

Westinghouse Electric Corporation and Buffalo Section, Westinghouse Engineers Association, Engineers and Scientists of America, Petitioner. Case No. 3-RC-1634. March 11, 1959

SUPPLEMENTAL DECISION, ORDER, AND AMENDED DIRECTION OF ELECTION

On May 28, 1956, the National Labor Relations Board issued a Decision and Direction of Election in this case,¹ in which it directed an election in a unit comprised of 233 professional and 9 nonprofessional employees. Thereafter, an election was held, and the Petitioner was certified as the collective-bargaining representative of the employees in said unit.

The Petitioner, however, brought a suit in the United States District Court for the District of Columbia,² in which it maintained that the Board had exceeded its statutory power by including the professional employees, without their consent, in a unit with nonprofessional employees, and prayed that the Board's action be set aside. On December 18, 1956, the District Court granted the motion and issued an order which provided in part as follows:

3. Defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of this order, shall: (a) set aside and vacate the Decision and Direction of Election in Case No. 3-RC-1634, dated May 28, 1956, to the extent that it determines that a unit for collective bargaining purposes may include both professional and non-professional employees in the same unit without affording the professional employees an opportunity to vote on whether or not they desire to be included in the same unit with non-professional employees; (b) set aside and vacate the election conducted on June 14, 1956, in Case No. 3-RC-1634; (c) set aside and vacate the certification of representatives issued on June 21, 1956, in Case No. 3-RC-1634; and (d) further process the petition filed in Case No. 3-RC-1634 in accordance with customary procedures, provided that a unit including both the professional employees in that case and non-professional employees shall not be found appropriate for purposes of collective bargaining, unless the professional employees are afforded an opportunity to vote on whether or not they desire to be included in the same unit with non-professional employees.

Thereafter, this judgment was affirmed by the Court of Appeals for the District of Columbia³ and the Supreme Court of the United

¹ 115 NLRB 1420.

² *William Kyne, etc. v. Boyd S. Leedom*, 148 F. Supp. 597.

³ *Boyd S. Leedom v. William Kyne, etc.*, 249 F. 2d 490.

States.⁴ We shall, therefore, set aside and vacate the original direction of election, the election, and the certification in this case, and reconsider the matter in accord with these rulings.

As the Board stated in the original Decision and Direction of Election, none of the parties disputed the appropriateness of a unit of professional employees, nor the professional status of the employees in all the categories named in the Petitioner's amended petition. Dispute arose, however, over the unit placement of the employees in five additional categories: the Intervenor maintained that they all had professional status and should be included; the Petitioner maintained that none of them were professional employees as defined in Section 2(12) of the Act, and, therefore, they should all be excluded; and the Employer sought the inclusion of four of the five categories on the basis of their close integration in the plant's engineering operations. The Board found that the employees in all five disputed categories failed to meet the standards for professional status established by Section 2(12) of the Act.

While the Board included certain of the nonprofessionals in the same unit with the professionals, a prerequisite for our doing so now would be first to conduct separate elections among the professionals and the nonprofessionals in the unit heretofore found appropriate, which could be done only on the basis of a finding that the nonprofessionals could themselves constitute a separate appropriate unit. However, we cannot make such a finding because neither the Petitioner nor the Intervenor seeks establishment of a separate unit comprised of any or all of these nonprofessional categories, and the issue of the appropriateness of a separate nonprofessional unit was not fully litigated. Accordingly, we shall direct an election in a unit of the professional employees only, which unit we find to be appropriate.

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), and purchasing engineer, but excluding all other employees, guards, and supervisors as defined in the Act.

[The Board set aside and vacated the direction of election dated May 28, 1956, the election conducted on June 14, 1956, and the certification of representatives issued on June 21, 1956.]

[Text of Direction of Election omitted from publication.]

⁴ *Boyd S. Leedom v. William Kyne, etc.*, 358 U.S. 184.