Westinghouse Electric Corp. (Naval Reactors Facility) *and* Eastern Idaho Metal Trades Council, AFL–CIO, Petitioner

Westinghouse Electric Corp. (Naval Reactors Facility), Petitioner *and* Eastern Idaho Metal Trades Council, AFL–CIO.

Cases Nos. 19–RC–1036, 19–RC–1069, and 19–RM–321. September 6, 1961

SECOND SUPPLEMENTAL DECISION AND ORDER

On September 17, 1952, after an election conducted pursuant to a Decision and Direction of Election,[1] the Board issued a certification of representatives in Case No. 19–RC–1036 in which it certified the Eastern Idaho Metal Trades Council, AFL–CIO, herein called the Union, as the collective-bargaining representative for all employees at the Employer's submarine thermal reactor near Arco, Idaho, including plant clerical employees, but excluding office clerical employees, professional employees, draftsmen, *technicians*, cafeteria employees, guards, and supervisors as defined in the Act. On June 16, 1960, the Union filed a motion for clarification requesting that the certified unit be clarified. On July 21, 1960, the Board remanded this case to the Region for a hearing on the motion for clarification. A hearing on the motion was held on August 18 and 19, 1960. The Union, through its motion, seeks to have the Board determine that certain employees, heretofore classified as technicians,[2] and excluded from the unit, are in fact not technical employees and are therefore included in the unit. The Employer, in its opposition to the Union's motion, contended that the employees in issue are in fact technical employees and should remain excluded from the unit. Alternatively, the Employer contends that even if the Board finds some of the technicians not to be technical employees, they may not be added to the existing unit without first being given a self-determination election.

During this same period of time, the Union, relying on the language of the unit description in the certification, also requested that the Employer bargain with it for inspectors, production coordinators, and all other employees which the language of the certified unit description does not specifically exclude. Like the technicians, these employees have not been covered by the collective-bargaining agreements.

[1] Not published in NLRB volumes.

[2] In 1952, in excluding technicians from the unit, the parties entered into the following stipulation:

> (3) The parties stipulate to the following definition of the term "technician" An employee who has attained a high degree of technical, scientific or laboratory skill, through formal education and training, who exercises independent judgment in carrying out assignments of design, interpretation of design, test procedures, accumulation and interpretation of test and scientific data, installation and operation of test equipment, as well as the direction of such work.

The Employer refused to comply with the Union's request on the ground that the prior exclusion of these employees from the historical bargaining unit precluded their inclusion in the unit without a self-determination election.

On October 3, 1960, the Employer, in an attempt to secure such an election among the unrepresented employees, filed its petition in Case No. 19–RM–318. Included in the unit description were all those unrepresented employees within the Union's demands, excluding all other employees.

The Employer maintained its position that all of the "technicians" were technical employees who could not be included under any circumstance. The Employer requested alternatively that if the Board were to find, in connection with the Union's pending motion for clarification that any of the technicians were not technical employees, they should be included in the self-determination election, as they could not be placed in the existing unit without participating in such an election. At the same time, the Employer also requested the Board to remand the Union's motion for clarification of the status of the technicians to the Regional Office for consolidation with the Employer's petition in Case No. 19–RM–318, so that the status of all disputed employees might be resolved in a single proceeding.

At the time the Employer requested the Board to remand the Union's motion for clarification the hearing on the motion had been completed and the record transferred to the Board. On October 21, 1960, the Regional Director dismissed the petition in Case No. 19–RM–318. The Employer did not request the Board to review this dismissal. Thereafter, on November 7, 1960, the Employer filed its petition in Case No. 19–RM–321. In this petition, the Employer described as the unit those employee classifications in the unit covered by its collective-bargaining agreements with the Union. All of the disputed unrepresented employees, and all other employees, were excluded. The Employer does not contest the majority status of the Union in the contractual unit, but in effect is seeking a Board determination that the technicians and other unrepresented employees either do not belong in the unit, or should be included in the unit only after a self-determination election.

As Case No. 19–RM–318, which was one of the proceedings which was the subject of the Employer's motion for consolidation, is therefore no longer pending, the motion to remand and consolidate is hereby denied. However, in view of the similarity of the issues raised by Union's motion for clarification, to those raised by the Employer in Case No. 19–RM–321, we hereby consolidate the Union's motion with Case No. 19–RM–321, for purposes of this decision only.

We agree with the Union that the Employer's petition in Case No. 19–RM–321 should be dismissed. The Employer does not question the

Union's majority status among the employees in the unit petitioned for and does not seek an election in such a unit. We shall therefore dismiss the petition in Case No. 19–RM–321.

We also agree, however, with the Employer's contention that the employees in the disputed classifications may not now be added to the existing bargaining unit without a self-determination election.[3] It is clear from the bargaining history that these employees have been unrepresented and excluded from the bargaining unit, and many of them have been so excluded since the very beginning of the bargaining relationship in 1952. Accordingly, we shall deny the Union's motion for clarification.[4]

As we do not have before us any petition for an election among the disputed, unrepresented employees, and in view of our determination that these employees may not be added to the existing unit without such an election, we find it unnecessary at this time to rule on the Employer's further contention that the alleged technical employees could not properly be included in any production and maintenance unit because of their technical status.

[The Board denied the request of Eastern Idaho Metal Trades Council, AFL–CIO, for clarification of certification.]

[The Board dismissed the petition of Westinghouse Electric Corporation in Case No. 19–RM–321.]

CHAIRMAN MCCULLOCH and MEMBER LEEDOM took no part in the consideration of the above Second Supplemental Decision and Order.

[3] See *Ethyl Corporation*, 118 NLRB 1369, 1370.
[4] *FWD Corporation*, 131 NLRB 404; and *Ethyl Corporation*, *ibid.* footnote 2.

Hot Shoppes, Inc. *and* Local 71, Transportation Terminal, Interplant and Commissary Food Employees Union, AFL–CIO, Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO

Hot Shoppes, Inc. and National Caterers of New York, Inc. *and* Local 71, Transportation Terminal, Interplant and Commissary Food Employees Union, AFL–CIO

Hot Shoppes, Inc. and National Caterers of New York, Inc. *and* Local 295, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Cases Nos 2–CA–7283, 2–CA–7349, and 2–CA–7352. September 7, 1961*

DECISION AND ORDER

On February 27, 1961, Trial Examiner William F. Scharnikow issued his Intermediate Report in the above-entitled proceeding, find-