

In the Matter of WESTINGHOUSE ELECTRIC CORPORATION, EMPLOYER AND PETITIONER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 93 *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 332, A. F. L.

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In the Matter of WESTINGHOUSE ELECTRIC CORPORATION, EMPLOYER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 93 PETITIONER

*Cases Nos. 20-RM-31, 20-RM-33, and 20-RC-473, respectively.—  
Decided June 13, 1949*

DECISION  
AND  
DIRECTION OF ELECTIONS

Upon separate petitions duly filed, a hearing in the above-consolidated cases was held before Louis S. Penfield and Benjamin B. Law, hearing officers of the National Labor Relations Board. The hearing officers' rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

After the hearing, the I. A. M. moved to reopen the record in these cases to insert, as exhibits, decisions of the Superior Court of the State of California directing the Employer and the I. A. M. to arbitrate their dispute concerning the coverage of their contract, and also

<sup>1</sup> We find no merit in the contention made by United Electrical, Radio and Machine Workers of America, C. I. O., herein called the U. E., that its current contract covering the Employer's Emeryville, California, plant, applies to certain employees at the Employer's Sunnyvale, California, plant. As the U. E. has not complied with the filing requirements of Section 9 (f) and (h) of the Act and has no current contractual interest covering any of the employees involved herein, the hearing officers properly denied its motion for intervention. *Matter of Campbell Soup Company*, 76 N. L. R. B. 950. The hearing also properly denied the motion to intervene made by United Steelworkers of America, C. I. O., herein called the Steelworkers, which has not complied with the filing requirements of Section 9 (f) and (h) of the Act. The motion of the Steelworkers to overrule the hearing officers' denial of its motion for intervention upon the ground that these provisions of the Act are unconstitutional is hereby denied, for the reasons stated in *Matter of Rite-Form Corset Company, Inc.*, 75 N. L. R. B. 174. The hearing officers properly granted the motion to intervene made by the Independent. See footnote 5, *infra*.

an Arbitration Award made pursuant to these decisions, declaring that the Employer had violated the contract by bargaining with the I. B. E. W. rather than with the I. A. M. in regard to employees engaged in electrical production work. Although the Employer may have violated its agreement with the I. A. M. by bargaining with the I. B. E. W., this contract has now expired. Moreover, the proposed exhibits are limited to an interpretation of this contract and do not affect the history of collective bargaining with respect to the employees involved herein.<sup>2</sup> We have therefore denied the motion of the I. A. M. to reopen the record and have rejected its proposed exhibits.<sup>3</sup>

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman Herzog and Members Houston and Reynolds].

Upon the entire record in these cases, the Board finds:

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

2. The organizations involved:<sup>4</sup>

International Association of Machinists, District Lodge No. 93, herein called the I. A. M.; International Brotherhood of Electrical Workers, Local Union 332, A. F. L., herein called the I. B. E. W.; Independent Westinghouse Workers Union, herein called the Independent;<sup>5</sup> and Sales-Delivery Drivers and Warehousemen's Union, Local

<sup>2</sup> See paragraph numbered 4, *infra*, for a discussion of the history of collective bargaining.

<sup>3</sup> By order dated April 19, 1949. The I. A. M. also requested permission to file a reply brief in order to refute the statements made by the Independent in a letter and affidavit submitted in lieu of a brief. As we are not considering the statements made in the affidavit submitted by the Independent, we have also denied this request of the I. A. M. by order dated April 19, 1949.

<sup>4</sup> Although Santa Clara Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, A. F. L., herein called the Carpenters, had a contractual interest in this matter, it did not appear at the hearing.

<sup>5</sup> The hearing officers granted the Independent's motion to intervene, over the objections of the Employer, the I. A. M., and the Teamsters. Both the Employer and the I. A. M. contend in their briefs that the Independent is not a labor organization within the meaning of the Act, and that it has not complied and cannot comply with the filing requirements of the Act. As the record discloses that it was organized for the purpose of bargaining collectively with the Employer with regard to wages, hours, and other conditions of employment, and was authorized by employees to represent them for such purpose, we find that the Independent is a labor organization within the meaning of Section 2 (5) of the Act. *Matter of Pittsburgh Limestone Corporation*, 77 N. L. R. B. 710.

