

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

NATIONAL BROADCASTING COMPANY, INC.¹
Employer

and

Case No. 5-RC-15260

**AMERICAN FEDERATION OF TELEVISION
AND RADIO ARTISTS, WASHINGTON-BALTIMORE
LOCAL, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called 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. Upon the entire record,² the Regional Director finds:

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.

¹ The name of the Employer appears as amended at the hearing.

² Post-hearing briefs filed by the Employer and the Petitioner were duly considered.

5. The National Broadcasting Company, Inc., (hereinafter "the Employer" or "NBC") is a Delaware corporation with an office and place of business in Washington, D.C. engaged in providing broadcasting, cable and Internet operations. During the past twelve (12) months, a representative period, the Employer derived gross revenues in excess of \$100,000. During the same period, the Employer purchased and received goods and materials valued in excess of \$5,000 directly from points located outside the District of Columbia. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act.

On August 10, 2001, the American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO, (hereinafter "the Petitioner") filed the petition in this case seeking a self-determination (*Armour Globe*) election in which the petitioned-for employees may choose whether to be represented as part of the existing bargaining unit of NBC employees. By its petition, the Petitioner seeks to represent "all non-represented, non-supervisory employees involved in news gathering, including but not limited to editorial broadcast journalists (formerly known as writers and editors), producers (including field producers), assignment desk editors, researchers and librarians" employed at the Employer's Washington network news bureau, but excluding "guards and supervisors as defined in the Act." At the hearing, the Petitioner amended the petition to exclude representation of employees jointly employed by either NBC and MSNBC.com and/or MSNBC cable. The voting group sought by the Petitioner consists of approximately 30 employees. The Petitioner is willing to proceed to an election in any voting group deemed appropriate on this record by the undersigned Regional

Director.³ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

The Employer contends that the instant petition is inappropriate because: (1) Petitioner is contractually precluded from seeking to represent the petitioned-for employees; (2) the unit sought is not an appropriate residual unit; (3) the petition would include employees not sharing any community of interest with employees in the existing bargaining unit represented by Petitioner; and (4) certain of the petitioned-for employees are supervisory and/or managerial. Based on the foregoing reasons, the Employer did not set forth any alternate appropriate voting group and filed a Motion to Dismiss the Petition in its entirety.⁴

HISTORY OF COLLECTIVE BARGAINING

On December 2, 1971 in Case 5-RC-7856, Petitioner was certified as the exclusive collective bargaining representative of "all radio and television news writers, the film assignment editor, news assistants and copy boys" employed by the Employer in Washington, D.C. The parties stipulated that they have been engaged in a collective bargaining relationship for the past 30 years, and the record reflects that they have concluded successive collective-bargaining agreements for at least the past 17 years. The most recent collective-bargaining agreement is in effect from October 1, 1996 through September 30, 2004, and defines the current bargaining unit as "all network television Editorial Broadcast Journalists (formerly referred to as Newswriters and News Editors), the Electronic Journalism Assignment Editor, News Assistants and Desk Assistants" employed on staff at the Employer's Washington network news bureau.

³ The Petitioner has administratively advised the Region of its willingness to proceed to an election in any unit found appropriate.

⁴ The Employer's Motion is denied.

POSITIONS OF THE PARTIES

The Petitioner asserts that by its petition it seeks to represent a proper residual voting group of non-represented, non-supervisory employees involved in the news gathering function at the Employer's Washington, D.C. News Bureau in an *Armour-Globe* self-determination election. The specific petitioned-for job classifications include producers, assignment desk employees, and researchers/librarians. The Petitioner asserts that producers and assignment desk employees are neither supervisory nor managerial employees, and that all petitioned-for employee groups share a community of interest with the bargaining unit employees currently represented by it. The Petitioner contends that the Regional Director may not consider the side letter agreement relied on by the Employer as a contract bar to an election because by its terms it is non-citable. Further, the Petitioner argues that the side letter agreement is not an express promise not to represent the petitioned-for employees, nor does it constitute any waiver of the Petitioner's right to represent them.

The Employer contends that the Petitioner waived its right to seek representation of the petitioned-for employees in the parties' side letter agreement #7, effective October 1, 1996 and adopted October 1, 2000. A copy of the side letter is attached hereto as Appendix A. The side letter agreement is a part of the current collective-bargaining agreement, which expires September 30, 2004. The Employer argues that the language in the side letter agreement, which assigns representational status to 50% of new hires assigned to perform bargaining unit duties described in Article I of the collective-bargaining agreement, bars the Petitioner from seeking to represent the remaining 50% of new hires for the duration of the collective-bargaining agreement. The Employer further contends that even if the side letter agreement is determined not to bar processing of the instant petition, the petition fails since it does not seek a true residual

unit of all non-represented employees enjoying a community of interest with existing bargaining unit employees, and because the residual unit must include all unrepresented employees of the type covered by the petition. Finally, the Employer asserts that the Petitioner improperly seeks to represent statutory supervisors and managerial employees.

STIPULATED EXCLUSIONS⁵

The parties stipulated at the hearing that Senior Vice-president and Bureau Chief Timothy Russert, Deputy Bureau Chiefs Brady Daniels and Wendla Wilkinson, Director of News Engineering and Operations Richard Phillips, Nightly News Manager Gena Fitzgerald, Today Show Manager Susan Lasalla, Manager of Information Services Marcie Rickun, Manager of Technical Operations Susan Vitorovich, Network Operations Manager Michael Benetato, Senior Production Managers Lessandra Machamer and Elizabeth Nevins, Production Manager Ronald Thornton, and News Desk Manager Mary Dorman are supervisors as defined in Section 2(11) of the Act.

STIPULATED INCLUSIONS

The parties entered into several critical stipulations of fact concerning job functions performed by the petitioned-for assignment desk editors and producers, and the relationship between those job functions and the job functions performed by editorial broadcast journalists (EBJs) in the existing bargaining unit. The parties agreed that the petitioned-for assignment desk employees perform many of the same duties performed by bargaining unit employees who work on the assignment desk. It was further agreed that the petitioned-for producers perform the same duties as EBJs currently represented by the Petitioner.

⁵ The parties further stipulated that employees Barbara Fant and Lisa Havlovitz are properly excluded from any voting group found appropriate.

At the end of the hearing, the parties entered into and proffered several stipulations contingent upon the Regional Director not making any determination with regard to the alleged joint employer relationship between the Employer and contracting companies STATCO and Staffmark.⁶ Thus, the parties agreed that:

- Should it be determined that the petitioned-for producers are not statutory supervisors and/or managerial employees, and that the producers share a sufficient community of interest with the represented EBJs, that employee Jake Gibson should be appropriately included in the unit.
- Should it be determined that assignment managers/editors are not supervisors and/or managerial employees, and have a sufficient community of interest with any appropriate unit, that employees Christina McGinty and Adam Nixon should appropriately be included in the unit.
- Should it be determined that researchers/librarians either individually or as a group have a sufficient community of interest in any appropriate unit, that employees Kimberly Davidson, Chris Donovan and Jennifer Rahm should be included in the unit.

