

WESTINGHOUSE ELECTRIC CORPORATION, SUNNYVALE PLANT *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, PETITIONER.
Case No. 20-RC-2627. November 15, 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 L. D. Mathews, Jr., 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 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.

Local 1008 contends that no question concerning representation exists on the grounds that (1) the petition was filed within the year following its certification as bargaining representative of the employees involved herein, and (2) a collective-bargaining contract bars this proceeding.

As to (1), on September 3, 1953, Local 1008 was certified as the representative of the electrical production and maintenance unit at the Employer's Sunnyvale plant.² Thereafter, the national agreement in effect between Local 1008's parent organization, herein called the UE, and the Employer was extended and made applicable to the employees in the certified unit.³ Acting pursuant to the terms of that agreement, which provides for the negotiation of "local supplements" to "cover the procedures for administering the provisions" therein, Local 1008 and the Employer then entered into bargaining negotiations. They executed certain supplements in October 1953 and February 1954, and were in the process of negotiating another supplement when the instant petition was filed on July 23, 1954.

¹ United Electrical, Radio and Machine Workers of America, Local 1008 (UE), herein called Local 1008, International Union of Electrical, Radio and Machine Workers, CIO, and International Association of Machinists, District Lodge No. 93, AFL, were permitted to intervene at the hearing without objection.

² Case No 20-RC-2322

³ In pertinent part, the national agreement provides as follows: "Any units for which the Union or any of its Locals shall be lawfully certified by the National Labor Relations Board as the exclusive bargaining representative, shall, upon assent in writing to this Agreement by such representative, be included in and covered by this Agreement as of the date of certification"

In the recently decided *Ludlow Typograph* case⁴ the Board held that where an employer and a certified union enter into a collective-bargaining agreement within the certification year, the certification year merges with that contract, after which there is no need to protect the certification further, the contract becoming controlling with respect to the timeliness of a rival petition.⁵

Local 1008 contends in substance that this case does not fall within the rule of the *Ludlow Typograph* case, for the reason that negotiations for "local supplements" to the national agreement were not yet completed when the present petition was filed. We do not agree with this contention. In our opinion, as the record shows (a) that Local 1008, following its certification, became bound by the existing national agreement with respect to the certified unit, (b) that such national agreement is a comprehensive document which established certain uniform terms and conditions of employment for various plants of the Employer, and (c) that "local supplements" merely fill out the terms of the national agreement, which is the basic agreement between the parties, the rule of the *Ludlow Typograph* case is plainly applicable to the present case.⁶ It follows, therefore, that the petition was not untimely merely because it was filed prior to the end of the certification year.

With respect to (2), it is the national agreement referred to above which Local 1008 asserts as a bar to this proceeding. That agreement was effective until June 30, 1954, and from year to year thereafter in the absence of a 60 days' notice in writing of an intent to terminate. The contract permitted either party thereto to request unlimited contractual changes or additions after April 1, 1954, but provided that all changes or additions should take effect not earlier than July 1, 1954. It also provided that if no agreement on proposed changes or additions was reached before July 1, 1954, the UE could strike to enforce its demands, in which event either party could terminate the contract upon 1 day's written notice to the other.

Sometime between April 1 and 30, 1954, the UE, acting on behalf of itself and its interested locals, including Local 1008, served written notice upon the Employer that it desired to open the national agreement for the purpose of negotiating amendments thereto. As the result of negotiations pursuant of this notice, the UE and the Employer signed an agreement on July 24, 1954, which was made effective as of July 1, 1954, and which specified that the national

⁴ *Ludlow Typograph Company*, 108 NLRB 1463.

⁵ See *Pioneer Division, The Flintkote Company*, 109 NLRB 1273.

⁶ It is noteworthy that, as appears hereinafter, Local 1008 relies upon the national agreement itself as a bar to this proceeding.

agreement was to remain in full force and effect as modified therein. The modifications agreed upon effected substantial changes in the national agreement, including increased wage and salary rates, a change in the vacation provisions, a new provision on seniority, the removal of certain units from the contract's coverage, and the extension of the terminal date to October 15, 1955. As noted above, the present petition was filed on July 23, 1954.

Local 1008 contends that because notice was served under the modification instead of the termination provisions of the national agreement, that agreement automatically renewed itself prior to the filing of the petition and is therefore a bar. On the basis of all the above, however, we believe that the modification provisions in question, which permitted contract modifications without limit, granted the UE the right to strike to enforce its modification demands, and provided for the contract's termination by either party in the event of a strike, insured no greater degree of industrial stability than does the usual automatic renewal clause. In view thereof, and inasmuch as the petition was filed after the UE's timely notice to modify but before the execution of the modified contract, we find, for reasons more fully detailed in *General Electric Company*,⁷ that no contract bars an election at this time.⁸

4. The parties herein are in agreement, and we find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All electrical production and maintenance employees at the Employer's Sunnyvale, California, plant, including employees engaged in winding, treating, wiring, assembling, painting, testing, packing, and crating panel boards, switchgear apparatus, transformers, Buffalo motors, T & G motors, regulators, circuit breakers, water heaters, and home heaters, employees engaged in insulation detail fabrication and stamping and forming of bus bar copper, and all maintenance electricians and their helpers and apprentices, but excluding all mechanical production and maintenance employees, maintenance carpenters and their helpers and apprentices, transportation and warehouse employees, office and clerical employees, technical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁷ 108 NLRB 1290.

⁸ In view of our disposition of this issue, we find it unnecessary to consider the other contentions with respect thereto.

Members Murdock and Peterson, who dissented in the *Ludlow Typograph* case and from the majority's rationale in the *General Electric* case, consider themselves bound by those decisions and therefore join in the decision in this case.