

Westinghouse Electric Corporation and International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC Case 5-CA-7585

June 16, 1976

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND WALTHER

Upon a charge filed on October 14, 1975, by International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, herein called the Union, and duly served on Westinghouse Electric Corporation, herein called the Respondent, the Acting General Counsel, herein called the General Counsel, of the National Labor Relations Board, by the Regional Director for Region 5, issued a complaint and notice of hearing on October 31, 1975, amended on December 16, 1975, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce 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, complaint and amended complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the amended complaint alleges in substance that on April 11, 1975, following a Board election in Case 5-RC-8924, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate,¹ and that, commencing on or about April 15, 1975, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. Respondent filed its answers to the complaint and amended complaint, admitting in part, and denying in part, the allegations in the complaint.

On February 2, 1976, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 18, 1976, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause

¹ Official notice is taken of the record in the representation proceeding Case 5-RC-8924 as the term record is defined in Secs 102.68 and 102.69(g) of the Board's Rules and Regulations Series 8 as amended. See *LTV Electrosystems Inc* 166 NLRB 938 (1967) enf'd 388 F.2d 683 (CA 4 1968) *Golden Age Beverage Co* 167 NLRB 151 (1967) enf'd 415 F.2d 26 (CA 5 1969) *Intertype Co v Penello* 269 F.Supp. 573 (DC Va 1967) *Follett Corp* 164 NLRB 378 (1967) enf'd 397 F.2d 91 (CA 7 1968) Sec 9(d) of the NLRA.

why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause, entitled "Memorandum in Opposition to Petitioner's Motion for Summary Judgment." Subsequently, the Union filed motions for leave to respond to Respondent's memorandum and to strike the affidavit of D L Dotson which was attached to Respondent's memorandum.²

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.

Upon the entire record in this proceeding, the Board makes the following

Ruling on the Motion for Summary Judgment

In its answers to the complaint and the amended complaint, and in its response to the Notice To Show Cause, Respondent admits its refusal to bargain but attacks the propriety of the Union's certification in the underlying representation case. Respondent contends the Board erred in setting aside the first election, which the Union lost, and further contends Respondent was denied due process by the denial of its motion for specification of certain of the Union's objections to the first election and by certain of the Hearing Officer's rulings at the hearing on the Union's objections to the first election.

Review of the record herein, including the record in Case 5-RC-8924, reveals that, pursuant to a Stipulation for Certification Upon Consent Election, an election was held on June 12 and 13, 1974, which the Union lost. The Union filed timely objections to conduct affecting the results of the election alleging, in substance, (1) threats, coercion, and intimidation by named and unnamed supervisors, (2) interrogation by named and unnamed supervisors, (3) posting of a pay increase notice in the voting area, and (4) a discriminatory no-solicitation rule. After investigation, on September 18, 1974, the Regional Director issued his report on objections and notice of hearing in which he recommended that the "pay increase" and "no-solicitation rule" objections be overruled, and directed a hearing on the Union's other objections.³

On September 24, 1974, Respondent moved the Regional Director that the Union be directed to inform Respondent, by October 3, 1974, of the names

² In view of our determination hereinafter we find it unnecessary to rule on the Union's motions for leave to respond and to strike the Dotson affidavit or on Respondent's alternative request for an evidentiary hearing thereon.

³ The Board on October 8, 1974, adopted the Regional Director's recommendations and ordered that the issues raised with respect to the Union's other objections be processed pursuant to the notice of hearing.

of the unnamed supervisors and the times of all events and conversations referred to in the Union's objections or, alternatively, that the Regional Director amend his report to recommend that these objections be overruled. Thereafter, on September 27, 1974, Respondent filed with the Board in Washington, D C, a request for review of any ruling of the Regional Director which may be adverse to Respondent's motion for particulars. On September 30, 1974, the Acting Regional Director referred Respondent's motion to the Hearing Officer for ruling. Respondent, on October 4, 1974, supplemented its September 27 request for review, asserting that the referral, in effect, denied its motion for particulars.⁴ Treating Respondent's request for review as a request for special permission to appeal from the ruling referring the motion for particulars to the Hearing Officer, the Board, by telegraphic order dated October 9, 1974, denied such request as lacking in merit.

