

these laid-off employees have a reasonable expectancy of recall in the foreseeable future, and we shall therefore permit those who have been in laid-off status less than a year at the time of this Decision and Direction to vote subject to challenge⁴

[Text of Direction of Election omitted from publication]

MEMBER RODGERS, dissenting

Upon the record as a whole it has been established to my satisfaction that a definable multiplant unit, based upon bargaining history, is presently in existence. Accordingly, I would dismiss the petition of *General Motors Corporation, Cadillac Motor Car Division*, 120 NLRB 1215

⁴ Compare *Hunt Heater Corporation*, 113 NLRB 167, where the Employer's manager testified without contradiction that because of the Employer's manpower curtailment program certain laid off employees would not be rehired within the foreseeable future. See also *Channel Master Corporation*, 114 NLRB 1486, where the Board found eligible to vote those on the layoff list who had responded to the Employer's annual check of this list to ascertain which employees in laid off status were interested in returning to work

Westinghouse Air Brake Company (Air Brake Division) and (Industrial Products Division)¹ and Engineers Professional Association, Petitioner. Case No 6-RC-2108 August 26, 1958

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 Harvard A. Borchartt, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Fanning]

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 herein 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

4 The Petitioner seeks to represent a unit of the professional employees at the Employer's Air Brake and Industrial Products Divisions at Wilmerding, Pennsylvania. The Employer and the

¹ The Employer's name appears as amended at the hearing

Intervenor, Westinghouse Air Brake Office and Technical Union,² which has represented some of the employees here sought, dispute the professional status of certain of the employees and the inclusion of certain other admittedly professional employees.

The Employer is engaged in the manufacture and sale of airbrake equipment and accessories for railroads, subways, and other traction equipment. Its plants and some of its offices are located in Wilmerding, Pennsylvania, where it employs approximately 4,200 persons.

The parties agree, and we find, that the following classifications of employees are professional as defined in the Act and are included in the unit: design engineers A and B, test engineers A and B, staff engineers, and junior engineers. The parties also stipulate, and we find, that service engineers A and B, sales engineers A and B, patent attorneys A and B, and nurses are professional employees. They disagree, however, as to the inclusion of these latter classifications in the unit sought by the Petitioner.

Sales engineers A and B and service engineers A and B: The Employer seeks to exclude sales and service engineers; the Petitioner and the Intervenor would include them. These employees, who are part of a nationwide system of sales and servicing, report to the Employer's vice president and sales manager. They are not part of the Air Brake or Industrial Products Divisions. There are 6 sales engineers A and B and 25 service engineers A and B attached to the central district office, which has its headquarters in Wilmerding but covers a large part of the country. Of these, only 1 sales engineer B and 2 service engineers B are located in Wilmerding. The others are assigned to various district sales offices throughout the country. The engineers assigned to Wilmerding have offices in a downtown office building away from the buildings where other engineers are located. They spend 80 percent of their time in the field. We find that the sales and service engineers lack a community of interest with the employees in the unit. We shall exclude them.³

Patent attorneys A and B: The Employer would exclude the patent attorneys A and B, contrary to the Intervenor's contention. The Petitioner seeks their inclusion only if the Board should determine that they are attached to the Air Brake or the Industrial Products Division. The patent attorneys are not part of the Air Brake or Industrial Products Division, but report to the Employer's vice presi-

²The Intervenor has been certified as the bargaining representative of "all office, clerical, technical, and inspection employees . . . excluding plant guards, time-study observers, sales and commercial engineers, buyers, patent attorneys, personnel department employees except messengers, confidential employees, and supervisors. . . ." *Westinghouse Air Brake Company*, 64 NLRB 547; 119 NLRB 1118. However, the Intervenor and the Employer have bargained for all the employees here sought by the Petitioner except for the sales and service engineers A and B, patent attorneys A and B, and nurses, although the certification covers only inspectors and clerical and technical employees. No contention is made that an existing collective-bargaining contract is a bar.

