

In the Matter of WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY, LIGHTING DIVISION and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (CIO)

*Case No. 8-R-1263.—Decided December 4, 1943*

*Mr. William E. Miller, of Pittsburgh, Pa., for the Company.*

*Mr. David Scribner and Mr. Edward J. Matthews, both of New York City, for the UE.*

*Mr. Harry A. Gillis, of Cleveland, Ohio, for the Federation.*

*Mr. David V. Easton, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon an amended petition duly filed by United Electrical, Radio & Machine Workers of America (CIO), herein called the UE, alleging that a question affecting commerce had arisen concerning the representation of employees of Westinghouse Electric & Manufacturing Company, Lighting Division, Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Cleveland, Ohio, on November 5, 1943. The Company, the UE, and Employees Federation of the Westinghouse Electric & Manufacturing Company, herein called the Federation, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Federation made a motion at the hearing to dismiss the petition herein which the Trial Examiner referred to the Board. For reasons hereinafter stated, this motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

Westinghouse Electric & Manufacturing Company, a Pennsylvania corporation, owns and operates a number of plants located throughout the country. We are concerned here with that plant of the Company known as the Lighting Division, which is located in Cleveland, Ohio. The Lighting Division manufactures luminaries for commercial, industrial, flood lighting, aviation, and other purposes. During the year 1943, approximately 65 percent of the raw materials used at the Lighting Division, valued at more than \$1,700,000, has or will come from points outside the State of Ohio, and approximately 80 percent of its finished products, valued at more than \$3,500,000, has been or will be shipped to points outside the State of Ohio. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

### II. THE ORGANIZATIONS INVOLVED

United Electrical, Radio & Machine Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Employees Federation of the Westinghouse Electric & Manufacturing Company is a labor organization affiliated with the Federation of Westinghouse Independent Unions, admitting to membership employees of the Company.

### III. THE QUESTION CONCERNING REPRESENTATION

On or about August 10, 1943, the UE requested recognition by the Company as the bargaining representative of certain of its employees. The Company refused to grant such recognition unless and until the UE receives certification by the Board. The Federation contends that its present contract with the Company, dated September 10, 1943, constitutes a bar to this proceeding. However, inasmuch as this contract was executed subsequent to the date upon which the UE gave notice of its claims of representation,<sup>1</sup> and inasmuch as it is subject to termination at any time upon 30 days' notice, by either party, we find that it does not constitute a bar to this proceeding.<sup>2</sup>

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the UE and the Federation each represent

<sup>1</sup> *Matter of Bucyrus-Erie Co.*, 41 N. L. R. B. 939.

<sup>2</sup> *Matter of American Radiator & Standard Sanitary Corp.*, 35 N. L. R. B. 172.

a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

On March 27, 1940, the Board issued a Decision and Direction of Election,<sup>4</sup> concerning the employees of the Company herein, in which it directed separate elections among (a) all production, maintenance, and service employees, (b) clerical employees, and (c) employees engaged as polishers, buffers, platers, spinners, and helpers. In its decision the Board stated:

\* \* \* the clerical employees should properly be excluded from the plant-wide unit. Supporting this conclusion is the fact that clerical employees have been excluded from the unit of production and maintenance employees in plants of the Company other than the Lighting Division \* \* \*.

However, the Federation, claiming as members more than 50 percent of the clerical employees, wants them included in a plant-wide unit \* \* \*.

From the entire record, it appears that the clerical employees at the Company's Lighting Division might properly be included either with the plant-wide unit, \* \* \* or they might properly be excluded. Under such circumstances, we apply the principle that the determining factor is the desires of the \* \* \* employees themselves \* \* \*.<sup>5</sup>

As a result of the elections thus directed, the Federation was certified as the collective bargaining representative of a unit consisting of both the clerical employees, and the production, maintenance, and service employees,<sup>6</sup> and has conducted bargaining relations with the

<sup>3</sup> The Field Examiner reported that the UE submitted 275 designations, of which 260 bore apparently genuine original signatures and the names of persons appearing upon the Company's pay roll of September 20, 1943; that said pay roll contained the names of 693 persons in the unit sought by the UE.

The Field Examiner further reported that the Federation relies upon the following for the establishment of its interest herein: (a) prior certification by the Board, (b) contracts between itself and the Company, and (c) membership lists totaling 178 employees, all of whose names appeared upon the afore-mentioned pay roll.

He further noted that approximately 150 persons were claimed both by the UE and the Federation.

<sup>4</sup> *Matter of Westinghouse Electric & Manufacturing Company, Lighting Division*, 21 N. L. R. B. 1150. The UE did not appear on the ballot.

<sup>5</sup> See footnote 4 *supra*, at page 157.

<sup>6</sup> *Matter of Westinghouse Electric & Manufacturing Company, Lighting Division*, 21 N. L. R. B. 701. Metal Polishers, Buffers, Platers, Spinners & Helpers International Union, Local No. 3, herein called the Metal Polishers, was designated at the same time as the collective bargaining representative of those employees engaged as buffers, polishers, platers, spinners, and helpers.

Company on behalf of the employees in this unit continuously until the present date. This bargaining history is evidenced by a contract between the Federation and the Company dated December 9, 1942, which was thereafter superseded by a subsequent contract dated September 10, 1943.

The UE now seeks to represent all production and maintenance employees, including powerhouse employees, salvage employees, stockroom and shipping employees, toolroom employees, and pattern makers, but excluding office and clerical employees, foremen, assistant foremen, and all other employees acting in a supervisory capacity, guards, and those employees now represented by the Metal Polishers. The Federation contends that the appropriate unit is the one previously certified by the Board. The Company takes no position with respect to the appropriateness of either unit.

As noted above, the unit including clerical employees for which the Federation was certified was formed, not so much upon the basis of functional interdependence, as upon the desires of the clerical employees themselves. This factor alone is not sufficient reason upon which to link irrevocably the respective groups of production and maintenance employees and clerical employees whom we customarily find constitute separate units, and who in other plants of the Company are constituted as such. Since we have previously found that each group may properly constitute an appropriate unit separate from the other, we are of the opinion that the production and maintenance employees may, at this time, constitute an appropriate unit. Accordingly, we find that all production and maintenance employees of the Company, including powerhouse employees, salvage employees, stockroom employees, shipping employees, toolroom employees, and pattern makers, excluding office and clerical employees, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, guards, polishers, buffers, spinners, platers, and helpers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

## DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Westinghouse Electric & Manufacturing Company, Lighting Division, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, or by Employees Federation of the Westinghouse Electric & Manufacturing Company, affiliated with the Federation of Westinghouse Independent Unions, for the purposes of collective bargaining, or by neither.