

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

Case No. 14-R-1072.—Decided January 8, 1945

Thompson, Mitchell, Thompson & Young, by Mr. John Hichew,
of St. Louis, Mo., for the Company.

Messrs. Victor Pasche and Charles Anderson, of St. Louis, Mo., for
the U. E.

Mr. James A. Morrell, of St. Louis, Mo., and Mr. J. W. Johnson, of
Clayton, Mo., for the I. B. E. W.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Electrical, Radio & 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, St. Louis, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph Lepie, Trial Examiner. Said hearing was held at St. Louis, Missouri, on December 20, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of International Brotherhood of Electrical Workers, A. F. of L., herein called the I. B. E. W., to intervene. The Company, the U. E., and the I. B. E. W. 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 Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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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. . It operates plants in the States of Missouri, New York, New Jersey, Ohio, and Pennsylvania. We are here concerned with its plant at St. Louis, Missouri, where it is engaged in the manufacture, sale, and repair of electric motors and appliances. During 1943 the Company used raw materials at its St. Louis plant valued in excess of \$400,000, about 75 percent of which was shipped to it from points outside the State of Missouri. During the same period, the Company sold products from its St. Louis plant valued in excess of \$600,000, approximately 50 percent of which was shipped to points outside the State of Missouri.

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.

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 10, 1944, the U. E. requested the Company to recognize it as exclusive bargaining representative at the St. Louis plant. The Company refused this request on the ground that it was operating under a contract with the I. B. E. W.

On August 15, 1942, the Company and the I. B. E. W. entered into an exclusive bargaining contract. The contract provides that it may be terminated at any time by 30 days' notice of either party thereto. During February 1944 the I. B. E. W. and the Company modified the contract and being unable to reach agreement on wage issues, submitted the matter to the Regional War Labor Board. The latter refused to grant the I. B. E. W.'s request. At the time of the hearing in the instant proceeding the I. B. E. W. was preparing its appeal to the National War Labor Board. The I. B. E. W. contends that the petition should be dismissed because of the anticipated appeal to the National War Labor Board. The record shows that the I. B. E. W.

has enjoyed the rights of an exclusive representative for over 2 years, and that the employees it represented have received the benefits of the August 15, 1942, contract. This case, therefore, is clearly not comparable to those recent cases¹ in which we declined to hold an election because the recognized or certified representative had had no real opportunity to obtain for employees the benefits of exclusive representation inasmuch as the initial collective bargaining efforts following recognition, or certification, had resulted in resort to the processes of the National War Labor Board. We find, therefore, that the pendency of a dispute between the I. B. E. W. and the Company which might come before the National War Labor Board does not constitute a bar to this proceeding,² nor do we find that the contractual relationship between the I. B. E. W. and the Company constitutes a bar to this proceeding, inasmuch as the contract of August 15, 1942, is terminable upon 30 days' notice.

A statement of a Field Examiner of the Board, 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.³

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

We find, in accord with a stipulation of the parties, that all production and maintenance employees at the St. Louis, Missouri, plant of the Company, including shipping and storeroom employees, but excluding clerical employees, design engineers, draftsmen, time-study engineers, production superintendent, supervisors in charge of repair, manufacturing, sheet metal, and building and stores departments, and any other 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.⁴

¹ *Matter of Aluminum Company of America, Vancouver, Washington*, 53 N. L. R. B. 593; *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

² *Matter of MacClatchie Manufacturing Co.*, 53 N. L. R. B. 1268.

³ The Field Examiner reported that the U. E. presented 57 authorization cards bearing the names of persons who appear on the October 15, 1944, pay roll of the Company. There are approximately 115 employees in the appropriate unit. The I. B. E. W. did not present any evidence of representation, but relies upon its contract as evidence of its interest in the instant proceeding.

⁴ This is the same unit as provided for in the contract between the I. B. E. W. and the Company.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of 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.

The U. E. requests that it appear on the ballot as "U. E.-C. I. O." The request is hereby granted.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Westinghouse Electric & Manufacturing Company, St. Louis, Missouri, 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 Fourteenth 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 any 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 U. E.-C. I. O., or by International Brotherhood of Electrical Workers, A. F. of L., for the purposes of collective bargaining, or by neither.