At the hearing, the Hearing Officer denied Respondent's motion for particulars and, in general, ruled adversely to Respondent's various attempts to exclude testimony as to the conduct of supervisors not named in the Union's objections and to its requests for recesses. Following the conclusion of the hearing, the Hearing Officer issued her report on objections in which she recommended that certain of the Union's objections involving supervisory conduct be sustained and that the election be set aside. Respondent filed timely exceptions to the report, contending, *inter alia*, that the Hearing Officer erred in sustaining these objections and that, due to the Hearing Officer's rulings, Respondent was not given a full opportunity to participate in the hearing and to examine and cross-examine witnesses. The Board considered Respondent's exceptions and the Union's statement of position and, on February 25, 1975, issued its Decision and Direction of Second Election in which it adopted the Hearing Officer's findings and recommendations, except in certain respects not relevant herein, set aside the election, and directed that a second election be held.

The second election was held on April 2 and 3, 1975, which the Union won. On April 11, 1975, in the absence of objections to the election, the Regional Director issued a Certification of Representative in which he certified the Union as the exclusive collective-bargaining representative for an appropriate unit of Respondent's employees.

⁴ By this supplement the Respondent also requested that the Regional Director postpone the hearing scheduled for October 9, 1974 until Respondent is given at least 10 days' notice of the information requested or until a reasonable time following disposition of the request for review. On October 8, 1974, the Regional Director denied the request for postponement of the hearing.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁵

Except as hereinafter discussed, all issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

On May 3, 1976, Respondent filed a supplement to Respondent's memorandum in opposition to Petitioner's Motion for Summary Judgment. Respondent cites the recent Board decision granting a motion for a bill of particulars in *Blue Bell, Inc.—Hicks Ponder Division*, Cases 23-RC-4272 and 23-RC-4306, as supportive of its position that the denial of particulars, relating to the alleged objectionable conduct of unnamed supervisors, in the underlying representation case constituted a deprivation of due process and equal protection of the law. It contends there are no substantive differences between the facts in *Blue Bell* and those in the instant case.

After review of the record in *Blue Bell*, of which we take judicial notice, we find Respondent's contentions to be without merit. As our telegraphic order in *Blue Bell* indicates, the Board therein directed particulars only with respect to the employer's general conclusory objection in Case 23-RC-4306⁶ which was necessary for adequate preparation for a hearing. That objection was much less specific and detailed than were the Union's objections in the representation proceeding herein, with respect to which particulars were not deemed to be essential for adequate preparation for a hearing. In these circumstances, we conclude that the denial of particulars in the underlying representation case did not constitute a denial of due process or of equal protection of the

⁵ See *Pittsburgh Plate Glass Co v NLRB*, 313 U.S. 146, 162 (1941). Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

⁶ The Employer's objection in *Blue Bell* as to which particulars were granted follows:

The Petitioner by and through its officers, representatives and agents threatened employees engaged in gross falsehoods and misrepresentations and injected class race and religious hostilities in its effort to successfully deny the voters an opportunity to exercise a free and untrammelled choice in the election.

By these and other acts and conduct the Petitioner completely destroyed the atmosphere and laboratory conditions required by the Board for the exercise of a free and uncoerced choice by the voters in an NLRB election.

law We shall, accordingly, grant the Motion for Summary Judgment

On the basis of the entire record, the Board makes the following

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

Respondent, a Pennsylvania corporation, is engaged in the manufacture of magnet wire at its Abingdon, Virginia, facility. During the preceding 12 months, a representative period, Respondent sold and shipped, in interstate commerce, materials and supplies valued in excess of \$50,000 to points located outside the Commonwealth of Virginia.

We find, on the basis of the foregoing, 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, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II THE LABOR ORGANIZATION INVOLVED

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, 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 of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

All production and maintenance employees employed by Respondent at its Wire Division facility located at Abingdon, Virginia, but excluding all office clerical employees, professional employees, sales employees, technical employees, guards, and supervisors as defined in the Act, as amended.

2 The certification

On April 2 and 3, 1975, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 5, designated the Union as their representative for the purpose of collective bargain-

ing with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on April 11, 1975, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B *The Request To Bargain and Respondent's Refusal*⁷

Commencing on or about April 15, 1975, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit, and has requested that Respondent honor the terms and conditions of section I, paragraph 2, of the national agreement between the Respondent and the Union which provides for the inclusion of certified units of Respondent's employees within the coverage of the national agreement as of the date of certification.⁸ Commencing on or about April 15, 1975, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit and has refused to honor the terms and conditions of section I, paragraph 2 of the national agreement between the Respondent and the Union.