Although the Independent was organized only a few days before the hearing and has therefore not yet complied with the filing requirements of Section 9 (f) and (h) of the Act, it is in the process of effecting compliance. We shall therefore place the name of the Independent on the ballot, but subject to the conditions set forth in footnote 20, *infra*. *Matter of New Indiana Chair Company, Inc.*, 80 N. L. R. B. 1686; *Matter of United States Gypsum Company*, 79 N. L. R. B. 48; *Matter of Continental Industries, Incorporated, of Kansas City, Missouri*, 76 N. L. R. B. 561. Nor does it appear, as suggested by the Employer, that the Independent is acting as an agent for the U. E. for the purpose of evading the filing requirements of the Act, or that it will not, if successful, be the actual representative of the employees involved. *Matter of New Indiana Chair Company, Inc.*, *supra*. But Cf. *Matter of Campbell Soup Company*, *supra*.

No. 296, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., are labor organizations claiming to represent employees of the Employer.

3. Questions affecting commerce exist 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:

*Contentions of the parties*

The I. A. M. seeks to represent a unit of all production and maintenance employees employed at the Employer's Sunnyvale, California, plant, *including employees engaged in the assembly and production of electrical equipment*, but excluding maintenance electricians, their helpers and apprentices, maintenance carpenters, their helpers and apprentices, transportation and warehouse employees,<sup>6</sup> office, clerical, and technical employees, professional employees, guards, and supervisors. The I. A. M. contends that this is the unit which has been covered by its recently expired contract with the Employer.

The I. B. E. W. seeks to represent a unit of all *electrical production and maintenance employees* employed at the Employer's Sunnyvale, California, plant, excluding all employees engaged in mechanical production and maintenance work,<sup>7</sup> transportation and warehouse employees, maintenance carpenters, their helpers and apprentices, office and clerical employees, professional employees, and supervisors. The I. B. E. W. contends that, basically, this is the unit which it has represented pursuant to its recently expired contract with the Employer.<sup>8</sup>

The Independent seeks a plant-wide unit, including all maintenance employees and transportation and warehouse employees, but excluding office, clerical, and technical employees, professional employees, guards, and supervisors.

The Teamsters seeks to represent a unit consisting of all transportation and warehouse employees plus all packers and craters employed in the Shipping and Crating Department<sup>9</sup> of the Employer's Sunnyvale plant. The Teamsters admits that the packers and craters have been covered by the I. A. M.'s contract with the Employer, but con-

<sup>6</sup> Maintenance electricians, maintenance carpenters, and transportation and warehouse employees have been represented respectively by the I. B. E. W., the Carpenters, and the Teamsters, pursuant to contracts which expired on March 31, 1949.

<sup>7</sup> These employees have been covered by the contract between the I. A. M. and the Employer which expired on March 31, 1949.

<sup>8</sup> The I. B. E. W. admits that employees engaged in the assembly and production of water heaters and employees engaged in micarta fabrication have been represented by the I. A. M., but it now seeks to include these employees in the unit of electrical production and maintenance employees. See footnotes 13 and 19, *infra*.

<sup>9</sup> Department X-36, discussed below.

tends that their interests are more closely allied to those of the transportation and warehouse employees whom it has represented than to those of the employees who have been represented by the I. A. M.

The Employer agrees with the unit position of the I. B. E. W., that electrical production and maintenance employees should be included in a separate unit from other production and maintenance employees.

### *History of collective bargaining*

The Employer is engaged, at its plant in Sunnyvale, California, in the manufacture and sale of electrical and steam equipment, including transformers, panelboards and switch gear apparatus, circuit breakers, regulators, large and small electrical motors, home heaters, water heaters, turbines, valves, and gates. Joshua Hendy Iron Works, herein called Hendy, operated the Sunnyvale plant until March 1, 1947, when the Employer succeeded to its interests.

From about 1942 to March 1, 1947, Hendy had bargained continuously with both the I. A. M.<sup>10</sup> and the I. B. E. W. and had entered into successive collective bargaining agreements with them. Before 1942, Hendy had been engaged exclusively in heavy mechanical production work; it had written contracts with the I. A. M. covering mechanical production employees, maintenance machinists, and tool and die makers, and oral agreements with the I. B. E. W. for maintenance electricians. In 1942, because of its inability to obtain certain electric generators needed for the manufacture of its turbines, Hendy started manufacturing generators, and continued to manufacture them until 1945. The written contract between Hendy and the I. B. E. W. which became effective on April 1, 1943, was, for the first time, extended to cover "electrical production workers," who were employed in the production of these generators. The I. B. E. W. continued to represent electrical production employees as well as maintenance electricians until Hendy ceased to produce generators in 1945. Although the 1946 contract between Hendy and the I. B. E. W. covered only maintenance electricians, it provided that "when classifications not herein enumerated are established for production or other type of work, the parties agree to negotiate rates for such classifications, which shall become effective from date of establishment of such classifications." The 1946 contract between Hendy and the I. A. M. covered all production and maintenance employees, but specifically excluded certain enumerated jobs and "specific classifications covered by collective bargaining agreements currently in effect."

