RECENT CASES

NLRB Regional Director dismisses Producers Guild petition seeking certification of producers as a collective bargaining unit

The Los Angeles Regional Director of the National Labor Relations Board has concluded that the responsibilities of producers and associate producers are those of supervisory and managerial employees. As a result, he has dismissed a petition filed by the Producers Guild of America seeking to represent producers in a multi-employer, industrywide unit consisting of member companies of the Alliance of Motion Picture and Television Producers, member companies of the Association of Motion Picture and Television Producers, and other

independent companies engaged in the production of motion pictures and television programs.

Testimony presented to an NLRB hearing officer indicated that producers are responsible for supervision of the creative, financial and technical areas of film production and post-production, and that associate producers "function under the supervision of the producer in performing the producer's duties, or supervise those duties delegated to them by the producer."

In the preproduction phase of a film, producers may supervise writers in the development of a screenplay and prepare, or are consulted on, the itemized production budget. Producers are ultimately responsible for all cost items having to do with the physical production of the film, including the cost of leased facilities, set construction, wardrobe labor and material, script, make-up and hair-styling, and postproduction. Producers hire and negotiate salaries for a variety of personnel, including

directors, production managers, art directors, writers, composers, actors, and crew and have the authority to discipline personnel, authorize overtime, travel and per them expenses, adjust payroll disputes, and determine safety procedures.

During production, producers regularly report to studio executives regarding the progress of a production and maintain compliance with the production budget. In so doing, producers may veto expenditures, exceed budgeted amounts or reallocate amounts budgeted for one department to another department, and approve daytoday expenditures. Producers also supervise filming in that they may make suggestions to the director regarding the quality and speed of filming, occasionally cut or change a previous day's filming, or order the refilming of certain sequences, and control the scheduling and locale of filming. Producers make the initial determination of which writer will receive screen credit.

With respect to post-production, producers negotiate for the use of editing facilities and supervise the dubbing and the final cut of the film before it is submitted to the employer or the network.

Associate producers, in the case of television programs, often perform the same functions as those performed by a producer.

In all, given this record, the Regional Director concluded that he could not find that any person serving in the capacity of a producer or associate producer could be considered a statutory employee.

Further, producers and associate producers also are managerial employees, because they effectuate management policies by their control over "the manner and means to be utilized in securing the production results sought by the studios and/or network;" because they exercise independent judgment and discretion as to many aspects of filming; and because they often share in a

percentage of the profits from a production, in addition to receiving a salary.

The Regional Director declined to find that producers and associate producers are confidential employees, since they do not formulate management policies in the field of labor relations. While producers and associate producers may negotiate salaries, the salaries generally are based on nonconfidential collective bargaining agreements. And while producers and associate producers also may mediate disputes among cast and personnel during production, this is not done in conjunction with labor relations personnel of the employer production companies.

Alliance of Motion Picture and Television Producers and Producers Guild of America, Inc., Case No. 31-RC-5435, Before the National Labor Relations Board, Region 31 (April 15, 1983) [ELR 4:24:1]

Federal District Court approves consent decree by which National Association of Broadcasters agrees to cease enforcing certain of its advertising standards

A Federal District Court in Washington, D.C., has approved a consent decree which will terminate an antitrust proceeding brought by the Department of Justice against the National Association of Broadcasters. At issue were certain advertising standards contained in the NAB's Television Code, which was subscribed to by most commercial television stations. The government alleged that the effect of these standards was to restrict the overall supply of television advertising available to advertisers and to restrict competition in the format in which television commercials could be presented.

In 1982, the court held unlawful the NAB standard restricting the number of products an advertiser could promote in a commercial lasting less than 60 seconds (ELR 3:22:1). The validity of the remaining two provisions, which limited the number of minutes per hour that could be allocated to commercials and the number of different commercials that could be broadcast each hour, was to be determined after trial. Subsequently, the parties prepared and submitted for public comment a proposed consent decree in which the NAB agreed to stop disseminating or enforcing all of the three questioned advertising standards. In return, the government agreed not to object to the entry of an order by the Court of Appeals vacating the prior District Court holding that the NAB was in violation of the Sherman Act. This means that the District Court order will not be available as prima facie evidence against the NAB in any civil antitrust case brought by a private party.