DISPUTED ISSUES

- Does the side letter contained in the parties' current collective-bargaining agreement, which assigns representation status only to half of new hires performing bargaining unit work, constitute a bar to the instant petition?
- Are the petitioned-for assignment desk editors and producers statutory supervisors and/or managerial employees? If not, do they share a sufficient community of interest with employees in the existing bargaining unit?
- Does the petition seek an election among an appropriate residual unit of employees?
- Do the petitioned-for researchers/librarians share a sufficient community of interest with employees in the existing bargaining unit and/or the petitioned-for unit, or should they be excluded as office clerical employees?

⁶ The stipulations were received with the parties' full knowledge that the stipulations could not influence the decision making process on this record, nor in any way restrain the Regional Director's exercise of his unencumbered authority and discretion to make necessary factual and legal determinations for the resolution of issues presented by this petition.

THE SIDE LETTER

The record reflects that the Employer and Petitioner entered into a side letter agreement effective October 1, 1996, which was adopted and incorporated into the current collective-bargaining agreement on October 1, 2000, in which it is agreed:

"If the Company hires individuals assigned to primarily perform the duties listed in Article I of this Agreement, a number equal to 50% of those hired after the date of ratification of this Agreement shall be employed as AFTRA-represented Editorial Broadcast Journalists under this Agreement. . . . The parties agree that the negotiations and discussions with respect to the contractual provisions covering duties under this Agreement and this Sideletter shall be non-citable and without prejudice to the contractual positions of the parties. Furthermore, the employment of any individual pursuant to this Sideletter is without prejudice to the contractual positions of the parties.⁷

The bargaining unit work described in Article I of the collective-bargaining agreement sets forth the duties of Editorial Broadcast Journalists, News Assistants and Desk Assistants.⁸

The Employer asserts that the above-described agreement bars the Petitioner from seeking to represent the petitioned-for assignment desk editors and producers. Board law

⁷ The Hearing Officer overruled the objections of Petitioner's counsel that the side letter "by its terms" was non-citable by the parties, and admitted the agreement into the record. Contrary to the Petitioner's argument, the side letter specifically states only that "*negotiations and discussions*" pertaining to both the collective bargaining agreement and the side letter, were non-citable. Since the Employer and Petitioner agreed that the terms of the agreement included that the negotiations and discussions leading to the side agreement were "non-citable", there is no record evidence other than the side letter agreement itself that relates to this issue.

⁸ "The duties of television Editorial Broadcast Journalists may include writing continuity for live or recorded (film or tape) news, special events and other actuality programs, produced from Washington, D.C. by the Network News Department of the Company (excluding news documentary programs and news magazine shows), including any systems existing or yet to be developed, for the recording and/or playback of sound or picture, whether digital, disc, computer generated or otherwise, and shall be treated throughout this Agreement as though it were "film" or "tape". The term "write" shall include writing, rewriting, condensing, processing, editing and otherwise treating news, feature and other material and correlating news sources, such as teletype, newspapers, magazines, personal interviews, etc.

Duties of Editorial Broadcast Journalists may also include "desk operations". Desk duties include, but shall not be limited to, participating in future planning of news coverage, making camera, reporting and writing assignments, checking out stories, directing bulletin coverage, editing news material, supervising newsroom activities under the supervision or direction of the Bureau Chief, Deputy Bureau Chief or other Managers of the News Department.

In addition, the duties of Editorial Broadcast Journalists may also include producing (including field producing), previewing and/or screening recording (film and tape) news material, supervising its editing and taking any notes (including the creation of a log) with respect to such material."

recognizes the validity of an agreement not to represent groups of employees and will give effect to such an agreement provided it meets specified criteria. A contract in which a union agrees not to seek representation of certain employees bars a petition by that union for the specified employees during the life of the agreement. Briggs Indiana, 63 NLRB 1270 (1945). The agreement not to represent a group of employees need not be confined to the four corners of the collective-bargaining agreement, but the agreement must contain an express promise by the Petitioner to refrain from seeking representation of the employees in question. Lexington House, 328 NLRB 894 (1999) clarifying Cessna Aircraft Co., 123 NLRB 855 (1959). Importantly, however, a promise not to represent may not be implied from a mere unit exclusion. Budd Co., 154 NLRB 421 (1965).

Based on the record evidence, I find that the side letter agreement does not constitute an express promise by Petitioner to refrain from seeking to represent employees performing bargaining unit work. The language in the agreement only states that fifty percent of employees hired to perform bargaining unit work will be represented by the Petitioner. There is no explicit mention of the remaining fifty percent of employees hired to perform duties outlined in the collective bargaining unit, let alone any express statement of the Petitioner's intentions with regard to these new hires. The language of the side letter agreement requires the reader to glean by implication how the parties intended to treat the remaining fifty percent of new hires. Thus, there is no clear or express promise in the side letter that the Petitioner will not seek to represent the employees not mentioned in the agreement. Indeed, it is at least as permissible a reading of the side letter that the remaining fifty percent of new hires simply would not automatically be included in the unit, i.e., a mere unit exclusion. As the language in the side letter agreement does not expressly state that the Petitioner agrees not to seek to represent the remaining fifty percent

of new hires performing bargaining unit work, it does not constitute a bar to the processing of the instant petition.⁹

THE EMPLOYER'S STRUCTURE

The Employer operates its Washington, D.C. network news bureau from 4001 Nebraska Avenue, N.W., primarily covering news stories in and around Washington, D.C. and of interest to the Washington, D.C. area. The news operations employs employees who support network programming, including the NBC Nightly News, Weekend Nightly News, and the Today Show, and is informally organized into two functional branches, editorial and technical. NBC is headquartered in New York. WRC-TV, is a separate station owned and operated by NBC, also housed at the Nebraska Avenue location, but its employees are neither involved in the instant petition nor included in the existing bargaining unit. There is a separate affiliated news service known as the NBC News Channel, located at 400 North Capitol Street in Washington, D.C. that covers events and sends coverage to other NBC affiliates. The Employer's director of employee relations and human resources Rachel Manning testified that the network news bureau includes the NBC Nightly News, Today Show, and Meet the Press. However, there is a separate programming unit for Dateline, the affiliate news service NBC News Channel, WRC-TV, and the TVSD news production unit that provides news coverage for 13 stations owned and operated by NBC around the country. The Employer and the Petitioner both agree that the instant petition does not involve or impact upon employees who work for programs Meet the Press, Dateline,

