

**Westinghouse Electric Corporation and Westinghouse Salaried Employees Association of South Philadelphia, affiliated with Federation of Westinghouse Independent Salaried Unions, Petitioner. Case 4-UC-52**

November 16, 1973

**DECISION AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS JENKINS  
AND KENNEDY

On April 3, 1973, Petitioner, Westinghouse Salaried Employees Association of South Philadelphia, the representative of a unit of the Employer's employees since it was certified in 1950, filed a petition requesting clarification of the unit. A hearing was held on May 17 and 31, and on June 14, 15, and 26, 1973, before Hearing Officer Dorothy L. Moore for the purpose of taking testimony with respect to the issues raised by this petition. On July 3, 1973, the Regional Director for Region 4 issued an order transferring the case to the National Labor Relations Board. Thereafter, the Employer filed a brief and Petitioner filed a memorandum.

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

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.<sup>1</sup>

Upon the entire record in this case, including the parties' brief and memorandum, the Board finds:

The Employer, a Pennsylvania corporation, is engaged in the manufacture, sale, and servicing of electrical and related products. This proceeding is concerned with the Employer's engineering operations in the Lester, Pennsylvania, area. At the time of the hearing, the Employer conducted operations at its Lester plant, at the Argal (also called Baldwin-Lima-Hamilton) Building, and at Widener College. The latter two locations are 3 and 10 miles distant, respectively, from the Lester plant.

Petitioner was certified in 1950 as the collective-bargaining representative of a unit of engineers and other professional employees at the Employer's South Philadelphia Works. The unit described in the collective-bargaining agreement between the Employer and the Petitioner is as follows:<sup>2</sup>

All engineers, negotiation engineers, industrial engineers, data processing engineers, headquarters service engineers, equipment engineers, plant layout engineer specialists, production control analysts, office method analysts, lab, or material engineers, market analysts, buyers, and the librarian of the Westinghouse Electric Corporation located at the Lester Plant, Tincum Township, Delaware County, Pennsylvania including such employees of said location assigned to temporary facilities at the Argal Building, Borough of Eddystone, Delaware County, Pennsylvania, leased by the Westinghouse Electric Corporation but excluding all nonexempt clerical and technical salaried employees, all hourly paid production and maintenance employees, guards, manufacturing engineers, all Industrial Relations Department employees, and supervisors as defined in the Act, as amended.

Petitioner contends that it is entitled to represent "all field service engineers" in the Employer's Power Generation Service Division, located at or working out of the Argal Building and Widener College, a classification for which the Employer refuses to grant it recognition. It argues that its 1950 Board certification as representative of "all engineers" at the Lester location included the field service engineers, that in the past the Employer has considered that classification as included in the unit, that the 1954 decision of the Board in *Westinghouse Electric Corporation*, 110 NLRB 387, clarified the certified unit to hold that field service engineers are included in that unit, and that the Union has assumed their inclusion from that time. It also argues that the field service engineers should be included in the unit by accretion because they perform work similar to that of headquarters service engineers, who are included in the unit.

The Employer argues that the bargaining unit, originally certified by the Board in 1950, did not specify field service engineers, that this classification has been in existence since before 1950 and has not been considered as included in the unit, that the parties' changes in the unit description, made by agreement after the 1950 certification, never included field service engineers and that Board decisions after 1950 have not held that they were so included. It is the Employer's position that, because the field service engineers have been excluded from the unit for such a long period, the disputed employees are entitled to an election on the question of inclusion.

<sup>1</sup> We find no prejudicial error in the Hearing Officer's ruling denying Petitioner's motion to amend its petition to read "all engineers." Petitioner's unit clarification request is clear on the record that it desires to include in the unit those employees in the Power Generation Service Division whom the Employer has classified as "field service engineers," the group set out in the petition. Petitioner's argument in support of its petition, that "all

engineers" are included in its certified unit, has been fully considered.

<sup>2</sup> The bargaining unit is described in "Lester Divisions Local Supplement No 1" (Employer's Exh. 1, dated September 16, 1971). It is a supplement to the parties' collective-bargaining agreement, dated February 28, 1970, effective to June 10, 1973

The Employer's facilities in the Lester or South Philadelphia area include the Power Generation Service Division, the Heat Transfer Division, the Steam Turbine Division, and the Gas Turbine Systems Division. Some administrative responsibilities of the latter two divisions are performed in the Argal Building. The Power Generation Service Division has employees at both the Argal Building and at Widener College.

The Power Generation Service Division is responsible for the installation, repair, and maintenance of steam, gas, heat, and other apparatus manufactured by the Employer. Through the years these service functions have been performed by variously named departments. Before 1959, they were performed in a department known as Engineering and Service with some technical direction from Lester for steam service (or field service) engineers. Thereafter, the service and engineering functions were separated and carried out separately in various regions of the world. In 1962 they were carried out by the Steam Service Department which was then organized with headquarters at Lester. In 1963 or 1964 that department undertook the training of field service engineers and customers. In 1965 the Steam Service Department became the Power Generation Service Department, and, in 1971, the Power Generation Service Division. At the time of the hearing, the division had a general manager and a headquarters staff at the Argal Building.<sup>3</sup> The seven area managers of field operations report to the general manager. Four to seven district managers in each district report to an area manager. Some field service engineers report to district managers.

