

employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Rescind its no-solicitation, no-distribution rule posted on July 22, 1965, as it applies to union solicitation or other activities protected by Section 7 of the Act.

(c) Post at its plant in Gibsonburg, Ohio, copies of the attached notice marked "Appendix."²⁸ Copies of said notice, to be furnished by the Regional Director for Region 8, after being duly signed by a representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 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 the Regional Director for Region 8, in writing, within 20 days from the date of receipt of this Recommended Order, what steps the Respondent has taken to comply herewith.²⁹

²⁸ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

²⁹ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 8, 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, as amended, we hereby notify our employees that:

WE WILL NOT unlawfully question employees as to their own or fellow employees' union sympathies and leanings, threaten economic reprisals because of union activities, condition job advancement upon abandonment or renunciation of union activity, create the impression that employees' union activities are under surveillance, or in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

WE WILL rescind our no-solicitation, no-distribution rule posted on July 22, 1965, as it applies to union solicitation or other activities protected by Section 7 of the Act.

WE WILL, upon request, bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers Local # 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all our employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All production and maintenance employees at our Gibsonburg, Ohio, plant, including shipping, receiving, stockroom and toolroom employees, truckdrivers, draftsman, and working group leaders, but excluding office clerical employees, time-study methods employee, and all guards, professional employees and supervisors as defined in the Act.

ATLAS ENGINE WORKS, 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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio 44115, Telephone 621-4465.

**Westinghouse Electric Corporation and Lima
Westinghouse Salaried Employees
Association, Affiliated with Federation of
Westinghouse Independent Salaried
Unions. Case 8-CA-4219.**

March 20, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS JENKINS
AND ZAGORIA

On November 28, 1966, Trial Examiner James F. Foley issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the Respondent's exceptions and brief, and the entire record¹ in the case, and

¹ Respondent's motion to reopen the record in this case is hereby denied. The evidence, which Respondent now seeks to introduce relating to the role of the product department managers in the 1966 contract negotiations, is not, in our opinion, newly discovered. The managers' role had been established in

hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Westinghouse Electric Corporation, Lima, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

advance of opening negotiations, and such evidence was available to Respondent at the hearing in this case on August 9, 1966, a week prior to the reopening date of the existing contract. Indeed, counsel for Respondent conceded at the hearing that Respondent at that time had "the actual facts as to their [the product department managers'] role in the negotiations."

Accordingly, Respondent's claim of new evidence is rejected.¹ In his Decision, the Trial Examiner inadvertently gave as the date of Respondent's refusal to bargain, "April 20, 1965." We correct that date to read, "April 20, 1966."

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES F. FOLEY, Trial Examiner: This case, 8-CA-4219, was brought before the National Labor Relations Board (herein called the Board) under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519), herein called the Act, against Respondent Westinghouse Electric Corporation (herein called Respondent) on a complaint issued by the Regional Director for the Board's Region 8, on May 20, 1966, and an answer of Respondent filed June 6, 1966. The complaint is premised on a charge filed on April 29, 1966, by Lima Westinghouse Salaried Employees Association, Affiliated with Federation of Westinghouse Independent Salaried Unions (herein called the Union).

The allegations of the complaint are that on or about March 31, 1966, the Union demanded that Respondent recognize it and bargain with it, as the collective-bargaining representative of the three private secretaries to the managers of the Aerospace Power Systems Department, the Systems Research and Development Department, and the Utilization Systems Department, of Respondent's Aerospace Electrical Division, at Lima, Ohio, as these three secretaries were employees in the appropriate unit of Respondent's employees at Lima, Ohio, covered by a collective-bargaining agreement then in effect between it and Respondent; and that on or about April 20, 1965, Respondent refused, in violation of Section 8(a)(5) and (1) of the Act, to recognize and bargain with the Union as the collective-bargaining representative of these three employees, and continues to refuse to recognize and bargain with the Union as it has demanded. Respondent admits in its answer filed June 6, 1966, that the Union demanded recognition and bargaining on or about March 31, 1966, as alleged in the complaint, and admits that on or about April 20, 1966, it refused to recognize and bargain with the Union, and continues to do so, but denies that its refusal is violative of the Act.