<sup>10</sup> Before March, 1946, Lodge No. 68 represented the employees at Sunnyvale. At that time, however, the International transferred jurisdiction over these employees from Lodge No. 68 to Lodge No. 504 of District Lodge No. 93.

When the Employer took over the operation of the Sunnyvale plant, on March 1, 1947, Hendy was carrying out contracts for the manufacture of Diesel engines, a wind tunnel, a printing press, steam turbines, and some gate valves. The Employer completed these contracts and, on July 10, 1947, started to manufacture various types of electrical equipment. Since that time, manufacturing has greatly increased and the type of work done has gradually changed from mechanical to electrical production. With the exception of turbines, valves, and gates, which Hendy also produced, the Employer now manufactures only electrical products.

In May 1947, the present Employer executed its first contracts with the I. A. M. and the I. B. E. W. These contracts were to remain in effect until March 31, 1949, subject to automatic renewal for yearly periods thereafter.<sup>11</sup> The I. A. M. contract covered "all production and/or maintenance employees" with certain specified exclusions, among which were "specific classifications covered by other collective bargaining agreements currently in effect." Although the I. B. E. W. contract did not specifically include electrical production classifications, it appears that their inclusion was contemplated, because the contract provided, in Section 2, that "if during the term of this Agreement the classifications listed in Appendix A are not adequate, additional classifications as may be required for the production or assembly of electrical equipment or other types of electrical work shall be established and appropriate wage rates provided therefor." When the Employer started to hire electrical production workers in July 1947, new rates and classifications were added to Appendix A of the I. B. E. W. contract.

It appears that, before the Employer commenced its electrical production work, it apprised both the I. A. M. and the I. B. E. W. of its plans, and informed the I. A. M. that such work would be covered by its contract with the I. B. E. W. The I. A. M. apparently acquiesced in this arrangement, as it had when electrical production was undertaken by Hendy. It raised no objection to the Employer's interpretation of these contracts until about August 1948, when the expansion of the electrical production departments had been substantially completed. Since that time, the I. A. M. has protested that it is entitled to represent all production employees, including those engaged in the assembly and production of electrical equipment, pursuant to the terms of its agreement.

<sup>11</sup> These contracts have now expired. On January 24, 1949, and January 26, 1949, the I. B. E. W. and the I. A. M., respectively, notified the Employer of their desire to amend their respective agreements. On January 27, 1949, the Employer notified both the I. B. E. W. and the I. A. M. of its intent to terminate these contracts on March 31, 1949.

The Teamsters has represented transportation and warehouse employees at the Sunnyvale plant since 1942.<sup>12</sup> The Employer and the Teamsters executed an agreement on June 6, 1947, which expired on March 31, 1949, covering storekeepers, stock checkers, lift truck operators, and truck drivers.

The Carpenters have, for many years, represented all maintenance carpenters, their helpers and apprentices employed at the Sunnyvale plant. In May 1947, the Employer and the Carpenters entered into an agreement covering these employees, which expired on March 31, 1949.

*The operations at Sunnyvale*

As stated above, the Employer's Sunnyvale plant was owned and operated by Joshua Hendy Iron Works until March 1, 1947. Hendy had had primarily a machine shop operation and, although it had for a short period, from 1942 until 1945, manufactured electric generators, it was engaged solely in mechanical production at the time the Employer took over its operations. The Employer has continued to manufacture turbines, valves, and gates, which Hendy also produced, but has gradually added the manufacture of electrical products. It appears that this is the only plant of the Employer which is engaged in the production of such a variety of unrelated items, combining, as it does, the manufacture of heavy mechanical products with the production of electrical industrial equipment and electrical home appliances.