Action for Children's Television had submitted comments recommending that the proposed decree be revised to permit the continued enforcement of the provisions of the NAB Code that related to childrens advertising. However, the court observed that individual stations may continue to regulate childrens advertising and that the FCC also retains authority in this area. An injunction therefore was issued restraining the NAB from maintaining any standard or provision limiting the quality, length or placement of non-program material appearing on broadcast television or the number of products or services presented within a single non-program announcement.

United States v. National Association of Broadcasters, 553 F.Supp. 621 (D.D.C. 1982) [ELR 4:24:2]

Court upholds director's right to receive sole film credit; producer is enjoined from claiming co-director credit

A Federal District Court in New York has issued a preliminary injunction barring Romano Vanderbes and International Talent Marketing, Inc. (Vanderbes' wholly owned company) from distributing, marketing or publicizing the film "New York Nights" unless Simon Nuchtern receives sole credit as director of the film. Nuchtern originally was hired to direct the film in 1979, but the project did not begin shooting until 198 1. In 1981, Nuchtern agreed to accept a reduced fee of a \$25,000 (in addition to a percentage of the producer's share) instead of the originally agreed upon fee of a deferred \$35,000. Vanderbes contended that Nuchtern also had renegotiated his status on the film and agreed to a co-director credit, shared with Vanderbes. At the time

Nuchtern brought his action, Vanderbes had prepared distribution copies of the film which he listed himself first and then Nuchtern as co-directors.

The court found that Nuchtern had not agreed to Vanderbes' proposal as to a shared or different credit on the film and that there was substantial evidence to establish Nuchtern's contribution as the sole director of "New York Nights." Vanderbes was present at a crew party when Nuchtern was introduced as the director of the film, and the amount listed as director's salary in the film budget was the amount which was to be paid to Nuchtern. Further, the daily production reports, call sheets and "slates" on each segment of unedited film showed Nuchtern as the director of the project; and this was done with Vanderbes' knowledge and participation, stated the court.

Vanderbes had listed himself as the director of the film on the distribution contracts which he entered into prior to the making of the film. But these contracts were never shown to, or acquiesced in by, Nuchtern.

Vanderbes also claimed that he was entitled to directing credit because he participated in the direction of the film and supervised post-production work. This argument was "without legal significance," according to Judge Pierre N. Leval. "The fact that a producer-writer participates with the director (or even in competition with the director) in directing functions is not unusual and does not entitle him to receive all or a part of the direction credit where this has been contractually assigned to a director and where the director has done his job in performance of that contract," Judge Leval explained.

Nuchtern, having shown irreparable harm and loss to his reputation if he failed to receive director credit, was awarded a preliminary injunction. Interestingly, although jurisdiction was premised on the Lanham Act, Judge Leval stated that Nuchtern had proved a cause of action for breach of contract which the court proceeded to adjudicate on the basis of pendent jurisdiction.

Nuchtern v. Vanderbes, Case 82 Civ. 6182 (S.D.N.Y., Oct. 8, 1982) [ELR 4:24:2]

Radio station's use of the term "107" as part of its identification did not violate the rights of contiguous station which had used "107" for 10 years

In keeping with a standard practice in the radio industry, WYEN-FM in Chicago, since 1971, has "rounded off" its assigned frequency of 106.7 megahertz to the number 107 when referring to the station in promotional materials and in its broadcasts. WGCI-FM also broadcasts in the Chicago area, at a frequency of 107.5 megahertz. In 1979, WGCI began using the slogan "Studio

107," and in 1981, the station began identifying itself in its broadcasts as "FM 107." WYEN brought an action alleging that WGCI's use of the number 107 violated WYEN's rights under section 43(a) of the Lanham Act. A Federal District Court ruling granting injunctive relief to WYEN has been reversed by a Federal Court of Appeals.

