

IN the Matter of WESTINGHOUSE ELECTRIC CORPORATION, EMPLOYER  
and ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, AFFILIATED WITH FEDERATION OF WESTINGHOUSE INDEPENDENT SALARIED UNIONS, PETITIONER

*Case No. 20-R-2176.—Decided June 16, 1947*

*Mr. Grant Wiswell*, of Emeryville, Calif., for the Employer.

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

*Messrs. John Bittman* and *H. Martinson*, of Oakland, Calif., for the Intervenor.

*Mr. Bernard L. Balicer*, 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 May 2, 1947, before Charles Y. Latimer, 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

The Employer, a Pennsylvania corporation with its headquarters office at Pittsburgh, Pennsylvania, maintains manufacturing plants throughout the United States. At its plant located at Powell and Peladeau Streets, Emeryville, California, the only plant involved in this proceeding, the Employer is engaged in the manufacture, sale, and distribution of electrical equipment. During 1946, the Employer received for use in its operations at the Powell and Peladeau Streets plant, materials and equipment valued at \$1,717,600, of which approximately 90 percent was shipped to the plant from points outside the State of California. During the same period, the plant manufactured

electrical equipment valued at \$3,350,000, of which approximately 50 percent was sold and shipped to points outside the State of California.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization affiliated with the Federation of Westinghouse Independent Salaried Unions, claiming to represent employees of the Employer.

United Electrical, Radio and Machine Workers of America,<sup>1</sup> herein called the Intervenor, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

## III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

On or about May 9, 1946, the Employer and the Intervenor entered into a contract covering the employees involved herein. The contract was to be effective for 1 year from April 1, 1946, and from year to year thereafter unless written notice of termination was given by either party at least 30 days before the annual termination date.

In December 1946, the Petitioner notified the Employer that it was organizing its employees. On February 21, 1947, Petitioner advised the Employer of its intention to file with the Board a petition for certification of representatives, and did so file the petition on February 27, 1947. On or about March 18, 1947, the Intervenor and the Employer commenced negotiations for a new contract, which culminated in the execution of a new agreement on or about April 18, 1947, retroactively effective from April 1, 1947.

The Intervenor contends that its contracts constitute a bar to a present determination of representatives. However, inasmuch as the petition herein was filed prior to the automatic renewal date of the 1946 agreement and before the execution of the 1947 contract, neither agreement constitutes a bar to a present determination of representatives.<sup>2</sup>

<sup>1</sup> Designation as amended at the hearing.

<sup>2</sup> *Matter of Michigan Producers' Dairy Company*, 68 N. L. R. B. 6; *Matter of Mill B, Inc.*, 40 N. L. R. B. 346.

Subsequent to the hearing, the Employer moved to reopen the record herein for the purpose of incorporating additional evidence not available at the hearing, to the effect

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

We find, in substantial accord with the agreement of the parties, that all office and clerical employees, engineers, draftsmen, and time and motion analysts, employed in the manufacturing and repair division of the Employer's Powell and Peladeau Streets plant, Emeryville, California, but excluding administrative secretaries, nurses, 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.<sup>3</sup>

#### DIRECTION OF ELECTION <sup>4</sup>

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Westinghouse Electric Corporation, Powell and Peladeau Streets, 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

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that no notice of termination of its April 1, 1946, agreement with the Intervenor was given and that it continued in full force and effect until terminated by the new agreement which became effective as of April 1, 1947. However, assuming the truth of the Employer's proffered evidence, for the reasons indicated in Section III, *supra*, the petition herein was timely and the contracts do not constitute a bar to a determination of representatives at this time. Inasmuch as the evidence offered cannot in any event affect the decision arrived at herein, Petitioner's motion to reopen the record is hereby denied.

<sup>3</sup> There are approximately 100 employees in the alleged appropriate unit.

<sup>4</sup> 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.

election, to determine whether they desire to be represented by Association of Westinghouse Salaried Employees, affiliated with Federation of Westinghouse Independent Salaried Unions, or by United Electrical, Radio and Machine Workers of America, C. I. O., for the purposes of collective bargaining, or by neither.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.