

In the Matter of WESTINGHOUSE ELECTRIC SUPPLY COMPANY,¹ EMPLOYER and DISTRIBUTION AND WAREHOUSE WORKERS, LOCAL 22, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (AFL),² PETITIONER

Case No. 8-RC-305.—Decided April 26, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing in this case was held at Toledo, Ohio, on November 30, 1948, before Bernard Ness, hearing officer.

On February 21, 1949, the Board, on its own motion, stayed further proceedings and ordered the record reopened and the case remanded to the Regional Director for further hearing to determine the relationship between the Petitioner and the Congress of Industrial Organizations, herein called the CIO. Accordingly a further hearing was held on March 22, 1949. 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-member panel [Houston, Reynolds, and Murdock].

During the course of the second hearing, the Employer moved to dismiss the petition on the grounds that the Petitioner was directly affiliated with the CIO at the time of the first hearing within the meaning of Section 9 (f), (g), and (h); that Local 22 was not related to the Petitioner in the original proceeding; and that there was no showing of interest of Local 22. This motion was referred to the Board by the hearing officer and is denied for reasons stated hereinafter in paragraph 2.

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. The organization involved:

The petition in this case was filed by Toledo Joint Council, Retail, Wholesale & Department Store Union, CIO. At the original hear-

¹ The name of the Employer appears as amended at the first hearing.

² The name of the Petitioner appears as amended at the second hearing.

ing the name of the Petitioner was amended to read "Toledo Joint Council, CIO." At this time the explanation was made by the Petitioner's representative that the Toledo Joint Council had formally disaffiliated from Retail, Wholesale & Department Store Union, CIO, and was, at that time, paying a per capita tax directly to the "National CIO." At the subsequent hearing, it was disclosed that the Toledo Joint Council had not, in fact, paid a per capita tax after its disaffiliation from the International Union, nor was any relationship reconstructed with the CIO following the disaffiliation other than a general notice to the latter organization that the Joint Council "wished to remain within the CIO." Until January 26, 1949, the Joint Council operated under its own constitution and bylaws and its own elected officers. On that date, it voted to affiliate with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL), hereinafter referred to as Teamsters. A charter was granted to the membership of the Joint Council designating it as Distribution and Warehouse Workers, Local 22. The officers of the Joint Council were elected to the corresponding offices in Local 22 and the office and clerical staff remained the same. No claim was made at the second hearing that a Toledo Joint Council exists at the present time other than in the form of Local 22, nor was there any showing of prejudice to the rights of the Employer in the allowance by the hearing officer of a motion to amend the petition to show Local 22 as the Petitioner herein. As Local 22 and the Teamsters are in compliance with Section 9 (f), (g), and (h) of the amended Act and as we are satisfied that Local 22 is the successor to the Toledo Joint Council, we find it unnecessary to rule as to whether the Petitioner was affiliated with the CIO at the time of the first hearing. Contrary to the contention of the Employer, we further find that the Petitioner has satisfied our administrative requirements as to the showing of interest.³

We find that Distribution and Warehouse Workers, Local 22, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL), is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

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

4. The appropriate unit:

The Petitioner seeks a unit composed of warehousemen, the truck driver, and service department employees at the Employer's Toledo

³ We have repeatedly held that the showing of interest is an administrative matter not subject to collateral attack. See *Standard Printing Co.*, 80 N. L. R. B. 338; *Matter of Amos Molded Plastics Division of Amos Thompson Corp.*, 79 N. L. R. B. 201.

branch, excluding the counter salesman, outside salesmen, office employees, and supervisors. The Employer contends that separate units should be established for the warehouse employees and the service department employees, respectively. While these employees have different immediate supervision and work at opposite ends of the same building, they share a community of interest evidenced by the same workday, vacation plan, monthly salary basis, and over-all supervision and are part of a small, cohesive organization. We shall therefore reject the Employer's request for two units.⁴ Neither the Employer nor the Petitioner desires the inclusion of the counter salesman in the unit. However, it appears that this employee is a part of the warehouse department, where he works in close contact with the rest of the unit and shares the same hours and working conditions common to the other personnel. We shall therefore include him in the unit.⁵

We find that all employees at the Employer's Toledo branch including warehousemen, service department employees, the truck driver, and the counter salesman, but excluding outside salesmen, office and clerical employees and supervisors as defined in the amended Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election 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 Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, 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 Distribution and Warehouse Workers, Local 22, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL).

⁴ See *Matter of Jordan Marsh Company*, 78 N. L. R. B. 1031.

⁵ See *Matter of Hannaford Bros. Co.*, 78 N. L. R. B. 869.