

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

**WGCI-FM & WGRB-AM,
CLEAR CHANNEL BROADCASTING¹**

Employer

and

CASE 13-RC-21207

**AMERICAN FEDERATION OF TELEVISION
AND RADIO ARTISTS, CHICAGO LOCAL**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on June 2, 3, and 8, 2004 before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. Issues

The American Federation of Television and Radio Artists, through its Chicago Local (herein the Petitioner), seeks an election within a unit comprised of all full-time and part-time employees who perform duties on the air, including but not limited to all on-air staff, producers, announcers, van personalities, and production director, of WGCI-

¹ The parties verified their proper legal names at the hearing. Prior to June 1, 2004, the call letters of WGRB-AM were WGCI-AM. The AM station is commonly known as Gospel Radio 1390.

² Upon the entire record in this proceeding, the undersigned finds:

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

FM and WGRB-AM, Chicago-area radio stations owned by Clear Channel Broadcasting (herein the Employer).³

The Employer contends that the petitioned-for unit is not appropriate because the on-air personalities of WGCI-FM do not share a community of interest with the on-air personalities of WGRB-AM. In addition, the parties identified six specific individuals by name whose eligibility in the petitioned-for unit was disputed by the Employer on the grounds that they do not regularly or frequently appear on the air. Finally, the parties identified two individuals whose eligibility in the petitioned-for unit was disputed by the Employer on the grounds that they are not employees of Clear Channel Broadcasting. The parties did not present any other issues at the hearing.⁴

II. Decision

For the reasons discussed below, I find that on-air personalities at WGCI-FM and WGRB-AM can be included in an appropriate bargaining unit. However, those employees whose eligibility was challenged by the Employer and who do not appear regularly and frequently on the air should not be included in the bargaining unit. They are Barbara Gueno, Johnny Starks, Al Whipple, and Dion Walker. Because the record evidence is not clear as to the frequency or regularity that Nelson Grinnage or Arthur Porter appear on air, these two employees will be permitted to vote in the election subject to challenge by any party. Finally, Jesse Jackson and Santita Jackson are not included in the bargaining unit because they are not employees of either WGCI-FM or WGRB-AM.

Based on this finding, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 at a time and place to be set forth in a subsequently issued notice of election, in the following bargaining unit:

All full-time and part-time employees who regularly or frequently perform duties on the air for WGCI-FM or WGRB-AM, including but not limited to on-air personalities and program hosts, producers, announcers, and news persons, employed by the Employer at its facility currently located at 233 N. Michigan Avenue, Chicago, IL, but excluding all professional employees, office clericals, guards and supervisors as defined by the Act.⁵

³ The Petitioner initially sought a unit of all full-time and part-time employees who perform duties on the air, including but not limited to on-air staff, on-air producers, on-air announcers, program hosts and news persons. At the hearing, the Petitioner amended its petition.

⁴ The parties stipulated to the Petitioner's status as a labor organization; the lack of a Section 9(a) agreement or other contract bar to the processing of the petition; and the Board's jurisdiction over the Employer, which is a communications, radio, and television industry business with revenue exceeding \$100,000 and direct inflow of goods and services in excess of \$5,000 from points located outside the State of Illinois in the past calendar year.

⁵ The parties stipulated to the inclusion of 25 specific employees in a combined WGCI-FM and WGRB-AM bargaining unit, based upon the description of the bargaining unit in the original petition. The amended petition merely added the job classifications of "van personalities" and "production director" who should not be included in the bargaining unit, as described more fully herein. Thus, the 25 identified employees should be included on the Employer's *Excelsior* list, barring a change in circumstances unrelated to the issues raised at the hearing.

III. Statement of Facts

Clear Channel Broadcasting owns seven radio stations in the Chicago metropolitan area. Its “urban division” within that cluster includes WGCI-FM, WGRB-AM, and WVAZ-FM.⁶ WGCI-FM’s music format is hip-hop and R&B, while WGRB-AM is a gospel music and talk station. The Employer’s Regional Vice Chairman, John Gehron, oversees all Clear Channel stations in Chicago. The three urban division stations are managed by Operations Director Elroy Smith. His job duties include oversight of the on-air personalities, announcers, news department, and production department. Each of the stations also has a program director who is responsible for its day-to-day operations. Mr. Smith serves that role for WGCI-FM, while Sandra Robinson is the program director for WGRB-AM. The program director is responsible for setting the sound and content of each station and supervising the on-air staff. The program directors hire, fire, and discipline the on-air personalities, or “disc jockeys,” for each station. (For the sake of clarity in this decision, these employees will be referred to as “on-air personalities.”) Because Mr. Smith also acts as operations manager, Ms. Robinson does consult with him on these personnel matters and he retains authority to make decisions on his own. The program directors also train their respective staffs and hold staff meetings.