The Employer's electrical production operations at Sunnyvale are mainly of an assembly nature. It purchases the electrical units which go into its products from outside suppliers or obtains them from its other plants throughout the country. Some of the parts, however, are fabricated and machined at the Sunnyvale plant, in Buildings 61, 41, and the North Side of Building 31. The employees in these three buildings are primarily skilled machinists and related machine operators, engaged in mechanical or machining work. Neither the Employer nor the I. B. E. W. seeks to have them included in the allegedly appropriate unit of electrical production and maintenance employees.

A plant manager is in charge of the entire Sunnyvale plant. His immediate subordinates, who report directly to him, are the mechanical superintendent, the electrical superintendent, the supervisor of quality control, and the plant services superintendent. The mechanical superintendent is in charge of Building 41 and the North Side of Building 31, where all machine work for products made at

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<sup>12</sup> Until January 1, 1946, Local 287 had represented these employees. On that date, Local 296 succeeded to the interests of Local 287, and since then has bargained for these employees at the Sunnyvale plant.

the Sunnyvale plant<sup>13</sup> and all production of nonelectrical equipment are carried on. The electrical superintendent is in charge of all electrical production and of the fabrication of parts for electrical products carried on in Building 61.<sup>14</sup>

The supervisor of quality control has charge of the quality control department, which is responsible for the inspection and testing of products at various stages of production. There are two supervisors working directly under him, one responsible for mechanical inspection and the other for electrical testing. The plant services superintendent has charge of the tool room, the maintenance department,<sup>15</sup> and the store rooms, receiving departments, and shipping and crating department.

Most of the employees engaged in electrical production work are unskilled or semiskilled. Inexperienced persons are hired and trained on the job to perform the specific assembly or finishing operation for which they have been employed. Employees engaged in mechanical production, however, are considerably more skilled. There is therefore virtually no interchange between the Employer's electrical production employees and those in Buildings 61, 41, and the North Side of 31, who are engaged in mechanical production and machining operations. Although a single plant-wide unit of production and maintenance employees might be appropriate, the above-mentioned factors and the history of collective bargaining indicate that the electrical production and maintenance departments and the mechanical production and maintenance departments can also function at this plant as two separate units.<sup>16</sup>

All employees engaged in unloading, receiving, handling, storing, and distributing materials and in transporting them from building to

<sup>13</sup> Micarta machining, however, is carried on in one of the electrical production buildings, subject to the supervision of the electrical superintendent. The three employees in the micarta department are skilled machinists who cut, punch, drill, and bore micarta, a plastic used as insulation material. Both the Employer and the I. B. E. W. would include the micarta machinists in the allegedly appropriate unit of electrical production and maintenance employees. As their work is similar to that done by the employees in Building 41, who, the Employer and the I. B. E. W. agree, should be included in a unit of mechanical production and maintenance employees, and as they are skilled machinists, we shall include the micarta machinists in the voting group of mechanical production and maintenance employees herein found appropriate.

<sup>14</sup> As over 90 percent of the parts fabricated here are used in the assembly of electrical products. Building 61 is under the supervision of the electrical superintendent. The work done, however, is of a mechanical nature. Thus, about 40 percent of the employees work with machine tools, such as punch presses, drill presses, shears, and welding equipment, about 45 percent are employed as welders, and the remaining 15 percent are lay-out men, degreasers, painters, and air and pressure testers. As previously set forth, the Employer and the I. B. E. W. agree to the inclusion of these employees in a unit of mechanical production and maintenance employees.

<sup>15</sup> There are about 30 employees in the maintenance department, including maintenance machinists, maintenance electricians, and maintenance carpenters, all of whom are highly skilled journeymen.

<sup>16</sup> *Matter of Manhattan Coil Corporation*, 79 N. L. R. B. 187.

building within the plant have been represented by the Teamsters in the past. Employees engaged in packing and crating products manufactured at the plant, however, have been represented either by the I. A. M. or by the I. B. E. W. Small electrical products are packed or crated at the end of their respective assembly lines, and the employees engaged in this work have been represented by the same union which has represented the employees engaged in the assembly and finishing of these products. All large equipment, both mechanical and electrical, is crated in the shipping and crating department, known as Department X-36, where employees classified as "Packers A and B" pack, crate, and load the products for shipment outside the plant. They cut lumber, build crates, and load them on trucks or railroad cars for shipment. Although the I. A. M. has represented these employees in the past, the Teamsters seeks to include them in its allegedly appropriate unit, but does not seek to include employees engaged in packing small electrical equipment. At is appears that the "Packers A and B," who are engaged primarily in building crates, do work and possess skills different from those of the employees engaged in the storing and transportation of materials, we shall not include them in the voting group of transportation and warehouse employees, but shall include them in the voting group of mechanical production and maintenance employees herein found appropriate.

