NLRB rules against AFTRA in WPGC "hot cargo" case

Law judge says clause in agency contracts constituted illegal secondary boycott; although still subject to appeal, decision is seen as protection for broadcasters

A radio station combination in the Washington market has won the first round of a labor dispute that its lawyers argue is significant to the broadcasting industry. An administrative law judge for the National Labor Relations Board found last week that the Washington-Baltimore local of the American Federation of Television and Radio Artists violated laws against "secondary boycotts" and "hot cargo" contracts by trying to force advertisers to observe its strike against First Media Corp., licensee of WPGC-AM-FM Morningside, Md.

The case is not finished yet. AFTRA has already notified the NLRB that it takes exception to the ruling, meaning that now the agency board will have to consider the issues, perhaps even hold oral arguments before accepting or rejecting the administrative law judge's decision.

The judge, Bernard Ries, found that the AFTRA local has an unlawful "hot cargo" clause in a letter that advertising agencies are asked to sign pledging adherence to the union's codes. Under the clause, an agency agrees to go along with the striking AFTRA performers who want to withdraw their taped commercials from a station that is the object of an AFTRA strike.

In the strike against WPGC, initially brought by the station's announcers, AFTRA tried to enforce that clause, threatening to bring suit against some local agencies that continued to permit AFTRA performers' commercials to run on the stations. The union argued that use of taped commercials carrying the voices of striking performers has the same effect as if the performers were to cross the picket line.

First Media, was concerned that the union had found a way to pressure it through its advertising, a method which, if successful, "would have been a powerful strike weapon against WPGC," Judge Ries noted in his decision.

He ruled that the union had exceeded the bounds of lawful economic boycotts, saying that by trying to coerce advertising agencies and producers to cease doing business with the stations, it was engaging in a secondary boycott, which is against the law. He ordered the union to stop enforcing the offending clause in the letter of adherence.

On the broadcaster's side, the judge's decision was welcomed as a blow for the entire industry. Indeed, said Marshall Berman of the Washington law firm, Dow, Lohnes & Albertson, which represents First Media, it may be "the most important labor case in the history of the broadcasting industry," because "it goes directly to the balance of power at the bargaining table." If the union can force advertisers to withdraw their commercials from stations in Washington, its but a short step, he said, to apply like pressure on radio and TV stations all over the country—and on the networks. It is also conceivable, he said, that the union could try to shut off records, as well as advertising tapes.

Among those who share Mr. Berman's assessment of the case's importance is the National Association of Broadcasters, which sent a letter over President Vincent Wasilewski's signature to the NLRB last year, urging that the case be carefully considered by the full agency board.

But the attorney for the other side, Thomas Powers of Cafferky, Powers, Jordan & Lewis, disputed Mr. Berman's claim. Last week, he called the controversial clause in the Washington-Baltimore local's letter of adherence "a local peculiarity" that has "no national implications in terms of AFTRA." There is no similar clause in the national AFTRA contract, he said, and "assuming that we win, you will not see the national at the next negotiations trying to change the contract. I just don't think that will happen."