The Employer’s urban division has multiple support departments. The promotions department is responsible for, among other things, promotional events at metropolitan area locations and website content. Angela Fleming is Vice President of the Promotions Department, overseeing promotions for all urban division stations. Althea Billings handles promotions for both WGCI-FM and WGRB-AM. The sales department is responsible for selling commercial air time. Lana Thompson is the General Sales Manager for the urban division stations, while Anita Jeans is Local Sales Manager for WGCI-FM and WGRB-AM. The production department is responsible for producing commercials. Scott Silz is the Production Director/Imaging Director for the urban division stations.

WGCI-FM and WGRB-AM have operated within the same two facilities since at least 1992. The stations moved into their current building, which houses all seven Clear Channel Broadcasting stations in Chicago, about two years ago after the Employer acquired the stations. The studios for WGCI-FM and WGRB-AM are located directly next to one another on the same floor, along with the studios for WVAZ-FM. No other stations are located on that floor. Mr. Smith and Ms. Robinson have offices on this same floor. Radio shows typically are broadcast from the studios on that floor. Occasionally,

⁶ The Petitioner is the certified bargaining representative for on-air staff who work at WVAZ-FM, an urban adult contemporary radio station. The bargaining unit at that station, as described in the current collective bargaining agreement, is “all persons engaged as talent, including but not limited to staff performers (including newscasters), sportscasters, colormen, extras, disc jockeys, actors, singers, moderators, announcer/technicians (combo), production directors, and all other performers who participate in programs.” The unit also includes the Program Director and News Director to the extent they regularly perform duties covered by the Agreement, but excludes the Public Affairs Director and any person not employed by the company who takes part in public service programming.

on-air personalities do “remotes” which entail performing their shows live from remote locations in the metropolitan area, or “callbacks” which involve on-air personalities or announcers calling back to the studio using a cellular phone and promoting an event at the remote location.

With respect to employees who appear on the air on WGCI-FM or WGRB-AM, the wages for full-time employees differ depending on the wage agreement negotiated between the on-air personality and the Employer. The wage rate for part-timers is identical for the two stations, \$16 per hour. Pursuant to Clear Channel’s benefit programs, the benefits received by on-air personalities are identical. These include vacation time, holidays, sick leave, health insurance, and the 401(k) plan.

In its petitioned-for unit description, the Petitioner describes the job classifications as “on-air staff, producers, announcers, van personalities, and production director.” Both WGCI-FM and WGRB-AM have employees working in these job classifications, including some who perform their job functions for both stations. Obviously, each station has on-air personalities who broadcast music and/or talk shows on the air. The on-air personalities do not have radio shows on both stations due to their different formats. However, they do interact occasionally on promotions and commercials. Producers create the radio shows and commercials through support activities, and occasionally appear on-air for spontaneous remarks when prompted by on-air personalities. No producer works for both stations, although one producer for WGRB-AM also performs as a regular on-air personality for WGCI-FM. Announcers read copy for commercials and other promotions on the air; the stations share the same announcers. In addition, Ty Wansley is the news announcer who provides on-air newscasts for both WGCI-FM and WGRB-AM. He records public service announcements which appear on both stations as well. Van personalities drive the WGCI-FM Sound Machine to remote locations and then perform callbacks to the studio for the radio shows. The production director is responsible for producing commercials and promotions. The same person, Al Whipple, does this for both stations. Mr. Whipple occasionally will use his voice on commercials and promotions, but typically will attempt to find an on-air personality or announcer to complete the voice work.

With respect to specific employees, crossover between the two stations has occurred on a limited basis. Leroy Johnson is an on-air personality on WGCI-FM who also acts as a board operator/producer for WGRB-AM. Effie Rolfe had worked as an on-air personality at WGRB-AM, and then transferred to that same role on WGCI-FM. Angel Jerez is an on-air personality for WGRB-AM who also performs callbacks and promotional work for both stations. Michael Robinson is an on-air personality for WGRB-AM and also performs daily voice work on commercials for WGCI-FM. Finally, Mr. Whipple produces commercials, promotions, and talk shows for both WGCI-FM and WGRB-AM, and acts as a back-up voice to record commercials which are heard on both stations.

