

sional engineers in the voting group in the 1946 election. Also, it does not appear that the addition of the 9 employees in these categories to the unit of 233 employees stipulated to be professional would destroy the predominantly professional character of such a unit. Under all the circumstances, we shall include these employees in the professional unit.⁷ We do not, however, find that the order correspondent masters and safety inspectors share this mutuality of employment interests with those in the unit. They were not included with the engineers in the 1946 election, and we shall exclude them from the unit here found appropriate.

Accordingly, we find that the following employees at the Employer's Cheektowaga, New York, plant constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All professional employees, including the categories of engineer assistant, engineer associate, engineer, engineer senior, engineer fellow, manufacturing engineer, manufacturing engineer senior, plant layout engineer, methods engineer (formerly time and motion analyst), purchasing engineer, engineer order service, engineer test record, and engineer contact, but excluding the categories of machine designer, order correspondent master, and safety inspector, all other employees, guards, and supervisors as defined in the Act.⁸

[Text of Direction of Election omitted from publication.]

⁷ *Westinghouse Electric Corporation*, 111 NLRB 497, 501; *Westinghouse Electric Corporation*, 80 NLRB 591, 594.

⁸ In view of our unit finding above, which corresponds substantially to the unit in the amended petition, we deny the motion to dismiss on the grounds (1) that the unit set forth in the original petition is too limited, and (2) that the unit set forth in the amended petition is not comprehensive enough.

**General Electric Company, Apparatus Service Shop, Petitioner
and United Electrical, Radio and Machine Workers of America,
Local 1412. Case No. 20-RM-188. May 29, 1956**

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 Shirley N. Bingham, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

¹ United Electrical, Radio and Machine Workers of America, Local 1412, herein called UE Local 1412, moved to dismiss the petition because of the pendency of *General Electric Company (Apparatus Sales Division, Service Shop)*, Cases Nos. 20-RC-2969 and 2970. We deny this motion because the above consolidated cases were issued March 28, 1956. (Not reported in printed volumes of Board Decisions and Orders.) Further, insofar as they are relevant, the Board has taken judicial notice of the cases and has applied them to the present case.

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 certain employees of the Employer.

3. UE Local 1412 contends that no question concerning representation of the employees of the Oakland, California, apparatus service shop involved herein exists because (1) there is no claim to represent such employees; (2) the petition was untimely filed during UE Local 1412's certification year;² and (3) the current contract of UE Local 1412's International bars the election. We find no merit in these contentions and deny UE Local 1412's motions to dismiss based thereon for the following reasons:

As to (1), UE Local 1412 is the certified bargaining representative of the Employer's Oakland apparatus service shop employees. It has continued to bargain with the Employer for them from the time it was certified on April 27, 1955,³ to the present, although the Employer currently contests UE Local 1412's majority status. Further, UE Local 1412 has asserted its International's contract with the Employer as a bar, and has thus, in effect, challenged the Employer's right to contest its status as a bargaining representative. In these circumstances, we find that a question concerning representation has been raised.⁴

With respect to (2), the record shows that the national contract between UE Local 1412's International and the Employer was made applicable to the employees in the Oakland apparatus service shop after UE Local 1412's certification on April 27, 1955; that thereafter UE Local 1412 and the Employer negotiated and entered into a local agreement concerning seniority and transfers of San Francisco apparatus service shop employees to the Oakland shop which local agreement was to "run concurrently with the GE-UE agreement affecting the Oakland Apparatus Service Shop"; and finally that the parties stipulated that UE Local 1412 when certified had continued to bargain for the Oakland apparatus service shop employees up to the present time. In these circumstances, we conclude that UE Local 1412, following its certification, became bound by the existing national contract with respect to the certified unit,⁵ that such national agreement is

² International Brotherhood of Electrical Workers, AFL-CIO, Local No. 6, an Intervenor herein called the IBEW, joins in this contention.

³ Following a consent election in Case No. 20-RC-2767 (not reported in printed volumes of Board Decisions and Orders).

⁴ *American Lawn Mower Company*, 108 NLRB 1589, 1590.

