

In the Matter of WESTERN ELECTRIC COMPANY, EMPLOYER *and* MARK E. NELSON, PETITIONER *and* EQUIPMENT WORKERS, LINCOLN DIVISION, No. 62, COMMUNICATION WORKERS OF AMERICA, C. I. O., UNION

Case No. 17-RD-19.—Decided December 9, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before William J. Cassidy, hearing officer. 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 [Chairman Herzog and Members Reynolds 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 Petitioner, an employee of the Employer, asserts that the Union is no longer the representative of the Employer's employees designated in the petition.

The Union, a labor organization affiliated with the C. I. O., is currently recognized by the Employer as the exclusive bargaining representative of the employees designated in the petition.

3. The Union asserts that it has a bargaining contract with the Employer which is a bar to this proceeding. On August 29, 1947, the Employer and the Union signed a contract covering these employees, with a termination date of August 28, 1949. This contract contained no automatic renewal clause, but provided for one reopening as to wages during the contract period, upon notice to be given on or after June 30, 1948. Pursuant to this provision a supplementary agreement was signed on October 28, 1948, containing a new wage scale and extending the termination date of the original contract to February 28, 1951. The petition herein was filed on August 25, 1949. The supplementary agreement was executed 10 months in advance of the expiration date of the August 29, 1947, contract, and was therefore a premature extension of that contract. As the petition was filed before

the expiration date of that contract, we find that the supplementary agreement of October 28, 1948, cannot operate as a bar to this proceeding.¹

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. We find, in accord with the stipulation of the parties, that all sergeants and watchmen at the Employer's Lincoln, Nebraska, plant, excluding supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.²

DIRECTION OF ELECTION³

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 Equipment Workers, Lincoln Division, No. 62, Communications Workers of America, C. I. O.

¹ *Doehler-Jarvis Corp. (Doehler Die Casting Division)*, 81 NLRB 1097; *Robertshaw-Fulton Controls Company*, 77 NLRB 316; *Geo. Knight & Co.*, 74 NLRB 560. Cf. *Republic Steel Corporation*, 84 NLRB 483. As we have found that the existing contract is not a bar to this proceeding, it is unnecessary to rule on the Petitioner's contention that the contract is invalid. We find no merit in the Union's motion that the petition should be dismissed because its filing was motivated by the Petitioner's reliance upon the invalidity of the contract. The motion is hereby denied.

² These employees principally perform plant protection duties and enforce the Employer's plant rules and regulations. During their employment in these positions they are deputized by the municipal police department. We find that they are guards within the meaning of the Act.

³ Section 9 (b) (3) of the Act precludes the Board from certifying any labor organization as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. For this reason and also because the Union is not presently in compliance with the filing requirements of Section 9 (h) of the Act, we will not certify the Union if it wins the election, but will only certify the arithmetical results of the election. *Westinghouse Electric Corporation*, 78 NLRB 10.