In the Matter of WESTINGHOUSE ELECTRIC CORPORATION (CLEVELAND LIGHTING DIVISION), EMPLOYER *and* PAUL T. GRECOL, PETITIONER *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (CIO), AND ITS LOCAL 777, UNION

Case No. 8-RD-3.—Decided June 29, 1948

Mr. Robert D. Blasier, of Pittsburgh, Pa., for the Employer.
Mr. Paul T. Grecol, of Cleveland, Ohio, for himself.
Mr. Arthur Kinoy, of New York City, for the Union.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition for decertification duly filed, hearing in this case was held at Cleveland, Ohio, on February 11, 1948, before Louis S. Belkin, hearing officer. At the hearing, the Union moved to dismiss the petition on various grounds. For the reasons set forth in Section III, *infra*, the motions are hereby denied.[1] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. After the hearing, the Employer moved to correct certain errors in the transcript. No objections having been filed thereto, it is ordered that the transcript be, and it hereby is, corrected in accordance with the motion.

Upon the entire record in the case, the National Labor Relations Board[2] makes the following:

[1] The Union also requested the Board, in the event its motions to dismiss the petition were not granted, to direct that a new hearing be held, because it was prejudiced by the hearing officer's refusal to admit testimony purporting to establish coercion of the Petitioner by the Employer or other relationship between the Employer and the Petitioner. The hearing officer properly excluded all testimony as to the Petitioner's motives in instituting this proceeding, or as to the existence of unfair labor practices. The Union's request is therefore denied. *Matter of Federal Shipbuilding & Drydock Co.*, 76 N. L R B. 413; *Matter of Magnesium Castings Company*, 76 N. L. R. B 251; *Matter of Underwriters Salvage Company of New York*, 76 N. L. R. B. 601.

[2] Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel, consisting of the undersigned Board Members [Chairman Herzog and Members Murdock and Gray].

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Westinghouse Electric Corporation is a Pennsylvania corporation owning and operating a number of plants located throughout the country. We are here concerned with the plant of the Company known as the Lighting Division, which is located in Cleveland, Ohio. In the past year, the value of the raw materials purchased for the Cleveland plant was in excess of $1,000,000, of which more than 50 percent was received from points outside the State of Ohio. During the same period, the total value of the sales of the Cleveland Lighting Division was in excess of $1,000,000, of which more than 50 percent represented shipments to points outside the State of Ohio.

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

II. THE PARTIES INVOLVED

The Petitioner, an employee of the Employer, asserts that the Union is no longer the representative of the Employer's employees, as defined in Section 9 (a) of the amended Act, in a unit considered appropriate by the Petitioner.

The Union, a labor organization affiliated with the Congress of Industrial Organizations, was certified by the Board on August 6, 1945, as representative of the employees here involved.[3]

III. THE QUESTION CONCERNING REPRESENTATION

On August 6, 1945, the Union was certified, as the result of a consent election, as the representative of a unit of plant guards in the Employer's Cleveland Lighting Division. The Employer and the Union thereupon included these guards within the terms of their National Agreement, dated April 1, 1944. The guards were also included within the terms of a new National Agreement dated April 1, 1947, effective for an initial term of 1 year, and renewable from year to year thereafter, unless notice to terminate is given by either party at least 30 days before the yearly terminal date. On December 18, 1947, the instant petition for decertification of the Union as representative of the plant-guard unit was filed. At the end of January 1948, the Employer and the Union agreed to waive their right to terminate their agreement on April 1, 1948, and also agreed to begin

[3] Case No 8–R–1900 The International was certified by the Board in this proceeding. However, the record discloses that the Local has been acting as representative of these employees.

negotiations for contract modifications. The Union asserts that its contract is a bar to the present proceeding. As the decertification petition was filed before the automatic renewal date, the contract, under well-established principles,[4] is not a bar to this proceeding.

The Union also contends that, under Section 103 [5] of the Labor Management Relations Act, 1947, the Board could not properly entertain the petition or hold the hearing herein, because by so doing it might "affect" the certification granted the Union before the effective date of the amendments to the Act. The Union's theory is that neither the Board's decisional rules on contracts as a bar to representation proceedings, nor the decertification procedure provided in Section 9 (c) of the amended Act, could affect its contract in any respect until, at the earliest, April 1, 1948, the end of the contract period. As to the Union's contention that the Board's rules of contract bar are inapplicable, it is sufficient to point out that Section 103 does not purport to alter the Board's substantive rules of decision, but merely postpones the application in some cases of changes brought about by the amendments to the Act. As to the applicability of Section 9 (c) as amended, we believe that the filing of the petition and the holding of the hearing before the end of the contract period did not "affect" the Union's certification or its contract within the meaning of Section 103.[6]

The Union also contends that the petition should be dismissed because of inadequacy in form. However, the petition was on a form prescribed by the Board, and complies with the requirements of the Board's Regulations.[7]

The Union's motion to dismiss the petition for the reason that the amended Act is unconstitutional is denied, for the reasons given in *Matter of Rite-Form Corset Co.*, 75 N. L. R. B. 174.

We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

It is the Union's contention that the unit alleged as appropriate in the decertification petition is inappropriate, because the guards per-

[4] *Matter of Snow & Nealley Company*, 76 N. L. R. B. 390

[5] Section 103 reads as follows: "No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs."

[6] *Matter of Bush Woolen Mills*, 76 N. L. R. B. 618; *Matter of National Tube Company*, 76 N. L. R. B. 1199. The original contract period has now expired.

[7] *Matter of Kraft Foods Co.*, 76 N. L. R. B. 492

form duties basically custodial rather than monitorial in nature and should therefore be included in a plant-wide production and maintenance unit. This is not borne out by the testimony of the Petitioner, which was in the main uncontradicted, and is contrary to our previous decisions with respect to bargaining units at this plant.[8] But even if their activities were basically custodial, we would still be required to find the Employer's guards to be appropriately grouped in a separate unit because of the requirement of Section 9 (b) (3) of the Act, that:

> . . . the Board shall not . . . (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; . . .[9]

We find that all plant guards at the Employer's Cleveland Lighting Division, excluding supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION[10]

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Westinghouse Electric Corporation, Cleveland Lighting Division, Cleveland, Ohio, 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, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, 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

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[8] *Matter of Westinghouse Electric & Manufacturing Company, Lighting Division,* 53 N L R B 1073, in which we found appropriate a unit of the Employer's production and maintenance employees, from which the guards were excluded, *Matter of Westinghouse Electric Corporation,* Case No. 8–R–1900, in which we certified the Union as representative of a unit of the Employer's guards, as the result of a consent election.

[9] *Matter of C V. Hill & Company, Inc*, 76 N L. R B 158

[10] In the event that the Union wins the election, we are precluded from certifying it, not only by reason of its failure to comply with the filing requirements of Section 9 (f) and (h) of the amended Act, but also by Section 9 (b) (3) of the Act, which provides in part.

> . . . but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

In such event, therefore, the Board will only certify the arithmetical result of the election. *Matter of Schenley Distilleries, Inc.*, 77 N. L. R. B. 468.

Direction, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by United Electrical, Radio and Machine Workers of America (CIO), and its Local 777, for the purposes of collective bargaining.