

In the Matter of WESTINGHOUSE ELECTRIC CORPORATION, EMPLOYER
and ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES,
F. W. I. S. U., PETITIONER

Case No. 6-RC-62 and 6-RC-150.—Decided January 27, 1949

DECISION
AND
DIRECTION OF ELECTIONS

Upon petitions duly filed, a consolidated hearing was 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.

At the hearing the Intervenor moved to dismiss the petitions on the grounds (1) that its contract with the Employer constituted a bar to this proceeding, and (2) that the units requested by the Petitioner were inappropriate for the purposes of collective bargaining. The hearing officer referred the motion to the Board. For the reasons set forth hereinafter, the motion is hereby denied.

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,¹ the Board finds:

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

2. Association of Westinghouse Salaried Employees, F. W. I. S. U., herein called the Petitioner, and United Electrical, Radio and Machine Workers of America, C. I. O., Local No. 601, herein called the Intervenor, are labor organizations claiming to represent certain employees of the Employer.

*Chairman Herzog and Members Houston and Gray.

¹ The record has been corrected pursuant to the unopposed motion of the Employer filed with the Board subsequent to the hearing

3. Questions affecting commerce exist concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.²

4. The appropriate units; the determination of representatives:

In this proceeding the Petitioner³ seeks to sever, in Case No. 6-RC-62, junior and senior order clerks and, in Case No. 6-RC-150, junior tool designers, associate tool designers, tool designers, and senior tool designers⁴ from the unit represented by the Intervenor,⁵ and to merge them into its existing unit. The Petitioner contends that such severance and merger is proper, because the junior and senior order clerks and tool designers are all salaried employees whose interests lie with the other salaried employees whom it represents. The Intervenor contends that, because of the bargaining history, because the interests of these employees lie with the other employees whom it represents, and because it adequately represents such employees, such severance is improper. The Employer expressed no opinion regarding this question.

a. The bargaining history

On July 9, 1937, the Intervenor was certified by the Board, on the basis of a union-membership check, as the exclusive bargaining repre-

² Contrary to the contention of the Intervenor, we find that its contract with the Employer is not a bar to the determination of representatives in this proceeding. Irrespective of any other factors, both the petition in Case No. 6-RC-62 and the petition in Case No. 6-RC-150 were filed prior to the execution of Supplement II to the 1-year, renewable, national agreement of April 1, 1947. Supplement II, executed on June 20, 1948, after negotiations which commenced on February 9, 1948, provided for changes in various of the substantive provisions of the contract, including maintenance of membership, check-off, overtime, holidays and vacations, and further provided for a general wage and salary increase. In addition, Supplement II extended the period of notice required for termination of the contract from 30 days to 60 days, and extended the term of the contract to March 31, 1950. Although Supplement II is denominated as a supplement or amendment to the existing contract, and although that contract contained a provision permitting negotiations at any time on any subject pertinent thereto, the broad scope of the negotiations and the changes resulting therefrom make it clear that the Employer and the Intervenor in substance negotiated for and executed a new agreement. Moreover, the supplemental agreement was a premature extension of the original contract. Accordingly, both petitions were timely. *Matter of Westinghouse Electric Corporation*, 80 N. L. R. B. 121; *Matter of E. I. duPont de Nemours & Company, Inc., Neoprene Plant*, 73 N. L. R. B. 439; *Matter of Houston Packing Company*, 71 N. L. R. B. 1232.

³ The Petitioner is presently the certified bargaining representative of "the salaried employees of Westinghouse Electric & Mfg. Co. at its East Pittsburgh Unit, excluding supervisory employees." *Matter of Westinghouse Electric & Mfg. Co.*, 23 N. L. R. B. 1049, 1051.

⁴ Herein collectively referred to as tool designers.

