

In the Matter of WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA

Case No. 4-R-1212.—Decided January 4, 1944

Mr. Robert D. Blasier, of Pittsburgh, Pa., for the Company.

Mr. Carl Bersing, of Philadelphia, Pa., *Mr. Alfred L. Meier*, of Lansdowne, Pa., *Mr. Wm. J. Kirkpatrick*, of Oaklyn, N. J., and *Mr. Wm. H. Dunn*, of Essington, Pa., for the C. I. O.

Mr. C. Y. Bellerjeau, of Haddon Heights, N. J., *Mr. H. J. Schaefer, Jr.*, of Merion, Pa., and *Mr. E. R. Townsend*, of Philadelphia, Pa., for the Association.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio & Machine Workers of America, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Westinghouse Electric & Manufacturing Company, Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on November 4, 5, and 11, 1943.¹ The Company, the C. I. O., and Middle Atlantic District Salaried Employees Association, herein called the Association, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Since the hearing, the Company has filed a motion to correct certain alleged errors in the record. No objections to the motion have been filed by any other party. Said motion is granted and it is hereby directed that the record be phys-

¹ At the hearing on November 5, 1943, it appeared that the Association had an interest in the proceeding, notwithstanding its prior statement to the contrary. The Trial Examiner adjourned the hearing to November 11, 1943, and issued a notice to the Association of the said hearing. The Association appeared at the hearing on November 11, 1943.

really corrected in accordance therewith. 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 is a Pennsylvania corporation. Either directly or through its subsidiaries, the Company is engaged in the manufacture, distribution, and sale of electrical products of various kinds and sundry equipment and materials used by the armed forces. The Company has 24 major manufacturing plants located in various States, and its raw materials and products are shipped in interstate commerce. During the year 1942 the Company sold finished products valued at over \$487,000,000 throughout the United States and foreign countries. Over 90 percent of the Company's business is devoted to the war effort. The only operation of the Company here involved is the Company's plant at 30th and Walnut Street, in Philadelphia, Pennsylvania.

The Company admits and we find 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, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Middle Atlantic District Salaried Employees Association, affiliated with Federation of Westinghouse Independent Unions, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that on or about July 22, 1943, the C. I. O. requested recognition as the exclusive bargaining agent of employees of the Company and that the Company has refused to grant such recognition until the C. I. O. has been certified by the Board in an appropriate unit.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of the employees here involved.²

²The Regional Director reported that the C. I. O. submitted 10 authorization cards bearing apparently genuine signatures of persons listed on the Company's pay roll of September 15, 1943, which contained the names of 18 employees in the categories here involved

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 ALLEGED APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The C. I. O. seeks a unit composed of the telephone operators, production clerks, and time and motion analysts at the Company's 30th and Walnut Street plant in Philadelphia, Pennsylvania. The Company opposes this unit, contending that because production clerks and time and motion analysts are in the Manufacturing and Repair Division, while the telephone operators are in the Application Engineering and Order Service Department, bargaining for these employees in the same unit would be impracticable.

The C. I. O.'s attempt to combine into an appropriate bargaining unit such an heterogeneous grouping of employees results from the prior bargaining history at the plant. On March 29, 1940, in its Decision in a complaint proceeding, the Board found appropriate, pursuant to a stipulation of the parties, a unit consisting of all hourly paid employees and the shop clerk.³ The C. I. O. was found to be the exclusive bargaining representative of the employees in that unit, and the C. I. O. and the Company have executed annual bargaining contracts since that time covering the employees therein. On September 6, 1943, pursuant to a petition filed by the Association, the Board found appropriate a unit of all salaried employees of the Middle Atlantic District Main Office of the Company, located in the 30th and Walnut Streets building.⁴ At the request of the Association, the Board excluded from that clerical unit the telephone operators and all employees in the "turbine division." The evidence in the instant proceeding revealed that there is no turbine division and that the employees to whom the parties referred are the production clerks and time and motion analysts of the Manufacturing and Repair Division who are not exempt from the provisions of the Fair Labor Standards Act. By reason of the two aforesaid unit findings, the only categories of employees at the 30th and Walnut Street plant which do not now come within one or the other of the aforesaid units are the three categories here involved.

We are of the opinion that the grouping here proposed by the C. I. O. is too heterogeneous to constitute a unit appropriate for the purposes of collective bargaining. The C. I. O. has requested, however, that the unit herein sought be merged into the production and

³ 22 N. L. R. B. 147, 156.