⁹ The Employer excepts to the Hearing Officer's ruling denying the admission of prior arbitration decisions as not relevant. Although the Employer concedes that the prior arbitration decisions would have no binding effect on the Regional Director's determination of the contract bar issue, it proffers the decisions as evidence of the events leading to the side letter agreement. In doing so, the Employer admits that the language in the side letter is not clear and express on its face, thus not meeting the standards in Board law. Therefore, the Hearing Officer's ruling that the arbitration decisions were not relevant does not constitute prejudicial error.

and the news service called the NBC News Channel, and that employees of those separate units are not included in the existing collective bargaining unit.¹⁰

There are approximately 130 employees of the NBC network news operations. Senior vice-president Tim Russert is the bureau chief for the Washington network news operations. Deputy bureau chiefs Wendla Wilkinson and Brady Daniels report directly to Russert. Wilkinson is in charge of news coverage and operations. Daniels is deputy bureau chief for finance and administration. There are approximately 70 employees on the editorial side, including correspondents, producers, EBJs, directors, the library manager, and tape librarians and researchers, and approximately 50 technical employees on the technical side of the news operations. The directors are represented by the Directors Guild of America. The technical employees, including cameramen, tape editors, sound employees, graphic artists, staging managers, and staging assistants, are involved in shooting video footage, operating studio cameras, maintaining equipment, editing news material, and creating graphics. The technical employees report to Director of Engineering Rich Phillips and are represented by NABET, the National Association of Broadcast Employees and Technicians. Director of Engineering Phillips reports to Wilkinson, as do most employees on the editorial side.

There are a handful of network news editorial employees who do not report to Wilkinson because they are assigned solely to programming for either the Today Show or Meet the Press. For example, senior producer Gena Fitzgerald is dedicated solely to the NBC Nightly News and

¹⁰ The parties stipulated that the existing bargaining unit excludes employees involved in programming for Dateline and Meet the Press.

reports directly to New York. Senior producer Susan Lasalla works solely for the Today Show and also reports directly to New York. Both Fitzgerald and Lasalla are stipulated supervisors.¹¹

The network news operation includes a print library managed by Marcie Rickun, with approximately six researchers/librarians whose function it is to archive and retrieve print or Internet news materials upon request and to respond to research requests from correspondents and producers. The four researchers/librarians who work in the tape library in the technical operations of the network news retrieve tape requested for review by a producer and/or correspondent, or for feeding to the New York headquarters.

In addition to the editorial and technical sides of the network news, there are administrative and financial employees including financial analysts, the finance coordinator, secretaries, and the receptionist. These employees report directly to deputy bureau chief Brady Daniels and are not in any bargaining unit.

DAILY OPERATIONS

Within the above-described structure, deputy bureau chief Wendla Wilkinson heads the day-to-day news operation. Wilkinson prepares the daily work schedule. All editorial employees of the network news, including the petitioned-for assignment desk employees and producers, report to Wilkinson on a daily basis. Employees in the separate programming unit for Meet the Press do not report to Wilkinson, but rather they report directly to bureau chief Tim Russert, who is the moderator for Meet the Press.

Deputy bureau chief Wilkinson testified that the Washington bureau participates in network-wide meetings at 9:30 a.m. each day by conference call, in which all bureaus are represented through their respective bureau chiefs or desk managers. Bureau chief Russert,

¹¹ EBJ Elizabeth Vaughn is assigned solely to NBC Nightly news and is currently represented by the Petitioner. Producers Rich Minner and Tory Duncan work solely for the Today Show and report only to Lasalla. Minner and Duncan are in the existing AFTRA-represented bargaining unit.

deputy bureau chief Wilkinson, desk manager Mary Dorman, and senior NBC Nightly News producer Gena Fitzgerald and her assistant, EBJ Elizabeth Vaughn, participate on behalf of the Washington bureau with other NBC news bureaus across the country. Each news bureau attempts to lobby for its regional news events and story ideas. Producers and correspondents in each local bureau participate largely by listening to discussions. Wilkinson stated that after the morning conference call of approximately 25 minutes duration, senior producers participate in a separate call to fine-tune decision making.

Dan Erlenborn testified that the Washington news bureau conducts twice daily internal operational meetings, called budget meetings, at 10:30 a.m. and 4:00 p.m. The meetings are normally chaired by bureau chief Russert or deputy bureau chief Wilkinson, with Mary Dorman representing the desk operations, Tony Capra representing crew issues and desk pool operations, technical manager Mike Benetato or Rich Phillips representing the editing side of the editorial journalism department, Manager of Information Services Marcie Rickun, Phyllis Lau from the electronic journalism editing, and producers from the NBC Nightly News, Today Show and MSNBC. The participants discuss and share story ideas to be aired for the day, resources required, number of crews available, and whether additional crews, producers and/or trucks will be hired. Fund expenditures are discussed and decided. Decisions concerning whether to hire additional producers, as well as whether to engage extra satellite trucks, are either made during the meeting or after the meeting by Wilkinson, based on the content of discussions during the meeting. Sometimes producers participate in the meeting to listen to other story ideas and/or to lobby for his/her story idea in order to assemble necessary resources. Wilkinson testified that although correspondents and producers participate in the conference meeting, their participation is normally restricted to listening. Erlenborn recalled that during these meetings, Wilkinson

approved tape library manager Phyllis Lau's request for the assignment of an extra tape librarian for the weekend. The 4:00 p.m. meeting is used for outlining the following day's coverage plans with more focus on story development for the Today Show. The same group of representatives participating in the morning meeting is present for the afternoon meeting. In addition to the morning and afternoon budget meetings, additional daily meetings are held encompassing a larger universe of NBC staff, including representatives from the "super desk" in New York, the head of daily coverage for MSNBC, the head of NBC national coverage, representatives from NBC's Burbank bureau, and Wilkinson, representing the Washington bureau, during which specific coverage requirements and special story assignments are discussed.

Wilkinson stated that after the morning meetings, assignments are made to correspondents and producers. Some story assignments may be accomplished without a crew request, for example when the producer retrieves video feeds or tape from other NBC bureaus or third party entities, which is booked through the satellite desk manager.¹² Only if the assignment involves conducting an interview are the services of a technical crew, i.e. cameraperson and/or sound person, required.

ANALYSIS

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.

¹² EBJ Elizabeth Vaughn books feeds with the satellite manager for the Nightly News.

