

In the Matter of WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY and ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES

Case No. 1-R-2206.—Decided February 19, 1945

Mr. Robert D. Blasier, of Pittsburgh, Pa., and Mr. Thomas O. Armstrong, of Springfield, Mass., for the Company.

Messrs. R. W. Allison, Leo F. Bollens, and W. J. Grohs, of Pittsburgh, Pa., for the Independent.

Messrs. David Scribner, Frederick R. Livingston, and Edward J. Matthews, of New York City, for the C. I. O.

Mr. Donald H. Frank, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Association of Westinghouse Salaried Employees (East Springfield Plant), affiliated with the Federation of Westinghouse Independent Salaried Unions, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Westinghouse Electric & Manufacturing Company (East Springfield Plant), herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leo J. Halloran, Trial Examiner. Said hearing was held at Springfield, Massachusetts, on January 19, 1945. The Company, the Independent, and United Electrical, Radio and Machine Workers of America, Local 202 (C. I. O.), herein called the C. I. O., appeared and participated.¹ All parties 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 an opportunity to file briefs with the Board.

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

¹ International Council of Office Employees Unions, A F L, was requested in writing to submit representation evidence, if any, but failed to appear or participate.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a Pennsylvania corporation, with its principal office and place of business located in Pittsburgh, Pennsylvania. The Company has a number of plants in various States. Its plant at East Springfield, Massachusetts, is the only one involved in the instant proceeding. The Company is presently engaged at that plant in the manufacture of torpedo devices and various types of electrical equipment. The plant's total production goes to the United States Army and Navy. The principal raw materials used by the Company at its East Springfield plant are steel, copper, brass, rubber, and oils. During the calendar year 1944, the Company purchased for the East Springfield plant raw materials valued in excess of \$2,000,000, approximately 90 percent of which was purchased outside the Commonwealth of Massachusetts. During the same year, the East Springfield plant manufactured finished products valued in excess of \$10,000,000.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act, and we so find.

II. THE ORGANIZATIONS INVOLVED

Association of Westinghouse Salaried Employees (East Springfield Plant), affiliated with the Federation of Westinghouse Independent Salaried Unions, is a labor organization admitting to membership employees of the Company.

United Electrical, Radio and Machine Workers of America, Local 202, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Independent as the exclusive bargaining representative of certain of its employees until the Independent has been certified by the Board in an appropriate unit.

The C. I. O. contends that its contract with the Company, made April 1, 1944, is a bar to the present proceeding. That contract repeats the provision of the 1942 and 1943 contracts between the same parties, reciting that the contract is terminable upon 30 days' notice by either party thereto. We hold, therefore, that the contract does not constitute a bar to the present petition for a determination of representatives.² The showing by the C. I. O. that it was the practice

² *Matter of Antioch Foundry, Delco-Remy Division of General Motors Corporation*, 55 N L R B 1419, *Matter of Westinghouse Electric & Manufacturing Company*, 53 N L R B 1073

of the parties not to terminate their contracts before a year had elapsed does not persuade us that these were in reality 1-year contracts. Private practices and oral agreements outside the written provisions of the contract cannot alter those provisions so as to foreclose the right of employees relying thereon to seek a determination of representatives. Moreover, assuming the validity of the C. I. O.'s contention, there would remain only 6 weeks until the expiration of the existing contract.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Independent represents a substantial number of employees in the unit sought.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

On March 29, 1940, the Board issued a Decision and Order,⁴ concerning the employees of the Company's East Springfield plant, in which it found, in accordance with the agreement of the parties involved, that an appropriate unit in the East Springfield plant, consisted of all production and maintenance employees, including among others, shop clerical workers and tool designers. The C. I. O. was found to represent the majority of the workers in the unit at that time. On January 12, 1942, the Board issued a Decision and Certification of Representatives,⁵ concerning the employees of the Company herein, in which it found that an appropriate unit in the East Springfield plant consisted of all clerical employees, including draftsmen, and certified, on the basis of a consent comparison of records, that the C. I. O. had been selected by a majority of employees in that unit as their collective bargaining representative.⁶ The finding did not expressly exclude from the unit shop clerical workers and tool designers. In the three resultant contracts (1942, 1943, 1944) between the Company and the C. I. O., however, the units stated to be covered therein placed the shop clerical workers and the tool designers in the production and maintenance unit, using the exact wording of the two Board findings.

The Independent seeks in the instant proceeding a unit consisting of all salaried employees in the East Springfield plant, including draftsmen, but excluding technical and service engineers, confidential

³ The Field Examiner reported that the Independent submitted 171 authorization cards, 162 of which bore apparently genuine original signatures of persons appearing on the Company's pay roll of December 2, 1944, which contained the names of 477 employees in the unit sought.

⁴ *Matter of Westinghouse Electric & Manufacturing Company, et al.*, 22 N. L. R. B. 147.

⁵ *Matter of Westinghouse Electric & Manufacturing Company*, 38 N. L. R. B. 178.

⁶ The Independent was not a party in either of these proceedings.

secretaries, confidential pay-roll and savings clerks, nurses, police, time and methods analysts, executives, and supervisors. This unit would cut across the two units previously adjudged appropriate. The record discloses that some of the shop clerical workers, tool designers, and draftsmen are hourly-paid, and some are salaried employees. It appears that the unit requested is the same as the clerical unit previously found appropriate, except that the unit sought would include the salaried shop clerical workers and tool designers, at present a part of the production and maintenance unit, and would omit those draftsmen who are hourly paid. Nothing appears in the record, however, to show any community of interest distinctive to the salaried employees, which would set them apart from the other office workers. The different method of payment was not explained, nor was any evidence introduced to show whether or not the total wage received under the two methods of payment varied. We have often held that the fact of similar method of payment is not sufficient *per se* to warrant an appropriate unit finding.⁷ Since the Board has previously determined the appropriate bargaining units in the East Springfield plant⁸ and since collective bargaining on the basis of those determinations has been conducted over a period of several years, we are of the opinion that the unit sought is not appropriate. We note, however, that the requested unit, with very few exceptions, is the same as the clerical unit previously found appropriate by the Board. With the exception of the hourly-paid draftsmen, it does not appear that any categories of non-salaried employees would be added to the requested unit by substituting the word "clerical" for the word "salaried" in the unit request. We shall not, therefore, dismiss the Independent's petition, but shall proceed with a determination of representatives of the employees in the clerical unit previously determined to be appropriate.

We find that all clerical employees of the Company's East Springfield plant, including draftsmen, but excluding shop clerical workers, tool designers, technical and service engineers, confidential secretaries, confidential pay-roll and savings clerks, nurses, police, time and methods analysts, executives, supervisors, 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

⁷ *Matter of Jones & Laughlin Steel Corporation, Pittsburgh Works*, 57 N. L. R. B. 357, and cases cited therein.

⁸ As to the propriety of including shop clerical workers in a production and maintenance unit, see *Matter of Chicago Rawhide Manufacturing Company*, 59 N. L. R. B. 1234; *Matter of Westinghouse Electric & Manufacturing Company*, 50 N. L. R. B. 427.

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, 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 (East Springfield Plant), East Springfield, Massachusetts, 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 First 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 the 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 Association of Westinghouse Salaried Employees (East Springfield Plant), affiliated with the Federation of Westinghouse Independent Salaried Unions, or by United Electrical, Radio and Machine Workers of America, Local 202, UE-CIO, for the purposes of collective bargaining, or by neither.