The Court of Appeals found that WYEN did not establish that the primary significance of the term 107 was to designate a single source of radio broadcasts. Although the station used the term for 10 years and spent about one million dollars in advertising and promotion, this did not dispel the likelihood that listeners would regard the term "in anything but its utilitarian sense of denoting an approximate position on the FM dial."

WYEN also claimed that when "FM 107" was listed as a slogan for WGCI for the first time in the 1981 Arbitron survey, WYEN, also for the first time in nine years,

failed to make the list of the top stations in the Chicago area. Apparently WGCI was credited by Arbitron for survey participants' references to 107. However, the court ruled that the radio audience's responses to the survey did not mean that listeners accorded any particular significance to the number 107 aside from its location-denoting function. The "meager" showing by WEYN regarding the public's perception of the term 107 as associated with the station did not demonstrate secondary meaning, and therefore the District Court was ordered to vacate its injunction.

Walt-West Enterprises, Inc. v. Gannett Co., Inc., 695 F.2d 1050 (7th Cir. 1982) [ELR 4:24:3]

Dispute between Filmways as distributor of 3-D film "Comin' At Ya" and manufacturer of 3-D

equipment results in order requiring return of special lenses to Filmways and unfair competition claim by manufacturer

In April 1981, Filmways Pictures, Inc., the distributor of the 3-D film "Comin' At Ya," began negotiations with Marks Polarized Corporation for the purpose of obtaining from Marks special projection and viewing devices necessary for 3-D films. While the parties never executed a written contract, Marks did begin manufacturing the equipment for the film. A dispute arose between the parties, and Filmways sought an accounting from Marks, alleging that Marks was obligated to pay commissions to Filmways for the rental income Marks expected to receive from exhibitors of the film. Marks responded by contending that it had agreed to manufacture the equipment only if Filmways paid at least part of

the costs and only if Filmways agreed to recommend Mark's equipment to exhibitors.

After reviewing four draft contracts prepared by Filmways, a Federal District Court ruled that the understanding between the parties was too uncertain to warrant an order for an accounting. Filmways may be entitled to certain information about Marks' financial transactions with the exhibitors of the film, but this information will have to be obtained by Filmways through the regular discovery process.

The court did order Marks to return approximately 40 lenses provided to Marks by Filmways.

The court dismissed counterclaims against Filmways in which Marks alleged violations of the Lanham Act, the misappropriation of confidential trade secrets, prima facie tort, contributory patent infringement and attempted monopolization of the market for 3-D motion picture equipment in violation of section 2 of the Sherman Act.

However, the court refused to dismiss a counterclaim under New York's common law of unfair competition, in which Marks contended that Filmways induced Marks to disclose its trade secrets to competitors so that Filmways could bypass Marks and deal directly with those competitors. Marks also will be entitled to pursue a claim based on the alleged assault by one of Filmway's employees on one of Marks' employees. Although only a human being can be the direct victim of an assault, damages to a corporation, such as a decline in employee morale, may be a foreseeable consequence of an assault on an employee, particularly when the assault occurs in the employer's office during the working day, the court ruled.

Filmways Pictures, Inc. v. Marks Polarized Corporation, 552 F.Supp. 863 (S.D.N.Y. 1982) [ELR 4:24:3]

National Football League's refusal to grant Memphis franchise to Mid-South Grizzlies did not violate antitrust laws, Federal District Court rules

There are those who would say that the Mid-South Grizzlies should have been granted a National Football League franchise on the basis of their team name alone. But in 1975, when the Grizzlies applied to obtain an NFL franchise in Memphis, the League denied the application, citing "major problems presently confronting the NFL" as the ground for refraining from expansion of the League anywhere at that time. The problems included: the League's failure to sign a collective bargaining agreement with the Players Association, court rulings invalidating League policies, and the likelihood that the procedures used to acquire players for the recently added Tampa Bay and Seattle teams would be challenged.