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 or perfunctory 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., 523 U.S. ___, 121 S.Ct. 1861, 167 L.R.R.M. 2164 (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 Desk Employees

Supervisory Status

There are four assignment desk editors: Wendy Jones, Christina McGinty, Kim Sneed and Adam Nixon. They work at the assignment desk, a fixture the width of the newsroom, with assignment desk managers Dave Forman and Tony Capra. The Petitioner seeks to include in the voting group Forman, Capra, McGinty, Sneed, and Nixon.¹³ Mary Dorman manages the news desk and is a stipulated supervisor. The Employer presented a job announcement for the assignment desk manager position prepared and posted in 1997. It sets forth the duties of assignment desk managers as including supervising the assignment of stories, editorial staff and field crews, and the scheduling of personnel. Wilkinson testified that assignment desk managers are responsible for hiring freelance technical crews and producers, and authorize overtime payments for freelance employees. Wilkinson testified that while Capra was responsible for scheduling crews for NBC pool assignments, Forman was in charge of the assignment of daily crews and that the daily crews reported to him.¹⁴ EBJ/producer Erlenborn testified that when he had an immediate need for a crew to be assigned within the Washington metropolitan area, he would make his request directly either to Dave Forman or Tony Capra. Normally, Forman fulfilled the producer's request for a crew assignment. However, on some occasions, Forman did not always honor the producer's request for a 2-man crew, consisting of both a cameraperson and sound person, if only one cameraperson was available. The record reflects that the crew

¹³ Assignment desk editor Wendy Jones is currently represented in the existing AFTRA unit.

¹⁴ A pool assignment is a prearranged plan involving one network covering an event and sharing tapes or other materials with the other networks, including ABC, CBS, CNN, NBC and Fox. Pool arrangements are rotated among the networks.

availability depended on the timing and nature of numerous competing story events. Forman also monitored the terms of the separate collective-bargaining agreement covering technical employees and instructed producers when a crew had to be "broken" or released. EBJ/producer Debra Petit testified that she has received assignments from Forman. EBJ/producer Joel Seidman testified that he discusses the need for a crew with Forman.

Dave Forman works from 11:00 a.m. to 7:00 p.m. with Tony Capra at the assignment desk, placing daily calls to camera and technical freelance employees, and calls for freelance producers once or twice a week to assign coverage of interviews. Both Forman and Capra are salaried employees who participate on behalf of NBC in formal grievance meetings under the parties' collective-bargaining agreement. Both Forman and Capra approve timesheets for technical crews. Human resource director Rachel Manning stated that when Capra and Forman exercised their authority to verbally reprimand employees, she consulted with them in her determination whether discipline higher than a verbal warning was appropriate.

The assignment desk is staffed 24 hours per day, 7 days of the week. Assignment desk employee Kim Sneed performs many of desk manager Mary Dorman's functions on the weekend when Dorman is not present, including preparing for weekend assignments, independently booking crews on the weekends, taking requests from shows for coverage, and determining what is newsworthy.¹⁵ Although Capra and/or Forman prepare certain weekend crew assignments in advance, Sneed independently assigns crews for interviews for the weekend NBC Nightly News and the weekend Today Show. Sneed reviews the weekend schedule to determine what NBC staff crews are scheduled to work the weekend and assigns those crews. Sneed works from 4:00 a.m. until 12:00 p.m. and is a salaried employee. Sneed also approves timesheets of technical freelance employees.

¹⁵ Desk manager Mary Dorman is scheduled to work Monday through Friday from 8:00 a.m. until 6:00 p.m.

Christina McGinty works 3 to 4 days per week from 3:00 p.m. or 3:30 p.m. until 11:00 or 11:30 p.m. In Dorman's absence, McGinty assigns freelance crews to producers, as needed. Adam Nixon works as a substitute assignment desk employee on an as needed basis when employees are absent due to illness or vacation. Manning testified that Nixon and McGinty perform the job functions outlined in the job announcement for assignment desk managers. Both McGinty and Nixon are paid by a contract agency Staffmark.¹⁶ The record testimony reveals that a regular responsibility of assignment desk employees, both managers and editors, includes hiring outside freelance employees. In Union Square Theater 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 record evidence establishes that assignment desk managers Tony Capra and Dave Forman, and assignment desk editors Kim Sneed and Christina McGinty hire outside freelance individuals as a "part and parcel" of their regular duties. While the record reflects that Adam Nixon is relatively new to the assignment desk and is developing in his duties as assignment desk editor, he has already provided crew assignments. Assignment desk editors also assign stories for coverage to producers and EBJs as a regular, routine part of their job duties. Furthermore, as a regular part of their duties, assignment desk editors monitor a crew's time on a shoot in conformance with collective-bargaining agreement requirements and instruct producers when a crew must be released. Accordingly, I find that the assignment desk editors and assignment desk managers are supervisors and exclude them from the unit.

¹⁶ The parties stipulated that should it be determined that, either as a group or individually, **assignment managers/editors** are not supervisors and/or managerial, and have sufficient community of interest with any appropriate unit, employees McGinty and Nixon should be included in the voting group.

Managerial Status

The Employer asserts that should assignment managers/editors not be excluded as statutory supervisors, they should be excluded from any unit found appropriate because they are managerial employees responsible for formulating and implementing policies on behalf of the Employer. As I have concluded that the record supports that the assignment desk editors and assignment desk managers are statutory supervisors, I do not reach the issue of whether they are managerial employees.

Producers

Supervisory Status

The Employer asserts that the petitioned-for producers are supervisors within the meaning of Section 2(11) of the Act based on their independent authority to hire freelance technical crews. The Employer argues that the petitioned-for producers have the authority to effectively recommend the assignment of a specific technical crew to a story, to determine the type and size of crews required for a story, and to establish the work hours and duties of the crew. Finally, the Employer contends that producers direct the work of technical crews while engaged in a shoot.

The Petitioner entered into evidence the Employer's job announcement advertising an available producer position in April 1997. The posting describes the producer's responsibilities as including "working with Correspondents in live reports from the field, editing reporter tape packages, covering news events, conducting interviews and originating story ideas."¹⁷ Several EBJ/producers with experience ranging from 3 to 20 years with NBC testified about their job responsibilities. Producer Marc Koslow testified that he interviews subjects, does stakeouts, and cuts and edits stories in the performance of his primary job function of producing stories for

¹⁷ The vacancy announcement posted in April 1997 for the AFTRA-represented EBJ position is identical in content.

NBC Nightly News.¹⁸ Koslow gives the tape to a tape editor who cuts the tape where indicated by Koslow. While the correspondent is responsible for deciding the scope of the story, the producer is responsible for gathering all necessary elements to prepare the story to air, including pictures and interviews. Producer Andrew Gross testified that his duties include interviewing subjects recorded by a cameraperson. Gross works primarily for NBC Nightly News and receives story assignments from the assignment desk, often to work with a correspondent to develop a story for airing that night. Gross' duties requires that he work in the editing room piecing together the correspondent's script with video footage. EBJ/field producer Petit testified that she is assigned stories by desk manager Dorman or by an assignment desk employee filling in for Dorman, and that she is required to go to stakeouts, hearings and/or interviews. Petit normally meets the crew at the designated location, conducts the interview, then works with the correspondent to coordinate the story elements including field interviews, tapes from other bureaus, stand-ups with correspondents, and/or file footage from the tape library. Neither the Employer's written job description for producers nor the producers' record testimony establish that they exercise any of the indicia of supervisory authority in the Employer's interests.

