

Westinghouse Electric Corporation and International Union of Electrical, Radio and Machine Workers, Local 456, AFL-CIO. Case 22-CA-3685

June 30, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND JENKINS

Upon a charge filed by International Union of Electrical, Radio and Machine Workers, Local 456, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint dated February 25, 1969, against Westinghouse Electric Corporation, herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, and complaint and notice of hearing before a Trial Examiner were duly served upon Respondent.

With respect to the unfair labor practices, the complaint alleges, in substance, that on December 10, 1956, the Union was duly certified by the National Labor Relations Board¹ as the exclusive bargaining representative in a unit found appropriate by the Board; that on October 24, 1968, the Board, in its "Decision of Review,"² found that employees in two disputed classifications are an accretion to the above certified unit and that the unit as clarified includes these two classifications; and that, at all times since on or about October 25, 1968, Respondent has refused to bargain with the Union as the exclusive bargaining representative of Respondent's employees in the unit found appropriate as clarified, although the Union has requested and is requesting it to do so. On March 10, March 26, and April 1, 1969, respectively, Respondent filed its answer with two amendments, in which Respondent admitted its refusal to bargain with the Union, but denied the appropriateness of the unit as clarified, and denied the commission of the unfair labor practices alleged.

On April 9, 1969, the General Counsel filed with the Board a Motion for Summary Judgment, and a supporting memorandum, on the ground that no issue of fact or law is in dispute since all matters raised have been determined by the Board in its unit clarification proceeding,³ and requesting, in view of Respondent's answer, that the Board enter judgment against Respondent on the pleadings. On April 14, 1969, the Board issued an Order, transferring the proceeding to the Board, with a notice to show

cause why the General Counsel's Motion for Summary Judgment should not be granted. Thereafter, Respondent filed an answer to the notice to show cause, and a supporting memorandum.

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

Upon the entire record in this case, the Board makes the following:

**RULING ON THE MOTION FOR
SUMMARY JUDGMENT**

The record establishes that, pursuant to Board Decisions and Directions of Elections, issued in 1950⁴ and 1956,⁵ the Board duly certified and recertified the Union as the exclusive bargaining representative of an appropriate bargaining unit of office, clerical and technical employees in Respondent's Jersey City Works, Jersey City, New Jersey. In 1967, by a petition filed under Section 9(b) of the Act, the Union sought to include, as an accretion to its certified unit, employees in the classifications of Systems and Procedures Analysts "A" and "B" (as well as certain other employees not in issue here.) At that time, the unit description was as follows:

All office, clerical and technical employees of Westinghouse Electric Corp., Jersey City Works, 150 Pacific Avenue, Jersey City, New Jersey, including assistant buyers, but excluding all staff assistants to department managers or the general manager, buyers, confidential salary payroll clerks, paymasters, industrial relations employees; secretaries to Company officers, managers and assistant managers, purchasing agents, superintendents, and factory accountants; the internal auditor, budget accountants, the audit clerk, and other professional employees, guards, and supervisors as defined in Section 2(11) of the Act, as amended.

Thereafter, a hearing was held before Hearing Officer Julius Cohn. All parties appeared and were given full opportunity to participate in the hearing. The Union and Respondent filed briefs in support of their respective positions.

On October 18, 1967, the Acting Regional Director for Region 22 issued a Decision and Order Clarifying Bargaining Unit⁶ in which he granted the Union's request to include Systems and Procedures Analysts "A" and "B" in the bargaining unit. Specifically, and contrary to the contention of Respondent, the Acting Regional Director found that (1) these employees were technical employees having a close community of interest with the technical employees already in the unit, and were not professional employees; (2) they were not

¹Case 2-RC-8364. This certification was pursuant to the Board's Decision and Direction of Elections in *Westinghouse Electric Corporation*, 116 NLRB 1545.

²173 NLRB No. 43.

³*Ibid.*

⁴*Westinghouse Electric Corporation*, 89 NLRB 9.

