

IN the Matter of WESTINGHOUSE ELECTRIC CORPORATION, LAMP DIVISION, EMPLOYER *and* ASSOCIATION OF TECHNICAL AND PROFESSIONAL EMPLOYEES, PETITIONER

IN the Matter of WESTINGHOUSE ELECTRIC CORPORATION, LAMP DIVISION, EMPLOYER *and* ASSOCIATION OF ENGINEERS IN THE BLOOMFIELD, NEW JERSEY, PLANT OF THE WESTINGHOUSE ELECTRIC CORPORATION, PETITIONER

Cases Nos. 2-R-7713 and 2-RC-160, respectively.—Decided November 22, 1948

DECISION

AND

DIRECTION OF ELECTIONS

Upon separate petitions duly filed, a consolidation thereof was ordered, and a hearing held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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.*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. Association of Technical and Professional Employees, herein called the Research Union, and Association of Engineers in the Bloomfield, New Jersey, Plant of the Westinghouse Electric Corporation, herein called the Engineers Union, both unaffiliated, and United Electrical, Radio & Machine Workers of America, and its Local 412, affiliated with the Congress of Industrial Organizations and herein jointly called the Intervenors, are labor organizations claiming to represent employees of the Employer.¹

*Chairman Herzog and Members Reynolds and Gray.

¹The Intervenors' contention that the record falls to establish that the Engineers Union and the Research Union are labor organizations within the meaning of the Act is without merit.

3. At the hearing the Intervenors moved to dismiss the petitions, alleging that their 1947 contract with the Employer, as extended to April 1, 1949, is a bar to a determination of representatives. The Petitioners argue that their representation claims were timely made before the Intervenors' 1947 contract was extended, and that in any event the extension of the contract was premature.

The current contract between the Employer and the Intervenors was executed on April 17, 1947, to remain in effect until April 1, 1948, and from year to year thereafter in the absence of notice of a desire to terminate given 30 days before any anniversary date. The Research Union requested recognition and filed its original petition herein before that contract was executed.² The Engineers Union made its current request for recognition on January 27, 1948. Such request was timely with respect to the 1948 automatic renewal date of the contract, and was made 2 days before the Employer and the Intervenors signed an agreement waiving their right to terminate their contract before its 1949 anniversary date.³ In these circumstances, it is clear that neither the contract of April 17, 1947, nor the agreement waiving the right to terminate it in 1948, precludes the Board from proceeding to a determination of representatives upon either of the petitions herein. Accordingly, the Intervenors' motion to dismiss is denied.⁴

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.

4. The appropriate unit; the determination of representatives:

The Research Union seeks a unit consisting of all salaried professional and technical employees in the Research Department of the Employer's Bloomfield, New Jersey, plant.⁵ The Engineers Union seeks a unit consisting of all professional employees with engineering classifications in the entire Bloomfield plant.⁶ The Employer con-

² Although the Research Union's request for recognition was not made before the March 1, 1947, automatic renewal date of an earlier contract between the Employer and the Intervenors, the new contract which was executed on April 17, 1947, has superseded this earlier contract. As this earlier contract is no longer in effect, it cannot serve as a bar.

³ The Engineers Union pursued its request for recognition by filing a timely petition with the Board on February 2, 1948. Cf. *Matter of General Electric X-Ray Corporation*, 67 N. L. R. B. 997.

⁴ It is unnecessary here to determine whether the 1947 contract between the Employer and the Intervenors was prematurely extended by their agreement to waive the right to terminate it in 1948.

⁵ This proposed unit includes the following job classifications in the Research Department: Engineer, Associate Engineer, Assistant Engineer, Junior Engineer, Technician Specialist, Laboratory Technician, Laboratory Assistant, and Laboratory Attendant.

⁶ The Engineers' proposed unit includes the following job classifications: Engineer, Associate Engineer, Assistant Engineer, Junior Engineer, Product Specialist I, Product Specialist II, Test Engineer I, Test Engineer II, Maintenance Engineer I, Maintenance Engineer II, Plant Layout Engineer I, and Plant Layout Engineer II.

cedes that either unit or both units could be appropriate.⁷ The Intervenor, however, maintain that neither unit is appropriate, on the ground that neither includes all the professional employees at the Employer's Bloomfield plant, and that both include individuals who are not professional employees within the meaning of the amended Act.⁸