Producers have no authority to discipline an employee, terminate an employee, or hire any NBC staff employee. There is no evidence that any producer has the independent authority to transfer, lay off, promote or recall an employee from lay off, or to adjust employee grievances. The Employer contends that producer Jay Blackman effectively recommended for hire Kimberley Davidson as a researcher/librarian in the fall of 2000. The record reflects that it was correspondent Robert Hager who initiated the search for a researcher due to his expanding workload, and asked Blackman to identify employees in the newsroom whom he considered

¹⁸ Stakeouts are when the producer and/or correspondent are assigned to wait at a location in the field (away from the studio) for a subject to appear or for an event to occur.

capable of handling the researcher position. Blackman advised that in his opinion Davidson would make a successful researcher. There is no evidence that Hager has any authority to hire employees. Likewise, there is no evidence that Blackman discussed his favorable consideration of Davidson with any NBC official with the authority to hire. The record reflects that Hager recommended to deputy bureau chiefs Wilkinson and Daniels that Davidson be hired. Wilkinson and Daniels offered the researcher position to Davidson and she accepted. Blackman's favorable review of Davidson's abilities upon solicitation from Hager, with Hager in turn then recommending the hire of Davidson to the decision makers, does not establish that Blackman possesses or exercises the authority to make effective recommendations to responsible officials with authority to hire.

EBJ Dan Erlenborn testified that when working in a pool arrangement with other news networks, he consults with deputy bureau chief Wilkinson to get a crew assigned and that he does not independently engage the service of freelance crews or NBC staff crews. When producing for NBC locally, Erlenborn requests a crew assignment from assignment desk manager Forman, who is responsible for crews in the Washington area. When producing out of town for NBC, producers are required to submit a written crew request. The producers utilize a template in NBC's central computer system that can be accessed from any NBC bureau. The producer completes the template retrieved from the computer and enters information including the date, starting time, and location of the shoot. The producer enters as much specific information about the shoot as possible to enable the crew person(s) to come prepared with the appropriate equipment, including a synopsis of the story and specific information regarding what the crew will be recording, as well as any special needs. Once the crew request form is completed and saved on the computer, a copy is automatically electronically transmitted to the

crew desk located at 30 Rockefeller Plaza in New York, with a prompt to advise the crew desk that there is a new request. The crew desk receives all request forms from NBC bureaus across the country and monitors crew availability nationwide. The crew desk telephone extension is CREW and it is manned by Nancy Kirk and Judy Kerr. The national crew desk forwards the crew request form to the NBC news bureau closest to the location of the story so that it can review the availability of qualified crews on the date and time of the prearranged interview or event.

Deputy bureau chief Wilkinson stated that producers determine the shooting schedule for interviews, and then request a crew assignment by completing a crew request form which is submitted to Wilkinson or to the New York crew desk for approval. According to Wilkinson, producers must first get approval prior to obtaining additional crew assistance. The producer is required to contact the assignment desk manager to apprise that person of any issues arising at the event that would require extended hours by the assigned crew, or in the event of a stakeout that failed to materialize, to determine whether the crew should be released. NBC headquarters issued standards and procedures posted on the company wide computer system governing booking crews. The written policy dictates that employees need approval from the assignment desk for booking crews. Wilkinson testified that the crew request form in evidence showed a request made by producer Jay Blackman submitted to the New York crew desk and that Kerr engaged the crew. Deputy bureau chief Daniels stated that producers engaged freelance crews without approval only on occasion, but could not recall any specific examples.

Each of the producers who testified at the hearing stated that they did not independently hire or engage technical crews. Producers Gross, Petit, Seidman and Koslow all use crew request forms submitted to the New York crew desk, or address their requests to assignment desk

manager Forman. Koslow testified that the first available crew with the abilities required for the story is assigned the story. Erlenborn stated that only after parameters had been predetermined by Wilkinson and when she gave him prior authority did he request a crew for pool assignments. Erlenborn submitted both verbal and written crew request forms to assignment desk manager Forman for a shoot in the Washington metropolitan area and to the New York desk for shoots located outside of the Washington metropolitan area. There is no evidence that Erlenborn has ever bypassed either Forman or the New York crew desk in efforts to engage a crew. No producer reviews or signs crew timesheets, nor do producers determine the crew's compensation package. All staff and freelance technical employees are covered by a collective-bargaining agreement which sets forth working conditions and terms of employment including entitlement to meal breaks, meal expenditures, and/or the assessment of penalties if not honored. Producers in the field call into the assignment desk for instructions on how to accommodate meal obligations during a shoot, i.e. whether to break and provide meals or to buy out the meals. The record reflects that producers do not make those types of decisions independently.

The Employer asserts that producers recommend technical crews for assignment. Wilkinson testified that producers sometimes make specific requests for the assignment of either a particular NBC staff crew or a freelance crew. The request for a particular crew relates to what the story coverage mandates, i.e. a technician skilled in doing stand-up interviews with correspondents, one more skilled in lighting, or one more able to meet the physical requirements of the shoot. The record reflects that each network news bureau maintains a roster of freelance technical employees utilized and available in their area. The assignment desk prepares a daily schedule of all available NBC staff crews. The record shows that staff technical employees are assigned by assignment desk editors to shoots and producers/correspondents based on their

availability and ability. From these predetermined lists and schedules, producers make requests for specific crews based on their knowledge of that cameraperson's or sound person's skill and based on a determination regarding what the story demands. Every effort is made to fulfill the producer's request. Producer Koslow testified that when he worked on the assignment desk, he made every attempt to honor a producer's request for a specific crew person. Erlenborn testified that he has recommended that a particular crew be assigned to a story based on that crew's experience. Erlenborn described that after submitting his written crew request form, he reviewed each name on the list of available daily hire crews with the New York desk to determine whether there was a crew available better suited for the particular assignment, based on his knowledge of the crew's work. Erlenborn testified that sometimes he was assigned the specific crew he requested, and at other times he was not. The record also demonstrates that while producers had no authority to formally evaluate the performance of a freelance daily hire, feedback provided about his negative performance would keep the crew person from being reassigned to the producer making the complaint.