The Employer has several employees whose principal function involves production work, but who do appear on the air on occasion. These employees include

Nelson Grinnage, Arthur Porter, Barbara Gueno, Johnny Starks, Dion Walker, and Al Whipple.

Nelson Grinnage works in the Employer's production department, producing commercials and acting as the board operator in the studio when on-air personalities perform remotes. Mr. Grinnage has on occasion filled in on overnight or weekend shifts on WGCI-FM, although he has not done so at all from March 1, 2004 to the present. Mr. Grinnage also substitutes for Daniel Dees, stage name "Big Poppa," who is an on-air personality for WGCI-FM's weekday afternoon radio show. The frequency of this substitution is not clear from the record, nor is the total amount of time that Mr. Grinnage appears on-air.

Arthur Porter is the executive producer of the WGCI-FM weekday morning show with Howard McGee. He occasionally appears on air at the prompting of Mr. McGee although, again, the record does not make clear how often this occurs or the total amount of his on-air time.

Barbara Gueno and Johnny Starks, stage name "Koolout," both work as van personalities for WGCI-FM, Ms. Gueno on weekday mornings and Mr. Starks on weekday afternoons. Mr. Starks also substitutes for Ms. Gueno in the mornings as needed. The van personalities drive the WGCI-FM Sound Machine to remote locations and then perform callbacks to the studio for the shows. Ms. Gueno performs 3 callbacks per day for the morning show, amounting to about 2-3 minutes of on-air time per day. Mr. Starks has performed about 10-15 callbacks in 2004, amounting to 5 to 7 1/2 minutes of on-air time and also has voiced commercials for no more than 10 percent of his work time.

Dion Walker works as a production assistant for the Employer's urban radio stations. He very rarely voices commercial tags, or 10-second spots, and only when someone is absent; he does not voice any commercial longer than 10 seconds.

Finally, as described above, Mr. Whipple principally acts as production director, and on rare occasions uses his voice in commercials as a backup. He has been on-air for just over one hour during all of 2004.

Within the past four to five weeks, Reverend Jesse Jackson began broadcasting a syndicated radio program called "Keep Hope Alive," which originates out of the WGRB-AM studios on Sunday mornings. His daughter, Santita Jackson, is the show's producer. Undisputed record testimony indicates that these two individuals are employed by Premiere Radio Networks, a subsidiary of Clear Channel, and not by WGCI-FM or WGRB-AM. In addition, undisputed testimony establishes that Mr. Jackson is not paid by Clear Channel Broadcasting.

IV. Analysis

The Employer contests the appropriateness of the petitioned-for unit on three separate grounds. First, the Employer contends that a combined unit of on-air personalities from WGCI-FM and WGRB-AM is not appropriate because the two groups have separate and distinct communities of interest. However, because of the employees' similar working skills and the other common factors among them, I find that on-air personalities on WGCI-FM and WGRB-AM share a sufficient community of interest and can be placed appropriately into one bargaining unit. Second, the Employer contests the eligibility in the unit of the six specific employees, identified above, whose regular job duties include both on air and off air activities. Because Barbara Gueno, Johnny Starks, Al Whipple, and Dion Walker do not appear on the air with the necessary frequency or regularity, I find they should not be included in the unit. However, because the record evidence is not clear as to the frequency or regularity that Nelson Grinnage or Arthur Porter appear on air, I find that these two employees will be permitted to vote in the election subject to challenge by any party. Third, the Employer contests the eligibility of two individuals, Jesse Jackson and Santita Jackson, who it claims are not employees of WGCI-FM or WGRB-AM. Because undisputed testimony establishes that Jesse Jackson and Santita Jackson are employees of Premiere Radio Networks, and not WGCI-FM or WGRB-AM, I find they should not be included in the unit.

A. Community of Interest of On-Air Personalities at WGCI-FM and WGRB-AM

Section 9(b) of the Act grants discretion to the Board to “decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” 29 U.S.C. § 159(b). The Board’s procedure for determining an appropriate unit is to first examine the petitioned-for unit. *See, e.g., The Boeing Co.*, 337 NLRB 152, 153 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). If the petitioned-for unit is appropriate, then the inquiry ends; if the petitioned for unit is not appropriate, the Board may examine alternative units suggested by the parties or select an appropriate unit different from those proposals. *Id.* It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Id.*; *see also Phoenix Resort Corp.*, 308 NLRB 826, 827 (1992). Furthermore, it is often possible that employees of a given employer may be grouped appropriately in more than one way for purposes of collective bargaining. *See, e.g., General Instrument Corp. v. N.L.R.B.*, 319 F.2d 420, 422-423 (4th Cir. 1963), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. N.L.R.B.*, 310 F.2d 478, 480 (10th Cir. 1962). The Board will pass only on the appropriateness of units that have been argued for. *Acme Markets, Inc.*, 328 NLRB 1208 (1999).

