

Westinghouse Electric Corporation, Petitioner and International Brotherhood of Electrical Workers, Local 1805, AFL-CIO and International Union of Electrical, Radio and Machine Workers, Local 130, AFL-CIO.¹ *Cases Nos. 5-RM-471, 5-RC-2929, and 5-RC-2143. September 9, 1963*

**DECISION AND DIRECTION OF ELECTION AND ORDER
PARTIALLY GRANTING MOTION FOR CLARIFICATION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held in Case No. 5-RM-471 before Hearing Officer August A. Denhard, Jr. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Prior to the filing of said petition, the Employer had filed a motion seeking clarification of the bargaining units heretofore certified in Cases Nos. 5-RC-2929 and 5-RC-2143.² In view of the relationship between the issues raised by the motion and the petition, these matters are hereby consolidated for the purposes of this decision.

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

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved herein claim to represent certain employees of the Employer.

3. Through the medium of its petition and motion, the Employer seeks a resolution by the Board of a dispute involving the representation of certain maintenance employees at its Defense Center operation at Friendship International Airport, Baltimore, Maryland. This operation is conducted in the following buildings: air arm, electronics, central services, and works engineering and maintenance; the last, herein referred to as the maintenance shop, is a recent addition. The employees in air arm receive, manufacture, assemble, test, and ship air arm equipment; those in electronics perform the same functions for electronics equipment; central services handles all administrative work; and the maintenance shop services all the buildings.

Prior to the construction of the maintenance shop, the maintenance facility for air arm was located in the air arm building, and that for electronics in the electronics building. Maintenance men in various

¹ The Unions are referred to herein respectively as IBEW Local 1805, and IUE Local 130. The name of the latter Union appears as corrected at the hearing.

² While the Employer's motion also referred to Case No. 5-RC-1670, the unit certified in that proceeding is not involved herein.

trades, compensated equally for equal skills, were located in each facility, with about 39 in air arm and 26 in electronics. While both groups were called upon for maintenance work in central services, there was no interchange between the groups. Duplicate supervisory hierarchies were maintained under the overall supervision of a works engineer, who at first was located in air arm and later in central services.

For a number of years, IBEW Local 1805 has been the certified and contractual bargaining representative of the approximately 2,200 production and maintenance employees in air arm, and IUE Local 130 has similarly represented the approximately 1,500 production and maintenance employees in electronics. The most recent supplement to the IBEW contract, dated December 5, 1960, is effective until October 31, 1963; the term of the most recent supplement to the IUE contract is October 21, 1960, to October 15, 1963.

In the late summer of 1961, the Employer commenced construction of the maintenance shop because the space then utilized by the maintenance facilities was needed for other purposes. The Employer contemplated the establishment of a common pool of maintenance employees and facilities and a single supervisory hierarchy so as to reduce inventories, eliminate the movement of work and materials between the two existing maintenance facilities, and facilitate a more efficient utilization of manpower, thus reducing the need for subcontracting. The maintenance shop was completed in June 1962, and about July 2, maintenance equipment and employees from air arm and electronics were moved there. The Unions were advised of the Employer's plans and objected thereto.

These objections took various forms, as did the Employer's countermeasures. Thus, about a week prior the move, air arm maintenance men protested by a half-day work stoppage, which resulted in a 1-day disciplinary furlough. On July 2, IBEW Local 1805 filed a grievance, under its contract, claiming that the entire maintenance shop was an accretion to its unit. On August 9, the Employer refused arbitration on the ground that "all personnel are presently being treated as a part of the bargaining unit in which they have been working." On September 21, the Employer filed a petition in Case No. 5-RM-459, seeking an election among maintenance shop employees. That petition was subsequently withdrawn. On September 23, IBEW Local 1805 struck the entire air arm unit to protest the Employer's denial of arbitration of its accretion claim. The Employer filed charges in Cases Nos. 5-CC-203, 5-CP-22, and 5-CD-82, based on the strike. The General Counsel thereafter secured a temporary restraining order, ending the strike on September 26. At the October 4 hearing on the injunction, the court directed that the proceeding be held in abeyance pending the filing of a "Motion for Clarification of Bargaining Units"

so that the Board could resolve the problems raised. IBEW Local 1805 agreed at the hearing not to resume the strike in return for the Employer's agreement to drop the charges it had filed and to seek clarification of the units. The charges filed by the Employer were subsequently withdrawn or dismissed. On October 9, the subject motion was filed by the Employer. On October 17, IBEW Local 1805 filed its answer to the Employer's motion, requesting the Board to grant the motion, and contending that the maintenance shop employees were an accretion to its unit. Both Unions brought charges under the AFL-CIO Internal Disputes Plan, and on January 29, 1963, subsequent to a decision thereon by the Impartial Umpire, IBEW Local 1805 withdrew the aforesaid answer and the position taken therein. On March 7, 1963, IBEW Local 1805 notified the Board by letter that it disclaimed interest in those maintenance shop employees represented by IUE Local 130. On February 14, the Employer filed the instant petition.