On an infrequent basis, producers engage couriers to run errands, including transporting tapes from location back to the studio or to an affiliate. Couriers are often college students contacted through their school's journalism department. There is no evidence that prior to being engaged, the producer assesses the courier's "skill and ability". NBC issued memoranda outlining procedure for engaging couriers, and producers Erlenborn and Petit testified that pursuant to the written procedures they pay the courier in cash and are reimbursed by NBC by claiming it as an expenditure on their individual expense report.¹⁹ Erlenborn testified that he retained a courier's services five times in the period of time from October 1999 through November 2000 during the presidential election campaign, and Petit testified that she engaged a

¹⁹ Couriers may earn from \$50 to \$150 per day.

courier's service on one occasion five years ago. Producer Gross stated that he never retained a courier.

The assessment of the supervisory status of the petitioned-for producers involves not only an analysis of whether they exercise any one of the indicia listed in Section 2(11) of the Act, but also requires an analysis whether they use independent judgment in carrying out those job duties or whether the job duties are executed in a routine manner. The record reflects and I find that the producer's exercise of authority to retain courier services occurs on a sporadic as-needed basis, and is routine and governed by written instructions provided by the Employer. Therefore, the mere retention of courier services by producers pursuant to the Employer's written instructions does not demonstrate the exercise of independent judgment necessary for a finding of supervisory status.

The Employer contends that producers are statutory supervisors because they assign technical crews, and/or effectively recommend technical crews, to video shoots and events for coverage. The record shows that in developing the elements of a story, producers arrange necessary interviews with subjects at various locations and then submit written requests for technical assistance to the New York crew desk for assignments outside of the Washington metropolitan area, and submit verbal and written requests to assignment desk manager Dave Forman at the Washington bureau. The crew request form is a template in the company-wide computer system, accessible from any NBC bureau. The record demonstrates that all requests are submitted electronically to the New York desk and that they act on the request by referring it to the NBC bureau closest to the location of the shoot. Each bureau retains a list of active camera and sound crews. There is no evidence that producers are involved in developing the Employer's listings of qualified crews in each bureau area.

In Union Square Theatre Management, Inc., 326 NLRB 70 (1998), the Board determined that technical directors were statutory supervisors based on their significant job function of finding, hiring, and setting the wages of temporary crews used to assist in theatre renovation. The producers herein do not find available crews, and the crews' wage rates are predetermined either by their applicable collective-bargaining agreement or are set by the bureau. Crews are contacted and offered assignment by the New York crew desk and/or by Washington bureau assignment desk manager Forman. There is no evidence to support the contention that the producers independently contact and assign either staff or freelance technical crews.

Producers, correspondents and researchers/librarians work as a team to broadcast the best possible story coverage. In the performance of their job, producers work routinely with NBC staff and freelance camerapersons and sound persons. The record reflects that producers become familiar with the various talents and abilities of qualified technical crews utilized by the Employer. The record established that producers may attempt to match the talent of the crew person with the requirements of the story, i.e., some story coverage requires a lot of running around so he might want someone with athletic ability to keep up, some crews are better at lighting, or better at sound, or better at doing stand-ups with correspondents. Based on their experience with technical crews, producers may request a specific crew person on the crew request form. The record reflects that while assignment desk employees make every attempt to fulfill the producer's specific request, at times the request is met, and at other times it is not.

The Supreme Court set a new and authoritative standard in assessing whether the exercise of independent judgment by professional employees in directing the work of other employees confers supervisory status on that professional employee in Kentucky River Community Care, Inc., 523 U.S. ___, 121 S.Ct. 1861, 167 L.R.R.M. 2164 (2001). The Supreme Court held that the

exercise of independent judgment by professional employees in giving direction to other employees renders the professional a statutory supervisor, regardless whether the professional uses their ordinary professional or technical judgment in doing so. Thus, the Supreme Court rejected the Board's previously held distinction that a professional employee's use of ordinary professional or technical judgment does not reflect the independent exercise of supervisory authority. See KGW-TV, 329 NLRB 378 (1999); KGTV, 329 NLRB 454 (1999).

The record reflects that there is a pre-approved list of technical crews from which the producers can make requests. There is no evidence that producers can request technical crews who are not on the list. In making a request there is no evidence that producers have any input into which independent crews should be candidates for selection or any evidence that producers are involved in development of the roster of available technical crews. The application of the producers' experience and professional judgment to the assessment of the appropriate skill match between technical crew and story coverage is part and parcel of the producers' job assignment. The producers use a pre-approved list of available freelance crews from which to select for story coverage, based largely on their personal preference. The producers' recommendations as to which crew is better suited for a shoot is an expression of their personal and/or professional preference. The Employer has failed to establish that a recommendation for a particular technical crew is done in the direct interests of the Employer. cf. Tiberti Fence Co., 326 NLRB 1043 (1998); Willis Shaw Frozen Food Express, 173 NLRB 487 (1968). I find that the Employer has not met its burden of establishing that producers are supervisors under the Act. Accordingly, producers are appropriately included in the voting group and eligible to vote.

Managerial Status

The Employer asserts that should producers not be excluded as statutory supervisors, they should be excluded from any voting group found appropriate because they are managerial employees responsible for formulating and implementing policies on behalf of the Employer. Employees who independently effectuate management policies by expressing and making operative the decisions of their employer and/or who have the independent authority to fiscally bind the employer are managerial employees not covered by the Act. General Dynamics Corp., 213 NLRB 851 (1974); NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974). The Employer asserts that the petitioned-for producers are managerial employees because they have independent authority to expend funds, including the authority to engage a satellite or microwave truck for coverage on a story.²⁰ Rather, the record reflects that decisions to make such large expenditures are discussed and made by the deputy bureau chiefs Wilkinson and Daniels during the twice-daily budget meetings held at 10:30 a.m. and 4:00 p.m. The lease of satellite and/or microwave trucks represents a large expenditure and producers must get approval first to get such equipment. Producers Gross, Seidman and Petit testified that they have never leased a satellite or microwave truck. Erlenborn testified that he has never hired either a satellite truck or a microwave truck on his own. Erlenborn recalled that approximately five to six years ago, he was admonished for incurring additional costs on a pool assignment at Andrews Air Force base when he agreed with the cameraman's suggestion that a small portable microwave unit be utilized on the shoot. Erlenborn explained that he was not aware it involved extra costs, and Wilkinson warned him never to make such decisions without first consulting her. Wilkinson's verbal warning to producer Erlenborn when he used a portable microwave without prior

²⁰ The microwave truck is referred to as a live truck, it feeds materials or signals back to the broadcast facility via microwave signals. An uplink truck or satellite truck feeds materials back via satellite. The cost for satellite trucks range from \$1500 to \$7000 per day depending on what is needed and availability.

authorization demonstrates that producers do not have the independent authority to commit the Employer's funds.