⁵ The Intervenor is presently the certified bargaining representative of "all hourly rate employees of Westinghouse Electric & Manufacturing Company at its East Pittsburgh plant, . . . including all tool designers and machine tool designers, telephone maintenance employees, and junior and senior order clerks in the shipping department whether paid by salary or by the hour, but excluding supervisory employees." *Matter of Westinghouse Electric & Manufacturing Company, East Pittsburgh Plant*, 33 N. L. R. B. 463, 466.

sentative of "all hourly rate employees" at the Employer's East Pittsburgh, Pennsylvania, plant, such designation being interpreted by the Board in its decision to include only production employees, and to exclude clerical employees.⁶ On May 22, 1940, on the basis of the results of three separate elections, the Petitioner was certified by the Board as the exclusive bargaining representative of all salaried employees at the Employer's East Pittsburgh plant.⁷ This unit consisted largely of engineers, draftsmen, salesmen, and office-clerical employees. It also included, as the consequence of the aforesaid separate elections, certain "fringe" groups of employees, all salaried, such as production, file, ledger, and record clerks, stenographers, typists, inspectors, inspectors' stenographers, and powerhouse employees. Despite its certification in 1937, as the representative of the hourly paid employees only, the Intervenor had bargained for these "fringe" employees until the elections in 1940. In its Decisions and Directions of Elections in 1940, the Board held, however, that these "fringe" employees shared interests with both the hourly paid employees then represented by the Intervenor, and also the other salaried employees then sought by the Petitioner, and could, therefore, appropriately be included in either unit. This salaried unit did not include, however, certain hourly paid plant-clerical employees and inspectors, whose duties differed from those of certain of the employees in the "fringe" groups principally in the degree of skill and responsibility associated with their tasks; in addition, the hourly paid plant-clerical employees were supervised by divisional foremen, whereas the clericals in the "fringe" groups were supervised by production supervisors.⁸

Subsequently, a dispute arose as to which of the foregoing units properly included junior and senior order clerks, tool designers, and telephone maintenance employees. Some of these employees were paid by the hour, some by salary, and some first by the hour and subsequently by salary. Based upon the stipulation of the parties, the Board directed that three separate elections be held.⁹ The intervenor won all three elections; and on July 15, 1941, it was certified as the exclusive bargaining representative of these employees as part of its previously existing unit.¹⁰ Since that time it has represented them as part of such unit.

⁶ *Matter of Westinghouse Electric & Manufacturing Company*, 3 N. L. R. B. 1.

⁷ *Matter of Westinghouse Electric & Manufacturing Company*, 23 N. L. R. B. 1049.

⁸ *Matter of Westinghouse Electric & Manufacturing Company*, 19 N. L. R. B. 640, 22 N. L. R. B. 956.

⁹ *Matter of Westinghouse Electric & Manufacturing Company, East Pittsburgh Plant*, 32 N. L. R. B. 188.

¹⁰ Footnote 5, *supra*.

b. The order clerks

The junior and senior order clerks are employed in the Shipping Department, which is part of the Factory Service Division at the Employer's East Pittsburgh plant. An individual, to be employed as an order clerk, must have a high school education. Their duties consist of performing certain of the paper work necessary for the shipment of orders to the Employer's customers, or to other of the Employer's plants. They determine whether material delivered to the shipping floor for shipment corresponds with material ordered for shipment and, where discrepancies exist, initiate steps to correct them. They perform no manual labor. They perform the bulk of their work while sitting at their desks. Occasionally, in order to expedite certain shipments, they make personal contacts with employees on the shipping floor.

The junior and senior order clerks work in an enclosed office at one end of the shipping floor. Also working in the same office are such clerical employees as master order clerks, order service clerks, order correspondents, traffic and claims clerks, and time and rate clerks, some of whom also perform paperwork necessary for the shipment of orders. The junior and senior order clerks are under the immediate supervision of two chief clerks, as are file clerks, typists, and master order clerks. The chief clerks are under the immediate supervision of an assistant divisional staff superintendent, who in turn is supervised by the superintendent of shipping, receiving and plant transportation. With the exception of the junior and senior order clerks, all employees in the office in which they work, and all employees under the supervision of the chief clerks, are part of the unit represented by the Petitioner. The first common line of supervision for both the junior and senior order clerks and any other employees in the unit represented by the Intervenor is the superintendent of shipping, receiving, and plant transportation.

The natural line of advancement for order clerks is from junior order clerk to senior order clerk to master order clerk. All three levels have similar duties; their duties differ principally in the amount of experience required for their performance, and the complexity of the orders assigned to each level. Because master order clerks are in the unit represented by the Petitioner, and because of the terms of the contract between the Petitioner and the Employer, senior order clerks, unless they have special qualifications, are barred from competing for master order clerk positions unless there are no employees within the Petitioner's unit who are qualified for such positions: this has not, however, prevented senior order clerks from being promoted

to master order clerk positions. Likewise, in the event of a reduction in force, junior and senior order clerks cannot compete for other clerical positions at the Employer's East Pittsburgh plant, but rather compete only for non-clerical positions within the Intervenor's unit; the duties of certain of such positions are, however, clerical in part.

c. The tool designers

Tool designers are employed in six¹¹ of the seven divisions of the Employer's East Pittsburgh plant. Their duties¹² consist of designing tools used by the Employer in the manufacture of its products. They perform no manual labor, their work consisting entirely of design drafting and such non-manual activities as consultation with sales and manufacturing engineers and with tool makers. A technical education is considered desirable for employment in the lower tool designer classifications and essential for employment in the higher classifications. In addition, practical experience as a tool maker is considered necessary.