The Grizzlies claimed that the NFL's rejection of its application constituted an unlawful group boycott, an unreasonable restraint of trade and monopolization in violation of sections 1 and 2 of the Sherman Act. It also was alleged that the NFL may have sought to retaliate against the Grizzlies' owners for the team's involvement in the World Football League.

A Federal District Court has granted summary judgment to the NFL. Initially, the court noted that joint planning and rulemaking activities by the League were not evidence of a group boycott. "The view that the production of professional sports requires joint decisions of the different teams in order to insure their continued existence has become widely recognized." The Grizzlies were seeking to participate in the advantages of an established organization; the team did not assert that it was injured by any anticompetitive behavior of the League. Substantial business reasons justified the denial

of the new franchise. And the court further found that insufficient evidence had been presented as to the role in the rejection, if any, of the Grizzlies' former WFL affiliation.

The court also determined that the League's denial of the franchise did not constitute unlawful monopolization. While the NFL did have a monopoly in the United States in major league football, it did not use this power to prevent the Grizzlies, or any other interested organizations, from forming a rival league and fielding a team in Memphis, the court said.

Mid-South Grizzlies v. National Football League, 550 F.Supp. 558 (E.D.Pa. 1982) [ELR 4:24:4]

Antitrust claim brought by New Jersey franchisee of Miss World beauty pageant against pageant organizers is dismissed

The Miss Litigation pageant announces a new entrant to an already stunning array of contestants (see ELR 4:22:3, 3:24:4, 3:12:7). Giannna Enterprises, the 1981 New Jersey franchisee of the Miss World pageant sued the pageant's organizers, alleging that they had stated that the 1982 pageant would be made available, at the 1981 fee, to 1981 franchise holders. However, the 1981 Miss World pageant did not take place. Rather, World representatives entered into an agreement with the owners of the Miss Universe pageant by which the runnerup in the 1981 national Miss Universe-America pageant became World's representative in the international Miss World competition. In return, World agreed not to hold

or authorize any Miss World competitions in the United States.

Gianna's claim that this agreement violated section 1 of the Sherman Act has been dismissed by a Federal District Court. The court cited the absence of an adequate market definition as a primary factor in its ruling. According to World, the product market consisted of international beauty pageants, and the consumers were the state franchisees and pageant contestants. But this excluded a "myriad" of other state and national beauty pageants, noted the court. Judge Sofaer stated that the lack of a market definition made it "impossible even to approximate the market effect of (World's) allegedly anticompetitive agreement." A claimant under section 1 is required to allege "how the net economic effect of the alleged violation is to restrain trade in the relevant market and that no reasonable alternative source is available." World's assertion that the contestant entry fee increased from \$350 to \$500 after the agreement and that the opportunity to become a state franchisee had been reduced did not adequately demonstrate an anticompetitive effect. The court also ruled that Gianna failed to show an antitrust injury, that is, an "injury emanating directly from the anticompetitive practice." It would appear that those who would have standing to assert such a direct injury were the franchisees and contestants in the Miss Universe system who might have to pay "a monopoly price," and other beauty pageants.

In ruling on other procedural issues presented, the court: refused to certify a class composed of all state franchisees of World and all winners of state Miss World beauty pageants because of the insufficiency of the antitrust claim, and because of the failure to satisfy the prerequisites for certification; found that the Miss World corporations were subject to jurisdiction in New York; and declined to tax Gianna and its attorney for

World's attorneys fees because the antitrust claim, while "frivolous," did not amount to the "intentional abuse of judicial process."