The Employer contends that the petitioned-for producers' representation of NBC in the arrangement of network news pools and their attendant independent authority to incur costs in pool assignments renders them managerial employees excluded from the petitioned for group. The record reflects that pool arrangements are discussed and decided at the twice-daily budget meetings, including decisions on what equipment will be used. Deputy bureau chief Daniels testified that assignment desk managers engage NBC in pool arrangements which annually cost from \$5 to \$6 million dollars. The record reflects that assignment desk managers are responsible for tracking pool expenses on behalf of NBC, as well as representing NBC at meetings with other broadcast entities to account for and settle costs. Daniels testified that news desk managers engage in pools routinely on a daily basis and that normally desk managers Mary Dorman or Tony Capra, or other managers, decide whether NBC will be the responsible party in a pool assignment. As there is no credible record evidence to establish that producers have any involvement in committing NBC to pool arrangements or in expending funds on behalf of NBC in pool arrangements, the Employer has failed to establish this as a basis for excluding producers as managerial employees.

Lastly, the Employer asserts that producer Rich Gardella's negotiation of balcony rental space from which to cover IMF demonstrations in Washington, D.C. elevates him to a managerial status. The record shows that deputy bureau chief Wilkinson reviewed and signed the temporary lease arrangement on behalf of NBC. Thus, there is insufficient evidence to establish that Gardella exercised any independent authority to commit the Employer's funds.

Accordingly, based on the foregoing, I conclude that the petitioned-for producers are not managerial employees and are appropriately included in the petitioned for voting group.

RESEARCHERS/LIBRARIANS

The Employer employs researchers/librarians at the Washington bureau in two functionally and physically separate areas. The print library is headed by Manager of Information Services Marcie Rickun and is housed on the first floor of the Washington bureau at its 4001 Nebraska Avenue location, and located near offices of correspondents, producers and AFTRA represented EBJs. Researchers/librarians Kim Davidson, Chris Donovan, Robert Finley, Kathy Johnson, Chad Parks, Jennifer Rahm and Felix Schein work in the print library. The tape library is housed on the basement level of the Nebraska Avenue facility and employs three researchers/librarians, Joelle Goode, Brian Manion, and Kim Parker.

The function of the print library is to provide a source of information for correspondents, producers and all staff to support story development. Researchers research information from print and electronic sources, including newspaper articles and Internet sites, upon request from NBC staff. The tape library researchers retrieve tape requested for review by a producer and/or correspondent, or they may retrieve it for a direct feed to the New York headquarters. Joelle Goode and Kimberly Parker are tape library assistants. They are asked to retrieve tapes in the archives or to be on the lookout for tapes coming in from shoots for delivery to producers and editors. Brian Manion is the video archivist scheduled to work later in the day, and is responsible for organizing tape that has been shot and assisting producers in obtaining tapes needed for NBC Nightly News stories. Technicians represented by NABET also work in that area.

Researcher Chris Donovan testified that he provides research for producers and correspondents for NBC Nightly News, the Today Show, as well as for MSNBC. Donovan stated that he either forwards the requested information electronically by e-mail or hand delivers printed information to the staff employee making the request. Donovan works Monday through Friday from 10:00 a.m. through 6:00 p.m. Donovan shares a work space with researcher Robert Finley at the library desk area, and works with researcher Kim Davidson. Donovan testified that he does not work as much with Jennifer Rahm, who works part-time Monday through Friday from 3:00 to 7:00 p.m. Donovan described Rahm's duties as primarily clipping and filing news articles for research purposes later. Donovan occasionally provides requested information to employees from the tape library and interacts with researcher Chad Parks.

Researcher Kimberley Davidson works Monday through Friday in the print library from 9:30 a.m. to 7:30 p.m. Davidson performs research and field producing tasks primarily for correspondent Robert Hager and his producer Jay Blackman. The record reflects that deputy bureau chiefs Wilkinson and Daniels offered Davidson the researcher position in fall 2000, based on the specific request from Hager that he needed a researcher and that he was recommending Davidson. Davidson's tasks include maintaining daily contacts with public relations contacts at federal agencies that are on Hager's "beat", meeting with Hager and Blackman, identifying and booking guests for interviews, as well as researching Lexis-Nexis, Dow-Jones Interactive or the Internet. She also performs some field producing tasks for MSNBC. Davidson testified that she interacts with Rickun and Donovan in the print library and with tape librarians Regina Blackburn, Kim Parker and Joelle Goode.²¹

²¹ Blackburn also performs duties as a stage manager on the teleprompter and is represented by NABET.

The Employer asserts that researchers/librarians are improperly included in the petitioned-for voting group because they are office clerical employees.²² In this regard, the Employer states that the duties of the petitioned-for researchers/librarians, including gathering background information for stories, “surfing” the Internet and accessing NBC print archives, are mere clerical support functions. The Employer argues that the petition fails to include other unrepresented office clerical employees of the news operation, including secretaries, the finance coordinator, and receptionists.

The Employer’s pay grade chart shows that compensation range earned by researchers/librarians from approximately \$30,600 to \$53,000 falls in between the compensation earned by bargaining unit desk assistants (approximately \$20,800) and the compensation earned by bargaining unit EBJs (\$84,348).

I find that the researchers/librarians are not office clericals. The Employer’s argument fails as the record clearly establishes that the petitioned-for researchers/librarians perform duties in direct support of the news gathering function. The record demonstrates that the petitioned-for researchers/librarians have substantial interaction with correspondents and producers when they complete daily research requests from them. Researchers and librarians in the print library report to library Manager of Information Services Rickun, while researchers/librarians in the tape library report to Director of Operations and Engineering Rich Phillips. Secretaries, the finance coordinator, and receptionists report to deputy bureau chief Daniels for finance and administration. Producer Erlenborn testified that although Phillips arranges tape librarians’ work

²² The Employer cites a prior Board decision involving certain researchers employed at its New York bureau and claims that the decision supports its position that the petitioned-for researchers are office clerical employees. National Broadcasting Company, Inc., 214 NLRB 704 (1974). In that case, the Board dismissed the petition on the basis that the requested employees did not constitute a clearly identifiable group with a sufficiently distinct community of interest separate from other unrepresented employees. Although the Board’s decision discussed groupings of other clerical employees, it also discussed groups of other researchers not included in the petition. There was no finding that the researchers therein were office clericals.

schedules, their work is directed by the requests for information from correspondents and producers on the editorial side.

