Westinghouse Electric Corporation *and* Robert J. Hurtt, Petitioner and International Union of Electrical Radio & Machine Workers, AFL–CIO–CLC and its Local 186.[1] Case 11–RD–247

January 31, 1977

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer George Carson on July 28 and 29 and August 11, 12, and 13, 1976, and before Hearing Officer Martin Ball on September 1, 1976. Following the hearing, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, this case was transferred to the National Labor Relations Board for decision. Thereafter, Petitioner, Employer, and the International Union of Electrical, Radio & Machine Workers, AFL–CIO–CLC (hereafter Union or IUE) filed briefs.[2] The Union also filed a motion to dismiss which the Employer and Petitioner have opposed.

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. The rulings are hereby affirmed.

Upon the entire record in this case, including the briefs, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner, an employee of the Employer, asserts that the Union, a labor organization, is no longer the representative, as defined in Section 9(a) of the Act, of the employees designated in the petition.

3. The Petitioner seeks to decertify the Union as the representative of all production and maintenance employees of the Employer at its Charlotte, North Carolina, Apparatus Service Plant, but excluding professional, technical, and office clerical employees, guards, and supervisors as defined in the Act. The Union contends that the petition should be dismissed because the unit in which the Petitioner seeks an election is not coextensive with the recognized multiplant collective-bargaining unit. The Employer and the Petitioner claim that the individually certified bargaining unit is the appropriate unit in which the election should be held.

The record shows that on March 21, 1975, the Union was certified as the bargaining agent for all production and maintenance employees at the Charlotte plant. Subsequently, on March 25, 1975, pursuant to section I of a preexisting national agreement, executed by the Employer and the Union, the president and secretary of the Union assented to the application of the national agreement to the employees in the Charlotte unit. (Details of the national agreement will be discussed below.) In a letter dated April 2, 1975, the Employer acknowledged the Union's assent. Thereafter, on May 5, 1976, the decertification petition in this case was timely filed with the National Labor Relations Board.

Since 1951, the Union or its locals have been certified by the Board as bargaining agent for units of Westinghouse employees on a plant-by-plant basis. In that year, the IUE-Westinghouse Conference Board was established, pursuant to a constitutional provision, "for the purpose of coordinating the collective-bargaining activities of local unions which . . . deal with employers having many plants . . . ." According to the Union's constitution, the Conference Board is to consist of delegates from each of the locals falling within the Board's jurisdiction. The number of delegates from each local varies from one to four, depending on the number of employees represented by the local. These delegates, in turn, elect a negotiating committee, in this case consisting of 12 individuals, who meet with representatives of the Employer at a centralized location and negotiate the terms of a national agreement. After an agreement is tentatively drafted, the Conference Board meets and decides whether it should be ratified. If the Conference Board decides to ratify the agreement, its terms become applicable to all local units under the jurisdiction of the Conference Board, without exception.

At the time the Charlotte unit first joined the other units covered by the Westinghouse-IUE national agreement, section XX of the 1973–76 agreement was in force. That section states, "This Agreement expresses the understanding of the parties in respect to matters deemed by them to be Company-wide and generally applicable to the various collective-bargaining units. . . ." In this same section, the national agreement also provides for the creation of supplements, negotiated locally, as follows:

[1] The name of the Union appears as amended at the hearing.

[2] The United Electrical, Radio and Machine Workers of America and the International Brotherhood of Electrical Workers, AFL–CIO, intervened in this proceeding. Neither organization appeared at the hearing, but an *amicus curiae* brief was filed by the United Electrical, Radio and Machine Workers of America

> All agreements made locally, other than agreements as to settlement of specific grievances, shall be embodied in local supplements to this Agreement, agreed upon by the respective Locals and local Managements. Such local supplements shall be in writing and shall cover the procedures for administering the provisions contained in this Agreement and other items of collective bargaining not Company-wide in character and generally applicable to the various collective bargaining units.

Matters negotiated but not agreed upon at the national level are subject to further negotiation at the local level. National representatives of both parties are sometimes present during local negotiations, but their presence is not required. Since the local supplements are subordinate to the national agreement, the Conference Board has the authority to review and approve the local supplements. However, the scope of review is limited to determining only whether the local supplements conflict with the terms of the national agreement.

The Westinghouse national agreement covers such substantive terms as general wage increases, cost-of-living adjustments, overtime pay, holidays, vacations, a four-stage grievance procedure, arbitration, hours of work, a limited no-strike provision, and general seniority rules. Under the terms of the recognition provision in the agreement:

> The Company agrees to recognize the Union, on behalf of and in conjunction with its locals, for those units where the Union or its locals, through a lawful National Labor Relations Board certification, have been lawfully designated as the exclusive bargaining representative for the purposes of collective bargaining. . . .

The national agreement uniformly refers to the locations within its coverage as "units," and an appendix lists and describes these units in detail.

There is also a provision describing the procedure to be followed for the inclusion of additional units which become certified after the ratification of the national agreement. In pertinent part, it provides:

> Any units for which the Union or any of its Locals shall be lawfully certified by the National Labor Relations Board as the 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 of the other party within thirty (30) days of such representatives' assent.

It was through the application of this assent procedure that the Charlotte local first joined the units covered by the national agreement. The local supplements that have been agreed upon concerning the Charlotte plant cover such matters as the progression in wage rates for new employees, shift hours, composition of the local bargaining committee, the recognized bargaining unit, and specific procedures involving overtime, grievances, and seniority. Wage rates were established locally.