⁴ 52 N. L. R. B. 460.

maintenance unit in the event that the C. I. O. is chosen as the bargaining representative of the employees involved. We find merit in this request, and, insofar as feasible, it will be granted.

Telephone operators are a fringe group, the treatment of which has depended upon the circumstances surrounding each case. Generally we have included them in units of clerical employees,⁵ but we have also, on occasion, included them, and clerical employees also, in production and maintenance units.⁶ Since the telephone operators were excluded from the clerical unit at the request of the Association, and since the C. I. O., which represents the employees in the production and maintenance unit, is seeking to merge them into the latter unit, we shall direct an election in which the telephone operators may indicate whether or not they desire to be represented by the C. I. O. If a majority of their number select the C. I. O., they will have thereby indicated their desire to be included in and will be deemed to be part of the production and maintenance unit already represented by the C. I. O.⁷

Production clerks are the type of employees which are usually described as expeditors. They are divided into three classes known as A, B, and C, respectively. Production clerks A serve as bureaus of information on work in progress; review incoming orders; requisition materials and tools; plan, schedule, and group work to eliminate duplication of process set-up; handle division production correspondence; make scheduled reports on production status, inventory, standing and delayed orders, and orders on hand; and assist in arranging the character and size of the production clerical force as activity of work demands. Production clerks B and C do essentially the type of work just described, but their work involves principally routine duties while Class A clerks exercise considerable discretion in planning and scheduling work. We are of the opinion that the functions of production clerks A are of such a managerial character that the clerks of this grade cannot appropriately be grouped with the production and maintenance employees for collective bargaining purposes. We therefore shall not permit them to participate with the production clerks B and C in the election hereinafter directed. The remaining production clerks will be permitted to determine by an election whether or not they wish to be represented by the C. I. O. If a majority of their number select the C. I. O. they will thereby have indi-

⁵ *Matter of Chrysler Corporation*, 36 N. L. R. B. 157; *Matter of Cincinnati Times-Star Co.*, 39 N. L. R. B. 39; *Matter of Warner Bros. Pictures, Inc.*, 35 N. L. R. B. 739; *Matter of Montgomery Ward & Co., Inc.*, 38 N. L. R. B. 297

⁶ *Matter of Chrysler Detroit Company*, 38 N. L. R. B. 313; *Matter of Fairmont Creamery Co.*, 44 N. L. R. B. 941

⁷ We find no merit in the Company's contention that the telephone operators should not be included in the production and maintenance unit because they are paid on a salary basis, while the other employees are paid on an hourly basis.

cated their desire to be included in and will be deemed to be part of the production and maintenance unit.⁸

Time and motion analysts appear to be what many firms describe as industrial engineers. They are classified into Classes A and B. Their function is to improve efficiency and reduce manufacturing costs through time- and motion-study and analysis. They set the time allowances for each job and set wage incentives. They study methods, working conditions, drawings, materials, operations, processes, and specifications, with a view to improving output and quality. Class A analysts perform the more difficult and discretionary functions and supervise the routine activities of the Class B analysts. They prepare formulae for standard application and compile standard data for use in estimating costs. They work in close cooperation with the department foremen on matters of cost and expense control. We are of the opinion that the functions of these time and motion analysts affect too directly the interests of the production and maintenance employees to warrant their inclusion in the same unit. The propriety of their inclusion in the clerical unit is not before us,⁹ nor has the C. I. O. expressed a desire that time and motion analysts alone be established as a separate bargaining unit. They will accordingly be excluded from the groups of employees entitled to vote in the elections hereinafter directed.

We shall direct that the question concerning representation which has arisen be resolved in part by elections by secret ballot among all the telephone operators, and among the production clerks B and C, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections.

DIRECTION OF ELECTIONS

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, Philadelphia, Pennsylvania, elections 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 Fourth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said

⁸ *Matter of Worthington Pump & Machinery Corp.*, 44 N. L. R. B. 779; *Matter of Pangborn Corporation*, 53 N. L. R. B. 79.

⁹ See *Matter of Bohn Aluminum & Brass Corporation*, 47 N. L. R. B. 1229.

Rules and Regulations, among: (1) all production clerks B and C, and (2) all telephone operators in the employ of the Company at its plant at 30th and Walnut Streets, Philadelphia, Pennsylvania, 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 all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and employees who have since quit or been discharged for cause and who have not been rehired or reinstated prior to the election, to determine whether or not they desire to be represented by United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.