As a general matter, a unit is appropriate where employees in the unit have a separate community of interest from other job classifications; in determining this community of interest, the Board examines such factors as wages, benefits and other working conditions, commonality of supervision, degree of skill and common functions,

frequency of contact and interchange between employees, and degree of functional integration. *Boeing Co.*, 337 NLRB at 153. When the interests of one group of employees are dissimilar from those of another group, a single unit is inappropriate. *Swift & Co.*, 129 NLRB 1391 (1961). However, the fact that two or more groups of employees engage in different processes does not by itself render a combined unit inappropriate if there is a sufficient community of interest among all these employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963).

The Board has addressed the appropriateness of bargaining units in the radio and television industry on many occasions in the past, providing the standard applicable to this case. In the seminal case for this industry, *Hampton Roads Broadcasting Corp.*, 100 NLRB 238, 239 (1952), the Board found that a unit confined to employees who regularly or frequently appear before the microphone was appropriate for collective bargaining purposes. The Board noted that on-air personalities have special and highly individualistic qualifications necessary to their positions, including “voice, diction, personality, [and] the ability to persuade through the spoken word.” *Id.* The Board emphatically stated 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.” *Id.* In determining the appropriateness of a petitioned-for unit, traditional community of interest factors apply. *KFDA-TV Channel 10*, 308 NLRB 667 (1992).

Although the Board has not addressed squarely the issue of whether on-air personalities on sister FM and AM stations have a sufficient community of interest to be included in the same bargaining unit, a number of decisions have involved bargaining units which covered multiple radio and/or TV stations. *See, e.g., Perry Broadcasting Inc.*, 300 NLRB 1140 (1990) (Board approving stipulated bargaining unit of on-air personnel on AM and FM stations, despite AM station being news, talk, and music format and FM station being jazz and new age music format); *WTMJ-AM-FM-TV*, 205 NLRB 36 (1973) (only appropriate unit required inclusion of TV and radio newsmen, along with other announcers and programming employees, because none had separate community of interest); *WTAR Radio-TV Corp.*, 168 NLRB 976 (1967) (unit of on-air performers and certain other job classifications on employer’s TV and AM and FM radio stations, was appropriate). Nothing in these decisions suggested that on-air personalities at AM and FM stations had separate and distinct communities of interest.

In this case, the on-air personalities of WGCI-FM and WGRB-AM have a sufficient community of interest to be included in one bargaining unit. Irrespective of the music format being played on the station, disc jockeys must possess the “voice, diction, personality, and the ability to persuade through the spoken word” to appear on both stations. It is these special and highly individualistic qualifications that cement the community of interest between them. Several other factors support this finding. Clear Channel Broadcasting operates the “urban division,” which includes these two stations, as a conglomerate. Mr. Smith oversees all three of the stations as operations manager and, although he is not the program director of WGRB-AM, he does retain final authority

over all aspects of that station's operation.⁷ The heads of the promotions, sales, and production departments oversee those work functions for all three stations. The three stations are located in the same physical facility, and the studios of WGCI-FM and WGRB-AM are positioned immediately next to one another. Employees receive the same benefits package from Clear Channel, and part-time employees earn similar wages. Although not necessarily sufficient to demonstrate the eligibility of individual employees, the occasional crossover between stations by on-air personalities and announcers further indicates the integration between WGCI-FM and WGRB-AM.

Admittedly, other units of urban division stations may be as appropriate or more appropriate than the unit sought by the Petitioner. However, the legal issue in this case is the appropriateness of the unit that the Petitioner seeks, not whether other bargaining units are appropriate or more appropriate than the one sought. *See KFDA*, 308 NLRB at 667-68. Here, given the similar job skills and working conditions of on-air personalities, as well as the functional integration of the two stations, a combined AM and FM unit of on-air personalities is appropriate.⁸

The Employer argues that the differences in the music and other programming heard on the two stations requires separate units. This position misses the focus of the Board's community of interest analysis in this particular industry—the skills of on-air personalities, rather than the products they are producing. In this case, the on-air personalities all have the basic working skills needed to perform on the radio—voice, diction, personality, and the ability to persuade through the spoken word—even if they must tailor their performance to the specific audience being sought by each station. Indeed, Mr. Smith made clear that he does not permit every employee to appear on air. The principal reason for such a restriction is that not every employee has the skills required to do so. The fact that WGCI-FM is a hip-hop and R&B station and WGRB-AM is a gospel music and talk station, and that therefore the disc jockeys on each station do not host shows on the other, does not mandate separate units.

