

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

the IUE, were allowed to intervene on the basis of a current contract with the Employer covering some of the employees involved in this proceeding. The Employer and the IUE assert that this contract constitutes a bar to an election among the Employer's salaried nonprofessional employees.

The parties have stipulated that the IUE's contract of October 1, 1950, as amended, was renewed on August 1, 1953. The original petition herein was filed on July 17, 1953, and requested a bargaining unit composed of all salaried employees at the Employer's Metuchen, New Jersey, plant, excluding only guards and supervisors. Thereafter, on August 5, 1953, the Petitioner amended its petition to request one election for the nonsupervisory salaried professional employees and a separate election for the remainder of the nonsupervisory salaried employees of the Metuchen plant. The IUE contends that the original petition did not raise a question concerning representation because the Petitioner there sought to represent both professional and nonprofessional employees in a single unit, without according the professional employees the separate election guaranteed them by Section 9 (b) (1) of the Act. The IUE further contends that the August 5, 1953, amendment to the petition could not cure this defect because its contract with the Employer was renewed on August 1, and thereafter constituted a bar. We cannot accept these contentions.

Section 9 (b) (1) of the Act is not a general interdiction against the establishment of bargaining units composed of both professional and nonprofessional employees. Indeed, the Board consistently finds such units appropriate when professional workers indicate in a separate election that they desire to be included in a larger bargaining unit.¹ As the amendment of August 5, 1953, simply sought a voting procedure required by the statute, and did not enlarge in any way the unit requested by the original petition, we find that it was timely and that the original petition raised a question concerning representation of the employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.²

4. The Petitioner seeks to represent the salaried professional and salaried nonprofessional employees at the Employer's Metuchen plant either as a single unit or as two separate units. The parties are in complete agreement as to the composition of both units except that the Employer would exclude the manufacturing engineers from the professional unit as managerial employees. The Petitioner dis-

¹See Sonotone Corporation, 90 NLRB 1236.

²See The Rauland Corporation, 97 NLRB 1333. We also reject the IUE's contention that the Petitioner has made an inadequate showing of interest. We are advised that the Petitioner's showing, which is a matter not subject to collateral attack, meets our administrative requirement.

putes this contention and would include them in the professional unit.

In an earlier proceeding the Board considered the status of manufacturing engineers at the Employer's South Philadelphia Works and determined that they should be excluded from the professional voting group there because they exercise managerial functions.⁹ As the duties and responsibilities of these employees are the same at both plants, and as the present record adds no significant evidence to that considered by the Board in the earlier proceeding, we shall follow the determination made in that case and exclude the manufacturing engineers as managerial employees.

As a result of the foregoing, and the agreement of the parties, we find that the employees in the following voting groups may constitute separate appropriate units for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(a) The professional voting group--all professional employees employed by the Employer at its Metuchen, New Jersey, plant, including engineers, design engineers, senior engineers, junior engineers, method engineers, time and motion analysts, and nurses, but excluding manufacturing engineers, doctors, and supervisors as defined in the Act.

(b) The nonprofessional voting group--all salaried clerical and technical employees of the Employer employed at its plant in Metuchen, New Jersey, including assistant buyers, but excluding all industrial relations employees, department heads, secretaries to department heads, the paymaster-cashier, the internal auditor, budget accountants, buyers, outside expeditors, all employees in voting group (a), guards, and supervisors as defined in the Act.

We further find that if a majority of the employees in professional voting group (a) so desire, both groups may be merged into a single salaried unit which, in the circumstances, we find to be appropriate for the purposes of collective bargaining within the meaning of the Act.

In order to ascertain the desires of the professional employees as to inclusion in a unit with nonprofessional employees, we shall direct separate elections in the two voting groups. The employees in the nonprofessional voting group (b) will be polled as to which, if either, of the competing unions they wish to represent them. The employees in the professional voting group (a) will be asked two questions on the ballot: (1) Do you desire the professional employees to be included with the clerical and technical employees in a single unit for the purposes of collective bargaining?; (2) do you desire to be represented for the purposes of collective bargaining by the IUE, The Federation of Westinghouse Independent Salaried Unions, or by neither?; and if a majority of the employees in the professional voting group (a) vote "Yes"

⁹89 NLRB 8, 30.

to the first question, indicating their wish to be included in a unit with the nonprofessional employees, they will be so included. Their votes on the second question will then be counted together with the votes of the nonprofessional voting group (b) to decide the representative for the whole salaried unit. If, on the other hand, the majority of the employees in the professional voting group (a) vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will then be separately counted to decide which union, if either, they want to represent them in a separate professional unit. If a majority vote for one of the competing labor organizations in one or more of the alternative units as described above, the Regional Director conducting the elections is instructed to issue a certification or certifications of representatives for such unit or units.

[Text of Direction of Elections omitted from publication.]

IVORY PINE COMPANY OF CALIFORNIA *and* OPERATING ENGINEERS, LOCAL NO. 3, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL, Petitioner. Case No. 20-RC-2354. November 10, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Albert Schneider, 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 organization involved claims to represent certain employees of the Employer.
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.
4. The appropriate unit:

The Petitioner requests a unit of all production and maintenance employees employed at the Employer's logging operation near Kings Canyon National Park, California. The Employer contends that the appropriate unit should include the logging operations and its sawmill plant at Dinuba, California, with certain exclusions. The Employer also contends that certain men engaged in falling, limbing, and bucking operations at the logging camp are not its employees but employees of an independent contractor.

The Employer's logging operations are carried on some 50 miles from the mill site at Dinuba. Each operation is separately