

In the Matter of WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY
and WESTINGHOUSE DETROIT SALARIED ASSOCIATION, AFFILIATED WITH
THE FEDERATION OF WESTINGHOUSE INDEPENDENT SALARIED UNIONS

Case No. 7-R-1936.—Decided June 5, 1945

Beaumont, Smith & Harris, by *Mr. Albert E. Meder*, of Detroit, Mich.,
for the Company.

Messrs. Robert W. Allison and *H. C. Jones*, of Pittsburgh, Pa., for the
Federation.

Mr. Fred R. Livingston, of New York City, for the U. E.

Mr. Julius Kirlle, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by Westinghouse Detroit Salaried Association, affiliated with the Federation of Westinghouse Independent Salaried Unions, herein called the Federation, alleging that a question affecting commerce had arisen concerning the representation of employees of Westinghouse Electric & Manufacturing Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David Karasick, Trial Examiner. Said hearing was held at Detroit, Michigan, on February 28, 1945. The Company, Federation, and United Electrical, Radio & Machine Workers of America, C. I. O., herein called the U. E., appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

62 N. L. R. B., No 20.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Westinghouse Electric & Manufacturing Company, a Pennsylvania corporation having its principal office and place of business at Pittsburgh, Pennsylvania, is engaged in the manufacture, sale, and distribution of electrical and machine equipment. It operates manufacturing and district office plants in various parts of the United States,¹ including a district office plant at Detroit, Michigan, where it assembles and sells prefabricated steel and copper shakes, copper wires, and castings. We are concerned herein solely with the district office plant at Detroit. During the 6-month period ending December 31, 1944, the Company received at its Detroit district office plant prefabricated parts valued in excess of \$100,000, approximately 90 percent of which was received from points outside the State of Michigan. During the same period, the Company sold at its Detroit district office plant finished products valued in excess of \$500,000, approximately 20 percent of which was shipped to points outside the State of Michigan.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Westinghouse Detroit Salaried Association, affiliated with the Federation of Westinghouse Independent Salaried Unions, is a labor organization admitting to membership employees of the Company.

United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Federation as the exclusive bargaining representative of certain of the Company's employees until the Federation has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Federation represents a substantial number of employees in the unit hereinafter found appropriate.²

¹ The district office plants assemble and sell prefabricated parts as distinguished from the Company's manufacturing plants which conduct regular manufacturing operations.

² The Field Examiner reported that the Federation submitted 64 cards, bearing the names of 64 persons listed on the Company's pay roll of February 1, 1945, which contained the names of 90 employees in the claimed appropriate unit; and that 62 cards were dated from December 1944, to January 1945, and 2 were undated.

The U. E. submitted 23 cards dated from August 1944 to October 1944, 21 of which bore the names of persons listed on the Company's pay roll of February 1, 1945, which contained the names of 60 employees in the office and clerical unit claimed as appropriate by the U. E. All of the designations submitted by the U. E. were confined to office and clerical employees listed in Appendix A, attached hereto.

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Federation seeks a unit of all office, clerical, technical, and professional employees employed at the Company's Detroit district office plant,³ excluding the secretary to the district manager, and confidential secretaries to the managers of the manufacturing and repair, lamp, and X-ray divisions. The Company and U. E.⁴ contend that there should be one unit consisting of office and clerical employees, and while they do not assert that the technical and professional employees should not have representation for the purposes of collective bargaining, they are opposed to a unit which would include both the office and technical employees.

Although we have included technical and professional employees within a unit containing office and clerical employees,⁵ we have frequently had occasion to recognize the difference in interests, background, and functions between the two groups and our general policy has been to place the employees in these groups in separate units,⁶ unless the parties themselves raise no objection to their inclusion within a single unit. In view of the objection of the U. E. and Company to the inclusion of various technical and professional employees within the same unit as clerical employees, we shall adhere to our customary practice, finding that the interests of the employees involved herein can best be served by representation within separate units, one consisting of office and clerical employees and the other of technical and professional employees.⁷

In the office and clerical unit, we shall include all employees listed in Appendix A, attached hereto, inasmuch as the Federation and U. E. agree that they may properly be included with an office and clerical unit, and the Company takes no position therein.

