

shall include electricians, carpenters, powerhouse employees, shipping and receiving employees, sheet and structural workers, storeroom employees (including Haskell Cooper), and plant clerical employees.

We find the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Paris, Texas, works of the Employer, including electricians, carpenters, powerhouse employees, shipping and receiving employees, sheet and structural workers, storeroom employees, and plant clerical employees, but excluding office clerical employees, timekeepers, gatemen, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Westinghouse Electric Corporation and Federation of Westinghouse Independent Salaried Unions, Petitioner. Case No. 2-RC-8364. November 7, 1956

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Nathan Cohen, 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 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.¹

3. The Intervenor contends that its current collective-bargaining agreement with the Employer is a bar to the petition filed herein. The Petitioner contends that this contract is not a bar because it is a premature extension of a prior agreement.

Since 1950, the Employer and the Intervenor have maintained a collective-bargaining agreement which, by various supplements, was periodically extended to remain in effect until October 15, 1956, and from year to year thereafter absent a 60-day notice of termination by either party. On March 20, 1956, the Employer and the Intervenor entered into a supplemental agreement, providing among other things for general wage increases and extending the contract term until October 15, 1960. The petition herein was filed on July 17, 1956, before the *Mill B* date of the basic contract.

¹ At the hearing, Local 456, International Union of Electrical, Radio & Machine Workers, AFL-CIO, herein called the Intervenor, was permitted to intervene in this proceeding.

On these facts, we find that the March 20, 1956, supplement was a premature extension of the basic contract within the meaning of the Board's premature extension rule.² As the instant petition was filed timely with respect to the basic contract's automatic renewal date, we find that neither that contract nor the March 20, 1956, supplement, is a bar to this proceeding.

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 Petitioner seeks an election in a unit of office, clerical, and technical employees at the Employer's Jersey City, New Jersey, plant, including methods engineers and junior engineers. The Employer opposes the unit request only to the extent that the Employer urges exclusion of the methods engineers and junior engineers as professional employees. Alternatively, the Petitioner will accept either the single overall unit or two units, in the event the Board finds that the methods engineers and junior engineers should be polled separately. The Intervenor contends that the methods engineers and junior engineers are not professional employees, but that in any event, as they had once chosen by separate balloting to form part of this office and technical unit, they must be included in the overall unit without a further separate polling, even if the Board now should again find that they are professional employees within the meaning of the Act.

The issue of whether these methods engineers and junior engineers are professional employees as defined in the statute was fully litigated in an earlier proceeding involving this same group of employees at this plant of the Employer.³ The Board there determined that they are professional employees and certified the Intervenor as the bargaining representative of all employees in the overall unit after the professionals, in a separate election, had expressed their desire to be included. In the hearing on the present case, there was no disagreement among the parties that the duties, work responsibility, skill requirements, and educational background of the two professional categories are substantially the same now as they were at the time of the earlier case. However, in support of its assertion that the methods engineers and junior engineers are not professional employees, the Intervenor introduced into evidence copies of the Employer's job descriptions for these employees. At best, these documents reveal that some of the methods engineers do not have college degrees. It is undisputed, however, that the group in these two categories includes a substantial majority of employees who are college graduates and some who hold master's degrees in scientific fields. We do not believe that minor variances in

² See *Congoleum-Nairn, Inc.*, 115 NLRB 1202; *Celanese Corporation of America*, 83 NLRB 103.

³ *Westinghouse Electric Corporation*, 89 NLRB 8, 10, 34.

the degree of training in the general professional group are sufficient to destroy the essentially professional character of the group as a whole. Accordingly, we find that the methods engineers and junior engineers are professional employees within the meaning of Section 2 (11) of the Statute.

The employees involved in this proceeding have constituted a bargaining unit since 1950 and have at all times been bargained for under successive collective-bargaining agreements between the Employer and the Intervenor. We find therefore that the employees sought by the Petitioner may continue to constitute a unit appropriate for the purposes of collective bargaining. However, Section 9 (b) (1) of the Act precludes the Board from joining in a single bargaining unit professional and nonprofessional employees without first affording to the professional employees an opportunity of separately expressing their desires respecting such inclusion.⁴ Clearly the situation here presented falls within the express ambit of that statutory provision. The Intervenor grounds its argument that the Board may not or ought not provide for such separate balloting in this case because these professional employees have already enjoyed the statutory privilege of such separate expression in the earlier Board proceeding 6 years ago. We find no merit in this contention. There is nothing in the statute limiting the privilege thus accorded to professional employees to a single opportunity in the course of their employment for a particular employer. Nor do we perceive anything in the statutory language which frees the Board, in its unit determinations, from the limitation imposed by Section 9 (b) (1) after it has once conformed to it with respect to any particular group of professional employees.⁵ Consistent with our established practice, therefore, we shall direct separate elections in the following voting groups:

a. All office, clerical, and technical employees including assistant buyers of the Employer's Jersey City works, 150 Pacific Avenue,

⁴ Section 9 (b) in pertinent part reads as follows :

(b) The Board shall decide in each case whether, . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof ; Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes, if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit ; . . ."

