

In the Matter of WESTINGHOUSE ELECTRIC CORPORATION, EMPLOYER
and INDUSTRIAL POLICE ASSOCIATION, PETITIONER

Case No. 6-RC-355.—Decided November 22, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Jerold B. Sindler, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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 [Chairman Herzog and Members Houston and Gray].

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 labor organization involved claims to represent employees of the Employer.
3. 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.²

¹ After the close of the hearing, the Employer moved to correct certain errors in the transcript made at the hearing. In the absence of objections, the Employer's motion is granted, and the transcript is hereby amended to read as corrected.

Because the record and the brief fully present the positions of the parties on the issues involved herein, the motion of the Intervenor, International Union, United Electrical, Radio and Machine Workers of America (CIO), Local 601, for oral argument is hereby denied.

² We find no merit in the Intervenor's contention that either the failure of the Petitioner to make a direct demand for recognition as exclusive bargaining representative of the Employer's employees, or a current contract between the Employer and the Intervenor precludes an investigation of representatives at this time. The Petitioner filed the instant petition and informed the Employer that it had filed a petition for certification with the Board. The record shows that the Employer refused to recognize the Petitioner, *Advance Pattern Company*, 80 NLRB 29; *J. I. Case Company*, 80 NLRB 223. The contract alleged as a bar, covering employees involved herein, was made effective from April 1, 1947, to March 31, 1950, and thereafter from year to year in the absence of notice of terminate. After its initial 2-year period, this contract is no bar to a representation proceeding. Cf. *Puritan Ice Company*, 74 NLRB 1311.

4. The Petitioner contends that guards at the Employer's East Pittsburgh, Trafford, Linhart, and Copper Mill plant, A. B. Building, Research Laboratory, Archives Building, and Headquarters Manufacturing Laboratory (Clark-Wright Building) in or near Pittsburgh, Pennsylvania, excluding sergeants, lieutenants, captains, and other supervisors, constitute a separate appropriate unit. The Employer raises no objection to the proposed unit. The Intervenor, however, objects both to the category and plant coverage of the proposed unit, alleging that the appropriate unit for guards should include all telephone maintenance employees and other hourly rated employees at the Employer's East Pittsburgh, Trafford, Linhart, and Copper Mill plants and Homewood Service Works, excluding supervisors.

The guards, otherwise called in the record "the police," at the Employer's several plants located in the Pittsburgh area are plant-protection employees, charged with guarding and protecting the Employer's properties. As such, they are guards within the meaning of Section 9 (b) (3) of the amended Act, and may not be included by this Board in a bargaining unit with employees other than guards. We find, therefore, without merit the Intervenor's contention that the unit appropriate for the Employer's guards should include employees other than guards.

With respect to the plant coverage of the Petitioner's proposed unit for guards, we will examine our earlier unit findings with respect to these employees, the history of bargaining between the Employer and these employees, and the Employer's plant operations in the Pittsburgh area at this time.

The Employer operates many plants in the various States of the United States. At the time of the hearing in this proceeding, the Employer operated, in the general area of Pittsburgh, Pennsylvania, 10 plants, known, respectively, as its East Pittsburgh, Trafford, Linhart, Copper Mill, and R. D. Nuttall plants, A. B. Building, Homewood Service Works, Research Laboratory, Archives Building, and Headquarters Manufacturing Laboratory (Clark-Wright Building).

On July 9, 1937, the Board certified the Intervenor as the exclusive bargaining representative of hourly rated employees, including guards, at the Employer's East Pittsburgh, Trafford, Linhart, Copper Mill plants, and Homewood Service Works.³ These five plants constituted at that time the East Pittsburgh Division of the Employer's operation.⁴ After the issuance of this certification by the Board, the Employer

³ 3 NLRB 1.

⁴ In its decision the Board found that the East Pittsburgh Division corresponded to other administrative divisions of the Employer in other geographical localities, such as the separate divisions in Cleveland, Ohio, and at Mansfield, Ohio. So far as the decision discloses, these five plants were all the plants in the Pittsburgh area at that time.

began operations at other plants at or near Pittsburgh. On March 27, 1941, the Board certified the Intervenor as the exclusive bargaining representative of production and maintenance employees, including guards, at the Employer's R. D. Nuttall plant in Pittsburgh.⁵

For a number of years the Employer and the Intervenor have entered into contracts covering employees, including guards, at all plants of the Employer in the United States for whom the Intervenor and other locals of the same parent body were then the recognized bargaining representatives. Among the employees covered in these multi-plant contracts have been employees at the Employer's East Pittsburgh, Trafford, Linhart, Copper Mill, and R. D. Nuttall plants, and its Homewood Service Works. Although the Employer has extended to employees at other plants of the Employer the benefits accorded to employees in the multi-plant bargaining unit, such other employees have not been represented by the Intervenor or its sister locals, nor made a part of the contract unit. This situation obtained at the time of the hearing herein.