Gianna Enterprises v. Miss World (Jersey) Lid., 551 F.Supp. 1348 (S.D.N.Y. 1982) [ELR 4:24:4]

Jeep television commercials were properly excluded as evidence in trial for injuries sustained by driver under circumstances dissimilar to those portrayed in commercials

Alma Haynes, who was injured in an accident that occurred while she was driving an American Motors Corporation Jeep CJ-5, sued AMC alleging negligence, strict liability and breach of warranty. Haynes attempted to introduce into evidence television commercials which purportedly led the Haynes family to believe that their Jeep would not roll over when subjected to strenuous driving conditions. Kenneth Haynes testified that the commercials depicted the Jeep as a good all-around vehicle, particularly on back roads. However, the Haynes used the Jeep as a family car, and the accident occurred on a rain slick asphalt highway.

The trial court excluded the commercials on the ground that they would have confused the issues before the jury, because "Nothing in the commercials implied that the CJ-5 would not roll over when sub- jected to the kind of conditions under which the Haynes accident occurred." A Federal Court of Appeals has upheld this ruling, and also has upheld the District Court's refusal to allow the Haynes' expert to comment on the commercials. The court found that there was no evidence that the Haynes relied on any representation made by AMC when purchasing the Jeep.

Haynes v. American Motors Corporation, 691 F.2d 1268 (8th Cir. 1982) [ELR 4:24:5]

Band musicians performing in Puerto Rican hotels are employees of their band leaders, not the hotels, rules Federal Court of Appeals

In a noteworthy decision, a Federal Court of Appeals has ruled that hotel musicians working together as a group are employees of their leader, rather than hotel employees or independent contractors.

An Administrative Law Judge (ALJ) had found that band leaders in charge of the steady engagement of hotel musicians were hotel supervisors and that the musicians themselves were hotel employees. Consequently, the ALJ concluded that the Federacion de Musicos de Puerto Rico, Local 468, was the proper bargaining representative of the musicians. The Union had complained that the Puerto Rico Hotel Association had refused to bargain collectively with the Union until the Union conceded that the musicians were independent contractors. The Association's conditional refusal to bargain with the Union was ruled a violation of sections 8(a)(1) and (5) of the National Labor Relations Act by the ALJ, who also held unlawful the Association hotels' use of personal service contracts which stated that the musicians were not hotel employees.

The National Labor Relations Board adopted the ALJ's decision. However, the Court of Appeals has ruled that there was insufficient evidence to support a finding that the musicians were hotel employees. Many factors indicated that the band leaders, not the hotels, "exercise all the significant control over the manner of their own and their musicians' performance." The leaders hire, fire,

instruct and discipline the musicians in their bands; Association hotels can only terminate the engagement of an entire band. The leaders select addition and replacement musicians, approve musician's sick leave and vacations, schedule and conduct rehearsals, and select the repertoire, instruments used, style, tempo, and other standards of performance. The leaders occasionally arrange outside employment for their bands such as television shows and recording sessions, and the leaders and musicians select and pay for their own uniforms. Band members also usually provide their own instruments and their own sheet music. Further, the musicians and leaders do not follow the same personnel practices as hotel employees: they do not have access to hotel grievance procedures, are not eligible for employee paid vacations, and generally are not given detailed rules regarding their conduct on stage or in the hotel casinos.

The ALJ had relied on the following facts in according employee status to the musicians: the hotels determine working hours, including overtime, and the locations in the hotels where the bands play; the hotels may request certain types of music and may sometimes require an increase in the size of the band. The Court of Appeals concluded that these facts showed that while the hotels may control the type, time and location of a band's "final product," that is, its music, they do not have the authority to regulate the manner in which the band leaders or the musicians perform.

The NLRB also argued that even if the hotels did not have an employer-employee relationship with the musicians and leaders, the band leaders were hotel supervisors who functioned as autonomous department heads, such as a chef or maitre d'hotel. This was "unpersuasive," stated the court since "Leaders usually form their own bands before contracting with Association hotels.

Most bands bear their leader's name and build up their reputations under that name." Leaders deal with hotels through booking agents and may arrange outside engagements for their groups, while chefs and maitre d's do not. In all, steadily engaged musical groups controlled by band leaders "have an independent identity that is not characteristic of hotel departments."