⁵ Cf. *Worden-Allen Company*, 99 NLRB 410, where the Board directed a separate election among the professional employees despite their inclusion in a larger bargaining unit by virtue of an earlier single consent election. See also *Westinghouse Electric Corp*, 102 NLRB 270, wherein the Board held that a craft group rejection of an opportunity for separate representation in a separate balloting did not preclude a second opportunity, again by separate voting group balloting, for such employees to establish a separate craft bargaining unit for themselves. Cf. *Westinghouse Electric Corporation*, 115 NLRB 530, involving a decertification proceeding, for the rule that the Board will not direct an election limited to professional employees for the sole purpose of their withdrawal from a larger existing collective-bargaining unit. In that case, Section 9 (b) (1) was held inapplicable because under no circumstances in a decertification proceeding limited to professionals could the Board be called upon to include professional employees with nonprofessional workmen.

Jersey City, New Jersey, but excluding all staff assistants to department managers or the general manager, buyers, confidential salary payroll clerks, paymasters, industrial relations employees; secretaries to company officers, managers and assistant managers, purchasing agents, superintendents, and factory accountants; the internal auditor, budget accountants, the audit clerk, methods engineers, junior engineers, and other professional employees, guards, and supervisors as defined in the Act.

b. All methods engineers and junior engineers at the Employer's Jersey City works, 150 Pacific Avenue, Jersey City, New Jersey.

The employees in the professional voting group (b) will be asked two questions on their ballot:

(1) Do you desire the professional employees to be included with the office, clerical, and technical employees in a unit composed of all office, clerical and technical employees at the Employer's Jersey City works, 150 Pacific Avenue, Jersey City, New Jersey, for the purpose of collective bargaining?

(2) Do you desire to be represented for the purposes of collective bargaining by the Federation of Westinghouse Independent Salaried Unions, by Local 456, International Union of Electrical, Radio & Machine Workers, AFL-CIO, or by neither?

If a majority of the professional employees in voting group (b) vote "Yes" to the first question, indicating their wish to be included in a unit with the nonprofessional employees, they will be so included. Their votes on the second question will then be counted together with the votes of the nonprofessional voting group (a) to decide their representative for the whole unit. If, on the other hand, a majority of the professional employees in voting group (b) vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will then be separately counted to decide which union, if either, they want to represent them in a separate professional unit. The Petitioner has declared its willingness to represent the professional employees separately. The Intervenor has not indicated on the record that it is unwilling to represent the professional employees separately, if those employees vote for separate representation. However, if the Intervenor does not desire to represent the professional employees in a separate unit even if those employees vote for such representation, it may notify the Regional Director to that effect within ten (10) days of the date of this Decision and Direction of Elections.

Our unit determination is based, in fact, then, upon the results of the election among the professional employees. However, we now make the following findings in regard to the appropriate unit:

(1) If a majority of the professional employees vote for inclusion in a unit with the nonprofessional employees, we find that the fol-

lowing employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All office, clerical, and technical employees including assistant buyers, methods engineers and junior engineers of the Employer's Jersey City works, 150 Pacific Avenue, Jersey City, New Jersey, but excluding all staff assistants to department managers or the general manager, buyers, confidential salary payroll clerks, paymasters, industrial relations employees; secretaries to company officers, managers and assistant managers, purchasing agents, superintendents, and factory accountants; the internal auditor, budget accountants, the internal auditor, budget accountants, the audit clerk, guards, and supervisors as defined in the Act.

(2) If a majority of the professional employees do not vote for inclusion in the unit with the nonprofessional employees, we find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(a) All office, clerical, and technical employees including assistant buyers of the Employer's Jersey City works, 150 Pacific Avenue, Jersey City, New Jersey, but excluding methods engineers, junior engineers and other professional employees, all staff assistants to department managers or the general manager, buyers, confidential salary payroll clerks, paymasters, industrial relations employees; secretaries to company officers, managers and assistant managers, purchasing agents, superintendents, and factory accountants; the internal auditor, budget accountants, the audit clerk, guards, and supervisors as defined in the Act.

(b) All methods engineers and junior engineers of the Employer's Jersey City works, 150 Pacific Avenue, Jersey City, New Jersey, excluding all other employees, guards, and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

Harvill Corporation and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO), Petitioner. Case No. 21-RC-4390. November 7, 1956

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, an election was conducted on May 8, 1956, under the direction and supervision of the Regional Director for the Twenty-first Region among