³See *Standard Oil Company*, 107 NLRB 1524, 1528.

dent and general counsel whose offices are in Pittsburgh. They are engaged in processing the Employer's patent applications as well as investigating the patents of other companies. They are located in an office building geographically separated from the plant. We find that the patent attorneys A and B are not part of the Air Brake or Industrial Products Division and that they lack a community of interest with the employees in the unit. Accordingly, we shall exclude them.⁴

Nurses. The Employer seeks to exclude the nurses, contrary to the contentions of the Petitioner and the Intervenor. The nurses render first-aid treatment and perform other medical services under the direction of the medical examiner. We find that their interests are different from those of the other professional employees included in the unit. We shall exclude them.⁵

The Intervenor asserts that the following classifications of employees are not professional and seeks to exclude them. Both the Petitioner and the Employer seek their inclusion as professionals.

Chemist A. There are two chemists who test and evaluate compounds. One has a college degree in chemical engineering and the other has a certificate from the Carnegie Institute of Technology.⁶ We find that they are professional employees and include them in the unit.⁷

Equipment planning engineer. The equipment planning engineers keep abreast of new developments in the machine tool industry and recommend the purchase of, and test, new equipment. One of the two incumbents is a high school graduate who has taken the Employer's apprentice course for machinists and has studied for 1 year at the Westinghouse Technical Night School. The other studied metallurgical engineering at the University of Pittsburgh for 3 years and attended Pittsburgh Technical Institute for 1½ years, after which he is indicated as having been graduated as a management engineer. We find that these employees do not satisfy the requirements for professional status as defined in the Act. We shall exclude them.⁸

Plant Engineer. The plant engineers lay out production lines, design equipment and direct its installation, and formulate the arrangement of equipment for the proper flow of materials. Most of these employees have taken various specialized courses in addition to high school training, including some who have graduated from the 15-month pneumatic engineering course given by the Employer. Three are graduates of the Westinghouse Technical Night School. Only 1 of the 10 incumbents has a college degree in engineering. We

⁴ See *Standard Oil Company, supra*.

⁵ *Westinghouse Electric Corporation*, 112 NLRB 590, 592.

⁶ The record indicates that the certificate signifies that the recipient has completed all the technical courses necessary for a degree but has not taken the required humanities courses.

⁷ *Ohio Ferro Alloys Corporation*, 107 NLRB 504.

⁸ See *Brady Aviation Corporation*, 104 NLRB 220.

find that their training does not satisfy the requirements of Section 2 (12) of the Act. We shall exclude them.

Metallurgist A: This employee is engaged in the testing of metals and plastics. He interprets the results of the tests and makes recommendations based thereon. He is a high school graduate who studied general engineering at Westinghouse Technical Night School for 2 years and has been studying metallurgy at night for 4 years at the Carnegie Institute of Technology.⁹ He started with the Employer as a metallurgist B and has been doing the same type of work since 1953. We find that he is not a professional employee and exclude him from the unit.¹⁰

Foundry metallurgist: The foundry metallurgists test and check the materials involved in the casting of metals in the foundry. All three incumbents are high school graduates who have taken the Employer's metallurgical trainee course, which involves 4 years of practical training in the plant along with metallurgical engineering courses at Carnegie Institute of Technology. This represents only half the time required for a degree in metallurgical engineering. One of the three also received a certificate in vocational education following 2 years of study at the University of Pittsburgh. We find that these employees are not professionals. We shall exclude them.¹¹

Technical writers A and B: These employees write instruction bulletins, sales literature, and manuals. The technical writer A also guides and checks the work of the three technical writers B, whose work is of the same type as, but less complicated than, that of the technical writer A. The technical writer A holds a Bachelor of Science degree in mechanical engineering after 2 years' study at Pratt Institute.¹² He also studied writing and calculus for 2 years at the University of Pittsburgh night school, and has taken 1 semester of law and psychology. Of the three technical writers B, 1 holds a degree in journalism and has done some work as a chemical analyst, 1 holds a degree in "writing," and 1 has studied electrical engineering at the University of Pittsburgh for 2½ years. All but 1 of the 4 have completed the Employer's 15-month course in pneumatic engineering. It thus appears that the knowledge required of these employees, some of whom had little or no prior educational experience in engineering, may be acquired by the intensive study of pneumatic engineering, pertinent to the Employer's business, rather than knowledge of an advanced type in a field of science or learning customarily

⁹ The record reveals that 8 to 9 years of night study would normally be required for a degree from Carnegie Institute of Technology.

¹⁰ See *Alpine Trading Co., et al.*, 77 NLRB 766, 767-768.