¹ The Contract was for the period October 15, 1963, to October 14, 1966, with a yearly automatic renewal provision. Notice required by the contract for its termination as of midnight October 14, 1966, was contemplated. Notice not earlier than 60

A hearing on the complaint and answer was held before me on August 9, 1966, in Lima, Ohio. General Counsel, Respondent, and Charging Party were represented at the hearing. All parties were afforded an opportunity to offer evidence, make oral argument, and file briefs. Respondent filed a brief after the close of the hearing.

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent, a Pennsylvania corporation with its principal office and place of business in Pittsburgh, Pennsylvania, is engaged in the city of Lima, Ohio, in the manufacture of aircraft generators and control apparatus at its Aerospace Electric Division, and the manufacture of fractional horsepower appliance motors at its Small Motor Division, and annually, in connection with its business operations at Lima, Ohio, causes goods valued in excess of \$50,000 to be shipped directly from Lima, Ohio, to points outside the State of Ohio. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Board's assertion of jurisdiction effectuates the purposes of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding: Case 8-CU-3*

On September 15, 1965, the Union filed with the Regional Director a petition, Case 8-CU-3, seeking a unit clarification of the employees included in the bargaining unit of Respondent's Lima, Ohio, employees described in the national agreement (herein called the Contract) between Respondent and the Federation of Westinghouse Independent Salaried Unions (herein called the Federation) with which the Union is affiliated.¹ This unit is:

All salaried technical and clerical employees at the Lima, Ohio, facilities of Westinghouse Electric Corporation, located at Wapak Road, and 325-327 South Main Street, excluding all professional employees, senior internal auditors and industrial relations assistants, cashiers, shop production clerks, secretaries to: division general managers, assistant division general managers, managers of manufacturing, managers of accounting, industrial relations managers, managers of union relations,—all other employees and all supervisors as defined in the Act.

The Contract unit for Lima, Ohio, includes employees of the Aerospace Electrical Division and the Small Motor Division located in Lima, Ohio.² In August 1963, as a result of reorganization, Respondent created three new departments in the Aerospace Electrical Division; namely, the Aerospace Power Systems Department, the Utilization Systems Department, and the Systems Research and Development Department. Three officials of this division were made managers of the newly created departments. Sales Manager A. C. Chiazza was appointed manager of

days or later than 30 days prior to October 14, 1966, is provided by the Contract. The hearing was held on August 9, 1966.

² Approximately 335 employees are in the unit. Aerospace has 238 and Small Motor has 97.

Aerospace Power Systems, Special Products Manager R. L. Rumsey was appointed manager of Utilization Systems, and Engineering Manager J. D. Miner was appointed manager of Systems Research and Development.

Chiazza, prior to his new appointment, reported to A. L. Paquette, the marketing manager for the Aerospace Electrical Division. When he was appointed manager of Aerospace Power Systems, June Haggard, Paquette's secretary, was made his full-time secretary. She had done work for Chiazza when her duties as Paquette's secretary permitted. Judy Heath, who had been Miner's secretary for 10 years, continued as his secretary when he became manager of Systems Research and Development. Frances Jenkins, secretary to the manager of Materials Control and Subcontracts, was assigned to Rumsey as his secretary when he became manager of Utilization Systems. She had been his secretary when he was purchasing agent for the Aerospace Electrical Division.

These three secretaries were in the unit represented by the Union prior to their assignments as secretaries to the three new department heads. On September 15, 1964, Respondent gave the three new job descriptions, informed the Union that it considered them to be confidential employees, and removed their names from the union dues payroll deduction list. The Union filed a grievance under the Contract, and unsuccessfully processed it through four steps of the contractual grievance procedure.

In the representation proceeding (Case 8-CU-3), initiated by the petition of September 15, 1965, the Union sought to have the Regional Director rule that the three secretaries were not confidential employees, and were still in the unit which it represented. A hearing on the petition was held in Lima, Ohio, on October 22 and December 1 and 2, 1965, before Hearing Officer Bernard Levine. The Union and Respondent offered evidence, the Union made summary argument, and Respondent filed a brief after the close of the hearing. In the course of the hearing, evidence was taken of the extent of the participation of Chiazza, Rumsey, and Miner in the formulation, determination, and effectuation of Respondent's policy in the field of labor relations, and the extent to which the three secretaries rendered secretarial assistance to these three department heads with respect to the matters alleged to contribute to Respondent's labor policy.