The field engineers whom Petitioner contends are in its Lester area contract unit include approximately 55 who work at field sites but administratively report to the Argal Building. Fourteen other field service engineers whom Petitioner contends are in the unit work daily at the Argal Building, and six work at Widener College.

The work of field service engineers relates to the installation, repair, and maintenance of the Employer's products in the field. The duties of the 55 who work in the field and report to the Argal Building are the same as those field service engineers at field jobsites who report to district managers. Those who work at the Argal Building, including the two installation engineers, answer questions of field service employees who work at outlying jobsites. They are in daily contact with such employees and they spend about 10 percent of their time in the field. Those who work at Widener College write manuals

and conduct training programs for other field service engineers and for customers. Those engaged in customer instruction spend about 90 percent of their time in the field. Those who train employees spend a majority of their time at Widener. Field service engineers working at the Argal Building and Widener College have usually been transferred there from field work and are expected to return to the field or a district office, or to be chosen for another, often executive, assignment.

Field service engineers have worked at and out of the Lester location years before Petitioner was certified. The record shows that such employees, called steam service engineers, were at Lester as early as 1936. There is no showing that they have ever been represented. In 1953 a group of field service engineers, who had been located at the Employer's Walnut Street, Philadelphia plant, moved to Lester and were represented by Petitioner as a separate group. The Walnut Street group eventually moved from Lester to the Employer's Springfield, Pennsylvania, plant, and Petitioner has continued to represent them at Springfield.

The Board has not included other of the field service employees in any unit determination at the Lester plant. The voting group in which the Board directed an election in 1950 did not specifically include them. It included "all engineers, [and] negotiation correspondents."<sup>4</sup> *Westinghouse Electric Corporation*, 89 NLRB 8, 31. A footnote statement that this description included "any other engineers with similar professional qualifications" necessarily referred to the other engineers named by classification earlier in the Decision, i.e., "general engineers, design engineers, development engineers, laboratory or materials engineers, headquarters engineers, plant layout engineers, standards engineers, drawing list engineers, shop contact engineers and junior engineers." 89 NLRB at 29. There is no evidence that Petitioner sought the field service engineers or that they voted in the 1950 election.

A later Board decision in *Westinghouse Electric Corporation*, 98 NLRB 463 (1952), directing an election for a special group of field service engineers who reported to the Lester location, underlined the fact that all engineers had not been included in the 1950 unit finding. In that case, the petitioner (the same union petitioner in this case) sought to represent a group of aviation gas turbine division field service engineers who were located in various parts of the country at government aviation stations, but who reported to the field service department at Lester. The Board directed an election in this voting

<sup>3</sup> The Employer's manager of administrative services, D R. Bryan, Jr., testified that the Power Generation Service Division would move in the near future to Broomall, Pennsylvania.

<sup>4</sup> "Negotiation correspondents" was an engineer classification in the Sales Department. 89 NLRB at 29. The unit finding in the 1950 case excluded "manufacturing engineers."

group at the Lester location. The Board found that the group had not previously been represented. Petitioner at the hearing in this case admitted that the group had not been included in the 1950 Decision and Direction of Election. Petitioner won the election among the aviation field service engineers and thereafter represented that group. Petitioner had sought no other field service employees working at or out of Lester.

The Board's subsequent decision in *Westinghouse Electric Corporation*, 110 NLRB 387 (1954), did not settle the unit placement of the field service engineers who, Petitioner argues, were included in the certified unit. In that case, the Board dismissed a petition for an election in a group of 75 field service engineers located at Lester, 42 of whom had transferred from the Employer's Walnut Street, Philadelphia plant. The Board observed that the remaining 33 electric and steam service engineers sought at Lester had not been represented by any union. The Board dismissed the petition on the ground that there was an existing professional engineer unit at Lester, that the Walnut Street group had been represented since its transfer to Lester by the union which represented other professional engineers at Lester (the Petitioner here), and that the remaining unrepresented field service engineers for whom an election was sought had common interests with the represented engineers at the Lester plant.<sup>5</sup>

Petitioner argues that the Board should hold that the field service employees have been accreted to the

unit because their work, like that of the headquarters engineers who were specifically included in the 1950 certification, is connected with field service generally. Headquarters service engineers, unlike the field service engineers who are the subject of the petition for clarification, rarely are in contact with field service engineers but are in contact with the district managers. While the work of both groups relates to the installation and repair of the Employer's products, it appears that some field service engineers have worked at and out of Lester since before Petitioner's 1950 certification and others, engaged in training duties, have performed such work for about 10 years. Petitioner has not previously represented the group and post-1950 collective-bargaining agreements between the parties have not included them.

We find that the long period of the field service employees' exclusion from the bargaining unit requires that the issues raised be resolved by a 9(c)(1) election proceeding.<sup>6</sup> We conclude that the request for the inclusion of the field service engineers in the unit at this late date raises a question concerning representation which may not be resolved in a unit clarification proceeding. Accordingly, we shall dismiss the petition.

#### ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.

<sup>5</sup> A 1953 Board Order Denying Motion to clarify a certification, filed by the union that had represented the field service employees at Walnut Street, did not bear on the unit placement of the field service engineers sought in the subject case. *Westinghouse Electric Corporation*, Case R-5789

(4-R-1140). Unpublished order without opinion, October 14, 1953.

<sup>6</sup> *Lufkin Foundry and Machine Company*, 174 NLRB 556; *Plough, Inc.*, 203 NLRB No. 132, and cases cited at fn. 4 therein