NLRB 318, 321 (1989)), the Board noted that “[w]here, however, the performance of supervisory functions is “part and parcel of the individual’s ‘primary work product’ rather than an ancillary part of their duties,” the Board has concluded that the individual is a 2(11) supervisor. The unrefuted testimony of union witness Siragusa established that the senior producer commercial production and the part-time production assistant/commercial producer hire outside freelance individuals or station employees to assist with commercials. This function is “part and parcel” of their regular duties. For this reason, I find that the senior producer commercial production and the part-time production assistant/commercial producer are supervisors and exclude them from the unit.⁴

JAMES HOGE

The Union contends that master control technician James Hoge is a laid off employee who has a reasonable expectancy of recall. The Employer asserts that Hoge’s position has been eliminated, and that he has been terminated, not laid off. There is insufficient evidence to determine the eligibility of master control technician Hoge; hence, I shall permit him to vote subject to challenge.

CONCLUSION AS TO THE UNIT

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time desk assistants, assignment editor, part-time weekend assignment editor, creative services managers, graphic artists, maintenance technicians, master control technicians, directors, senior directors, assistant directors, microwave control coordinator, news promotions specialist, photographers, production assistants, production specialists, pre-production specialists, programming supervisor, studio services coordinator, technical services director, and producers, but excluding anchors, project producer, Internet editor, reporters, senior producer commercial production, part-time production assistant/commercial producer, broadcast operations supervisor/air, sales, traffic, programming, marketing, G&A (general and administrative), guards and supervisors as defined in the Act.

³ Station employees who are hired are paid at a freelance rate separate from the wage rate they receive for their normal duties.

⁴ I find it unnecessary to address the Union’s assertion that the part-time production assistant/commercial producer should be excluded because she is not a regular part-time employee.

At the hearing, the Union stated its willingness to proceed to an election in any unit found appropriate. Since the unit that I find appropriate is broader than the petitioned for unit, the Union is granted fourteen (14) days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Union not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) 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 those in the unit(s) 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. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States 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, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began 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 **COMMUNICATION WORKERS OF AMERICA, LOCAL 2201**.

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their 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 Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the

Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely 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, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **June 22, 2001**.

Dated June 8, 2001

at Baltimore, Maryland

/s/ WAYNE R. GOLD
Regional Director, Region 5



177-8520
420-2900
440-1760-0500