On January 28, 1966, Philip Fusco, Regional Director for Region 8, issued his decision in this representation case. He referred to the evidence for and against the issue that the three managers formulated, determined, and effectuated employer policy in the field of labor relations, and to the confidential nature of the duties of secretaries Haggard, Heath, and Jenkins.³ He found that the three new product department managers do not participate in negotiations with any labor organization, that they are

consulted during negotiations and their opinions solicited concerning proposals relative to the local seniority supplement negotiated by the Union and Respondent (the petitioner and employer, respectively, in the representation case), and, as key management personnel, they submit their views, opinions, and recommendations regarding local supplement proposals insofar as they have an impact upon their respective departments. The Regional Director also found that the three secretaries acted in a confidential capacity to the new product department managers. The Regional Director then concluded that the three secretaries were not confidential secretaries with respect to labor relations policy as they are secretaries to department managers who participate in labor relations only to the extent they affect their respective departments, and department heads who have only this limited participation in labor relations matters do not formulate, determine, and effectuate employer policy in the labor relations field. The Regional Director's decision did not constitute a recertification of the Petitioner Union. The Union was certified in 1941, in *Westinghouse Electric & Manufacturing Company*, 36 NLRB 901. Since that time, the unit described in the certification has been modified, and is presently the unit described in the Contract, as stated *supra*. On March 18, 1966, the Board denied Respondent's request for review of the Regional Director's decision of January 28, 1966.

B. *The Evidence in the Unfair Labor Practice Proceeding*

In support of its complaint that Respondent has refused to bargain in violation of Section 8(a)(5) and (1) of the Act, counsel for General Counsel offered in evidence the Regional Director's decision and clarification of bargaining unit of January 28, 1966; the Board's telegraphic order of March 18, 1966, denying Respondent's request for review of the Regional Director's decision; the formal documents received in evidence in the representation hearing; the Union's exhibits received in evidence, as the Petitioner's exhibits, in the representation hearing; the Respondent's exhibits received, as the Employer's exhibits, in the representation hearing; the transcript of the 3 days' representation hearing; a letter dated March 31, 1966, from John R. Harman, president of the Union, requesting recognition and bargaining for the three secretaries, to Paul J. McDermott, manager of union relations, Westinghouse Aerospace Electric Division, Lima, Ohio;⁴ and a reply letter dated April 20, 1966, to Union President Harman from Industrial Relations Manager R. F. Kennedy, for the Aerospace Electrical Division, Lima, Ohio, of Respondent, in which Respondent refused the Union's request.⁵

This offer of counsel for General Counsel was received in evidence without objection by Respondent.⁶ General

³ Confidential secretaries to department heads who formulate, determine, and effectuate employer policy in the field of labor relations are confidential employees, and are excludable from the bargaining unit.

⁴ In the letter, the Union, by Harman, its president, requested that Westinghouse in accordance with the Regional Director's decision of January 28, 1966, and the Board's denial of March 18, 1966, of Respondent's request for review of the decision, consider the secretaries of Chiazza, Rumsey, and Miner to be employees within the unit represented by the Union, and to include their names on the rate review sheets for the forthcoming collective-bargaining rate review in April 1966.

⁵ Kennedy stated in his letter that careful review was given to Harman's letter, and that after every consideration was given to

the request in the letter, Respondent had concluded the request must be denied. Kennedy also stated in the letter that the record in the representation hearing established without a doubt the confidential nature of the duties of the three secretaries, that the Board erred in its decision, and Respondent's intention was to insist that there be a review of the decision "by the proper courts in appropriately instituted proceedings," and, "Until so directed by such a court, your request must be denied."

⁶ Respondent at this time offered as evidence in its behalf its request to the Board of February 18, 1966, for review of the Regional Director's decision of January 28, 1966, in the representation proceeding, and supporting brief. They were received in evidence as Respondent's exhibit, without objection.

Counsel then rested his case-in-chief. He represented that he offered the complete record of the representation hearing in evidence only to have the record complete for review by the court of appeals. He contended that the Trial Examiner was foreclosed by Section 102.67(f) of the Board Rules and Regulations from considering the merits of the issue of the confidential nature of the secretaries' duties as it had been resolved by the Regional Director's decision, and the Board's denial of the Respondent's request for review.

