

**Westinghouse Air Brake Company, Union Switch & Signal
Division and Westinghouse Air Brake Office and Technical
Union, Petitioner. Case No. 6-RC-1970. April 22, 1959**

**SUPPLEMENTAL DECISION AND CLARIFICATION
OF UNIT**

On February 24, 1958, following a Decision and Direction of Election¹ and an election held pursuant thereto, the Board issued a certification of representatives in the above-entitled proceeding in which Westinghouse Air Brake Office and Technical Union was certified as the exclusive bargaining representative in an appropriate unit of office and plant clerical employees. Thereafter, on August 8, 1958, the Union filed a motion in which it requested the Board to clarify the unit to determine whether or not leaders should be included. The Employer opposed this motion. On November 17, 1958, the Board ordered a hearing for the purpose of taking testimony on the supervisory status of leaders. Accordingly, a hearing was held before Hearing Officer H. G. Borchardt on December 8, 9, 15, and 16, 1958. Thereafter, the Employer filed a brief. The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed.

The office and plant clerical unit found appropriate and certified by the Board contained no express reference to leaders, as no mention had been made of that classification. On the day of the election, the question of the eligibility of leaders to vote was raised. The matter was settled temporarily by permitting them to vote subject to challenge. Since their ballots were not decisive of the outcome of the election, they were not counted. Thereafter, the parties commenced bargaining negotiations during which the Union sought to include the leaders in the unit. The negotiations culminated in the execution of a contract on July 11, 1958, effective from July 21, 1958, to June 1, 1959, under the terms of which the leaders were specifically excluded.

The Employer contends that the Union is estopped—at least for the duration of the contract—from asserting that the leaders should be included in the unit. The Employer urges that the contract was arrived at by virtue of the Union's offering to waive the inclusion of leaders in return for certain concessions which were made by the Employer. The Union contends that it insisted at all times that leaders were nonsupervisory and should be included and that it signed the agreement only after it could not obtain a contract which covered them.

¹ *Westinghouse Air Brake Company, Union Switch & Signal Division*, 119 NLRB 1391. 123 NLRB No. 101.

However, we find no need to resolve this issue in making our determination herein. Under a certification, a union acquires certain obligations as well as certain rights. If leaders are nonsupervisory employees, then the Union not only has the right to represent them but the corresponding duty to do so which it cannot avoid. The Union could not bargain away its obligation to represent *all* the employees in the certified unit, either voluntarily or involuntarily. As we would give no weight to an agreement to exclude employees covered by the certification, we need not determine whether the circumstances in the instant case resulting in the exclusion of leaders constitute an agreement with the Employer not to represent these employees.² Accordingly, we find no merit in the Employer's contention that the Union is estopped at this time from asserting that leaders should be included in the bargaining unit.

Superficially, the situation presented in the instant case may appear similar to that in the rather recent *A. O. Smith* case.³ However, we consider the cases clearly distinguishable. For in *A. O. Smith* the union, after the Board had found a unit of all office and clerical employees to be appropriate, stipulated to the exclusion of 18 clericals from the eligibility list thereby preventing them from voting in the election, and then entered into 2 subsequent contracts excluding the 18 clericals from coverage in the unit, despite the specific inclusion of their classification in the unit certified by the Board. Here, neither the unit petitioned for and found appropriate by the Board decision nor the resultant certification included the classification of leader and all employees in this classification were permitted to vote subject to challenge.

Moreover, this is not a situation in which the Board will revoke a certification because a union has failed to afford equal and full representation to all employees. For, unlike the *Smith* case, where the Union agreed even before the election and certification to the exclusion of employees whose classification was clearly covered by the unit finding and subsequent certification, the Union herein has maintained from the date of the election that leaders are nonsupervisory employees whom it has sought to represent, while the Employer has taken a contrary position. Thus, there is a *bona fide* dispute between the parties as to whether leaders are included or excluded from the unit in which the Union was certified by the Board, which question can best be resolved by a clarification of the certification.⁴ Finally, we find no merit in the Employer's contention that the Union has unduly delayed in moving to clarify the certification. The motion was filed within a month of the signing of the contract.

² *Wilford Auto Sales, Inc.*, 106 NLRB 1396.

³ *A. O. Smith Corporation, Kankakee Works*, 119 NLRB 621.

⁴ See *The Daily Press, Incorporated*, 110 NLRB 573, 579.

With respect to the merits of the proceeding, the Employer, contrary to the Union, contends that all 26 leaders in the accounting and production departments are supervisors and should be excluded from the office and plant clerical unit.

All 18 leaders in accounting and 8 leaders in the production department are classified as Leaders—Class B and all possess and exercise basically the same authority.

Upon the basis of the evidence adduced at the supplemental hearing, it appears that leaders have no authority to hire or fire or effectively to recommend such action. Their rate range is from \$434 to \$573 a month, while the highest paid employees working with them earn \$430 to \$532 a month. Leaders draw up the initial vacation schedule, upon ascertaining the desires and seniority of the various employees in the section. However, the final determination as to vacations rests with the supervisor who also takes the measures necessary to maintain discipline. Leaders may not sign passout slips but are, of course, notified when an employee leaves the section or subsection. They do recommend to management the need for overtime work and additional help, although the effectiveness of such recommendation is not clear.

In the accounting department, 5 of the 17 leaders in factory accounting work alone, 4 lead 1 employee, 4 lead 2 other employees, and 4 lead 3 employees. The leader in tabulating works with eight other employees. In the production department, the five leaders in the order group have two to six employees with whom they work. The three leaders in planning and scheduling lead four to eight employees. If leaders are assumed to be supervisors, there would be one supervisor for every six employees in the order group and a supervisor for every nine employees in planning and scheduling. The ratios would otherwise be 1 to 13 and 1 to 18, respectively. The Employer contends that its operations are temporarily depressed and that, with its normal complement “expected” toward the end of 1959, each leader will have four to six employees under him. However, we find merit in the Union’s contention that the Board should not make a determination on the basis of speculation as to increased business volume.⁵

In these circumstances, we find that leaders are not supervisors as defined in the Act and that they are properly included in the unit. Accordingly, we shall amend our certification with respect to the classifications of employees included in the unit by specifically including the leaders.

[The Board amended the certification of representatives issued to the Westinghouse Air Brake Office and Technical Union specifically to include in the certified unit the leaders.]

⁵ *United States Gypsum Company*, 118 NLRB 20, 26–27.