The Research Unit

A. The professional employees

Although the Employer maintains a large research laboratory at its main plant at East Pittsburgh, Pennsylvania, the record demonstrates that the Research Department of the Bloomfield, New Jersey, plant is an independent research organization. It is located in the Engineering and Administration building, which also houses the other engineering and technical employees hereinafter discussed. The work of the Research Department is limited for the most part to problems of pure science which are not directly connected with the Employer's manufacturing operations; there is very little interchange of personnel between this department and other departments of the Employer's operations, either in Bloomfield or elsewhere. The employees in this department who are classified as Engineer, Associate Engineer and Assistant Engineer generally work by themselves on individual projects. They are mainly college graduates, many of whom have pursued further courses of advanced study in scientific fields. Those few who are not college graduates have acquired comparable skill in their specialized fields by individual study and experience, and by taking numerous courses of instruction in institutions of higher learning. The results accomplished by these employees cannot be standardized in relation to any given period of time, and their work is predominantly intellectual and varied in character, involving the constant exercise of discretion and judgment. We find that the employees in the above-named job classifications in the Research Department are professional employees within the meaning of Section 2 (12) of the amended Act.

⁷ Although both units include the classifications of Engineer, Associate Engineer, Assistant Engineer, and Junior Engineer in the Research Department, the Employer believes that certain differences between the duties and qualifications of such employees in its Research Department and employees so classified in its other departments warrants the exclusion of those in the Research Department from the broader unit sought by the Engineers Union.

⁸ Pursuant to Stipulations for Certification upon Consent Election (Cases Nos. R-5705 and 2-R-5097), the Intervenor became the certified bargaining representative for all the employees here involved and certain other salaried employees in the Employer's Bloomfield plant in 1943 and 1944. Thereafter, the Intervenor entered into a series of contracts with the Employer covering these employees, the latest of which, as already noted, remains in effect until April 1, 1949.

The employees classified as Junior Engineers in the Research Department are principally recent college graduates and, although they do not possess the skills of the more experienced engineers, they perform work related to their academic training under the professional supervision of an older employee in order to achieve professional status. We conclude, therefore, that the Junior Engineers, like the other personnel with engineering classifications in the Research Department of the Employer's Bloomfield plant, are professional employees within the meaning of the amended Act.⁹

B. The non-professional employees

All the parties agree that the remainder of the employees in the unit sought by the Research Union (those classified as Laboratory Attendant, Laboratory Assistant, Laboratory Technician, and Technician Specialist) are not professional employees within the meaning of the Act.¹⁰ Nevertheless, the Employer, like the Research Union, would include these employees in the unit with those whom we have found to be professionals. The Intervenors oppose this grouping; the Engineers Union takes no position with regard to it.

The employees in question are principally technicians, who are engaged in carrying out laboratory tests and experiments in connection with the work of the professional employees of the Research Department. Although much of their work is routine, it requires certain technical skills and is an integral part of the work performed by their Department. We are convinced that the interests of these employees are more closely allied with those of the other personnel of the Research Department than with those of the employees in the overall salaried unit currently represented by the Intervenors.

We find that all Engineers, Associate Engineers, Assistant Engineers, Junior Engineers, Technician Specialists, Laboratory Technicians, Laboratory Assistants, and Laboratory Attendants employed in the Research Department of the Employer's Bloomfield, New Jersey, plant, excluding supervisors, may constitute a unit appropriate for

⁹ All the job classifications alleged to be professional by the Research Union and the Engineers Union, except that of Junior Engineer, are treated by the Employer as professional under the Fair Labor Standards Act of 1938, which defines "professional employees" in language almost identical to that contained in the Labor Management Relations Act, 1947. Junior Engineers are not treated as professional under the former Act because their starting wage is slightly below the \$200 per month minimum salary required to qualify as professional employees under Section 541.3 of the Regulations of the Wage-Hour Administrator. The Labor Management Relations Act, 1947, and the regulations issued thereunder by the Board contain no salary limitation in the definition of professional employees.

¹⁰ At the time of the hearing the Research Department employed approximately 21 employees with job classifications which we have found to be professional and approximately 6 employees with non-professional job classifications.

the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.¹¹

The Engineers Unit

The Engineers Union seeks to represent the entire professional engineering complement of the Employer's Bloomfield plant. Aside from employees so classified in the Research Department, the remainder of the employees sought by the Engineers Union are, for the most part, graduates of recognized engineering colleges and universities. When they are first employed, the Employer places these graduates in its student engineering training program, which consists of a period of orientation for several months in its main plant at East Pittsburgh. Thereafter, the student engineers are sent to the Employer's various manufacturing plants throughout the country for a period of further instruction. Upon completion of 1 year's training, they are placed upon the permanent pay roll of one of the plants as Junior Engineers. Aside from the training period, there is no general policy of interchange of personnel between the Employer's several plants, nor does the record contain any evidence of an Employer-wide system of job classifications. The few employees within the unit sought by the Engineers Union who are not graduate engineers have had some scientific or technical education and they are considered by the Employer to possess technical skills and aptitudes comparable to that of the graduate engineers.

