

Westinghouse Electric Corporation (Elevator Division) and Association of Westinghouse Engineers, Elevator Division. Case No. 2-CA-4478. January 20, 1956

DECISION AND ORDER

On November 3, 1955, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had refused and was refusing to bargain collectively with Association of Westinghouse Engineers, Elevator Division, although the said Union had been certified by the Board as the representative of employees in a unit found to be appropriate by the Board in the representation proceeding reported at 112 NLRB 590. The Trial Examiner found that the Respondent thereby engaged in and was engaging in violations of Section 8 (a) (5) and (1) of the Act. He recommended, accordingly, that the Respondent cease and desist from such violations and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report, together with a supporting brief. It also requested oral argument. As the briefs and the record adequately set forth the positions and contentions of the parties, the request for oral argument is hereby denied.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The Board has considered the Intermediate Report, the exceptions and brief of the Respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Westinghouse Electric Corporation (Elevator Division), Jersey City, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Association of Westinghouse Engineers, Elevator Division, as the exclusive representative of

¹The Respondent complains, in its exceptions, of the failure of the Trial Examiner to "accept or reject" certain of its proposed findings which called for the Trial Examiner's recitation, in his Intermediate Report, of certain procedural and substantive matters included in the representation proceeding. As the entire record in the representation proceeding forms a part of the record in the instant complaint case, the recitation of the matters to which the Respondent has reference is unnecessary. To the extent that the Respondent excepts to substantive determinations made by the Board in the representation case, and duly adopted by the Trial Examiner, the Board rejects such exceptions for the reason that they raise no issues of fact or law not considered by the Board in the representation case. The Board's findings and rulings made at the latter case are, of course, hereby affirmed.

all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) Engaging in any like or related acts or conduct interfering with the efforts of Association of Westinghouse Engineers, Elevator Division, to negotiate for or represent the employees in the appropriate unit as their exclusive bargaining agent.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Association of Westinghouse Engineers, Elevator Division, as the exclusive representative of the employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post in conspicuous places in its plant in Jersey City, New Jersey, including all places where notices to employees are customarily posted, copies of the notice attached to the Intermediate Report marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director in writing, within ten (10) days from the date of this Decision and Order, what steps the Respondent has taken to comply herewith.

² This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" in the caption thereof, the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

A charge having been duly filed, a complaint and notice of hearing thereon having been issued and served by the General Counsel, and an answer having been filed by the Respondent, a hearing involving allegations of unfair labor practices in violation of the National Labor Relations Act, 61 Stat. 136, herein called the Act, was held upon due notice in New York, New York, on October 3, 1955, before the duly designated Trial Examiner. The complaint alleges in substance, and the Respondent denies, that on or about June 21, 1955, the Respondent refused, and has since continued to refuse, to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, although a majority of said employees had designated the Union as their representative for such purposes, in violation of Section 8 (a) (5) and (1) of the Act. All parties were represented by counsel and were afforded full opportunity to be heard and to present evidence pertinent to the issues. The evidence was received by exhibits and stipulations and there were no witnesses. The parties declined opportunities to argue orally and to file briefs for consideration by the Trial Examiner, but proposed findings and conclusions were filed by the Respondent on October 31, 1955. They are disposed of hereinafter.

Upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Pennsylvania corporation, is engaged at its plant in Jersey City, New Jersey, in the manufacture, sale, and distribution of electric elevators, electric stairways, and related products. During the calendar year 1954 the Respondent purchased various materials, including steel, brass, and aluminum, valued in excess of \$500,000, which were transported to said plant directly from points outside the State of New Jersey. During the same period the Respondent sold finished products, valued in excess of \$500,000, which were shipped directly to points outside the State of New Jersey. The Respondent concedes, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

In a representation proceeding, *Westinghouse Electric Corporation (Elevator Division)*, 112 NLRB 590, the Board found that the Union is a labor organization within the meaning of the Act. In the instant proceeding the Respondent contends that such finding was erroneous, but it relies solely upon evidence in the representation proceeding. The Board's determination there represents the law of this case, binding upon me. Accordingly, I find that the Union is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The appropriate unit and the Union's majority status*

