

ing the same effect to elections conducted by responsible State agencies as to elections conducted by the Board, where, as here, such elections afford the employees involved an opportunity to express their true desires as to a collective-bargaining agent, and are not attended by irregularities. As the election conducted by the Virgin Islands agency was conducted within the last 12 months, the Regional Director was warranted in dismissing the petition. See *Bluefield Produce & Provision Company*, 117 NLRB 1660, 1663; *Olin Mathieson Chemical Corporation*, 115 NLRB 1501. We conclude, accordingly, contrary to the contention of the Petitioner, that in dismissing the petition herein, the Regional Director properly applied these principles.

MEMBER KIMBALL, dissenting:

I dissent from the determination of the majority to adhere, in this case, to its practice of recognizing an election conducted by a State or Territorial agency within the 12-month limitation of Section 9(c)(3). Noting that the Board clearly has jurisdiction in this case,<sup>1</sup> I rely upon Section 4(a) of the Rules and Regulations of the Labor Relations Act, Title 24, Chapter 3, Virgin Islands Code, which provides that the "Commissioner [of the Virgin Islands Department of Agriculture and Labor] shall not assume jurisdiction in any certification affecting businesses trading in interstate commerce when the National Labor Relations Board has jurisdiction." I would, therefore, conclude that the election and subsequent certification issued by the Commissioner were null and void *ab initio*. I would further find that, even if the election held by the Commissioner were otherwise valid under the laws of the Virgin Islands, the Board's Decision in *Bluefield Produce & Provision Company*, 117 NLRB 1660, 1663, is distinguishable from the instant case on the ground that, in that case, it was not contended by any party that the election therein was attended with any irregularities, whereas in this case the appellant contends, *inter alia*, that the unit was arbitrarily determined; there was no advance agreement as to voting eligibility, as required by the Virgin Island statute; and challenged, but not properly identified, ballots were arbitrarily allowed to be counted. I would, therefore, overrule the Regional Director's dismissal of the petition.

<sup>1</sup> *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261; *Southwest Hotels, Inc.*, 126 NLRB 1151, and Section 2(6) of the Act.

**Westinghouse Electric Corporation, Sharon Transformer Division and Sharon Westinghouse Employees Association, Petitioner.** *Case No. 6-RC-2621. January 6, 1961*

#### 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 Joseph Mark Maurizi, hear-  
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ing 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, Jenkins, and Kimball].

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 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 sever from an existing production and maintenance unit a group of 11 clerical employees, contending they are office clerical employees. It therefore asks that the Board find that these 11 clerical employees are part of its existing office clerical unit and amend its certification accordingly. In the alternative, however, it is willing that the Board direct a self-determination election for the purpose of ascertaining whether the said employees desire to become part of the Petitioner's unit. The Employer agrees in substance with the Petitioner's contention that the employees are part of the Petitioner's existing unit, but contends that neither an election nor an amendment of the Petitioner's certification is necessary to effectuate such result. The Intervenor, International Union of Electrical, Radio and Machine Workers and its Local Union 617, maintains that the employees are essentially plant clericals, and that, in any event, because of their history of collective bargaining they may not be severed from its existing production and maintenance unit without a self-determination election.

The Petitioner has been the certified bargaining representative for a unit of salaried office clerical employees since 1940. The Intervenor is the certified bargaining agent for a unit of production and maintenance employees and has represented such employees since 1950.

The 11 salaried employees involved in this proceeding constituted at one time the stores ledger section in the stores and shipping department. Of the 11 employees, 6 are stock controllers, 2 are keypunch operators, 1 is a store ledger clerk, 1 an inventory clerk, and 1 a secretary-sternographer. Their general function was to maintain at proper levels plant inventories of raw materials and supplies. From the original certification in 1940 until 1945, the stores ledger section was located adjacent to the production area, but successive moves in 1945 and 1955 resulted in its present location in the general office building which is occupied mainly by managerial, professional, and office clerical workers.

On August 1, 1959, the Employer effectuated a reorganization at its Sharon plant in which the main stores ledger section was dissolved and its function integrated into the purchasing department, thereby permitting a more flexible use of the inventory control function in the operations of the purchasing department. As a result of the change, the 11 clerical employees became an administrative part of such department and were ultimately made responsible to the purchasing agent. The group is physically located in the main purchasing department offices and spend most of their time in contact with the buyers, assistant buyers, and other clerical personnel who are represented by the Petitioner. They now spend most of their time at their desks with few or no visits to the production floor. They work the same hours as do other office clerical employees, and their method of pay and coded ratings are the same as the clerical employees represented by the Petitioner. Furthermore, as a result of the reorganization, a line of progression to other office clerical positions now embraced in the Petitioner's unit was opened to the stock controllers, whereas, under the terms of the agreement with the Intervenor, no further progression was available for them.

In view of the foregoing, and on the record as a whole, we find that the stock controllers and other categories of employees formerly comprising the stores ledger section are now office clerical employees who under normal circumstances and under established Board policy are not a proper part of a production and maintenance unit. However, because of the past bargaining history of these employees, we shall, consistent with Board policy, afford them an opportunity to express their desires with respect to their choice of representatives.<sup>1</sup> We shall, therefore, direct an election in the following voting group:

All stock controllers, keypunch operators, stores ledger clerk, inventory clerk, and secretary-stenographer, formerly constituting the stores ledger section of the stores and shipping department at the Employer's Sharon, Pennsylvania, plant, excluding all other employees and supervisors as defined in the Act.

If a majority of the employees in the voting group vote for the Petitioner, they will be taken to have indicated their desire to be included in the unit now represented by the Petitioner, and the Regional Director conducting the election directed herein is instructed to issue a certification of results of election to the Petitioner to such effect. In the event a majority does not vote for the Petitioner, these employees shall remain a part of the existing production and maintenance unit and the Regional Director will issue a certification of results of election to such effect.

[Text of Direction of Election omitted from publication.]

<sup>1</sup> *Westinghouse Electric Corporation*, 118 NLRB 1043, 1048.