During national negotiations, strikes may be called by the Conference Board. If this should occur, all locals would be obligated to obey the Conference Board's instructions in this regard. During local negotiations or as a result of unresolved grievances, strikes also may be called by the locals on a single plant basis. The Union's constitution states that locals may not strike without the prior authorization of the IUE president, but this provision applies to all units, whether or not they are under the jurisdiction of a national agreement. Additionally, article XVI of the constitution provides:

> A strike duly called by a local union or by a Conference Board on behalf of its component locals under its rules, and in accordance with the terms of a collective bargaining agreement or following the termination thereof, shall be deemed to be authorized.

Under another provision in the national agreement, the termination of the national agreement automatically terminates all local supplements. However, if an individual unit exercises its right to strike over the terms of a local supplement, section XX of the agreement applies:

> Either the Company or the Union shall have the right to terminate this Agreement and all local supplements insofar as they apply to such bargaining unit or units upon giving the other party not less than three (3) days written notice of such termination during the continuation of such strike.

Neither party to the agreement has ever attempted to use this termination procedure.

Based on the foregoing facts, we are not persuaded that Local 186 has retained a sufficiently separate, independent bargaining position from the other locals comprising the Conference Board in matters of collective bargaining for the employees at the Charlotte, North Carolina, Apparatus Service Plant to be considered a separate unit at this time. Rather, we are

of the opinion that Local 186 of the Union has engaged in multiunion bargaining with the other union locals and that the said employees have been merged into a single multiplant unit.

In making this decision, we note that this case closely parallels *General Electric Company,* 180 NLRB 1094 (1970). In that decision, the Board dismissed a decertification petition for a single plant unit of General Electric employees represented by the same union involved in the instant petition. There, a structurally identical conference board also had been created in 1951 covering all union employees of General Electric. In both cases the same union constitution defined the negotiating power of the Conference Board, its relation to the various locals, and provided that only the Conference Board could ratify the national agreement. Furthermore, the resulting national agreement between the Union and General Electric covering the latter's employees is in many respects similar to the Westinghouse agreement. Both agreements provide for wage increases,[3] working hours, vacations, holidays, a grievance and arbitration procedure, and subordinate supplemental agreements. The differences in the terms of the two national agreements, while not insubstantial, are not so great as to warrant a contrary finding here on the issue of merger.[4]

Moreover, it is clear that the Westinghouse Conference Board is the preeminent collective-bargaining agent for all employees represented by the Union at Westinghouse. Each local is represented on the board, but all decisions are rendered collectively. The record reveals that it is the Union's officers and not local agents who make the decision whether to include newly certified local units and that the decision has uniformly been in favor of adding newly certified units. The national agreement itself states that no local supplements may conflict with it and that the agreement covers all companywide terms. It is evident that the parties also may place in the agreement terms that vary in their application to individual plants. For example, in the 1976–79 national agreement, a term was added providing for a special skills increase that varied greatly in its application to different plants. It therefore is evident that the national agreement is not limited in the scope of its application, and may contain terms both national in scope and those of only local consequence. Such an agreement in not "merely a basic agreement for convenience in bargaining for whatever local units may be represented by the Union." *Radio Corporation of America,* 121 NLRB 633, 644 (1958).

It is true that the national agreement repeatedly refers to "units." However, neither the presence of such references nor the general provision for local supplements is inconsistent with a finding of multiplant bargaining. *Atlantic Richfield Company,* 208 NLRB 142, 144 (1974); *General Electric Company, supra.*

Furthermore, the failure of the Union to raise the merger argument regarding prior decertification petitions at single plants, and in cases involving elections where it is the incumbent representative, does not prevent the Union from raising the issue at this juncture. All proceedings cited by the Employer on this point are too remote in time, the latest of those proceedings occurring in 1963, to have much bearing on this case.

While we are not unmindful that the unit involved here was certified only 14 months prior to the filing of the decertification petition, we conclude that this fact does not preclude a finding of merger. At the hearing, there was uncontradicted evidence that copies of the national agreement were widely distributed prior to the representation election and that the coverage of the Charlotte employees was a key element of the representation campaign. There is no evidence that the Charlotte unit resisted in any way its amalgamation with the other groups or employees. While *General Electric, supra,* did not indicate the length of the bargaining history of the individual unit there involved, other Board decisions have found that mergers of separate bargaining units have occurred as a result of multiplant agreements in timespans of little more than a year. *Gould-National Batteries, Inc.,* 150 NLRB 418 (1964); *Owens-Illinois Glass Company,* 108 NLRB 947 (1954). We are therefore of the opinion that the employees of the Charlotte unit had sufficient notice that the unit's inclusion within the national agreement would entail a merger with a multiplant unit.

In view of the foregoing, we conclude that the record establishes a controlling history of multiplant bargaining resulting in the establishment of a single multiplant unit embracing all those plants of the Employer in which the Union through its Conference Board has been recognized as the exclusive bargain-

[3] In *General Electric* wage rates were negotiated locally, and general wage increases were negotiated nationally

[4] Under the *General Electric* agreement newly certified units were automatically included within the coverage of the agreement The Westinghouse agreement merely provides that the Union may assent to the inclusion of a newly certified local under the national agreement. The unilateral nature of this provision, together with its consistent application to all newly certified bargaining units, render the two provisions essentially identical. Second, the *General Electric* agreement did not list the local units covered in as much detail as in the Westinghouse agreement. In both agreements the location, the local involved, and a description of employees represented are listed Any distinction between the two documents in this regard are merely stylistic. Finally, in the *General Electric* agreement, there was no provision for strikes at the local level or for the possible termination of the agreement at such striking units. We do not consider that this sole distinction outweighs all of the similarities between the two agreements.

ing agent and which are covered by the national agreement. We shall therefore dismiss the petition since it is not coextensive with the recognized and established bargaining unit.

ORDER

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