

Director for the Fifteenth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify in writing the Regional Director for the Fifteenth Region, New Orleans, Louisiana, within 20 days from receipt thereof, what steps the Respondent has taken to comply with this Recommended Order.⁶

⁶ If this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Fifteenth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL, upon request, bargain in good faith with United Bakery & Confectionery Workers Local 441-B, as the exclusive bargaining representative of all our employees in the unit herein found to be appropriate for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment, and if an understanding is reached embody such understanding in a signed agreement.

The appropriate unit is:

All production, maintenance, shipping and cleaning employees at our Montgomery, Alabama, candy manufacturing plant, excluding office employees, executives, watchmen, guards, truckdrivers, salesmen, foremen, and supervisors as defined in the Act.

WE WILL, without prejudice to existing wage rates, furnish for inspection by the above-named Union all pertinent payroll data and other records used by us as a basis for establishing rates of pay and job classifications at our Montgomery, Alabama, plant, including such records and data now maintained at our plant in Centralia, Illinois.

HOLLYWOOD BRANDS, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana, 70113, Telephone No. 529-2411, if they have any question concerning this notice or compliance with its provisions.

Westinghouse Electric Corporation *and* Westinghouse Salaried Employees Association at South Philadelphia, affiliated with Federation of Westinghouse Independent Salaried Unions.
Case No. 5-RM-64. April 25, 1963

SUPPLEMENTAL DECISION AND ORDER

On June 29, 1950, the Board certified the Federation of Westinghouse Independent Salaried Unions as the bargaining representative of a unit of professional employees at the South Philadelphia works
142 NLRB No. 32.

of the Employer, excluding manufacturing engineers, who were held to be managerial employees.¹

On September 6, 1962, the Union filed a petition for clarification of unit, in which it alleged that, since the date of the certification, the Employer has misclassified a large number of additional employees, who are performing professional engineering functions, as "manufacturing engineers," and, also, that the duties and responsibilities of persons found by the Board to be "manufacturing engineers" have been changed so that most of such employees no longer have managerial authority. It contends that these persons have been and are being improperly classified by the Employer for the purpose of excluding them from the unit. On October 1, 1962, the Employer filed a memorandum entitled "Opposition to Petition for Clarification of Unit" in which it requested that the Board dismiss the petition, denying assertions by the Union therein and contending, in any event, that the problem raised can only be resolved by a representation petition and a Board-conducted election.

On October 22, 1962, the Board remanded the matter to the Regional Director for the Fourth Region for the purpose of taking testimony on the issues raised by the Union's petition for clarification of unit and the Employer's opposition thereto. A hearing was held on December 20, 1962, before David S. Reisman, hearing 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 Leedom, Fanning, and Brown].

Upon the entire record in the case, the Board finds:

The manufacturing engineers whose inclusion in the certified bargaining unit is requested by the Union are highly qualified engineers who act as coordinators between the engineering and manufacturing departments in establishing the broad methods and procedures under which a proposed product is produced and in setting the design and manufacturing standards of the product, utilizing methods calculated to insure the lowest possible cost.² In carrying out their duties, manufacturing engineers first study the design of a product to determine whether, and at what cost, it may be produced. If it is decided to proceed with the manufacture of a proposed product, the manufacturing engineer assigned to the job reviews the detailed routing of the product recommended by the industrial engineer. The manufacturing engineer must also determine whether proper tools and materials exist for producing the product and notify the tool design depart-

¹ *Westinghouse Electric Corporation*, 89 NLRB 8, 30.

² No evidence was adduced by the Union which supports its allegation that the Employer had misclassified other professional engineers as manufacturing engineers

ment and other departments involved with the precise requirements of the job. After approving a design from the standpoint of manufacturability, the manufacturing engineer follows the product through the shop, observing the details of its manufacture, attempting to ascertain solutions to any difficulties which may arise in the course of its production and insuring that it meets specifications.

Although testimony indicates that manufacturing engineers are consulted at every stage in the manufacture of a product, it does not appear that they are empowered to make final decisions in any of their various areas of responsibility or to translate their technical judgments into orders which must be executed by employees of the departments through which a product must pass in the course of its manufacture. It appears, rather, that while engineers may offer advice and suggestions, any disagreements which proceed to impasse are referred to higher authorities for resolution.

Should a manufacturing engineer conclude and recommend that a product under consideration may not be manufactured advantageously at the South Philadelphia plant, he does not participate in the formulation of the decision as to where and when it will be manufactured. Similarly, with respect to tools, dies, fixtures, and materials required in the manufacturing process, the decision to purchase them is made by higher authority.

Salary ranges of manufacturing engineers are comparable to those of other senior engineers currently represented by the Union, and they receive the same overtime pay and other benefits enjoyed by engineers in the certified unit. The Union presently represents several hundred manufacturing engineers at 10 locations of the Company, and the record indicates that all of these manufacturing engineers do essentially the same kind of work. It does not appear that the duties and responsibilities of the manufacturing engineers herein differ materially from those considered by the Board in the *Cheswick Plant* case,³ and the Company has advanced no persuasive reason for according them different treatment. It therefore appears from this record that the employees in dispute are not so closely allied to management as to preclude their inclusion in a professional unit.

Even so, however, the Employer contends that the only proper method by which the manufacturing engineers may be represented by the Union in a unit of its professional employees is by means of a representation petition and an election. We agree. The classification of manufacturing engineer was in existence prior to the Board-ordered election in 1950. Employees in that classification did not

³ *Westinghouse Electric Corporation*, 113 NLRB 337. To the extent of its inconsistency the earlier decision concerning the South Philadelphia works herein involved (see footnote 1, *supra*) was overruled.

participate in that election and have never been represented by a union. Neither the contract executed pursuant to the certification nor any subsequently executed contracts included manufacturing engineers. In view of the foregoing, and upon the entire record, we believe that the excluded classification may not be added to the existing unit by means of a motion for clarification. Clearly, the manufacturing engineers are not an accretion to the existing unit whom we would include therein by amendment of the certificate. They are entitled to vote whether they desire to be represented as part of the historical professional unit. Since the proper procedure for accomplishing this purpose is a petition pursuant to Section 9(c) of the Act seeking an election rather than a motion or petition for clarification, we shall dismiss the instant proceeding.⁴

[The Board dismissed the petition for clarification of unit.]

⁴ *Remington Rand Division of Sperry Rand Corporation*, 132 NLRB 1093, 1095; *Brockton-Taunton Gas Company*, 132 NLRB 940; *General Electric Company*, 119 NLRB 1233; cf. *D.V. Displays Corp., et al.*, 132 NLRB 568.

Douglas and Lomason Company and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO. *Cases Nos. 26-CA-1298, 26-CA-1303, and 26-CA-1373. April 26, 1963*

DECISION AND ORDER

On February 19, 1963, Trial Examiner Edwin Youngblood issued his Intermediate Report in the above-entitled consolidated proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed with respect to such allegations. Thereafter, the Respondent and the Charging Party filed exceptions to the Intermediate Report and the former also filed a brief in support of his exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record