⁷ Even though the day-to-day operations of each station are handled separately by Mr. Smith and Ms. Robinson, differences in supervision alone are not a per se basis for excluding employees from an appropriate unit. *Texas Empire Pipe Line Co.*, 88 NLRB 631 (1950).

⁸ The Employer asserts that the parties' bargaining history with respect to WVAZ-FM suggests that separate units for each station are the only appropriate ones. However, that bargaining history is not controlling as to the scope of other units of the Employer's unorganized employees. The Board has made it clear that the bargaining history of a group of organized employees in a plant does not control the unit determination of every other group of unorganized employees in that plant. *North American Rockwell Corp.*, 193 NLRB 985 (1971). Furthermore, the bargaining pattern at other plants of the same employer will not be considered controlling in relation to the bargaining unit at a particular plant. *Big Y Foods*, 238 NLRB 855 (1978). Herein, notwithstanding the administrative integration of the stations in the Urban Division, the parties' bargaining history at WVAZ-FM has created a separate community of interest for the "talent" employees at that station from the other stations in the Urban Division arising out of the terms and conditions of employment set forth in collective bargaining agreements. Neither party herein has taken a position that the appropriate unit should include all three stations in the Urban Division or that the unit sought by the Petitioner should be considered to be a residual unit to the existing unit at WVZA-FM. Thus, it appears that neither party has any interest in disturbing the stability of the existing WVAZ-FM unit through the instant petition. Thus, a combined unit of on-air personalities at WGCI-FM and WGRB-AM is appropriate as they have a separate and distinct community of interests from the WVAZ-FM bargaining unit due to the bargaining history in the WVAZ-FM unit.

A bargaining unit combining on-air personalities for WGCI-FM and WGRB-AM is appropriate under traditional community of interest factors.

B. Eligibility of Individual Employees

In *Perry Broadcasting, supra*, the Board held that a petitioned-for unit limited to on-air personnel was appropriate and rejected the inclusion of sales employees who performed limited on-air work. The principal job duty of sales employees was to sell commercials, although they sometimes wrote advertising copy and infrequently appeared on the air. *Id.* at 1140-41. In describing this limited on-air work, the Board noted that “during a remote broadcast at a client’s place of business, a sales employee may interview the client” and that occasionally sales employees would voice commercials and work with on-air personalities to voice station promotions and contests. *Id.* at 1141. The Board concluded that it was inappropriate to combine the sales employees with on-air personalities due to the “limited role” they had in on-air work, repeating the long-imposed requirement that on-air work be regular or frequent. *Id.* at 1141-42.

This case is analogous to the factual situation in *Perry Broadcasting*. The Petitioner seeks to include six employees whose principal function is off-air work but who do perform at least some on-air work, including callbacks from remotes and voicing commercials and promotions. However, the record evidence demonstrates that the on-air work of Barbara Gueno, Johnny Starks, Al Whipple, and Dion Walker is so infrequent and irregular as to require their exclusion from the unit. Ms. Gueno appears for 2-3 minutes per day; Mr. Starks for no more than 10 percent of his work time; Mr. Whipple as a backup voice for commercials totaling just over an hour of airtime during all of 2004; and Mr. Walker for rare 10-second commercial tags. These specific showings of on-air time all are insufficient to warrant the inclusion of the employees in the bargaining unit.⁹ In contrast, the record evidence does not clearly establish how much Nelson

