

benefits incidental to membership, and that the threat of such deprivation would ordinarily constitute a restraint upon an employee's right to refrain from joining in concerted activities. Nonetheless a threat by a union to deprive a member of economic advantages by expelling him from its membership is not violative of Section 8 (b) (1) (A) and neither is a "threat," which may be said to constitute a first step towards expulsion, violative of the section. The proviso to Section 8 (b) (1) (A) unambiguously declares that "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Congress could not have been clearer in expressing its intent that the restraint and coercion proscribed by Section 8 (b) (1) (A) did not include threats or actual expulsion of employees from union membership. As stated on the floor of the Senate by Senator Ball, who introduced Section 8 (b) (1) (A) "[The Union] can expel [an employee] from the union at any time it wishes to do so, *and for any reason.*" [Emphasis supplied.]<sup>5</sup>

The inapplicability of Section 8 (b) (1) (A) to expulsion from union membership is made even clearer by the conference report, in which representatives of the House and the Senate agreed on the final form that the amendments to the Act should assume. There Section 8 (c) (6) of the House bill,<sup>6</sup> which made it an unfair labor practice for a labor organization "to expel or suspend any member without affording him an opportunity to be heard" except on specified grounds was deleted, and the provisions of the Senate bill were accepted instead.<sup>7</sup> Thus Section 8 (b) (1) (A) as it was enacted by Congress constituted a clear declaration that the prescription and application of intraunion rules pertaining to membership shall not be unfair labor practices, regardless of the reasons for their invocation. Cf. *Colgate-Palmolive-Peet Co. v. N. L. R. B.*, 338 U. S. 355.

In *American Newspaper Publishers Association v. N. L. R. B.*, 193 F. 2d 782, 800, the court held that:

... the coercion of employees by a labor organization is illegal only to the extent that it is declared so by Congress. In this section of the Act [i. e. 8 (b) (1) (A)] Congress has said that only such action was illegal which would "not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership." Under this limitation Congress left labor organizations free to adopt any rules they desired governing membership in their organizations. Members could be expelled for any reason and in any manner prescribed by the organization's rules, so far as § 8 (b) (1) (A) is concerned. [Emphasis supplied.]

#### IV. CONCLUSIONS

It is my conclusion that insurance coverage was not a condition of employment in the 1952 contract but was obtainable only as a condition of union membership. No basis, other than that the Union threatened to deprive the Charging Parties of one of their conditions of employment, *viz.*, insurance benefits, has been urged and the record contains no claim and, in my opinion, no evidence of any other act or threat by the Respondent upon which a finding could be made that the Respondent restrained or coerced employees in the exercise of the rights guaranteed them under Section 7 of the Act and thus violated Section 8 (b) (1) (A) of the Act.

Accordingly I shall recommend that the complaint be dismissed in its entirety.

<sup>5</sup> 93 Cong. Rec. 4272, Leg. Hist. 1142; see also 93 Cong. Rec. 4271, Leg. Hist. 1139, 1141.

<sup>6</sup> H R 3020, 80th Cong., 1st Sess., Leg. Hist. 181

<sup>7</sup> H Conf. Rep. No. 510, 90th Cong., 1st Sess. (1947), p 46, Leg Hist. 550

WESTINGHOUSE ELECTRIC CORPORATION *and* AMERICAN FEDERATION OF  
TECHNICAL ENGINEERS, AFL, PETITIONER. *Case No. 4-RC-2321.*  
*October 18, 1954*

#### Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Julius Topol, 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 employees of the Employer.

3. No 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, for the following reasons:

The Petitioner seeks a unit of all electric and steam service engineers in the Atlantic region of the apparatus division of the Employer. This unit request would include approximately 42 service engineers, headquartered at the Employer's South Philadelphia plant, as well as 3 such engineers at Wilkes-Barre, Pennsylvania, 19 at Baltimore, Maryland, 3 at Norfolk, Virginia, 2 at Richmond, Virginia, 1 at Roanoke, Virginia, and 5 located at Huntington, West Virginia. The Employer and the Westinghouse Salaried Employees Association of South Philadelphia, affiliated with Federation of Westinghouse Independent Salaried Unions, hereinafter called the Intervenor, contend that approximately 42 of the service engineers here sought are presently being represented by the Intervenor as part of the professional unit at the South Philadelphia plant and the unit sought is inappropriate.<sup>1</sup> The Petitioner argues that none of the service engineers are currently represented.

