

In the Matter of WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY,
SHARON WORKS and UNITED ELECTRICAL, RADIO AND MACHINE
WORKERS OF AMERICA, C. I. O.

Case No. 6-R-843.—Decided February 9, 1944

Mr. Robert D. Blasier, of Pittsburgh, Pa., for the Company.
Messrs. David Scribner and Frederick R. Livingston, of New York
City, and *Mr. Thomas Flanagan*, of Sharon, Pa., for the U. E.
Mr. Leo H. McKay, of Sharon, Pa., for the Association.
Mr. Robert E. Tillman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Electrical, Radio and Machine Workers of America, C. I. O., herein called the U. E., alleging that a question affecting commerce had arisen concerning the representation of employees of Westinghouse Electric & Manufacturing Company, Sharon Works, Sharon, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James A. Shaw, Trial Examiner. Said hearing was held at Sharon, Pennsylvania, on December 15, 1943. The Company, the U. E., and Sharon Westinghouse Employees Association, herein called the Association, 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.¹

The Association moved at the hearing that the petition of the U. E. be dismissed for the following reasons: insubstantial showing of representation, authorization cards obtained by fraud and misrepresenta-

¹ The Association requested of the Board an opportunity to present oral argument. We perceive no necessity for oral argument in the instant proceeding. Accordingly, the request is hereby denied.

tion, contract a bar, election would tend to unstabilize present employment relations, and 1400 employees now in the armed services would, in effect, be disenfranchised. We find this motion to be without merit, and it is hereby denied.

Upon the entire record in the case,² the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Westinghouse Electric & Manufacturing Company, a Pennsylvania corporation, has its principal office in East Pittsburgh, Pennsylvania. It is engaged in the manufacture, sale, and distribution of electrical devices, operating several plants throughout the United States. At its Sharon, Pennsylvania, plant, which alone is involved in this proceeding, the Company manufactures transformers and ordnance materials for the United States Government. During the month of November 1943, the total value of raw materials purchased from sources outside the Commonwealth of Pennsylvania for use at the Sharon plant was in excess of \$1,000,000. During the same period the value of finished products manufactured at the Sharon plant and shipped outside the Commonwealth of Pennsylvania was in excess of \$3,000,000. 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 and Machine Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Sharon Westinghouse Employees Association is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 5, 1943, the U. E. wrote a letter requesting the Company to meet with it to discuss bargaining rights. The Company replied that it could not meet with the U. E. because its employees were covered by a contract with the Association. Both the Company and the Association allege that this contract is a bar to the instant proceeding. The contract, entered into on September 6, 1942, has subsequently had 10 supplements added to it, none of which has changed

² Subsequent to the hearing the Company filed a motion with the Board to correct certain errors in the record. The other parties were duly notified and made no objections to the motion. The motion is hereby granted, and the corrections are approved and made part of the record in this proceeding.

the term of the contract, which is indefinite, since the contract is terminable at any time by either party upon 30 days' notice. We find that the contract is no bar to a present determination of representatives, since it has been in operation for more than a year and is now terminable by either party upon notice.³

A statement of the Regional Director introduced into evidence at the hearing, indicates that the U. E. represents a substantial number of employees in the unit hereinafter found to be appropriate.⁴

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

The U. E. requests a unit of all production and maintenance employees, including inspectors, tool designers, production clerks, and production department shipping clerks, but excluding all other clerical employees, guards, time-study employees, and supervisory employees. The Company considers such a unit to be satisfactory. The Association contends that the unit substantially as set out in its hourly rate contract with the Company, with the additional inclusion of time-study employees, is appropriate, namely, all hourly paid employees, including salaried inspectors, tool designers, production department employees, stores and shipping department employees (except those in the purchasing department), and time-study employees, but excluding guards and supervisory employees.

It thus appears that the U. E. and the Association are in dispute as to the following employees whom the latter desires to include in the unit and the former wishes to exclude: time-study employees, production department employees (other than production clerks and shipping clerks), stores and shipping department employees, and tool department clerical employees. With the exception of time-study employees, all the above employees are presently included in the hourly rate contract unit.

On January 11, 1940, the Board issued a decision in which it found, upon the agreement of the U. E. and the Association who were parties to the proceeding, two appropriate units of the Company's employees, one unit consisting mainly of hourly rated employees, and the other of salaried office employees.⁵ Elections were directed among the em-

³ See *Matter of Phelps-Dodge Refining Corporation*, 40 N. L. R. B. 1159, 1161, and cases cited therein.

⁴ The Regional Director stated that the U. E. submitted to him 2,202 authorization cards, all bearing apparently genuine original signatures; and that 1,885 of the cards bore names of persons whose names appeared on the Company's pay roll of the last pay-roll period in October 1943, which listed 5,339 employees in the unit which the U. E. contends to be appropriate.

⁵ See *Matter of Westinghouse Electric & Manufacturing Company, Sharon Plant*, 19 N. L. R. B. 344.

ployees in the two appropriate units, with both the U. E. and the Association on the ballots. Prior to the elections, the U. E. withdrew its name from the ballots. The Association subsequently won both elections, and on February 27, 1940, was certified by the Board as the collective bargaining representative of the employees in each of the two appropriate units.⁶ Since only the hourly rated employees are involved in the present proceeding, it may be noted that the Association entered into a contract with the Company covering them in August 1941, and entered into its second, and present, contract on September 6, 1942.

We have carefully considered the contentions of the U. E. in the present proceeding, and are not persuaded that our earlier finding of an appropriate unit of hourly rated employees, in which the U. E. concurred, and on the basis of which the Company and the Association have bargained for over 2 years, should be changed at this time. Accordingly, we deem it unnecessary to discuss the disputed categories of employees, and we therefore find, substantially in accord with the Board's Decision issued on January 11, 1940, that all hourly paid employees of the Company, including salaried employees in the tool department, salaried inspectors, employees in the production department, employees in the stores and shipping department (except those in the purchasing department), but excluding guards, time-study employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁷

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 payroll period immediately preceding the date of our Direction of Election herein, subject to the limitations and additions set forth therein.

⁶ See *Matter of Westinghouse Electric & Manufacturing Company, Sharon Plant*, 20 N L R. B. 873.

⁷ It may be noted that the unit as presently found omits the specific inclusion of Otto J. Manse, Albert Molnar, and Alice P. Joyce, who are no longer with the Company; and that it specifically excludes guards and time-study employees, which groups were not specifically mentioned in the prior finding of the unit but were nevertheless not included in that unit. The specific inclusion of salaried employees in the tool department is in accord with the contract unit and our statement in the earlier decision that "the unit, as agreed on by the Association and the [U. E.] includes all production and maintenance employees and other employees whose work is closely associated with the manufacturing process"

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, Sharon Works, Sharon, Pennsylvania, 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 Sixth 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 and Machine Workers of America, C. I. O., or by Sharon Westinghouse Employees Association, for the purposes of collective bargaining or by neither.