In the technical and professional unit, we shall include employees listed in Appendix B,⁸ attached hereto, inasmuch as they have either an engineer-

³ Although the amended petition reads "office and clerical employees," the Federation seeks to include various engineers and technical employees employed at the Company's Detroit district office plant.

⁴ The U. E. presently represents a unit of production and maintenance employees and those directly associated with production in the repair, manufacturing, and warehouse departments of the Company's Detroit plant, excluding supervisory, office, and clerical employees.

⁵ See *Matter of Consolidated Vultee Aircraft Corporation (San Diego Division)*, 54 N. L. R. B. 103.

⁶ See *Matter of Oliver Farm Equipment Company*, 53 N. L. R. B. 1078; *Matter of Boston Edison Company*, 51 N. L. R. B. 118; *Matter of Curtiss-Wright Corporation*, 52 N. L. R. B. 805.

⁷ See *Matter of Micamold Radio Corporation*, 58 N. L. R. B. 888; *Matter of Spicer Manufacturing Corporation*, 55 N. L. R. B. 1491.

⁸ With the exception of the lay-out design draftsmen, detail draftsmen, and supervisory service engineers whom the U. E. would exclude from the clerical unit as technical employees and concerning whom the Company takes no position, the U. E. and Company are agreed that the remainder of the employees listed in Appendix B, are technical employees and should be excluded from the clerical unit. Although the Federation seeks the inclusion of the above employees in the unit petitioned for, it does not dispute the fact that they are technical employees.

ing college background or its equivalent and perform work of a technical or professional nature.⁹

There remains for consideration the status of the following employees whose inclusion in either the clerical or the technical units hereinafter found appropriate is in dispute.

Time and motion analysts. The Company employs two time and motion analysts who work in the manufacturing and repair division. The Federation would include them, the U. E. exclude them from the clerical unit, while the Company takes no position therein. The time and motion analysts study the time required to perform particular operations and determine time values and incentives for the production employees. They also make a detailed analysis of the jobs performed by production workers with a view to the improvement of efficiency and reduction in manufacturing costs. Although the time and incentive determinations made by the time and motion analysts do not affect the earnings of the employees whom we shall include in the units hereinafter found appropriate, we are of the opinion that, in view of their controlling role in the determination of employee earnings, they exercise a function of management. Accordingly, we shall exclude them from both the clerical and the technical units hereinafter found appropriate.¹⁰

Inspectors. The Company employs two inspectors who work in the manufacturing and repair division under the immediate supervision of the foreman of that division. The Federation would include them, the U. E. exclude them, while the Company takes no position therein. The inspectors inspect and approve or reject work done on the production line and are the only employees in the proposed unit who work regularly in the manufacturing and repair section of the shop. While their job is a responsible one and involves the use of various gauges and instruments, their inspections are based on previously formulated specifications. Inspectors are generally recruited from among the production employees after proper training. Inasmuch as the record shows that inspectors are engaged in duties dissimilar to those of the office, clerical, technical, and professional employees, and work in the plant under plant supervision, they would appear to belong more appropriately to a unit of production and maintenance employees.¹¹ Accordingly, we shall exclude them from both the clerical unit and technical unit hereinafter found appropriate.¹²

⁹ See *Matter of Universal Atlas Cement Company*, 54 N. L. R. B. 1555.

¹⁰ See *Matter of Yale & Towne Manufacturing Company*, 60 N. L. R. B. 116, and cases cited therein.

¹¹ See *Matter of Westinghouse Electric & Manufacturing Company*, 45 N. L. R. B. 826, *Matter of Scott & Williams, Incorporated*, 58 N. L. R. B. 249, *Matter of Athens Manufacturing Company*, 57 N. L. R. B. 1115; *Matter of The Dayton Rubber Manufacturing Company*, 57 N. L. R. B. 388, *Matter of C. A. Dunham Company*, 57 N. L. R. B. 1451, *Matter of Marshall Stove Company*, 57 N. L. R. B. 375; *Matter of McDonnell Aircraft Corporation*, 49 N. L. R. B. 897, and cases cited therein.