In 1943 the 42 service engineers in question were headquartered at the Employer's operations located at 3001 Walnut Street, herein called the Walnut Street plant. At that location they were represented by another union. In 1953, the 42 service engineers were transferred from the Walnut Street plant to the South Philadelphia plant where they are presently headquartered. As a result of this transfer, a motion to amend the certification covering the Walnut Street plant to continue to include the employees so transferred was filed with the Board by the contracting union at the Walnut Street plant. The Board thereafter denied the motion to so amend the certification covering the Walnut Street plant.

The Employer and the Intervenor contend that by denying the motion to continue to include these 42 service engineers in the Walnut Street plant unit, the Board, in effect, included them in the professional unit existing at the South Philadelphia plant where they were then headquartered. However, the Petitioner argues that the 42 service engineers were not included in the professional unit at the South

<sup>1</sup>The Employer also challenged the Petitioner's showing of interest. However, the Petitioner's showing is a matter for administrative determination and is not litigable by the parties. Moreover, we are administratively satisfied that the Petitioner has made an adequate showing of interest in this proceeding.

Philadelphia plant, nor have they been represented by the Intervenor herein because they are not specifically included in the unit description of the current contract.<sup>2</sup> The remaining 33 electric and steam service engineers sought are not represented.

The unit described in the contract<sup>3</sup> is as follows:

All engineers, negotiation correspondents, laboratory technicians, technical writers, nurses, and time-study men, at the South Philadelphia Works, Tincum Township, Delaware County, Pennsylvania, of Westinghouse Electric Corporation, including field service engineers of the Aviation Gas Turbine Division, but excluding manufacturing engineers, guards, and supervisors as defined in Section 2 (11) of the National Labor Relations Act, as amended.

Although it is true that the contract does not specifically include the electric and steam service engineers herein sought, the record shows that the Intervenor and the Employer considered these engineers to be part of the above unit and they included them in a rate review conducted in December 1953. In addition, it appears that the Intervenor notified these service engineers, at the time of their transfer, that it was currently representing them. In view of the foregoing, and as the Petitioner submitted no evidence showing that the 42 service engineers which it seeks are not part of the professional unit existing at the South Philadelphia plant or have not been represented by the Intervenor, we find that the electric and steam service engineers have been in that existing professional unit since their transfer.

The Employer's Atlantic region of the apparatus division is essentially a sales and service department for the Middle Atlantic States. The equipment sold and serviced by this "department" includes all apparatus manufactured by the Employer, at its many plants, and shipped or sold in the Middle Atlantic States. The 75 electric and steam service engineers, including the 42 who operate out of the South Philadelphia plant, are responsible for servicing all types of the Employer's apparatus located in this territory. The service engineers are under the ultimate supervision of the service manager and the vice president of the Atlantic region. On the other hand, the South Philadelphia plant is a manufacturing plant of the Employer which is engaged primarily in the manufacture of steam and aviation gas turbines. The engineers attached to this manufacturing plant,

<sup>2</sup> The Petitioner contends that after the Board included the Aviation Gas Turbine Field Service Engineers in the existing professional unit at the South Philadelphia plant, in *Westinghouse Electric Corporation*, 98 NLRB 463, the parties specifically amended the contract to include them in the unit.

<sup>3</sup> In addition, the Employer also urges that the petition herein was prematurely filed and the contract covering the employees in this professional unit is a bar to this proceeding. As the contract in question has since expired, we find no merit in this contention of the Employer. *Florida Citrus Cannery Cooperative, Inc.*, 96 NLRB 1021; *Union Oil Company of California*, 96 NLRB 1016.

as distinguished from those sought by the Petitioner, are specialists in such steam and aviation gas turbines and primarily service only such products. They are under the ultimate supervision of the vice president of the steam division and the vice president in charge of defense product production. The latter service engineers for the manufacturing plant are included in the professional unit, hereinbefore set forth, at the South Philadelphia plant.

The record shows that those engineers herein sought by the Petitioner, on frequent occasions, perform similar work to that of the service engineers or headquarter's engineers who work at the South Philadelphia plant. They also consult with the service engineers or headquarter's engineers at the South Philadelphia plant and request their assistance when they have difficulty servicing steam turbines located in the Middle Atlantic States. Moreover, the engineers here sought and those attached to the South Philadelphia manufacturing operation are all professional employees, and it appears that they have common interests.

In view of the foregoing, and as it appears that a majority of the electric and steam service engineers herein sought to be separately represented by the Petitioner are currently included in the professional unit at the South Philadelphia plant, we find that the unit requested is inappropriate for collective-bargaining purposes. Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

CHAIRMAN FARMER and MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

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ALABAMA-TENNESSEE NATURAL GAS COMPANY *and* INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 660, AFL, PETITIONER. *Case No. 10-RC-2827. October 18, 1954*

### 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 Philip B. Cordes, 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 named below claims to represent certain employees of the Employer.