

the Regional Director issued and duly served upon the parties his report on election, challenged ballots, and recommendations to the Board, recommending that the challenge to the ballot of William F. Sutton be overruled. Thereafter, on October 1, 1953, the Petitioner filed exceptions to the Regional Director's report. On October 7, 1953, the Intervenor filed a document in opposition to the exceptions.

The Petitioner challenged the ballot of William F. Sutton. In its Decision and Direction of Election the Board, in accordance with the Petitioner's request, included Sutton in the unit and found that he was eligible to vote as a regular part-time employee. The Petitioner now contends that Sutton should be disqualified from voting on the ground that there has been a reduction in his working hours. The Regional Director's investigation discloses that since November 5, 1951, Sutton has worked regularly for the Employer on a part-time basis. Between that date and January 1953 Sutton normally worked about 12 to 14 hours per week. During the summer months beginning July 4, 1953, and continuing to the date of the investigation, he regularly worked 4 hours each week.² The Employer states that beginning October 1953 his working hours will increase.

As it is clear from the foregoing that Sutton is a regular part-time employee, we find, in accordance with our usual policy, that he is eligible to vote in the election.³ Accordingly, we adopt the Regional Director's recommendation and hereby overrule the challenge to Sutton's ballot.

[The Board directed that the Regional Director for the Tenth Region shall, pursuant to National Labor Relations Board Rules and Regulations, within ten (10) days from the date of this Direction, open and count the ballot of William F. Sutton and serve upon the parties a supplemental tally of ballots.]

²Although the Employer stated at the representation hearing that it expected Sutton's work to increase during the summer, his work decreased because of the seasonal decline in the operations of the television station.

³Cf. *The Independent, Inc.*, 96 NLRB 192; *Central Florida Broadcasting Company*, 94 NLRB 473.

WINTER STAMPING COMPANY *and* LODGE NO. 1416, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, Petitioner.
Case No. 13-RC-3483. November 10, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Richard B. Simon, 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 Act.

2. The labor organizations involved claim to represent certain employees of the Employer.¹

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. The Employer and the Intervenor contend that their contract of April 8, 1952, constitutes a bar to this proceeding. The contract provides that it is for a 1-year term and will renew itself automatically from year to year "unless either party notifies the other in writing of their desire to modify the agreement at least 60 days prior to the yearly expiration date." It further provides that, "Any notice of desire to modify shall contain all proposed changes and modifications and the balance of this agreement shall be in full force and effect until agreement is reached of such proposals." On January 21, 1953, more than 60 days prior to the expiration date of the agreement, the Intervenor notified the Employer in writing that it desired to negotiate for a wage increase, fringe benefits, and better working conditions. On February 16, 1953, the Employer by letter pointed out that the Intervenor's notice failed to contain any proposals for changes, as required by the contract, and that the submission of such proposals would facilitate negotiations. On February 19, 1953, the Intervenor wrote another letter setting forth those matters regarding which it desired to negotiate, but not specifying desired changes in detail. Thereafter, the parties met and negotiated a wage increase and a wage dividend plan which were reduced to writing on or about April 1, 1953, as supplemental agreements to the previous contract, but were not signed by both parties, although they were subsequently put into effect. While the parties agreed to continue in effect the unchanged terms of the previous contract, no agreement to this effect was signed. The petition in this case was filed on July 29, 1953.

It is clear from the language of the contract, which does not make any provision for notice of termination, that the parties intended that a notice to modify would prevent the automatic renewal of the contract.² However, the Intervenor and the Employer contend that the notice of January 21 was not in proper form because it failed to specify the proposed changes

¹Federal Labor Union No. 22494, AFL, intervened at the hearing on the basis of a contractual interest.

²The Employer contends in its brief that the primary issue is union recognition and that, therefore, only a notice by "any interested party" prior to the automatic renewal date of the contract, requesting a change in bargaining representative, would prevent the contract from renewing automatically and from constituting a bar to a subsequent petition. As the contractual language does not support this contention we find no merit in it.

and modifications of the Intervenor, and that such notice therefore did not terminate the contract. We do not agree. It is clear from the fact that the Employer proceeded to negotiate with the Intervenor despite the defect in its January 21 notice; that such defect was not deemed substantial by either party and was waived by them.³ Inasmuch as the agreements reached by negotiation were never signed by both parties, they also cannot serve as a bar to this petition.⁴ Finally, the provision in the original contract which continues that contract until agreement is reached on proposed modifications does not preserve the original agreement as a bar, as the Board consistently finds that such extension agreements are of indefinite duration and cannot bar a representation petition.⁵

4. We find that all production and maintenance employees employed by the Employer at its Goshen, Indiana, plant, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁶

[Text of Direction of Election omitted from publication.]

Chairman Farmer took no part in the consideration of the above Decision and Direction of Election.

³Paducah Battery Company, 88 NLRB 32.

⁴Monarch Silver King, Inc., 94 NLRB 295.

⁵The Curtiss Way Corporation, 105 NLRB 642.

⁶The parties stipulated that this unit is appropriate.

WESTINGHOUSE ELECTRIC CORPORATION *and* FEDERATION OF WESTINGHOUSE INDEPENDENT SALARIED UNIONS, Petitioner. Case No. 4-RC-2050. November 10, 1953

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Eugene M. Levine, 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 Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. International Union of Electrical, Radio and Machine Workers, CIO, and its Local 401, herein collectively called