The tool designers are scattered throughout the plant, and are located in enclosed offices adjacent to the production areas of the divisions in which they are employed. Also located in the same offices are such employees as sales engineers, manufacturing engineers, time and motion analysts, and clerical employees, all of whom are in the unit represented by the Petitioner. The supervision of the tool designers varies from division to division. In certain divisions they are under common supervision with such employees as manufacturing engineers; in others they are under common supervision with tool makers, who are production employees in the unit represented by the Intervenor.

The tool designers are skilled draftsmen whose work is similar to that of other draftsmen employed by the Employer; all such other draftsmen are in the unit represented by the Petitioner. The natural line of progression from the top tool designer classification is into one of the Employer's engineering classifications. As in the case of the junior and senior order clerks, however, such progression is barred unless no employee in the Petitioner's unit possesses the necessary qualifications. Likewise, in the case of a reduction in force, the tool designers cannot compete for other positions as draftsman, but must compete for such positions as tool makers or machine operators.

¹¹ Switchgear and Control Division, Transportation and Generator Division, Factory Service Division, Feeder Division, Micarta Division, and Industrial Control Division

¹² The duties of the four grades of tool designers differ principally in the complexity of the tools designed and the degree of experience and technical supervision required.

d. Conclusions

On the basis of the foregoing, and on the entire record in this case, it is clear, and we find, that the junior and senior order clerks and the tool designers are, respectively, clerical and technical employees whose training, skills, duties, and interests are more closely related to those of the clerical and technical employees in the unit represented by the Petitioner than to those of the production and maintenance employees in the unit represented by the Intervenor.¹³ Accordingly, if the matter of the unit placement of the junior and senior order clerks and the tool designers had been presented here *de novo*, we would have included them in the unit represented by the Petitioner. However, because of the bargaining history, we shall afford them an opportunity to express their desires with respect to their unit placement. Accordingly, we shall make no final unit determination at this time, but shall first ascertain the desires of these employees, as expressed in separate elections which we shall direct to be conducted among the following voting groups at the Employer's East Pittsburgh, Pennsylvania, plant, excluding supervisors as defined in the Act:

- (1) All junior and senior order clerks.
- (2) All junior tool designers, associate tool designers, tool designers, and senior tool designers.

If a majority in either or both of the voting groups select the Petitioner, they will be taken to have indicated their desire to be severed from the unit represented by the Intervenor, and to be merged into the unit represented by the Petitioner.

DIRECTION OF ELECTIONS

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 Sixth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules

¹³ See *Matter of Westinghouse Electric & Manufacturing Company*, 24 N. L. R. B. 601, in which affiliates of the Petitioner and the Intervenor herein stipulated that tool designers be excluded from a production and maintenance unit at the Employer's Mansfield, Ohio, plant, and *Matter of Westinghouse Electric & Manufacturing Company*, 62 N. L. R. B. 137, in which an affiliate of the Petitioner herein and the International union with which the Intervenor herein is affiliated, agreed that order clerks be included in an office and clerical unit at the Employer's Detroit, Michigan, plant. But see *Matter of Westinghouse Electric & Manufacturing Company*, 60 N. L. R. B. 782, in which the Board refused to sever salaried tool designers from an established production and maintenance unit. The petitioner in that case, however, sought a predominately clerical unit which included draftsmen but excluded engineers and also excluded hourly paid tool designers.

and Regulations—Series 5, as amended, among the employees in the voting groups described in Section 4 (d), above, who were employed during the pay-roll period immediately preceding the date of this Direction of Elections, 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 election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Association of Westinghouse Salaried Employees F. W. I. S. U.¹⁴

¹⁴ As the Intervenor is not in compliance, and has not initiated action to effect compliance, with Section 9 (f) and (h) of the amended Act, it will not be accorded a place on the ballot.