In his opening statement, counsel for Respondent stated that when the representation hearing was held in October and December 1965, there had been no negotiations since 1963 for national agreements and accompanying local supplements between Respondent and unions with which it had collective-bargaining relations, in which the three new product department managers could have participated since their appointments dated from August 1964. He then stated that the only evidence Respondent would offer at the hearing in its defense against the complaint of a refusal to bargain was evidence of the "role these product department managers are now playing as negotiations begin on a new contract." Respondent's counsel was referring to Respondent's preparation for negotiations contemplated to begin about August 15, 1966, on the Contract with the Federation; on national agreements with other unions; and negotiations with the Union on local supplements to a new or amended Contract, and with other unions on local supplements to new or amended national agreements or on other local contracts.⁷ Respondent's counsel represented that the evidence of the participation of the new product department managers in the preparation for negotiations since the representation hearing, when considered with the evidence of record in the representation case, would show that the three secretaries are not within the unit covered by the Board certification.⁸

Respondent did not call as witnesses Chiazza, Rumsey, and Miner, the three new program department managers, or Haggard, Jenkins, or Heath, their secretaries. Respondent's witnesses were Robert F. Kennedy, the manager of industrial relations for Respondent's Aerospace Electrical Division at Lima, Ohio, and George M. Nicholson, the "Assistant Director of Labor Relations and group counsel for the atomic defense and space groups and miscellaneous groups" of Respondent. Nicholson testified he appeared as a witness "in the capacity of director of industrial relations activities in the groups to which I have been assigned which currently covers some 15 plants, 80 locations, and 25 to 30 thousand people."

Kennedy reports directly to R. W. Esarey, general manager of the Aerospace Electrical Division, at Lima, Ohio, and looks to Nicholson "for guidance to I.R. [industrial relations] policy matters and guidance in the personnel area, or guidance in any associated areas with

industrial relations." Nicholson reports directly to C. C. Frame, director of labor relations for Respondent, and Frame reports to R. D. Blazier, vice president in charge of industrial relations for Respondent. Both Frame and Nicholson participate in national negotiations. Ordinarily, Paul J. McDermott, manager of union relations for the Aerospace Electrical Division, negotiates with the Union on the local supplements. McDermott reports directly to Kennedy. While the local supplements to the Contract for the Lima, Ohio, area cover employees in the Small Motor Division, as well as employees in the Aerospace Electrical Division, Kennedy and McDermott negotiate with the Union on the local supplements on behalf of both divisions.

According to Kennedy, the three product department heads contributed to the formulation, determination, and effectuation of employer policy in labor relations during the period following the representation hearing by the work they did in labor relations as members of an employee relations committee (herein called Committee) appointed by Division General Manager Esarey. The members are Division Assistant General Manager C. J. Weber; Miner, Rumsey, and Chiazza, the three product department managers; R. E. Davis, manager of manufacturing; and Kennedy, McDermott, and L. J. Brehl, communications coordinator. Kennedy heads the industrial relations department, and McDermott and Brehl are in that department. They report to Kennedy. Miner and Kennedy report directly to General Manager Esarey, and Davis, Rumsey, and Chiazza report directly to Assistant General Manager Weber, and through him to Esarey.

Kennedy testified that the appointment of an employee relations committee by a division or plant general manager was in accordance with "companywide policy." He also testified that he had personal knowledge that this policy was followed in 1960 and 1963 in connection with negotiations of national and local agreements. In regard to the work that the Committee did in the field of labor relations, Kennedy stated:

Well, the responsibilities of the employees' relations committee are to analyze any particular employee relations, Union relations and labor relations that we have; to prepare and to determine and execute plans that may be necessary during the period of negotiations; to give consideration to the position the Company will take with respect to proposals during the forthcoming negotiations; to consider the proposals that may be submitted by the respective unions if we get into emergency situations such as those that would be involved during a threatened strike, or the actual execution of a strike; to provide the plans and the termination of plans that would be executed during that period.

Also, another responsibility as to participation would be in the planning of communications and

termination dates for the national agreements with IUE and UE are approximately the same as for the Contract The termination date of the IAM contract is October 15 or 31, 1966, and for the Lima Westinghouse Police Association contract, November 1, 1966

⁸ Sec 102.67(f) of the Board's Rules and Regulations precludes re litigation in a "related subsequent unfair labor practice proceeding" of an issue determined in a representation proceeding where there was a failure to request review, a denial of a request for review, or the Board affirmed the Regional Director's decision

