

Westinghouse Electric Corporation, X-Ray and Industrial Electronics Division, Petitioner and Salaried Employees Association of the Baltimore Division, affiliated with the Federation of Westinghouse Independent Salaried Unions.¹ *Cases Nos. 5-RD-203,*² *5-RM-421, and 5-RM-422. November 30, 1960*

DECISION, ORDER, AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Louis Aronin. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to Section 3(b) of the National Labor Relations Act, the Board has delegated its powers herein to a three-member panel [Members Rodgers, Jenkins, and Fanning].

Upon the entire record, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations³ named below claim to represent certain employees of the Employer.
3. The Union contends that neither of the Employer's petitions raises a question concerning representation and, therefore, they must be dismissed. It argues that the Employer in Case No. 5-RM-421 seeks an election in the professional segment only of the existing certified unit, thus attempting by indirection to accomplish what the employees could not accomplish by direct action of filing a decertifica-

¹ Name of the Union appears as amended at the hearing.

² In Case No. 5-RD-203, which is hereby consolidated with Cases Nos 5-RM-421 and 5-RM-422 for purposes of decision, the Petitioner, an employee of the Employer, sought to decertify a unit of professional employees at the Employer's Wilkens Avenue plant in Baltimore, Maryland, from a unit of salaried, technical, and clerical employees, certified by the Board in 1943 and again in 1947 (Case No 5-R-2794, not published in NLRB volumes). A substantial number of employees asserted that the certified bargaining representative was no longer their representative. Though the certified unit also included employees at three other plants of the Employer, two of the plants have ceased operations, and the technical and office clerical employees at the remaining plant in Lansdowne, Maryland, have been established as a separate unit, excluding professional employees by agreement of the parties. The professional employees at that plant are now unrepresented. The petition was dismissed by Regional Director John A. Penello on August 11, 1960, on the ground that the unit of employees for which the Petitioner sought to have the union decertified was inappropriate, because it comprised only a segment of the existing unit for which the Union was recognized as the representative. The Petitioner filed a request for review with the Board urging that because professional employees were involved, the Board should not apply its normal rule against decertification elections in only a segment of an existing or certified unit. In view of the petition filed in Case No. 5-RM-422 which we find *infra* to be a valid petition, we need not consider the arguments raised in the request for review. Accordingly, we hereby sustain the Regional Director's dismissal of the petition in Case No. 5-RD-203, noting that his decision is supported by precedent. See *Westinghouse Electric Corporation*, 115 NLRB 530; *Great Falls Employers Council, Inc.*, 114 NLRB 370.

³ The hearing officer properly granted the motion of International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 130, to intervene herein, on the basis of its adequate showing of interest.

tion petition.⁴ As to the petition in Case No. 5-RM-422, the Union argues that the Employer does not question its representative status in the certified unit, but filed the petition merely to insure that the professional employees would be afforded an opportunity to vote for or against continued inclusion in the certified unit in the event the Board dismisses the earlier petition.⁵ The Employer, on the other hand, contends (1) that the rule against processing decertification or employer petitions for segments only of an existing or certified unit does not, or at least should not, apply in the instant situation because of the statutory provisions guaranteeing to professional employees the right to vote on whether they wish to be included in a unit with non-professional employees; and (2) that in any event as the Union continues to claim representative status in the certified unit, its act of filing the petition must be taken as questioning such status, thereby raising the necessary question concerning representation.

We deem it unnecessary to consider the merits of the Employer's contention that because of the special statutory provisions relating to professional employees, an RM or an RD petition limited to a professional employee segment of an existing more inclusive unit must be deemed a valid petition. For, in our view, whatever the merits of existing policy in this regard, the Employer's petition in Case No. 5-RM-422 does raise a question concerning the representative status of the Union in the existing certified unit. The Board does not ordinarily look behind a petition to the good faith of an employer's refusal to grant continued recognition to a union as the bargaining representative of employees covered by the petition.⁶ If the formal requirements for filing a petition are met, the Board will process it. In an RM case, the requirements are that a union must have claimed representative status in the unit covered by the petition, and the employer must have rejected or otherwise questioned such status. As the petition itself must be viewed as questioning the Union's right to continue as the bargaining representative of the existing unit, we find that the Employer's petition in Case No. 5-RM-422 raises a question concerning representation. The fact that in raising such question the Employer may have been motivated solely by its desire to afford professional employees an opportunity to declare for or against continued representation by the Union, does not alter the fact that its petition does raise the necessary question concerning representation.⁷

⁴ See, for example, *Triangle Publications, Inc.*, 115 NLRB 941, 943

⁵ In support of this contention, the Union introduced copies of letters which the Employer sent to professional employees stating that the purpose of the second petition was to insure an election for professional employees in the event the earlier petition was dismissed, and not for the purpose of raising a question of representation among non-professional employees in the unit.