Guards at the East Pittsburgh, Trafford, Linhart, Copper Mill plants and the A. B. Building generally rotate, and the guards from that group of buildings rotate, in case of illness, at the Research Building and Headquarters Manufacturing Building. In 1942 or 1943, a guard was transferred from the R. D. Nuttall plant to Homewood Service Works, and in 1946 a guard was transferred from the East Pittsburgh plant to the Homewood Service Works. Transfers of guards from one Pittsburgh area plant to another have not lately involved the Homewood Service Works. No guards have been hired or laid off at this plant for the last several years.

The Petitioner would include in its proposed eight-plant unit guards at all the plants of the Employer in the Pittsburgh area, except Homewood Service Works and the R. D. Nuttall plant. Guards at both these plants were covered by earlier Board certifications and have been part of the larger contract unit represented by the Intervenor.

At the time of the hearing in this proceeding, the operations at Homewood Service Works, a repair, rather than manufacturing, plant, were under the charge of a separate vice president, with its own industrial relations counsel and its own pay-roll department, and not under the same supervision as the manufacturing plants in the same area. Hourly paid employees at the R. D. Nuttall plant, including guards, had been found by the Board in an earlier proceeding, noted above, to constitute a separate unit apart from other employees of the Employer in the Pittsburgh area. These employees, however, were thereafter

⁵ 27 NLRB 1358; 30 NLRB 635.

placed in the multi-plant contract unit, by the Intervenor and the Employer, for bargaining purposes.

The particular sector or sectors of its general administration to which the Employer has assigned the operation of one or more of the several plants in the Pittsburgh area are a condition which would be a factor in determining the unit or units appropriate for its production and maintenance employees. All guards at all the Employer's plants, however, are under the over-all supervision of one superintendent of police and his staff of subordinates, and not under production and maintenance supervisors in any geographic division of its operations. Our previous findings respecting the appropriate units for workers, including guards, at the Employer's six plants in the Pittsburgh area were based on the conditions then obtaining. The ensuing bargaining contracts between the Employer and the Intervenor were based upon the Intervenor's extent of organization and covered guards and other employees of the Employer represented by the Intervenor and its sister locals. Neither of these factors is determinative or indicative of the scope of unit appropriate for the Employer's guards in the Pittsburgh area under the present changed conditions.

Although the Petitioner does not now seek to include in its proposed eight-plant unit guards at the Employer's R. D. Nuttall plant and at the Homewood Service Works, it anticipates adding these employees at an early date to its presently sought eight-plant guard unit, covering all other plants of the Employer at or near Pittsburgh. The great expansion of the Employer's operations makes our earlier unit finding inapplicable now. The Employer's system-wide administration of its plant-protection services does not follow the divisional lines of control set up for its other employees. Because all guards at all plants of the Employer in the Pittsburgh area have common working conditions under common over-all guard control, independent of the type of the work done in the plant by production workers, and because these guards are subject to rotation and interchange rendered feasible by the common proximity of the plants, we believe that a single unit of guards at all the plants of the Employer in the Pittsburgh area will, under the changed conditions now obtaining at these plants, best effectuate the policies of the amended Act.

We find that all guards employed at the Employer's East Pittsburgh, Trafford, Linhart, Copper Mill, and R. D. Nuttall plants, Homewood Service Works, A. B. Building, Research Laboratory, Archives Building, and Headquarters Manufacturing Laboratory (Clark-Wright Building) in or near Pittsburgh, Pennsylvania, excluding sergeants, lieutenants, captains, and other supervisors, con-

stitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁶

DIRECTION OF ELECTION ⁷

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, 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 Industrial Police Association.

⁶ Because the unit found appropriate in this proceeding is somewhat more inclusive than that presently requested by the Petitioner, though identical with the geographic unit it ultimately seeks to achieve, the Petitioner may, within 10 days of the issuance of this decision, withdraw its petition without prejudice.

⁷ Because the Intervenor is a labor organization admitting to membership employees other than guards, and may not be certified as bargaining representative of guards, the Intervenor will not be accorded a place on the ballot.