In said representation proceeding, the Board determined that all engineers in the engineering department known as associate engineers, engineers, and senior and fellow engineers; all engineers in the new sales department known as application engineers I and II; all engineers in the service sales department known as headquarters and service engineers I and II; and works engineering design and layout engineers at the Respondent's Jersey City plant, exclusive of method engineers, junior engineers, application engineers in the order service department, traffic analysts, nurses, and all other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The Respondent denies that such unit is appropriate, but the issue has been determined by the Board and its determination is binding upon me. On June 13, 1955, following an election in said representation proceeding, the Union was certified as, and I find that on that date and thereafter it has been, the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

B. *The refusal to bargain*

On June 17, 1955, the Union wrote to the Respondent and requested a meeting for the purpose of collective bargaining. On June 21 the Respondent replied, refusing to bargain because of its contention that the unit is inappropriate. Accordingly, I find that on June 21, 1955, and thereafter, the Respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, thereby violating Section 8 (a) (5) and (1) of the Act.¹

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have

¹ Proposed findings Nos. 14 and 17 through 20 are accepted. Proposed findings Nos. 1 through 3 are rejected because they are not entirely consistent with the allegations of the complaint as admitted by the answer. Proposed finding No. 32 and proposed conclusions Nos. 1 through 5 are rejected because they are inconsistent with the findings and conclusions herein. Proposed findings Nos. 4 through 13, 15, 16, 21 through 31, and 33 are neither accepted nor rejected because they relate to procedural and evidentiary matters before the Board in the representation case above cited and may not properly be considered by me.

a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. It has been found that the Union represented a majority of the employees in the appropriate unit and that the Respondent refused to bargain collectively with it. Accordingly, I shall recommend that the Respondent, upon request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.
2. All engineers in the engineering department known as associate engineers, engineers, and senior and fellow engineers; all engineers in the new sales department known as application engineers I and II; all engineers in the service sales department known as headquarters and service engineers I and II; and works engineering design and layout engineers at the Respondent's Jersey City plant, exclusive of method engineers, junior engineers, application engineers in the order service department, traffic analysts, nurses, and all other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
3. The Union, on June 13, 1955, was, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.
4. By refusing to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.
5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We WILL, upon request, bargain collectively with Association of Westinghouse Engineers, Elevator Division, as the exclusive representative of all our employees in the following bargaining unit with respect to rates of pay, wages, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All engineers in the engineering department known as associate engineers, engineers, and senior and fellow engineers; all engineers in the new sales department known as application engineers I and II; all engineers in the service sales department known as headquarters and service engineers I and II; and works engineering design and layout engineers at our Jersey City plant, exclusive of method engineers, junior engineers, application engineers in the order service department, traffic analysts, nurses, and all other employees, guards, and supervisors as defined in the National Labor Relations Act.

WE WILL NOT engage in any acts which in any manner interfere with the efforts of Association of Westinghouse Engineers, Elevator Division, to negotiate for or to represent the employees in the aforesaid unit as their exclusive bargaining agent.

WESTINGHOUSE ELECTRIC CORPORATION
(ELEVATOR DIVISION),

Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

**Westinghouse Electric Corporation and International Union of
Electrical, Radio & Machine Workers, AFL-CIO, Petitioner.**
Case No. 8-RC-2550. January 20, 1956

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John Vincek, 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. 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 technical and clerical employees at the Employer's Lima, Ohio, plant. The Employer and the Intervenor urge a dismissal of the petition on the grounds that: (1) The Board's 1-year certification rule bars the petition; (2) Section 9 (c) (3) of the Act precludes an election at this time; and (3) the unit sought is inappropriate.

Since 1941 the Intervenor has been the collective-bargaining representative for a unit consisting not only of technical and clerical employees, but also professional-employees as well, at the Employer's Lima, Ohio, plant. On February 2, 1955, upon the petition of a union other than the Petitioner and the Intervenor in the instant case, the Board directed a self-determination election for the professional em-

¹Lima Westinghouse Salaried Employees Association, affiliated with Federation of Westinghouse Independent Salaried Unions, Independent, herein called the Intervenor, intervened on the basis of its contract with the Employer covering the employees involved herein.