⁵*Westinghouse Electric Corporation*, 116 NLRB 1545.

⁶Case 22-UC-11.

confidential employees; and (3) they could be included in the bargaining unit by means of the unit clarification procedure.

Thereafter, Respondent filed a timely request for review. The Board, by telegraphic order dated January 3, 1968, granted review only with respect to issue (3) above, and denied review as to the other issues. Both parties filed briefs in support of their respective positions. On October 24, 1968, the Board, in its Decision of Review, *supra*, rejected Respondent's contentions, affirmed the Acting Regional Director's findings, and found the disputed employees to be an accretion to the certified unit. On November 12, 1968, Respondent filed a motion for reconsideration and request for oral argument, which motion and request the Board denied on December 18, 1968.

In its Answer to notice to show cause, and its memorandum in support thereof, Respondent contends that the General Counsel's motion should not be granted since the Board erred in holding that: (1) these employees are not professional employees; (2) they are not confidential employees; and (3) they could be included in the bargaining unit by means of a unit clarification procedure. In support of its contention, Respondent offers no additional evidence, but asserts that the Board's Decision of Review was contrary to established law, and urges that the Board consider *de novo* the evidence adduced at the hearing in Case 22-UC-11. We find no merit in these contentions.

It is well settled that, in the absence of newly discovered or previously unavailable evidence, the Board will not relitigate in a subsequent refusal-to-bargain proceeding matters which have been disposed of in a prior related representation case.⁷ This matter having already been fully litigated in the related unit clarification proceeding, it is clear that no basis exists for relitigating it now. Accordingly, the General Counsel's Motion for Summary Judgment is granted. On the basis of the record before it, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the Commonwealth of Pennsylvania. At all times material herein, Respondent has maintained its principal office at 3 Gateway Center, Pittsburgh, Pennsylvania, and various other places of business, including its Elevator Division Plant at 150 Pacific Street, Jersey City, New Jersey, herein called the Jersey City Plant, and is now, and at all times material herein has been, continuously engaged at said Jersey City plant in the manufacture, sale, and distribution

of elevator machines, electric controllers, and related products.

During the past year, which period is representative of all material times herein, Respondent caused to be manufactured, sold, and distributed at its Jersey City Plant, products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said Jersey City Plant in interstate commerce directly to States of the United States other than the State of New Jersey.

Respondent admits, and we find, that Respondent is, 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.

II. THE LABOR ORGANIZATION INVOLVED

International Union of Electrical, Radio and Machine Workers, Local 456, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The Unit

The following employees at Respondent's Jersey City Plant constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All office, clerical and technical employees of Westinghouse Electric Corp., Jersey City Works, 150 Pacific Avenue, Jersey City, New Jersey, including assistant buyers, and Systems and Procedures Analysts "A" and "B," but excluding all staff assistants to department managers or the general manager, buyers, confidential salary payroll clerks, paymasters, industrial relations employees; secretaries to Company officers, managers and assistant managers, purchasing agents, superintendents and factory accountants; the internal auditor, budget accountants, the audit clerk, and other professional employees, guards, and supervisors as defined in Section 2(11) of the Act, as amended.

B. *The Request to Bargain and Respondent's Refusal*

Commencing on or about October 25, 1968, and continuing to date, the Union has requested and is requesting Respondent to bargain collectively with it as the exclusive collective-bargaining representative of Systems and Procedures Analysts "A" and "B" as part of the above unit. Since on or about October 25, 1968, and continuing to date, Respondent has refused, and continues to refuse, to bargain collectively with the Union as exclusive bargaining

⁷See *Pittsburg Plate Glass Co. v. NLRB*, 313 U.S. 146; *E-Z Davies Chevrolet*, 161 NLRB 1380, *enfd.* 395 F.2d 191 (C.A. 9)

representative of the Systems and Procedure Analysts "A" and "B" in the above described unit.