⁷ In addition to the Contract with Federation, Respondent has national agreements with International Union of Electrical Radio and Machine Workers, AFL-CIO (herein called IUE), and United Electrical Radio and Machine Workers of America (herein called UE). In addition to the local supplements Respondent has with the Union for the Lima plant, it has local contracts for the Lima plant in terms of supplements with IUE Local 724 for production and maintenance employees, and IUE Local 760 for production clerks, and local contracts with Local 366, International Association of Machinists, AFL-CIO (herein called IAM Local 366) for the toolroom employees, and with the Lima Westinghouse Police Association for 10 police officers. The

evaluating actually the effectiveness of the communications effort.⁹

In the representation proceeding, Kennedy testified that the new department heads would participate in national labor policy through membership on a Lima employee relations committee. He also testified at that time that this type of committee was appointed at all locations including Lima, in accordance with companywide policy established at the Pittsburgh headquarters. But he did not state the responsibilities of this type of committee in the broad conclusionary language, stated, *supra*, that he used in this unfair labor practice hearing.¹⁰ Counsel for General Counsel and for the Charging Party moved to strike his testimony on the ground that the broad conclusions in which he stated what the Committee did were neither evidentiary or probative. I stated that I was of the opinion that the motion had merit, and that the testimony would have to disclose what specific actions were engaged in by the Committee which would support the broad conclusionary description of what the Committee did, as well as what the new managers did as members of the Committee which would support the broad conclusionary assertion by Kennedy that these managers participated in the alleged policymaking of the Committee. I reserved ruling on the motion to strike.

Kennedy testified that the Committee had three meetings. The first was held in late April or early May, the second around May 17, and the third toward the latter part of June. At the first meeting, there was a discussion of the responsibilities of the Committee as he identified them in his testimony, *supra*, and the "identification of certain subcommittees that might have to be appointed" as preparations for negotiations, and negotiations, progressed. Kennedy testified that, "Some of the subcommittee could be headed by respective members of the employees relations committee, but the actual makeup of the subcommittees would involve other designated members of management, depending on the nature of the subcommittee." According to Kennedy, this was all the business of the first meeting.

The second meeting was attended by all members of the Committee, by Nicholson and Richard Dittmer from Respondent's headquarters in Pittsburgh, by R. W. Esarey, the general manager of the Lima Aerospace Electrical Division, and C. F. McMeekin, manager of that Division's Product Assurance Department, and by a Mr.

Frame, a representative of the Small Motor Division at Lima. Dittmer is connected with Respondent's information service. Kennedy testified that it "was a review meeting which involved divisionwide matters," and that "it was to review and discuss our local situation; to receive suggestions from our headquarters people and to make suggestions to them." Kennedy testified that a form had been sent to the Division on which certain facts about the Division were requested, the facts were furnished by the departments, and coordinated and reduced to writing by Kennedy's industrial relations department. The data furnished on the form were the basis for the May 17 meeting. Kennedy testified that a number of confidential matters were discussed, and disclosures were made that "might damage the collective bargaining position" of Respondent if known to the unions. The matters discussed involved all unions having collective-bargaining relations with Respondent. He testified that all members of the Committee freely participated. No notes were taken. I asked Kennedy what the general nature of the confidential matters discussed was, and what was discussed with respect to the coming contract negotiations. Kennedy replied to the first question by saying he did not care to give any inkling of the general nature of the confidential matter discussed. Counsel for Respondent refused to permit him to reply to the second question; on the ground that Nicholson, an official from Respondent's headquarters, could more properly reply to a question dealing with the approaching contract negotiations.

In regard to the third meeting in the latter part of June, Kennedy testified that there were present the members of the Committee, except Chiazza, R. D. Blazier, vice president of companywide industrial relations, and Dale McFeatters, vice president of companywide information services. Blazier and McFeatters were from Respondent's Pittsburgh headquarters. As stated, *supra*, Blazier is the superior of Clark Frame, Respondent's chief negotiator, and like Frame, participates in national negotiations. In answer to the question of Respondent's counsel as to what the purpose of the meeting was, Kennedy replied, "To receive suggestions and to discuss with us the problems of the national negotiations so that the key management in the division would be better prepared during the period of negotiations." He testified that there was discussion on contract proposals, their "pros and cons"; the communications program in detail;¹¹ the union-relations

⁹ At this point I asked the witness questions dealing with the negotiations of local supplements and other contracts at the Lima location, and the handling of matters arising at Lima under labor contracts. I have found from reading the transcript that evidence was given in the representation proceeding regarding these matters, and that the Regional Director made findings thereon that the three program department managers did not participate directly in negotiations with the Union or any other union, and that their views, opinions, and recommendations were submitted regarding local supplemental proposals only insofar as they had an impact upon their respective departments.