Most of the employees whom the Engineers Union seeks to represent are housed in the Engineering and Administration Building of the Bloomfield plant. However, aside from the research engineers, they work throughout the Bloomfield plant and many of them are called upon to visit the plants of suppliers and customers. They are assigned to the following departments: the Products Design and Development Division, covering electronics engineering, lamp engineering, chemical engineering and metallurgical engineering; the Standardizing Department, which prepares production specifications; and the experimental factory, where production techniques are perfected. Like the research engineers, these employees work either independently or in teams without regard to job classification and with little supervision. It is difficult to estimate the time which any given

¹¹ Section 9 (b) (1) of the amended Act precludes the Board from deciding that any unit is appropriate for the purposes of collective bargaining which contains both professional and non-professional employees, unless a majority of the professional employees vote for inclusion in such a unit. However, as the above-described unit is composed *predominantly* of professional employees within the meaning of Section 2 (12) of the Act, we believe that Section 9 (b) (1) does not preclude our finding that the group may constitute a single appropriate unit. See *Matter of Continental Motors Corporation*, 77 N. L. R. B. 345.

project will take to complete, or to measure the output of any individual in relation to time spent on the project.

The Intervenor takes the position that few of the employees sought by the Engineers Union or the Research Union are "professional employees" under the laws of the State of New Jersey, and assert that there are some employees in the Bloomfield plant who are classified as engineers whom the Engineers Union does not seek to represent. With regard to the first contention, the record discloses that under New Jersey laws a "professional engineer" must secure a license, analogous to that issued a lawyer or an architect, before he can practice as a *public engineer*. The law requires no special license of engineers who are employed by manufacturers and who do not offer their services to the public at large, regardless of their qualifications or the work in which they are engaged. With regard to its second contention, the Intervenor has adduced no evidence that the Engineers Union seeks to exclude from its proposed unit any bona fide engineer employed at the Bloomfield plant.¹² In view of the foregoing, and upon the entire record in the case, we find that all the employees in the job classifications which the Engineers Union seeks to represent¹⁸ are professional employees within the meaning of Section 2 (12) of the amended Act. We further find that such employees may constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.

As noted above, the unit sought by the Engineers Union would include most of the employees who we have found may properly constitute a separate research unit. However, these employees could also properly be part of the over-all engineering unit sought by the Engineers Union. The employees in the Research Department have a greater community of interest with the other employees sought by the Engineers Union than they do with the remainder of the Employer's salaried personnel. For the most part, both groups share common basis educational backgrounds and experience and, although their assignments range from problems of pure science to questions involving the practical application of manufactured products, their needs, and interests as scientific personnel are essentially the same. We find, therefore, that the employees in the proposed research unit may also appropriately constitute part of the proposed over-all unit of engineering employees in the Employer's Bloomfield plant above set forth.

¹² The record establishes that the Employer's Order Interpretation Engineers, whom the Engineers Union would exclude from their proposed unit, are in reality clerks with high school education only.

¹⁸ See footnote 6, *supra*.

We shall direct that separate elections by secret ballot be held in the following voting groups:

Voting group I

All employees employed in the Research Department of the Employer's Bloomfield, New Jersey, plant who are classified as Engineer, Associate Engineer, Assistant Engineer, Junior Engineer, Technician Specialist, Laboratory Technician, Laboratory Assistant, or Laboratory Attendant, but excluding all supervisors.

Voting group II

All employees of the Employer's Bloomfield, New Jersey, plant who are classified as Engineer, Associate Engineer, Assistant Engineer, Junior Engineer, Product Specialist I, Product Specialist II, Test Engineer I, Test Engineer II, Maintenance Engineer I, Maintenance Engineer II, Plant Layout Engineer I, and Plant Layout Engineer II, but excluding all employees in voting group I, and all supervisors.

Pending the outcome of these elections, we shall make no final unit determination.

DIRECTION OF ELECTIONS ¹⁴

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, separate elections by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, and subject to the foregoing Decision and to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the two voting groups described in paragraph numbered 4, 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, 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 elections, and also excluding employees on strike who are not entitled to reinstatement, to determine:

¹⁴ As the Intervenors have failed to achieve compliance or to initiate steps for compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act, they will not be accorded a place on the ballots in these elections.

(1) Whether the employees in voting group I desire to be represented, for the purposes of collective bargaining, by Association of Technical and Professional Employees, or by Association of Engineers in the Bloomfield, New Jersey, Plant of the Westinghouse Electric Corporation, or by neither;

(2) Whether or not the employees in voting group II desire to be represented, for the purposes of collective bargaining, by Association of Engineers in the Bloomfield, New Jersey, Plant of the Westinghouse Electric Corporation.