We shall make no final unit determinations at this time, but shall first ascertain the desires of the employees as expressed in the elections hereinafter directed. We shall direct that elections be held among the following groups of employees at the Employer's Sunnyvale, California, plant, excluding from the voting groups office, clerical, and technical employees, professional employees, guards, and all supervisors as defined in the Act:

(a) All mechanical production and maintenance employees, including all employees engaged in the general fabrication of parts, in welding, in machining,<sup>17</sup> and in the assembly of nonelectrical equipment, all tool and die makers, their helpers and apprentices, tool crib attendants, maintenance machinists, their helpers and apprentices, crane operators and hook-on men, the dinkey engine operator, and spray painters, packers and craters employed in the shipping and crating department, but excluding all electrical production employees, maintenance electricians, their helpers and apprentices, maintenance carpenters, their helpers and apprentices,<sup>18</sup> and transportation and warehouse employees;

<sup>17</sup> Including the micarta machinists. See footnote 13, *supra*.

<sup>18</sup> As maintenance carpenters have been and apparently still are being bargained for as a separate unit, we are excluding them from voting groups (a) and (b).

(b) All electrical production and maintenance employees, including all employees engaged in winding, treating, wiring, assembling, painting, testing, packing, and crating panelboards and switch gear apparatus, transformers, Buffalo motors, T & G motors, regulators, circuit breakers, water heaters,<sup>19</sup> and home heaters, employees engaged in insulation detail fabrication and stamping and forming of bus bar copper, and all maintenance electricians, their helpers and apprentices, but excluding all mechanical production and maintenance employees, maintenance carpenters, their helpers and apprentices, and transportation and warehouse employees;

(c) All employees engaged in unloading, receiving, handling, storing, distributing, and transporting materials, excluding crane operators and the dinkey engine operator, and all packers and craters.

### 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 Twentieth Region, 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 voting groups described in paragraph numbered 4, 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 elections, and also excluding employees on strike who are not entitled to reinstatement, to determine:

(1) Whether the employees in voting group (a) desire to be represented, for purposes of collective bargaining, by International Association of Machinists, District Lodge No. 93, or by Independent Westinghouse Workers Union, or by neither;

<sup>19</sup> The water heater department is under the supervision of the electrical superintendent and the work done here is similar to that done in other departments where electrical products are assembled. The employees in this department, however, have been represented by the I. A. M. When the Employer informed the I. A. M. and the I. B. E. W. that it was moving its water heater and home heater departments from its Emeryville plant, a controversy arose as to the coverage of their respective contracts. As a compromise, the parties agreed that employees in the water heater department would be covered by the I. A. M. contract and those in the home heater department by the I. B. E. W. contract. In view of their supervision and the nature of their work, we are including the employees in the water heater department in the voting group of electrical production and maintenance employees.

(2) Whether the employees in voting group (b) desire to be represented, for purposes of collective bargaining, by International Brotherhood of Electrical Workers, Local Union 332, A. F. L., or by International Association of Machinists, District Lodge No. 93, or by Independent Westinghouse Workers Union, or by none;

(3) Whether the employees in voting group (c) desire to be represented, for purposes of collective bargaining, by Sales-Delivery Drivers and Warehousemen's Union, Local No. 296, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., or by Independent Westinghouse Workers Union, or by neither.<sup>20</sup>

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<sup>20</sup> The compliance status of Local No. 296 has lapsed since the hearing in this matter, and the Independent has not yet effected compliance. The Regional Director is herewith instructed to delete the Independent from the ballots in all the elections directed herein if it is not in full compliance with Section 9 (f) and (h) within 2 weeks from the date of this Decision and Direction of Elections. No election shall be scheduled within the 2-week period allowed until and unless compliance has been determined. If Local No. 296 has not complied with the provisions of Section 9 (f), (g), and (h) of the Act within 2 weeks from this date, the Regional Director is to advise the Board to that effect, and no election shall be conducted among the employees in the voting group (c) unless and until Local No. 296 has renewed its compliance.