Board law recognizes office clerical employees as those whose job duties primarily relate to general office operations. Cook Composites & Polymers Co., 313 NLRB 1105, 1108 (1994). Where an employee's principal job functions and duties relate to general office operations and are performed within the general office itself, these employees are office clericals and they normally do not share a community of interest with production employees. Container Research Corp., 188 NLRB 586, 587 (1971). Office clerical employees, including receptionists, secretaries, and the finance coordinator, etc. are not involved in news gathering, but rather are involved in general office operations. They work in the administrative offices away from the newsroom. The "production" employees in the existing bargaining unit and in the petitioned-for voting group are directly involved in news gathering and production for the NBC Nightly News, the Weekend Nightly News, and the Today Show. The petitioned-for researchers/librarians perform job functions that are closely associated with news gathering and production. They are given research requests by correspondents and producers to research and obtain information in support of story development. Certain researchers, including Davidson, Parks and Schein, perform other critical news gathering tasks including contacting representatives from the correspondent's "beat", tracking down individuals, and scheduling interviews. Other researchers performing more typical research tasks do not do so as part of the general bureau business operations, but rather in support of the news gathering function of the bureau. Tape librarians catalog and retrieve videotape in the tape library, not as a part of the Employer's general office operations, but rather in support of news gathering. Accordingly, I conclude that the petitioned-for researchers/librarians in the print library and tape library are not office clerical employees.

The Employer further asserts that the petitioned-for researchers/librarians do not share a community of interest with either the existing bargaining unit employees, or the petitioned-for assignment editors and producers.²³ The parties do not dispute that the petitioned-for researchers/librarians and producers, as well as employees in the existing bargaining unit, all work on NBC's editorial side. The record demonstrates that the petitioned-for producers request information from researchers/librarians and that the two groups of employees frequently interact. Thus, researcher Davidson is assigned to gather information for correspondent Hager and producer Blackman. Davidson meets with them on a daily basis in the performance of her duties. Davidson testified that she has worked with petitioned-for producers Rich Gardella, Doug Adams, Jim Popkin, Donna Nelson, Andy Gross and John Rutherford. Each of these producers is included in the petitioned-for voting group, except EBJ Rutherford who is in the existing bargaining unit. Researcher Donovan testified that he obtains information for producers and correspondents for NBC Nightly News and the Today Show. Tape librarians Joelle Goode and Kimberly Parker handle incoming videotape from producers and retrieve videotape for them. EBJ/producer Erlenborn testified that he works with researcher/librarians Donovan, Finley and Johnson in the print library and with Goode, Parker and Manion in the tape library.

The parties stipulated that the petitioned-for producers perform the same duties as the EBJs in the existing bargaining unit. Therefore, the petitioned-for producers share a community of interest with the existing bargaining unit employees. Further, the Employer concedes that the measure of the community of interest among the petitioned-for producers and researchers/librarians, requires the same assessment of the community of interest among the petitioned-for researchers/librarians and the existing bargaining unit EBJs. Based on the foregoing, the record establishes that the researchers/librarians share a sufficient community of

²³ Assignment editors are determined herein to be excluded as statutory supervisors.

interest with the petitioned-for voting group as well as with EBJs in the existing bargaining unit. Accordingly, I find that the petitioned-for researchers/librarians are included in the voting group and are eligible to vote in the election.

The parties stipulated that should it be determined that researchers/librarians, either as a group or individually, have a sufficient community of interest in any appropriate unit, that researchers/librarians Davidson, Donovan and Rahm should be included in the unit and are eligible to vote. I conclude that in light of the parties' aforementioned stipulation, researchers/librarians Donovan and Rahm are appropriately included in the petitioned-for voting group and are eligible to vote in the election.

RESIDUAL VOTING GROUP

The Employer asserts that the petition seeks an inappropriate residual voting group because it does not include all unrepresented employees of the Employer involved in news gathering. A residual unit must "include all the unrepresented employees of the type covered by the petition." Syracuse University, 325 NLRB 162 (1997). The petitioned-for voting group must also share a sufficient community of interest with the existing bargaining unit employees such that they could have participated in the original bargaining unit election. Globe Machine and Stamping Co., 3 NLRB 294 (1937); NLRB v. Raytheon Co., 918 F.2d 249 (1st Cir. 1990). The Employer contends that the petition is inappropriate because it fails to include other unrepresented office clerical employees. Neither the existing bargaining unit, nor the petitioned-for voting group of assignment desk editors, producers and researchers/librarians, includes any general office clerical employees. The instant petition properly does not seek to represent office clericals.

The Employer also asserts that the instant petition fails to seek an appropriate residual voting group because it does not include other producers and researchers/librarians employed by NBC who perform work for the Dateline and Meet the Press programming units. Under Board law, the petitioned-for voting group must have a sufficient community of interest with the existing bargaining unit and must have been eligible to vote in the original bargaining unit election. The parties' current collective-bargaining agreement specifically excludes employees assigned to news documentary programs and news magazine shows. Further, the parties stipulated that employees of Dateline and Meet the Press have not been included in the existing bargaining unit. Thus, the exclusion of employees in classifications similar to the petitioned-for voting group and who are assigned to separate programming units, but who have never been involved in the parties' history of collective-bargaining, is appropriate. The petitioned-for voting group should not and does not seek to include employees working in classifications similar to the existing bargaining unit, but specifically excluded by the parties in the existing bargaining unit based on assignment to the separate Dateline and Meet the Press programming units. Accordingly, I conclude that the petitioned-for voting group constitutes a true residual voting group of all unrepresented employees of the type covered by the petition, and who share a community of interest with the established bargaining unit.²⁴

CONCLUSION

²⁴ The Employer argues in the alternative that should the Regional Director determine that the side letter discussed above not constitute a complete bar to an election, it is a bar to an *Armour-Globe* election among the Employer's unrepresented assignment desk managers and producers. The Employer asserts in this regard that the side letter demonstrates that the Petitioner agreed to fractionalize the unit it now seeks to represent, by its specific exclusion of fifty percent of assignment desk editors and producers. The Employer contends that the very language of the side letter precludes an *Armour-Globe* election, which requires representation of all unrepresented employees of type covered by the petition. The Employer's arguments have previously been addressed herein by my finding that the side-letter does not constitute any bar to proceeding to an election. Since the side letter's language does not reflect a clear and express agreement by the Petitioner not to represent the excluded fifty percent, it does not bar an election. The same language does not comprise an express promise not to represent for purposes of examining whether the petition includes all unrepresented employees of the type covered by the petition.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and their briefs, I find that the following employees of the Employer constitute an appropriate residual voting group of all unrepresented employees sharing a community of interest for the purposes of collective-bargaining with employees in the existing bargaining unit:

All unrepresented full-time and regular part-time employees involved in news gathering, including producers, field producers, researchers/librarians, and video archivist employed by the Employer at its network news bureau in Washington, D.C., but excluding correspondents, assignment desk editors, assignment desk managers, and employees assigned to the Dateline and Meet the Press programming units, guards and supervisors as defined by the Act.

If a majority of employees in the voting group cast valid ballots for the American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO, they will be taken to have indicated their desire to be included in the existing bargaining unit of employees involved in news gathering currently represented by American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the voting group 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 voting group 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 the American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO.

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 **November 20, 2001**.

Dated November 6, 2001

at Baltimore, Maryland

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



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420-2900
440-1760-0500