

WESTINGHOUSE ELECTRIC CORPORATION *and* PATTERN MAKERS' LEAGUE OF N. A., PHILADELPHIA ASSOCIATION, A. F. L., PETITIONER. *Case No. 4-RC-1733. January 14, 1953*

Decision and Direction of Election

Upon a petition duly filed, a hearing was held before William Naimark, 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 this case, the Board finds:

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

2. The labor organizations named below claim to represent certain employees of the Employer.

3. The Petitioner seeks to represent patternmakers and their apprentices at the Employer's South Philadelphia Works, Lester, Pennsylvania, severing these employees from the larger unit represented by Local 107, United Electrical, Radio and Machine Workers of America, herein called the Intervenor. The Intervenor contends that its current contract constitutes a bar to a determination of representatives for these employees at this time. The Employer takes no position on this issue.

On November 1, 1950, the Employer and the Intervenor's International entered into a contract, covering employees involved herein, effective until October 31, 1951, and thereafter from year to year in the absence of a 60-day notice before any terminal date. On December 28, 1951, the Employer and the International entered into a supplemental contract, providing, among other things, for general wage and salary increases and changing the contract year so that it would run from October 1, 1951, to September 30, 1952, and thereafter from year to year in the absence of a similar notice. The Petitioner filed the instant petition on August 29, 1952, before the "Mill B" date of the first contract, but after the "Mill B" date of the supplemental contract.

Contract modifications such as that involved herein, effected at irregular intervals, make unpredictable the times at which challenges to the bargaining rights of incumbent labor organizations are appropriate. We therefore find, contrary to the Intervenor's contention, that the amended contract is no bar to this proceeding.¹

¹ Cf. *Armstrong Cork Company*, 80 NLRB 566, and cases cited therein.

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. On January 21, 1948, in an earlier representation proceeding,² the Board found that patternmakers at the Employer's South Philadelphia Works constituted a highly skilled, well-recognized craft group and might, if they so desired, constitute a separate appropriate unit.³ There have been no material changes at the Employer's South Philadelphia Works affecting the Employer's patternmakers since that Decision. Under these circumstances, we find that patternmakers and their apprentices at the Employer's South Philadelphia Works, Lester, Pennsylvania, excluding supervisors as defined in the Act, may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. We shall direct an election among these employees. If a majority of employees in the voting group vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director conducting the election directed herein is instructed to issue a certification of representatives to the Petitioner for the unit described in paragraph numbered 4, above, which the Board, under such circumstances, finds to be appropriate for purposes of collective bargaining. In the event a majority vote for the Intervenor, the Board finds the existing unit to be appropriate, and the Regional Director will issue a certification of results of election to such effect.

[Text of Direction of Election omitted from publication in this volume.]

MEMBERS MURDOCK and PETERSON, dissenting:

We do not believe that an election should be directed in this case. The Employer and Intervenor have maintained a bargaining relationship since 1937. At the request of the Employer, in order to conform the existing contract with all other labor agreements applicable to the Employer's various plants, the parties on December 28, 1951, accelerated the termination and automatic renewal dates of their contract by 1 month. Thus, the termination date became September 30, 1952,

² *Westinghouse Electric Corporation*, 75 NLRB 978.

³ That patternmakers and their apprentices in the ensuing election and in the later consent election held in Case No. 4-RC-1314 (not published in the printed volumes of the Board's Decisions and Orders) voted against separate representation and were bargained for as part of the Intervenor's larger unit, does not, contrary to the Intervenor's contention, preclude such representation at this time. *Hudson Pulp & Paper Corporation*, 94 NLRB 1018; *Westinghouse Electric Corporation*, *supra*.

and the automatic renewal or "Mill B" date was advanced to August 2, 1952. The petition in this proceeding was filed on August 29, 1952. A majority of the Board finds that the petition raises a question concerning representation apparently because, although untimely filed with respect to the automatic renewal date of the present contract, it was filed before the automatic renewal date of a contract discarded by the parties more than 6 months earlier. We do not agree.

In representation cases the Board is faced almost invariably with the necessity of reconciling two important concepts, namely, granting freedom to employees to change representatives and maintaining stability in bargaining relationships. In order to preserve an equitable balance, too much emphasis should not be placed upon one at the expense of the other. Our colleagues apparently consider the action of the Employer and the Intervenor as constituting an unwarranted infringement upon the right of employees to challenge through another union the incumbent's representative status at a predictable and reasonable interval. In effect, they hold that a period of approximately 6 months was not a reasonable amount of time for dissident employees and rival unions to learn of the changes which the parties had made in their contract. Such a holding, it seems to us, ignores the fact that a contracting union must of necessity publicize the terms of its agreement so that employees will know the benefits which have been achieved. That being so, it is almost inconceivable that a potential rival union in the course of its organizing campaign would not find out within such a long period of time what changes were effected in the existing contract. We do not believe that full recognition of the basic right of employees to change bargaining representatives requires the subordination of the equally basic concept of industrial stability where, as here, the employees and the Petitioner had a reasonable opportunity to put in issue the Intervenor's majority status.

The premature extension doctrine, which a majority of the Board seemingly applies to a reverse factual situation, was designed to prevent a particular representative which no longer enjoys the support of a majority of employees from having its status perpetuated by the devious method of foreclosing rival petitions.⁴ It is patent here that there was no such attempt to forestall a rival claim; rather the parties brought *forward* the day when the Intervenor could be exposed to a valid claim. In these circumstances, we would find the contract a bar to a present election.

⁴ *Raytheon Manufacturing Company*, 98 NLRB 1330; 98 NLRB 785; *Cushman's Sons, Inc.*, 88 NLRB 121.