¹⁰ In the representation proceeding, Kennedy was asked to state the part the local division management played in national negotiations once they have been started, and he answered as follows

Well, for one thing, there are various selected managers of industrial relations, who are invited into Pittsburgh and actually become a participant on the negotiating team with the respective unions. There are also questions directed back to the local levels relative to reactions or suggestions concerning the subject of national negotiations. There is also somewhat of an advisory negotiations where notes of management of the department, whereby a cross section

there will be an advisory group to reflect the attitudes of dispositions of local management

In the representation proceeding, in reply to the question whether local management analyzes and examining of local union proposals and submitting comments, were done solely by industrial relations, Kennedy testified that in Lima, during negotiations, these functions were performed by a key management committee, consisting of Assistant Division Manager Weber, Miner, Rumsey, Chiazza, Berneburg, the division controller, and himself. As stated, *supra*, the extent of the actual participation in labor relations by this "key management committee" was explored on cross-examination in the representation proceeding

¹¹ Kennedy testified that the communications program meant: All facets of communications with the community, the total communications program of keeping our employees informed and in attempting to explain the division's problems, et cetera, et cetera. Many things. Analyzing as we get into negotiations and the communications of the respective unions relative to the negotiations of problems in the plant, analyzing these and, again, appraising the effectiveness of our own communications program

climate that existed among the various unions; the potential labor problems and the current labor problems; and Respondent's relationship with the community, with law enforcement, "and any number of things that were related."

In response to Respondent's counsel's question whether any decisions were reached at the June meeting concerning the subjects that were discussed or whether only information regarding these subjects was imparted and received, Kennedy testified

Well, when you say decisions, there were things discussed relative to our plans and our positions which were concerned with unanimity as far as being adequate is concerned. There were discussion of things where it may appear to be inadequate, if you can label this as a decision, but they say areas of agreement were clearly designated and areas where perhaps additional things and additional plants may be considered appropriate. These areas were identified.

In response to the Respondent's counsel's question whether the product department managers were playing any part in the communications program, Kennedy said they were. He described their role insofar as it related to negotiations by the words:

Analyzing and appraising the effectiveness of our communications program and planning our communications program for future events.

Kennedy then described their actual involvement in the actual plans of the program itself, as follows:

From the standpoint which we ought to be communicating and the perimeters within which we would be communicating and the determination of areas where there may not exist understanding and employee understanding and problems with the division and with negotiations and so on. This is the segment of management from which we determine the shape and the direction of our communications program and the evaluating and the effecting of this program.

Kennedy was asked by Respondent's counsel if he had seen any correspondence from the Respondent's headquarters in Pittsburgh regarding the negotiations which he would consider confidential. Kennedy replied that he could not recall having received a communication of the forthcoming negotiations that he would label as confidential. Kennedy had testified that confidential communications regarding the negotiations were distributed to the members of the Committee.¹²

Nicholson, the assistant director of labor relations from Respondent's Pittsburgh headquarters, testified in regard to the May 17 meeting. The meeting was not chaired, it was an open-discussion meeting. The outline of the agenda for the meeting was the questionnaire which had been sent to the Division by Nicholson from the Pittsburgh headquarters. Prior to the meeting, the answers had been compiled by Kennedy and the staff of the Industrial Relations Department, after consultation with department heads. The completed questionnaire was 40 to 60 pages in length.

In regard to the purpose and scope of the meeting, Nicholson testified as follows:

The purpose of the meeting was to—well, I might add that this meeting was not confined to the Lima

location. We had this meeting at all—any locations, and I think I had 12, and the subject of the meeting was to review the basic labor relations situation in Lima; to go over their current labor relations problems; to gather together and go over every problem that might arise and all possible effects it might have on national negotiations and/or local.

The purpose of the meeting was to have a general discussion between members of divisional management, the top echelon of division management, I might add, and representatives from both the communications function and the industrial relations function to headquarters; to review all labor relations problems connected with the division which might have an influence on either local negotiations coming up, or national negotiations which were coming up this month.

We reviewed this pursuant to that objective. We reviewed communications programs in detail; we reviewed their grievance handling, and in detail we reviewed their thoughts or maybe reviewed is the wrong word here. We discussed their thoughts on what some of the problems would be which we might face nationally or which they felt we might face locally.