⁶ See *Andrews Industries, Inc.*, 105 NLRB 946, 947

⁷ In view of this finding, we find it unnecessary to make a final determination on the issues raised by the petition in Case No. 5-RM-421, and we shall dismiss it.

4. In agreement with the parties we find that the employees in the existing unit may continue to constitute an appropriate unit for 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 opportunity to separately express their desires respecting such inclusion. This is so whether or not the professional employees have, on a prior occasion, been afforded such opportunity.⁸ Accordingly, consistent with our established practice and in agreement with the parties, we shall direct separate elections in the following voting groups of employees of Westinghouse Electric Corporation (X-Ray and Industrial Electronics Division) at its Wilkens Avenue plant in Baltimore, Maryland, excluding from each group all executive and supervisory employees, industrial relations assistants, clerical staff specialists, secretaries to department heads, clerical supervisors, production maintenance employees, guards, and all supervisors as defined in the Act:

(A) All professional employees including but not limited to engineers in all categories such as fellow, senior, associate, assistant, senior sales, sales, contact, headquarters service, and negotiations and engineers, time and motion analysts, division salesmen, buyers, and junior purchasing engineers, excluding all other employees.⁹

(B) All salaried technical, office and office clerical employees, excluding professional employees.

The employees in the professional voting group (A) will be asked two questions on their ballot:¹⁰

(1) Do you desire the professional employees to be included in a unit with all salaried technical, office, and office clerical employees at the Employer's Wilkens Avenue plant in Baltimore, Maryland, for purposes of collective bargaining?

(2) Do you desire to be represented for the purpose of collective bargaining by the Salaried Employees Association of the Baltimore Division affiliated with the Federation of Westinghouse Independent Salaried Unions?

The employees in voting group (B) will be asked whether they desire to be represented for purposes of collective bargaining by Salaried Employees Association of the Baltimore Division, affiliated with the Federation of Westinghouse Independent Salaried Unions;

⁸ See *Westinghouse Electric Corporation*, 116 NLRB 1545, 1547.

⁹ The parties stipulated that employees in these classifications are qualified to and are performing work of a professional character as defined in the Act.

¹⁰ The Intervenor indicated that it only wished to appear on the ballot in the election for the nonprofessional employees. Accordingly, we have not placed it on the ballot in the election for professional employees.

or by International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 130; or by neither.

If a majority of the professional employees in voting group (A) vote "Yes" to the first question, indicating their desire to be included in a unit with the nonprofessional employees, they will be so included, and in such circumstances, the Board finds a unit comprised of the employees listed in both voting groups to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The votes of the professional employees in voting group (A) on the second question will then be pooled with the votes of the nonprofessional employees in voting group (B) to determine the question of representation existing in such unit.¹¹ If, on the other hand, a majority of the professional employees in voting group (A) vote against inclusion, they will not be included and in such circumstances, the Board finds that employees in the two voting groups will constitute separate appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. In such circumstances, the votes of the two voting groups will be tallied separately, in accordance with the Board's normal policies, to determine the question concerning representation then existing in each unit.

[The Board dismissed the petitions in Cases Nos. 5-RD-203 and 5-RM-421.]

[Text of Direction of Elections omitted from publication.]

¹¹ If the votes are pooled, they are to be tallied in the following manner: The votes for International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 130, cast in voting group (B) shall be counted as valid votes but neither for nor against Salaried Employees Association of the Baltimore Division, affiliated with the Federation of Westinghouse Independent Salaried Unions. All other votes shall be accorded their face value whether for or against representation.

New Bedford Hotel Corporation and Bartenders Union, Local No. 100, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, Petitioner.¹ Case No. 1-RC-6171. November 30, 1960

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. His rulings made at the hearing are free from prejudicial error and are affirmed.

Pursuant to Section 3(b) of the National Labor Relations Act, the Board has delegated its powers herein to a three-member panel [Chairman Leedom and Members Fanning and Kimball].

¹ The names of the parties appear as amended at the hearing.