Accordingly, we find that the Respondent has, since April 15, 1975, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and has refused to honor the terms and conditions of section I, paragraph 2, of the national agreement between the Respondent and the Union, and that, by such refusals, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.⁹

⁷ The Union's request and Respondent's refusal to bargain are established by copies of letters dated April 15, 1975, which are attached to the General Counsel's Motion for Summary Judgment as exhs. 21 and 23, respectively, which stand uncontroverted.

⁸ Sec. I, par. 2 of the Agreement and Pension and Insurance Agreement between Westinghouse Electric Corporation and International Union of Electrical, Radio and Machine Workers (AFL-CIO-CLC) provides as follows:

Any units for which the Union or any of its Locals shall be lawfully certified by the National Labor Relations Board as exclusive bargaining representative shall upon assent in writing to this Agreement by such representative be included in and covered by this Agreement as of the date of certification, except that either party may withhold the application of those portions of this Agreement considered inapplicable to such units by giving written notice to the other party within thirty (30) days of such representative's assent.

⁹ See *S. B. Rest of Framingham, Inc.*, a wholly owned subsidiary of *Steak & Brew, Inc.*, 221 NLRB 506 (1975); *Houston Division of the Kroger Co.*, 219 NLRB 388 (1975).

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON
COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its 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 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, and, if an understanding is reached, embody such understanding in a signed agreement. We shall further order that it honor the terms and conditions of section I, paragraph 2, of the national agreement between the Respondent and the Union by including the certified appropriate unit of Respondent's Abingdon, Virginia, employees within the coverage of the national agreement as of the date of certification, April 11, 1975

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (C.A. 5, 1964), *cert. denied* 379 U.S. 817 (1964), *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (C.A. 10, 1965)

The Board, upon the basis of the foregoing facts and the entire record, makes the following

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, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act

3 All production and maintenance employees employed by Respondent at its Wire Division facility

located at Abingdon, Virginia, but excluding all office clerical employees, professional employees, sales employees, technical employees, guards, and supervisors as defined in the Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act

4 Since April 11, 1975, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act

5 By refusing on or about April 15, 1975, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act

6 By refusing on or about April 15, 1975, and at all times thereafter, to honor the terms and conditions of section 1, paragraph 2, of the national agreement between the Respondent and the Union by including the certified appropriate unit of Respondent's Abingdon, Virginia, employees within the coverage of the national agreement as of the date of certification, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act

7 By the aforesaid refusals to bargain and to honor the terms and conditions of section I, paragraph 2, of the national agreement between Respondent and the Union, 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 thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act

8 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 Respondent, Westinghouse Electric Corporation, Abingdon, Virginia, its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union of

Electrical, Radio and Machine Workers, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit

All production and maintenance employees employed by Respondent at its Wire Division facility located at Abingdon, Virginia, but excluding all office clerical employees, professional employees, sales employees, technical employees, guards, and supervisors as defined in the Act, as amended

(b) Refusing to honor the terms and conditions of section I, paragraph 2, of the national agreement between Respondent and the Union by including the certified appropriate unit of Respondent's Abingdon, Virginia, employees within the coverage of the national agreement as of the date of certification, April 11, 1975

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in 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 all employees 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) Upon request, honor the terms and conditions of section I, paragraph 2, of the national agreement between Respondent and the Union by including the certified appropriate unit of Respondent's Abingdon, Virginia, employees within the coverage of the national agreement as of the date of certification, April 11, 1975

(c) Post at its Abingdon, Virginia, facility copies of the attached notice marked "Appendix"¹⁰ Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, 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

¹⁰ In the event that this Order is enforced by a Judgment of a United States Court of Appeals the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

(d) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, as the exclusive representative of the employees in the bargaining unit described below

WE WILL NOT refuse to honor the terms and conditions of section I, paragraph 2, of the national agreement between Westinghouse Electric Corporation and the above-named Union by including the employees in the certified bargaining unit described below within the coverage of the national agreement as of the date of certification, April 11, 1975

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 all employees 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 production and maintenance employees employed by Respondent at its Wire Division facility located at Abingdon, Virginia, but excluding all office clerical employees, professional employees, sales employees, technical employees, guards, and supervisors as defined in the Act, as amended

WE WILL, upon request, honor the terms and conditions of section I, paragraph 2, of the national agreement between Westinghouse Electric Corporation and the above-named Union by including the employees in the above-described certified bargaining unit within the coverage of the national agreement as of the date of certification, April 11, 1975

WESTINGHOUSE ELECTRIC CORPORATION