Because of the Unions' resistance, and despite the consolidation of equipment and facilities, maintenance shop employees continue to work chiefly in the building to which they were formerly assigned, although both groups sometimes work together in central services and in the maintenance shop itself. The following additional changes have, however, been effected: (1) Due to illness of the regular works engineer, there are temporarily 2 works engineers; (2) a night shift has been set up consisting for the most part of former air arm maintenance people, all reporting to 1 supervisor; (3) the maintenance crew has been increased and now numbers about 92, of whom 55 are assigned to air arm work and 37 to electronics, with new employees assigned to one or the other; (4) about a week or two prior to the May 7, 1963, hearing herein, the Employer assigned 2 electronics electricians to air arm work and an air arm painter to electronics. Both Unions filed grievances based on these changes. IBEW Local 1805 also filed charges, in Case No. 5-CA-2436, which were subsequently dismissed.

The Employer asserts that because of the changes and projected changes in the organization of its maintenance functions, as outlined above, the maintenance employees are no longer appropriately part of two separate production and maintenance units, but rather constitute a single maintenance group. The Employer seeks by its motion for clarification to remove these maintenance employees from the two certified production and maintenance units and, without an election, to add them as a single group to one of the two existing units. By its petition the Employer, apparently in the alternative, seeks a self-determination election among the maintenance employees so as to determine the unit to which they should be added. The Unions moved jointly to dismiss the petition, claiming that there is no question concerning representation because their current contracts bar the

petition and because neither one of them seeks to represent all of the maintenance employees. IUE Local 130 also moved to dismiss the Motion for Clarification on the ground, *inter alia*, that it is an improper substitute for a petition and a device to evade the Board's contract-bar rules. IUE Local 130 also asserts that because both Unions have filed grievances protesting the Employer's actions, the issues herein should be settled through such grievance proceedings.

We find no merit in the Unions' contentions that these proceedings should be dismissed. It is evident from the recital above of the history of this dispute that the parties' efforts to date to reach agreement have met with failure. Further, the Employer and the district court are looking to this Board to resolve the dispute; and, at least until the decision of the AFL-CIO Impartial Umpire, IBEW Local 1805 was also actively urging Board resolution. In these circumstances and without regard to any other considerations, we find no merit in the contentions of IUE Local 130 that the Board should not entertain the Motion for Clarification and should defer to the pending grievance proceedings. In addition, in the special circumstances of this case, including the foregoing and the fact that IBEW Local 1805 at one time claimed to represent all the maintenance employees, that the present claims of both Unions taken together encompass all such employees, and that dismissal of the petition would for the reasons indicated *infra* leave these employees without representation or opportunity to select representation, we find no merit in the contention that there is no question concerning representation because neither Union presently claims to represent all such employees. Finally, as this decision is issuing after the 90th day preceding the termination date of each of the existing contracts between the Employer and the Unions, we find that these contracts are not a bar.³ Accordingly, we find that a question affecting commerce exists concerning employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. We have discussed above the changes which have already been effected and those which are contemplated with regard to the maintenance employees, their equipment, and facilities. From these facts, it is evident that the Employer has sought to establish a single maintenance group to service all of its operations at the Friendship site; that it has made substantial progress in unifying the two maintenance groups into a single group; and that such separation as may presently exist results only from the parties' inability to resolve the current representation dispute. In these circumstances, we conclude that the maintenance employees in issue have effectively been merged into a single group and they may therefore no longer be considered as part

³ See *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000; *St. Louis Independent Packing Company*, 122 NLRB 887, 889.

of two separate production and maintenance units. There is further no warrant in the record for concluding that as a group they are more appropriately to be joined with the air arm employees than with the electronics employees. In these circumstances, therefore, we shall grant the Employer's motion to the extent of excluding these previously separate maintenance employees' groups from the existing production and maintenance units; shall deny it to the extent that it seeks to determine the representation of the maintenance employees without an election; and shall, in order to determine such representation, direct an election in the following voting group:

All maintenance employees at the Employer's works engineering and maintenance building, Friendship International Airport, Baltimore, Maryland, including laborers and storeroom attendants, but excluding all other employees, office clerical employees, technical and professional employees, guards and/or watchmen, and supervisors as defined in the Act.

If a majority of the employees in the voting group vote for IBEW Local 1805, they will have indicated their desire to become part of the unit presently represented by that Union and IBEW Local 1805 may bargain for them as part of such unit. If a majority vote for IUE Local 130, they will be taken to have expressed their desire to become part of the unit presently represented by that Union, and IUE Local 130 may bargain for them as part of such unit. If a majority of the employees in the group vote for neither Union, they will be deemed to have expressed their desire to be unrepresented.

As noted above, we have directed an election in this voting group despite the fact that neither of the Unions presently claims to represent all the employees therein. In these circumstances, we shall permit either or both of the Unions to withdraw from the election upon written notice to the Regional Director within 10 days from the date of this Direction of Election. In the event that both Unions elect to withdraw, the Regional Director shall dismiss the petition and the employees in the voting group will remain unrepresented. The petition will, however, be reinstated if either or both of the Unions make any claim to represent any of these employees within 6 months of the date of the dismissal.⁴

[The Board amended the Certifications of Representatives heretofore issued in Case No. 5-RC-2143 on February 28, 1958, and in Case No. 5-RC-2929 on February 29, 1960, specifically to exclude from the units described therein the classification of "maintenance employees," and denied otherwise the Motion for Clarification filed in said cases.]

[Text of Direction of Election omitted from publication.]

⁴ *Campos Dairy Products, Limited*, 107 NLRB 715