⁹ The Board’s test for “dual function” employees further supports this finding. In cases where employees perform more than one function for an employer, the Board rule permits these employees to vote in a proposed unit even though they spend less than a majority of their time on unit work, as long as they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in the working conditions of the unit. *See, e.g., Ansted Center*, 326 NLRB 1208 (1998); *Air Liquide America Corp.*, 324 NLRB 661 (1997). The Board does not have a bright-line rule for the amount of time an employee must perform unit work, instead making the determination on a case-by-case basis. However, Board decisions indicate that employees were ineligible when they spent only between 3 percent and 17 percent of their time on bargaining unit work. *See Martin Enterprises, Inc.*, 325 NLRB 714 (1998) (employee who was transferred out of unit position and thereafter spent only 10 percent of his time doing unit work); *Continental Cablevision of St. Louis County, Inc.*, 298 NLRB 973 (1990) (employees who spent just over 17 percent performing duties that were arguably unit work, but possibly distinct); *Davis Transport*, 169 NLRB 557, 562-63 (1968) (employees who spent less than 3 percent of their time doing unit work during a 10-month time period). And employees were eligible to vote where they spent 25 percent or more time doing bargaining unit work. *See Ansted Center, supra*, (employee who worked from 22 to 24 hours out of 32-hour workweek on unit work); *Air Liquide, supra* (employee who spent 3/4 of his time on unit work despite being transferred out of unit and having job title changed); *Alpha School Bus Co.*, 287 NLRB 698 (1987) (employee who spent majority of workday doing nonunit work, but still spent 30 percent of day on unit work); *Oxford Chemicals*, 286 NLRB 187 (1987)

Grinnage and Arthur Porter appear on air as part of their work duties. Accordingly, Mr. Grinnage and Mr. Porter will be permitted to vote in the election subject to challenge by any party.

At the hearing, the Petitioner took the position that any on-air work, no matter how limited or infrequent, required the inclusion of an employee in the proposed bargaining unit. Indeed, the language of its petitioned-for unit suggests such a position. The Petitioner based this upon its own practice in the industry, including its collective bargaining agreement for WVAZ-FM where the parties agreed to such a unit. However, the Petitioner's argument is contrary to Board precedent requiring that the on-air work of an employee be regular or frequent in order for the employee to be included in a unit of on-air personalities. Accordingly, Petitioner's position must be rejected.

Barbara Gueno, Johnny Starks, Dion Walker, and Al Whipple are not eligible to be included in this bargaining unit or vote in the election. Nelson Grinnage and Arthur Porter may vote in the election subject to challenge.

C. Eligibility of Jesse Jackson and Santita Jackson

Section 9(a) of the Act permits an exclusive bargaining representative to be designated where a majority of employees in a bargaining unit vote to do so; thus, to vote in an election, a person must be an employee. 29 U.S.C. § 159(a).

The Petitioner seeks to include Jesse Jackson and Santita Jackson in the petitioned-for unit, contending that the evidence is insufficient to establish that they are not employees of WGCI-FM or WGRB-AM. However, the uncontroverted testimony of Erica Thornton, the Employer's financial controller in Chicago, establishes that neither Jesse Jackson nor Santita Jackson is employed by the two stations. Instead, Mr. Jackson performs and Ms. Jackson produces the show pursuant to a license agreement with Premiere Radio Networks, a Clear Channel subsidiary.¹⁰ That license agreement permits WGRB-AM, and other stations, to broadcast Mr. Jackson's radio show. The compensation paid to the Jacksons for the radio show is not set by either WGCI-FM or WGRB-AM. Although Mr. Jackson typically performs his show from the WGRB-AM facilities, this arrangement is due only to his permanent residence being located in the Chicago area. Mr. Jackson also uses the Clear Channel facilities in other cities depending on where he is located on any given Sunday morning. Accordingly, because they are not employees of WGCI-FM or WGRB-AM, neither Jesse Jackson nor Santita Jackson should be included in the bargaining unit.

V. Conclusion

(employee who regularly performed unit work for 25 percent of each working day). In this case, the record evidence establishes that none of these four employees perform 25 percent or more of their work on-air.

¹⁰ Although the actual licensing agreement was not received into evidence, Ms. Thornton testified from her own direct knowledge regarding the licensing arrangement.

No issues have been raised by either the Employer or the Petitioner which warrant dismissing the petition. As detailed above, an appropriate bargaining unit includes on-air personalities from both WGCI-FM and WGRB-AM. Accordingly, I direct an election in the unit found appropriate herein.

VI. 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. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the American Federation of Television and Radio Artists, Chicago Local.

VII. Notices of Election

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

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. 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 which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of 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, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois, 60606 on or before **July 7, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. 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, DC 20005-3419. This request must be received by the Board in Washington by **July 14, 2004**.

DATED at Chicago, Illinois this 30th day of June 2004.

Roberto G. Chavarry, Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606

CATS — Unit: Other Scope/Definition

362-6799-0000-0000
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