

to the effect that he thought it "useless" to contact Penny or to try to organize its employees, the executive board of the Respondent decided to picket with an "information type . . . substandard wage banner" in order to protect its wage scale and to "support fair contractors." While the evidence concerning the special meeting of the executive board is self-serving, nevertheless the picket sign itself and the Respondent's conduct during the picketing further support the Respondent's contention as to its motive. The picket sign was carried in such a way that its legend faced away from the Kraft job. There is no evidence that the Respondent, in conversation or through its picket line, demanded recognition from Penny, claimed to represent its employees, or attempted to organize them.

As for the conversation between Stanley Penny and Carr, it is to be noted that Penny, without giving Carr the opportunity to explain the object of the picketing, asked him if he wanted "to get together with [him] about a contract." Under the circumstances, the fact that Carr replied that he would "like" to get Penny's cement finishers "in our organization" and to discuss a contract covering them, standing alone, does not warrant the inference that the Respondent's object in the picketing was that of "forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees . . . to accept or select such labor organization as their collective-bargaining representatives"—the conduct proscribed by Section 8(b)(7). On all of the facts, therefore, I conclude that the purpose of the picketing, as the sign indicated, was to advise the public that Penny was "breaking down [the Respondent's] wage scale and working conditions," and thereby to protect its area standards.

Since the Respondent's picketing did not have a recognitional or organizational objective, I find that it did not violate the Act even though the picketing interfered with deliveries and services.<sup>3</sup>

#### RECOMMENDED ORDER

It is recommended that the complaint be dismissed in its entirety.

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<sup>3</sup> *Houston Building and Construction Trades Council (Claude Everett Construction Company)*, 136 NLRB 321; *Local 107, International Hod Carriers, Building and Common Laborers' Union of America, AFL-CIO*; and *Northwest Arkansas Building Trades Council, AFL-CIO (Texarkana Construction Company)*, 138 NLRB 102.

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### Westinghouse Electric Corporation *and* Federation of Westinghouse Independent Salaried Unions, Petitioner. *Case No. 22-RC-2091. October 31, 1963*

#### 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 Hearing Officer Earl S. Aronson. 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 National Labor Relations 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 this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain 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 a unit of all manufacturing engineers, quality control engineers, and division production and inventory control staff engineers at the Employer's plant in Newark, New Jersey, excluding all other employees, all other professional employees, guards, and supervisors as defined in the Act. The Employer contends that the unit is inappropriate on the grounds that (1) the manufacturing engineers are managerial employees, and (2) if the manufacturing engineers are not found to be managerial employees, all employees in the requested unit appropriately belong in a unit of design engineers currently represented by the Westinghouse Engineers Association, herein called WEA.

The Newark plant employs approximately 1,170 employees, of whom approximately 690 are production and maintenance employees represented by International Union of Electrical, Radio and Machine Workers, AFL-CIO. In addition, the IUE represents approximately 175 salaried employees. WEA represents approximately 37 professional employees in a unit of design, metallurgical, and chemical engineers in the engineering department, sales engineers in the sales department, and the test engineer in the manufacturing department. The Petitioner currently represents approximately 42 employees in a unit of draftsmen, tool designers, and laboratory technicians, as well as approximately 13 employees in a unit of time and motion analysts. The employees here sought consist of 16 manufacturing engineers, 4 quality control engineers, and 3 division product and inventory control engineers, and are the only unrepresented professional employees at this plant.

With respect to the Employer's contention that the manufacturing engineers are managerial employees, the record shows that these engineers perform substantially the same functions as the manufacturing engineers employed at two other plants operated by the Employer whom the Board has found to be nonmanagerial employees.<sup>1</sup> The duties of the manufacturing engineers are directed toward devising the methods by which the Employer's products are manufactured. Initially, a design is submitted by a design engineer. The manufacturing engineers are then called upon to determine whether the design is capable of being manufactured and, if so, what cost factors will be involved. If a dispute arises between the design and manufacturing engineers concerning the advisability of fabricating a particular product, the dispute is resolved by higher officials in the Employer's hierarchy.

<sup>1</sup> *Westinghouse Electric Corporation (South Philadelphia Works)*, 142 NLRB 317; *Westinghouse Electric Corporation (Cheswick Plant)*, 113 NLRB 337.

Once a decision is made to manufacture a product, it is the manufacturing engineers' responsibility to follow the product through production channels and advise and consult with employees in the production process to insure that the product meets the established specifications and to solve any problems which might arise. Expenditures for the production of a given product are established by officials of the Employer and are funded in a development budget which is created annually. Manufacturing engineers do not participate in the formulation of the budget. When standard or nonstandard tool purchases are necessary to complete the production process, the manufacturing engineers do not enter into the contractual negotiations with suppliers and do not assist in determining the price paid for such tools. These engineers do, however, make recommendations as to the purchase of tools from the various suppliers based upon their knowledge and experience as to the quality of the tools provided. They also requisition materials and equipment which are charged against the budgeted fund to carry out development work. The requisitions for low cost tools and equipment involve the expenditure of development funds in amounts comparable to those involved in requisitions for similar items placed by the design engineers who are non-managerial employees and are represented by WEA. With respect to requisitions of more costly items, the record discloses that such requisitions must have prior approval at higher levels of management before funds for such items may be expended.

In view of the foregoing and the entire record, we find that the manufacturing engineers are not managerial employees.<sup>2</sup>

The Employer's contention that the requested unit is inappropriate because these employees belong in the unit of design engineers currently represented by WEA is rejected. As the manufacturing engineers, quality control engineers, and division production and inventory control staff engineers are the only unrepresented professional employees at the Newark plant, as there is no history of collective bargaining respecting these employees, and as no other labor organization seeks to represent these employees in a larger unit, we find that they may appropriately be represented as a residual unit if they so desire.

Accordingly, we find that a unit of all manufacturing engineers, quality control engineers, and division production and inventory control staff engineers at the Employer's plant in Newark, New Jersey, excluding all other employees, all other professional employees, guards, and supervisors as defined in the Act is appropriate within the meaning of Section 9(b) and Section 2(6) and (7) of the Act.

[Text of Direction of Election omitted from publication.]

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<sup>2</sup> See footnote 1, *supra*.