

In the Matter of WESTINGHOUSE ELECTRIC CORPORATION, EMPLOYER and
ACCOUNTING EMPLOYEES COMMITTEE, INDEPENDENT, PETITIONER

Case No. 20-R-1700.—Decided May 27, 1947

Brobeck, Phleger & Harrison, by Mr. Marion B. Plant, of San Francisco, Calif., for the Employer.

Paul St. Sure, by Mr. Edward H. Moore, of Oakland, Calif., for the Petitioner.

Mr. John Bittman and Miss Sandra Martin, of Oakland, Calif., for the UE.

Mr. Morton B. Spero, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at San Francisco, California, on January 31, 1947, before Wallace E. Royster, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Westinghouse Electric Corporation is a Pennsylvania corporation engaged in the manufacture of electrical products throughout the United States. We are here concerned with the Employer's Emeryville, California, plant, where it is engaged in the manufacturing and repairing of electrical products. Over 50 percent of the raw materials used at the Emeryville, California, plant is shipped to it from sources outside the State of California. The Employer's annual sales of finished products from this plant amount to over \$100,000, of which more than 50 percent represents shipments from this plant to points outside the State.

We find, therefore, that the Employer is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization, claiming to represent employees of the Employer.¹

United Electrical, Radio & Machine Workers of America, herein called the UE, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

In April 1944, the Employer and the UE executed a master contract, covering those units of employees at plants of the Employer in which the UE or its locals were the bargaining representatives, and making provision for the blanketing thereunder of other units at plants of the Employer in which the UE or its locals might thereafter be certified by the Board. This contract, as supplemented in certain immaterial aspects, was still in effect on June 26, 1945, when, as the result of a consent election, a local of the UE was certified by the Board as the exclusive bargaining representative for certain employees in the accounting department at the Employer's Emeryville, California, plant. The master agreement was accordingly extended to cover this operation. On January 14, 1946, the UE called a strike at all the plants of the Employer where the UE or its locals were the bargaining representatives. On the following day, the Employer informed the UE that as of midnight, March 31, 1946, the contract between them would, in accordance with its terms, be terminated. On May 9, 1946, the strike was settled, and the Employer and the UE entered into another master contract. This contract, which covered, among others, the employees sought herein, had an effective date of April 1, 1946, and was to be in force for a period of 1 year and thereafter from year to year, unless either party gave written notice of termination at least 30 days before the anniversary date.

¹ It was contended at the hearing that the Petitioner is not a labor organization within the meaning of the Act. We do not agree. The record reveals that the Petitioner has elected officers and has adopted a constitution and bylaws, and that it admits to membership employees in the accounting department at the Employer's Emeryville, California, plant. Although the Petitioner does not, as yet, collect dues from its members, the evidence indicates that individuals in the requested unit signed cards which stated that the Petitioner was organized for the purpose of bargaining collectively with the Employer in behalf of its members concerning wages, hours, and working conditions. Under these circumstances, we find that the Petitioner is a labor organization within the meaning of the Act. *Matter of Seneca Falls Machine Company*, 71 N. L. R. B. 1106; *Matter of Wicaco Machine Corporation*, 69 N. L. R. B. 741.

During the period of the strike, the Petitioner was organized at the Employer's Emeryville, California, plant, and, on March 12, 1946, during the pendency of the strike, it filed the instant petition.

The UE contends that an election should not be held at this time because (1) the petition was filed within the certification year, and (2) the Employer is presently in contractual relationship with the UE. We do not agree. As to the first ground, inasmuch as the certification year has already expired, the certification no longer bars an election. And, as to the second ground, although the contract executed during such certification year is effective as a bar during its initial period, that period has already expired; and the contract is clearly no bar to a petition which antedated its operative renewal notice date.² Accordingly, we find that no obstacle exists to a current determination of representatives.

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

IV. THE APPROPRIATE UNIT

The parties agree generally that the appropriate unit should consist of all employees in the Employer's Emeryville, California, accounting department, excluding confidential pay-roll clerks, all supervisory employees and their secretaries. They are in disagreement, however, with respect to the status of group leaders, the Employer and the Petitioner desiring to include them, while the UE desires their exclusion on the ground that they are supervisory employees.

The record reveals that there are 5 group leaders at the Emeryville plant. Subject to the over-all supervision of the plant supervisors, each group leader has from 4 to 11 employees in his individual group. The supervisors draw up the schedule of work to be performed, and look to the group leaders to correlate and coordinate the work of their individual groups to conform to these schedules. The group leaders work along with the men in their group, and are generally subject to the same conditions of employment as these fellow workers. Although they instruct, guide, and generally oversee the work of their group members, they admittedly have no authority to hire or discharge the employees in their respective group. Group leaders, as such, are presently specifically included in the contract unit, and are defined therein as non-supervisory employees.³

² *Matter of Elder Manufacturing Company*, 73 N L R B 230, and cases cited therein

³ While the UE contends that group leaders at this particular plant of the Employer have more authority than other group leaders at similar plants and can effectively recommend changes in the status of their subordinates, the record fails to support this contention

In view of the foregoing, we believe that these individuals are merely more experienced workers who function as leaders in their respective groups, and that their relationship to their fellow workers is not one of supervisor to subordinate.⁴ We shall therefore include group leaders in the unit hereinafter found appropriate.

We therefore find that all employees in the accounting department of the Employer's Emeryville, California, plant, including group leaders, but excluding confidential pay-roll clerks, the secretaries to supervisory employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION ⁵

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Westinghouse Electric Corporation, Emeryville, California, an election 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 Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the unit 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 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, to determine whether they desire to be represented by Accounting Employees Committee, Independent, or by United Electrical, Radio & Machine Workers of America, C. I. O., for the purposes of collective bargaining, or by neither.

Mr. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.

⁴ *Matter of Volney Felt Mills, Inc.*, 71 N. L. R. B. 951; *Matter of Pittsburgh Equitable Meter Company*, 61 N. L. R. B. 880

⁵ Any participant in the election herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.