The method used to pay the hotel musicians also did not establish an employer-employee relationship. The hotels do pay each musician with an employee payroll check and withhold payroll taxes, instead of distributing to the leader the entire contracted-for lump sum amount. But employees of independent construction contractors engaged by Association hotels have been paid in the same manner.

Duration of employment, which in the case of some bands, was for periods of a year or more, also does not in and of itself suggest employee status, the court ruled. The court therefore concluded that the band leaders were independent contractors and are the employers of the musicians in the hotel bands.

Hilton International Company v. National Labor Relations Board, 690 F.2d 318 (2d Cir. 1982) [ELR 4:24:5]

Oakland zoning ordinance regulating location of adult entertainment activities is upheld; but Santa Clara zoning measure is ruled an infringement of First Amendment

An Oakland, California operator of an adult bookstore containing motion picture machines was denied a conditional use permit pursuant to a city ordinance banning adult entertainment activity within 1,000 feet of a residential zone. The bookstore was located less than 600

feet from a residential zone. The ordinance allowed owners one year to terminate or alter their operations, and this was found to be reasonable as applied to the bookstore. There was no investment in permanent improvements in the property; the bookstore lease expired during the one year period; and the cost of removing nonconforming materials was negligible due to the proximity of the owner's other adult bookstores. The ordinance itself was held to be a valid regulation of the location of a business that did not decrease public access to adult entertainment activities, and had little or no effect upon legitimate expression.

In a separate case, a Federal Court of Appeals has struck down a Santa Clara County, California zoning ordinance which made unlawful the operation of Peter Kuzinich's adult businesses. Kuzinich had operated an adult movie theater and an adult bookstore pursuant to use permits issued by the county. But certain conditions

of the use permits such as landscape work and parking lot improvements were not met.

In 1980, Kuzinich applied for a new use permit. The county responded with an action to enjoin his operation of the bookstore and theater, and adopted an emergency zoning measure. There was some evidence that the amendment was passed to control traffic and littering and that the adult businesses did have a negative effect on nearby residential areas. But there also was evidence that the basic purpose of the measure was to control pornography, not to serve a substantial public interest unrelated to the suppression of free speech. Therefore a District Court order granting summary judgment to the county and denying Kuzinich all relief was reversed.

Castner v. City of Oakland, 180 Cal. Rptr. 682 (1982); Kuzinich v. County of Santa Clara, 689 F.2d 1345 (9th Cir. 1982) [ELR 4:24:6]

Briefly Noted:

Cable Television.

A New York statute authorizing the installation of cable equipment in apartment buildings has been held to be a proper exercise of the state's police power, provided compensation is paid to the property owner. This validating construction of the statute was announced by the New York Court of Appeals in response to a decision of the United States Supreme Court. The Supreme Court had reversed and remanded an earlier Court of Appeals opinion in which it was found that the statute did not require compensation to the property owner (ELR 4:6: 1). Compensation will be determined by the

state's Cable Television Commission, subject to judicial review.

Loretto v. Teleprompter Manhattan CA TV Corp., New York Law Journal, p.20, col.4 (N.Y., Feb. 17, 1983) [ELR 4:24:6]

Broadcasting.

On January 14, 1983, a Federal District Court in Louisiana prohibited CBS from broadcasting "in any manner whatsoever" a segment of its "60 Minutes" news program relating to the events at issue in the case of United States v. McKenzie, then pending in the District Court and scheduled for trial on February 7, 1983. The "60 Minutes" segment was scheduled for broadcast on January 16th. On January 15th, a Federal Court of Appeals

stayed the District Court order. The appellate court noted that the order was a prior restraint which "bears a heavy presumption against its constitutionality," but was not supported by any findings. Further, McKenzie and his co-defendants had requested only that CBS be enjoined from broadcasting its report in the Dallas metropolitan area until after the commencement of the trial. But the order was unlimited geographically and as to time. There also was no indication that the District Court had considered alternatives to prior restraint, such as a continuance or change of venue, or had evaluated the effect of pretrial publicity on potential jurors.