Accordingly, we find that the Union was duly certified by the Board as the collective-bargaining representative of the employees of Respondent in an appropriate unit, that thereafter said unit was clarified by the Board to include Systems and Procedure Analysts "A" and "B," and said unit is constituted as described above, and that the Union at all times since October 24, 1968, has been and now is the duly certified exclusive bargaining representative in the aforesaid unit, as clarified, within the meaning of Section 9(a) of the Act. We further find that Respondent has, since on or about October 25, 1968, refused to bargain collectively with the Union as the exclusive bargaining representative of the Systems and Procedures Analysts "A" and "B" in the appropriate unit, as clarified, and that, by such refusal Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of the Respondent set forth in section III, above, occurring in connection with its operations as 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.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit as clarified, and, if an understanding is reached, embody such understanding in a signed agreement.

CONCLUSIONS OF LAW

1. Westinghouse Electric Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Electrical Radio and Machine Workers, Local 456, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All office, clerical and technical employees of Westinghouse Electric Corporation, Jersey City Works, 150 Pacific Avenue, Jersey City, New Jersey, including assistant buyers and systems and procedures analysts "A" and "B," but excluding all

staff assistants to department managers or the general manager, buyers, confidential salary payroll clerks, paymasters, industrial relations employees; secretaries to Company officers, managers, assistant managers, purchasing agents, superintendents and factory accountants; the internal auditor, budget accountants, the audit clerk, and other professional employees, guards, and supervisors as defined in Section 2(11) of the Act, as amended, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 10, 1956, the above-named labor organization has been the exclusive bargaining representative of all employees in the appropriate unit as clarified on October 24, 1968.

5. By refusing on or about October 25, 1968, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of the Systems and Procedures Analysts "A" and "B" in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By the aforesaid refusal to bargain, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Westinghouse Electric Corporation, Jersey City, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, hours, and other terms and conditions of employment, with International Union of Electrical, Radio and Machine Workers, Local 456, AFL-CIO, as the exclusive bargaining representative of Systems and Procedures Analysts "A" and "B" in the following appropriate unit:

All office, clerical and technical employees of Westinghouse Electric Corp., Jersey City Works, 150 Pacific Avenue, Jersey City, New Jersey, including assistant buyers, and systems and procedures analysts "A" and "B," but excluding all staff assistants to department managers or the general manager, buyers, confidential salary payroll clerks, paymasters, industrial relations employees; secretaries to Company officers, managers, assistant managers, purchasing agents,

superintendents and factory accountants; the internal auditor, budget accountants, the audit clerk, and other professional employees, guards, and supervisors as defined in Section 2(11) of the Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

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

(a) Upon request, bargain with the above-named labor organization, as the exclusive representative of Systems and Procedures Analysts "A" and "B" in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Jersey City, New Jersey, plant, copies of the attached notice marked "Appendix."⁸ Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representatives, shall be posted by 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

⁸In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order," the words "a Decree of the United States Court of Appeals Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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 refuse to bargain collectively with International Union of Electrical, Radio and Machine Workers, Local 456, AFL-CIO, as the exclusive representative of Systems and Procedures Analysts "A" and "B" in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of Systems and Procedures Analysts "A" and "B" in the bargaining unit described below with respect to rates of pay, wages, hours, 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 office, clerical and technical employees of Westinghouse Electric Corporation, Jersey City Works, 150 Pacific Avenue, Jersey City, New Jersey, including assistant buyers and systems and procedures analysts "A" and "B," but excluding all staff assistants to department managers or the general manager, buyers, confidential salary payroll clerks, paymasters, industrial relations employees; secretaries to Company officers, managers, assistant managers, purchasing agents, superintendents and factory accountants; the internal auditor, budget accountants, the audit clerk, and other professional employees, guards, and supervisors as defined in Section 2(11) of the Act, as amended.

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, Federal Building, 16th Floor, 970 Broad Street, Newark, New Jersey 07102, Telephone-201-645-2100.