What they thought the units would bring up would have to be discussed.

We gave them in turn our thinking on the way we saw things from our interchange of information. In this area we covered in detail various phases of their employee relations activities ranging from suggestions to everything we could think of, with the idea of ending up with a picture of the situation at Lima, so that we would know from our position nationally what kind of a situation faced them, and they would have an understanding of what kind of a situation faced us, and to try to anticipate as best we could what the union demands would be, and what demands we should make, if any.

Nicholson testified that the same type of meeting was conducted by two other assistant directors of labor relations. The Small Motor Division at Lima, Ohio, although covered by the local supplement with the Union, as well as the Contract with the Federation, did not participate in the meeting. Nicholson testified that the Small Motor Division was not included in his group. In response to Respondent's counsel's question whether any plans or conclusions were arrived at at the meetings Nicholson attended, he answered that there were plans. He could not recall specifically, however, if any were arrived at at Lima. He stated that it was "a little hard" to differentiate between the meetings he attended. He then testified that a decision was reached to "broaden out the area of communications at Lima." He said he referred to communications to employees. It was not discussed as a new policy, but as something thought to be desirable. In response to a question by Respondent's counsel at this point, he testified that the May 17 meeting did involve "subjects other than those related to or the impending national and location negotiations," but it was pointed very heavily in the directions of national and local negotiations as they were "coming up."

On cross-examination, Nicholson testified that he could not recall whether Chiazza, Rumsey, or Miner made any

¹² General Counsel's and Charging Parties' motions to strike Kennedy's testimony are denied.

suggestions for changes in the Contract or whether they said anything as specific suggestions relating to Respondent's communication system.

C. Analysis and Concluding Findings

On the foregoing findings, I make the analysis, findings, and conclusions in the following paragraphs.

It is undisputed that the Regional Director found on January 28, 1966, that the secretaries to the managers of the Aerospace Systems Department, Systems Research and Development Department, and the Utilization Systems Department, of the Respondent's Aerospace Electrical Division, Lima, Ohio, are in the unit of employees for which the Union is the certified collective-bargaining representative, and the Board on March 18, 1966, denied Respondent's request for review. It is also undisputed that the Union, on March 31, 1966, demanded that Respondent recognize it as collective-bargaining representative of the three secretaries, and bargain with it in regard to their rates of pay, wages, hours, and other terms and conditions of employment, and that Respondent refused on April 20, 1966, and continues to refuse, to so recognize and bargain with the Union, on the ground that the three secretaries are not properly in the unit of employees for which the Union is bargaining representative, and the Regional Director erred in holding they were in his decision of January 28, 1966, as did the Board on March 18, 1966, by denying the request for review.

The record made in the hearing before me on August 9, 1966, does not contain any newly discovered evidence of the participation of Department Managers Chiazza, Miner, and Rumsey in the formulation, determination, and effectuation of Respondent's policy in labor relations matters during the period from August 1964 through December 2, 1965. Nor does it contain substantial evidence on the record considered as a whole of such participation by Chiazza, Miner, and Rumsey during the period from December 1965 to August 9, 1966, the date of the hearing before me in the unfair labor practice proceeding.

While the secretaries serve in a confidential capacity to the three department managers, they are in the unit for which the Union is the certified bargaining representative unless the managers participate in the formulation, determination, and effectuation of Respondent's policy in labor relations matters.¹³ As stated, there is no evidence in the record made before me on August 9, 1966, of such participation by the managers. And by the Regional Director's decision of January 28, 1966, this issue is resolved with respect to the record made in the representation proceeding on October 22 and December 1 and 2, 1965, and may not be relitigated before the Trial Examiner.¹⁴

Since neither new or newly discovered evidence has been presented to warrant a holding contrary to the Regional Director's decision, that decision prevails. And since he found that the three secretaries are within the appropriate unit, Respondent had a duty on April 20, 1966, and thereafter, to bargain with the Union in regard to their

rates of pay, wages, hours, and other terms and conditions of employment. By its refusal on April 20, 1965, and thereafter, to so bargain, Respondent violated, and continues to violate, Section 8(a)(5) and (1) of the Act.¹⁵