United States v. McKenzie, 697 F.2d 1225 (5th Cir. 1983) [ELR 4:24:6]

Record Contract Litigation.

In 1979, Infinity Records entered into an agreement with Pathe News by which Pathe purported to convey to Infinity, for \$80,000 the exclusive right to manufacture and sell phonograph records of recordings made during the 1979 visit of Pope John Paul 11 to the United States. Within a month of the execution of the agreement, Infinity learned that RCA Records was distributing copies of a record of the Papal visit entitled "Official Commemorative Recordings." Infinity brought an action against Pathe for rescission of the agreement, return of the \$80,000, and damages for breach of the exclusive rights agreement. During discovery, Pathe failed to produce documentary support of its claim that it had acquired the rights conveyed to Infinity from the United States Catholic Conference. Moreover, Pathe had received a mailgram from the Conference prior to Infinity's payment of the \$80,000 fee in which the Conference advised Pathe of its decision to withdraw from then ongoing negotiations concerning the Papal recordings, and cautioned Pathe not to use the USCC name in connection with cassette, film or record agreements. Soon after, the Conference again warned Pathe against representing itself as having a relationship with the USCC. A New York appellate court has stated that the action of Pathe's counsel in failing to turn over relevant documents may have "tread dangerously close to the knowing withholding of evidence." Pathe's claim that a mailgram does not constitute "correspondence" was a "disingenuous semantical argument" made with "incredible temerity," stated the court. The court therefore ruled that it would grant Infinity's motion to strike Pathe's pleadings unless counsel for Pathe pays Infinity the sum of \$1,000 and Pathe pays Infinity's costs to date. Infinity's motion for summary judgment was denied since a factual issue does remain as to whether Pathe ever actually acquired exclusive rights to the Pathe recordings.

Infinity Records, Inc. v. Pathe News, Inc., 455 N.Y.S.2d 631 (App. Div. 1982) [ELR 4:24:7]

Labor Relations.

A New York State Department of Labor Industrial Board of Appeals decision affirming a labor law violation notice issued to ABC by the Industrial Commissioner has been annulled. The Industrial Commissioner contended that ABC did not provide an additional meal period between 5:00 and 7:00 P.M. for those company employees, such as the technical crews on soap operas and news programs, who start work before noon and are scheduled to continue later than 7:00 P.M. However, a

state supreme court justice has concluded that the employees in question had waived the statutory meal period benefit under collective bargaining agreements which provide for time and a half wages as well as penalty payments for forfeited meal periods.

Matter of American Broadcasting Companies, Inc., New York Law Journal, p. 1, col.4 (N.Y.Cnty., Sept. 23, 1982) [ELR 4:24:7]

Spectator Injury.

A New York appellate court has reversed a trial court ruling which had denied summary judgment to the New York Mets in an action brought by a spectator who was hit by a foul ball while attending a baseball game at Shea Stadium. The spectator was sitting in a front row

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box seat immediately behind first base; the area was separated from the playing field by a three foot high fence. The ball club was required to exercise "reasonable care under the circumstances" to prevent injury, and in this case, the standard of care was met when the club provided screening for the area behind home plate where the danger of being struck by a ball is the greatest, stated the court. The spectator's action was therefore dismissed.

Davidoff v. The Metropolitan Baseball Club, Inc., New York Law Journal, p.12, col.2 (N.Y. App., Feb. 7, 1983) [ELR 4:24:7]

Previously Reported:

The United States Supreme Court has taken actions on a half-dozen cases previously reported in these pages. The Court has agreed to hear the following cases: League of Women Voters v. Federal Communications Commission (4:9:5); Bose Corporation v. Consumers Union (4:16:4); and Jones v. Calder (4:19:5). The Court has declined to hear the following cases: Rooney v. Columbia Pictures (4:7:5); Eastern Microwave v. Doubleday Sports (4:13:2); and Muir v. Alabama Educational Television Commission (4:18:4).