⁵ In pertinent part, article XXIII of the national agreement provides as follows: "If, during the term of this Agreement, either the Union or a Local affiliated with it shall hereafter be certified by the National Labor Relations Board as the collective bargaining representative of other Company employees, this Agreement shall, as of the date of cer-

a comprehensive document which established certain uniform terms and conditions of employment for various plants of the Employer, and that, therefore, under the rule of the *Ludlow Typograph* case,⁶ the certification year merges with the contract. Accordingly, as the contract has become controlling with respect to the timeliness of the petition, we find that the petition herein was not untimely merely because it was filed prior to the end of the certification year.⁷

As to (3), the contract was effective to September 15, 1955, and annually renewable thereafter, absent proper termination notice, and contained a clause permitting unlimited modification and negotiation. Failing agreement under the latter clause, UE Local 1412's International could strike and the Employer could thereafter terminate the contract. Timely notice under the modification clause was given by the International on July 13, 1955, and no agreement had been reached when the Employer filed the petition herein on February 24, 1956. As the petition was filed after the timely notice to modify and before another agreement had been executed, we find that the contract does not bar an election at this time.⁸

Accordingly, we find that 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 Employer-Petitioner seeks an election among all apparatus service shop employees at Oakland. UE Local 1412 and the IBEW took no position with respect to the unit. In the above-mentioned *General Electric* cases, Cases Nos. 20-RC-2969 and 2970, the Board considered the Employer's administrative organization and the working conditions of the San Francisco and Oakland apparatus service shops and found that the San Francisco shop alone could constitute a separate appropriate unit. Further, the unit requested herein is substantially the same for which UE Local 1412 was certified on April 27, 1955. In these circumstances, we find that the Oakland apparatus service shop may likewise constitute a separate appropriate unit.

Accordingly, we find that all employees of the Employer at its apparatus service shop, located at 1525 Peralta Street, Oakland, California, but excluding office clerical employees, salesmen, service engi-

nification, automatically become effective as to such certified bargaining representative and employees represented by it, provided that the Union, or Local so certified shall within 30 days thereafter, or within such additional time as may be agreed upon between the Company and the Union, ratify this Agreement and cause to be delivered to the Company evidence of ratification, the nature of which has been mutually agreed upon "

⁶ *Ludlow Typograph Company*, 108 NLRB 1463

⁷ *Westinghouse Electric Corporation, Sunnyvale Plant*, 110 NLRB 872.

⁸ The parties agreed to consider as evidence in the present proceedings the data relating to contract bar in *General Electric Company (Apparatus Sales Division, Service Shop)*, Cases Nos. 20-RC-2969 and 2970, *supra*, where the Board also found the contract not to be a bar. See also *Westinghouse Electric Corporation, Sunnyvale Plant, supra*; *Ketchikan Pulp Company*, 115 NLRB 279.

neers, professional employees, guards, foremen, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

[Text of Direction of Election omitted from publication.]

Schye & Sullivan, a partnership, and Riedesel Construction Company, a corporation, a joint venture, Petitioner¹ and International Hod Carriers, Building and Common Laborers Union of America, Local Union No. 98.² Case No. 19-RM-191. May 29, 1956

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 Dan E. Boyd, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

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 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, for the following reasons:

The Union, *inter alia*, contends that no question concerning representation exists because at the time the Employer filed its petition herein it had already agreed to negotiate a contract with the Union for the employees involved. We do not agree. The fact that the Employer agreed to negotiate a contract for the employees in question does not negate a question of representation as to preclude the Employer from filing a petition to have the Union certified as the bargaining representative.⁴

The Union also contends that its common laborer contract with Billings Contractors Council to which Riedesel Construction Company, one of the joint venturers herein, is a member, is a bar to this proceeding. We believe that the evidence relating to Riedesel's cover-

¹ The Petitioner's name appears as corrected

² Montana Council of Laborers, without objections, was permitted to intervene for the sole purpose of filing a joint brief with the Union.

³ The Union's motion to dismiss the petition is denied for reasons hereinafter stated.

⁴ *J. P. O'Neil Lumber Company*, 94 NLRB 1299; *Philadelphia Electric Company*, 95 NLRB 71; also see *Andrews Industries, Inc.*, 105 NLRB 946, 947.