¹¹ *Ibid.*

¹² The record reveals that, although 4 years' study is presently required for a degree from the Pratt Institute, only 2 years were needed in 1926, when this employee was graduated.

acquired by a prolonged course of specialized instruction and study in an institution of higher learning. Nor does it appear that the training or experience required for their work is equivalent to that required for the attainment of engineering degrees. Accordingly, we find that these employees are not professionals and shall exclude them from the unit.¹³

Layout designer. The layout designers make and check layout and diagrammatic drawings of equipment, devices, and systems from verbal and written directions. Their work is quite similar to that performed by the design engineers. B. None of the four layout designers has a college degree. Two have completed 4 years of study at the Westinghouse Technical Night School, and 1 has completed 3 semesters there. The fourth has a certificate in mechanical drafting from Carnegie Tech's Evening Division. Although these employees are highly skilled and have had long experience, we find that they are technical rather than professional employees. Accordingly, we shall exclude them from the unit.¹⁴

Technical Specialist. The seven technical specialists work with the test engineers performing test and developmental work. A college degree is not required for this job, experience, however, is a prerequisite. Of the 7 employees in this classification, none has a degree and only 1 has had some college training. Most have received their training above the high school level from the Westinghouse Technical Night School or from various engineering schools in and around the Pittsburgh area. We find that these employees, like the layout designers, are highly skilled technicians rather than professional employees. We shall exclude them.

Artist A. There is one artist A, whose job involves normal commercial art, chiefly the illustration of sales and promotion circulars. After his graduation from high school, he attended 2 art schools, 1 for 22 months and 1 for about 2 years. We find that he is not a professional employee and shall exclude him from the unit.¹⁵

Tool Standards Engineers. The tool standards engineers keep abreast of developments in cutting tools and abrasives, run tests on tools, and try to standardize tools for interchangeability throughout the plant. The two incumbents have worked for the Employer since 1937. In addition to their high school education, one has taken 1½ years of night school mathematics, the other has studied at the Westinghouse Technical Night School for 2½ years and is presently taking a technical correspondence course. We find that they are not professional employees and shall exclude them from the unit.¹⁶

¹³ See *Westinghouse Electric Corporation*, 89 NLRB 8, 30.

¹⁴ *Westinghouse Air Brake Company, Union Switch & Signal Division*, 119 NLRB 1391.

¹⁵ *Westinghouse Air Brake Company, Union Switch & Signal Division*, 119 NLRB 1391, *Koopman Neumer*, 88 NLRB 612.

¹⁶ *Brady Aviation Corporation*, *supra*.

Accordingly, we find that all professional employees at the Employer's Air Brake Division and Industrial Products Division at Wilmerding, Pennsylvania, including design engineers A and B, test engineers A and B, staff engineers, junior engineers, and chemists A, but excluding all other employees,¹⁷ artists A, equipment planning engineers, plant engineers, tool standards engineers, metallurgist A, foundry metallurgists, technical writers A and B, layout designers, technical specialists, service engineers A and B, sales engineers A and B, patent attorneys A and B, nurses, 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.

[Text of Direction of Election omitted from publication.]

¹⁷ At present, the Employer has no incumbents in the classifications of accountant, metallurgist B, chemist B, and instrument engineer. These positions have been vacant for some time and it is doubtful if they will be filled in the near future. We therefore do not make specific findings as to the above four classifications at this time.

Pacific States Steel Corporation and Operating Engineers Local Union No. 3, IUOE, AFL-CIO, Petitioner. Case No. 20-RC-3519. August 26, 1958

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 Paul A. Cassady, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Fanning].

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.

¹ At the hearing the Intervenor moved to dismiss the petition upon the ground that the case presents a jurisdictional dispute not properly resolvable in a representation proceeding. The Employer also moved to dismiss the petition contending that the *General Box Company* doctrine (82 NLRB 678) does not justify directing an election. We find no merit in either of the motions. The issue in this proceeding relates to the composition of a unit sought by the Petitioner and is not a jurisdictional dispute in the statutory sense. The Petitioner has never been certified as bargaining representative although for many years it has been recognized as the representative of crane operators, locomotive engineers, and switchmen. The Petitioner is willing to go to an election for such a unit and the Employer does not dispute its appropriateness. In these circumstances, we find that a question concerning representation exists under the holding in the *General Box* case.