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The secretaries to the managers of the Aerospace Power Systems Department, the Utilization Systems Department, and the Systems Research and Development Department, of the Aerospace Electrical Division of Respondent at Lima, Ohio, are employees included in the appropriate unit for which the Union is the certified exclusive collective-bargaining representative under the Contract and its local supplements, and the Respondent has a duty to bargain with the Union in regard to the wages, hours, and other terms and conditions of employment of these three secretaries. The appropriate unit in which these three employees are included is:
All salaried technical and clerical employees at the Lima, Ohio, facilities of Westinghouse Electric Corporation, located at Wapak Road, and 325-327 South Main Street, excluding all professional employees, senior internal auditors and industrial relations assistants, cashiers, shop production clerks, secretaries to: division general managers, assistant division general managers, managers of manufacturing, managers of accounting, industrial relations managers, managers of union relations,—all other employees and all supervisors as defined in the Act.
4. On April 20, 1966, and thereafter, the Respondent refused, and continues to refuse, to bargain with the Union in regard to the wages, hours, and other terms and conditions of employment of the three secretaries.
5. By this refusal, Respondent has refused to bargain in violation of Section 8(a)(5) of the Act, and has interfered with, restrained, and coerced employees in the exercise of rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

¹³ *RCA Communications, Inc.*, 154 NLRB 34

¹⁴ *United Davries, Inc.*, 144 NLRB 153, 154, enfd 337 F 2d 283 (C A. 10), Sec 102.67(f) of the Board Rules and Regulations, Series 8, as amended. Also see *General Instrument Corporation*, 140 NLRB 18, 21, enfd 319 F 2d 420 (C A. 4), cert. denied 375 U.S. 966

¹⁵ *Memphis Moldings, Inc.*, 146 NLRB 265, enfd. 341 F.2d 534 (C A. 6), *Manning, Maxwell & Moore, Incorporated*, 143 NLRB 5, enfd 324 F.2d 857 (C A. 5); *Pittsburgh Plate Glass Company v N L R.B.*, 313 U.S. 146, 148, affg 113 F 2d 698 (C A. 8) (15 NLRB 515)

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following:

RECOMMENDED ORDER

Respondent Westinghouse Electric Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Lima Westinghouse Salaried Employees Association, Affiliated With Federation of Westinghouse Independent Salaried Unions, concerning rates of pay, wages, hours, and other terms and conditions of employment of the secretary to the manager of the Aerospace Power Systems Department, the secretary to the manager of the Utilization Systems Department, and the secretary to the manager of the Systems Research and Development Department, of Respondent's Aerospace Electrical Division at Lima, Ohio.

(b) Engaging in any like or related conduct interfering with the efforts of the Union to negotiate for and represent the employees in the appropriate unit for which it is the exclusive bargaining agent.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment, of the three secretaries as employees in the appropriate unit for which the Union is the exclusive representative, and if an understanding is reached, embody or include such understanding in a signed agreement.

(b) Post at its locations in Lima, Ohio, copies of the attached notice marked "Appendix."¹⁶ Copies of said notice, to be furnished by the Regional Director for Region 8, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including 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.

(c) Notify the said Regional Director, in writing, within 20 days from the receipt of this Trial Examiner's Decision and Recommended Order, what steps Respondent has taken to comply therewith.¹⁷

¹⁶ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

¹⁷ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

IT IS FURTHER RECOMMENDED that unless on or before 20 days from the receipt of this Trial Examiner's Decision and Recommended Order the Respondent notifies the said Regional Director, in writing, that it will comply with the foregoing order, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

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, as amended, we hereby notify our employees that:

WE WILL bargain collectively upon request with Lima Westinghouse Salaried Employees Association, Affiliated With Federation of Westinghouse Independent Salaried Unions, in regard to rates of pay, wages, hours of work, and other terms and conditions of employment of the secretaries to the managers of the Aerospace Power Systems Department, the Utilization Systems Department, and the Systems Research and Development Department, of our Aerospace Electrical Division at Lima, Ohio, and if an agreement is reached embody it in a signed agreement or include it in the agreement we have with this Union for the following bargaining unit.

All salaried technical and clerical employees at the Lima, Ohio, facilities of Westinghouse Electric Corporation, located at Wapak Road, and 325-327 South Main Street, excluding all professional employees, senior internal auditors and industrial relations assistants, cashiers, shop production clerks, secretaries to: division general managers, assistant division general managers, managers of manufacturing, managers of accounting, industrial relations managers, managers of union relations,—all other employees and all supervisors as defined in the Act.

WESTINGHOUSE
ELECTRIC
CORPORATION
(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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio 44115, Telephone 621-4465.