¹² Inasmuch as we are excluding them from the clerical and technical units on grounds other than that contended by the U. E., it is unnecessary for us to determine whether or not inspectors are included in the production and maintenance unit covered by an existing contract between the U. E. and the Company.

Receiving and shipping clerk, and shipping clerk. The Company employs one receiving and shipping clerk, and one shipping clerk, who work in the warehouse under the supervision of the lamp division manager. The Federation would include them, the U. E. exclude them, while the Company takes no position therein. The receiving and shipping clerk handles both incoming and outgoing materials, places material in the warehouse where it will be easily accessible, and compiles records necessary for such operations; the shipping clerk merely handles outgoing shipments and records relating thereto. They are the only employees in the proposed unit who work in the warehouse. Although the receiving and shipping clerk directs the shipping clerk, he does not possess supervisory authority under the Board's customary definition thereof. Inasmuch as they work in the warehouse under the same supervision as the production and maintenance employees, they would be under established Board practice more appropriately included within a unit of production and maintenance employees.¹³ Accordingly, we shall exclude them from both the clerical unit and the technical unit hereinafter found appropriate.¹⁴

We find that the following separate units, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, are appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

1. All office and clerical employees at the Company's Detroit district office plant, including employees listed in Appendix A, attached hereto, but excluding confidential secretaries,¹⁵ time and motion analysts, inspectors, receiving and shipping clerk, shipping clerk, and technical and professional employees listed in Appendix B, attached hereto.

2. All technical and professional employees at the Company's Detroit district office plant, including employees listed in Appendix B, attached hereto, but excluding confidential secretaries,¹⁶ time and motion analysts, inspectors, receiving and shipping clerk, shipping clerk, and office and clerical employees listed in Appendix A, attached hereto

V. THE DETERMINATION OF REPRESENTATIVES

Inasmuch as the U. E. has made no showing among the technical and professional employees and has not indicated whether or not it wishes to participate in an election among such employees, if one is held, we shall

¹³ See *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 531

¹⁴ Inasmuch as we are excluding them from the clerical and technical units on grounds other than that contended by the U. E., it is unnecessary for us to determine whether or not the receiving and shipping clerk and the shipping clerk are included in a production and maintenance unit covered by an existing contract between the U. E. and the Company

¹⁵ Excluded as confidential employees are the secretary to the district manager, and secretaries to the managers of the manufacturing and repair, lamp, and X-ray divisions.

¹⁶ See footnote 15, *supra*.

not accord it a place on the ballot in the election for the technical and professional employees.¹⁷

We shall direct that the question concerning representation which has arisen be resolved by separate elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Westinghouse Electric & Manufacturing Company, Detroit, Michigan, separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, (1) to determine whether the employees in the office and clerical unit found appropriate in Section IV, above, desire to be represented by Westinghouse Detroit Salaried Association, or by U. E.-C I O, United Electrical, Radio & Machine Workers of America, for the purposes of collective bargaining, or by neither,¹⁸ and (2) to determine whether or not the employees in the technical and professional unit found appropriate in Section IV, above, desire to be represented by Westinghouse Detroit Salaried Association for the purposes of collective bargaining.

¹⁷ See *Matter of Iowa Public Service Company (Eastern Division)*, 60 N L R B 1153, *Matter of Chicago Flexible Shaft Company*, 60 N. L. R. B. 848

¹⁸ The Federation and the U E requested that they be designated on the ballot as set forth above. The request is hereby granted

APPENDIX A

Production clerks
General duty clerks
Typists and dictaphone operators
Stock ledger clerks
Repair correspondents
Stenographers
Service correspondents
Application engineering assistants
Semi-technical application engineering assistants
District order clerks
Routine application engineering assistants
Teletype operators
Telephone operators
File clerks
Treasury-accounting clerks
Office supervisor's assistants
Claim clerks
Watchmen-elevator operators
Record clerks

APPENDIX B

Lay-out design draftsmen
Detail draftsmen
Design engineers
Lamp representatives
X-ray application engineers
Supervisory service engineers
District engineers
Application engineers-special
Application engineers
Technical-specialists
Production specialists