The following cases have been published: City of New York v. New York Yankees, 458 N.Y.S.2d 486 (4:20:6); Smithers v. Metro-Goldwyn-Mayer Studios, 189 Cal.Rptr. 20 (4:21:1); and Jason v. Fonda, 698 F.2d 966 (4:22:2).

[ELR 4:24:7]

DEPARTMENTS

In the Law Reviews:

The Tennessee Bar Association has published the second issue of its Journal of Copyright, Entertainment and Sports Law. Single issues are \$6 and subscriptions \$18 per year. Order directly from the Association at 3622 West End Avenue, Nashville, Tennesse 37205. The current issue contains the following articles:

Demise of the Tax-Motivated Personal Service Corporation by Steven J. Gombinski and Gary P. Kaplan, 1 Journal of Copyright, Entertainment and Sports Law 73 (1982)

U.S. Immigration Procedures and the Employment of Alien Performers and Sports Personalities by Alfred J. Del Rey, Jr., 1 Journal of Copyright, Entertainment and Sports Law 119(1982)

Breach of Contract or Copyright Infringement: Walking the Line: Part I by Donald Biederman, 1 Journal of Copyright, Entertainment and Sports Law 135 (1982)

The Anton Piller Order: Injunctive Relief and Ex parte Discovery Against Pirates in the English Courts by Jeremy A. T. Gawade, 1 Journal of Copyright, Entertainment and Sports Law 145 (1982)

The Benjamin N. Cardozo School of Law has published the Winter 1983 issue of its Cardozo Arts & Entertainment Law Journal. Single issues are \$5.50 and subscriptions \$10.00 per year. Order directly from Cardozo at

55 Fifth Avenue, New York, N.Y. 10003. The current issue contains the following articles:

Federal Income Taxation of Fine Art by Jeffrey C. McCarthy, 2 Cardozo Arts and Entertainment Law Journal 1(1983)

Home Recording of Pay Television: Beyond the Betamax Case, 2 Cardozo Arts and Entertainment Law Journal 69 (1983)

The Curtain Rises on Consent Decree Modification in the Theatre Industry: United States v. Shubert, 2 Cardozo Arts and Entertainment Law Journal 91 (1983)

Survey: Museums, Artists and Copyright by Dorothy Weber-Karlitz, 2 Cardozo Arts and Entertainment Law Journal 121 (1983)

Book Review by Abner J. Mikva of Banned Films: Movies, Censors and the First Amendment by Edward de Grazia and Roger K. Newman, 2 Cardozo Arts and Entertainment Law Journal 145(1983)

Book Note by Cynthia G. Fischer of Indecent Exposure: A True Story of Hollywood and Wall Street by David McClintick, 2 Cardozo Arts and Entertainment Law Journal 151(1983)

The Winter 1982 issue of Law and Contemporary Problems is a symposium on International Communications. It may be ordered directly from Duke University School of Law, Duke Station, Durham, North Carolina 27706; phone (919) 684-5966. The issue contains the following articles:

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Foreward by Ralph A. Uttaro, 45 Law and Contemporary Problems 1(1982)

Towards a Negotiable Definition of Propaganda for International Agreements Related to Direct Broadcast Satellites by Jon T. Powell, 45 Law and Contemporary Problems 3 (1982)

Capitalizing on National Self-Interest: The Management of International Telecommunication Conflict by the International Telecommunication Union by Donna C. Gregg, 45 Law and Contemporary Problems 37 (1982)

Transnational Freedom of Speech: Legal Aspects of the Helsinki Final Act by Jordan J. Paust, 45 Law and Contemporary Problems 53 (1982)

ENTERTAINMENT LAW REPORTER

The Suppression of Pirate Radio Broadcasting: A Test Case of the International System for Control of Activities Outside National Territory by Horace B. Robertson, Jr., 45 Law and Contemporary Problems 71 (1982)

The Voices of America in International Radio Propaganda by Ralph A. Uttaro, 45 Law and Contemporary Problems 103 (1982)
[ELR 4:24:7]