

In the Matter of WESTINGHOUSE AIRBRAKE COMPANY and UNITED  
ELECTRIC AND RADIO WORKERS OF AMERICA, RAILWAY EQUIPMENT  
WORKERS LOCAL No. 610

*Case No. R-282.—Decided December 4, 1937*

*Air Brake and Machinery Industry—Investigation of Representatives: controversy concerning representation of employees: substantial doubt as to majority status; refusal of employer to recognize and bargain with union until question of representation is determined by Board—Unit Appropriate for Collective Bargaining: production and maintenance employees, excluding engineering, clerical, and medical employees; occupational differences, dissimilarity of interests; eligibility for membership in both rival organizations—Election Ordered—Certification of Representatives.*

DECISION  
AND  
CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On June 16, 1937, United Electrical and Radio Workers of America, Railway Equipment Workers Local No. 610, herein called the U. E. R. W., filed with the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of Westinghouse Airbrake Company, Wilmerding, Pennsylvania, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 20, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 5, 1937, the Regional Director issued a notice of hearing and on August 12, 1937, a notice of change of time of hearing. The Company, the U. E. R. W., and United Employees Association of the Westinghouse Airbrake Company, herein called the Association, a labor organization purporting to represent employees directly affected by the investigation, were duly served with copies of both notices. Pursuant to the notice, the hearing was held at Pittsburgh,

Pennsylvania, on September 9, 1937, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board.

At the hearing the Association filed a petition for leave to intervene and be made a party to the proceeding, and the motion was granted by the Trial Examiner. The Board, the Company, the U. E. R. W., and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all the parties. At the conclusion of the hearing the U. E. R. W. and the Association filed briefs which have been given careful consideration.

During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8, of the Rules and Regulations, issued a Direction of Election on October 22, 1937,<sup>1</sup> in which it found that all the production and maintenance employees of the Company at its Wilmerding, Pennsylvania, plant, except superintendents, foremen, assistant foremen, group leaders, working group leaders, inspectors, clerical employees, and all employees in the engineering and drafting departments, constitute a unit appropriate for the purposes of collective bargaining. Merely for the purpose of expediting the election and thus to insure to the employees of the Company the full benefit of their right to collective bargaining as early as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

Pursuant to an Amendment to the Direction of Election issued October 29, 1937, extending the time for conducting the election ten days, an election by secret ballot was conducted on November 9, 1937, by the Regional Director for the Sixth Region among the employees of the Company constituting the unit found appropriate by the Board. Full opportunity was accorded all the parties to this proceeding to participate in the conduct of the ballot and to make challenges.

On November 6, 1937, the Association filed with the Regional Director for the Sixth Region preliminary objections to the Direction of Election and to the manner of procedure in the conduct of the election determined by the Regional Director. These objections per-

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<sup>1</sup> 3 N L R. B. 867.

ained to the bargaining unit determined by the Board, to the postponement of the election, to the holding of the election outside of the Company's plant, and to the form of the ballot. On November 12, 1937, the Regional Director issued his Intermediate Report upon the secret ballot, which was duly served upon the parties to the proceeding. On November 16, 1937, the Association filed objections to the Intermediate Report; these objections, in addition to repeating those raised in its preliminary objections, pertained to the conduct of the ballot among the Company's employees. No other objections with respect to the conduct of the ballot or to the Intermediate Report were filed. The Regional Director, having found that no substantial and material issues were raised thereby, forwarded the Intermediate Report and the objections of the Association to the Board in Washington, District of Columbia. The Board has given careful consideration to the objections and concurs in the finding of the Regional Director that no substantial and material issues with respect to the conduct of the ballot or to the Intermediate Report are raised thereby.

As to the results of the secret ballot, the Regional Director reported the following:

Total number of ballots cast.....	4455
Total number of blank ballots.....	3
Total number of void ballots.....	5
Total number of ballots cast for United Employees Association of Westinghouse Airbrake Company.....	1908
Total number of ballots cast for United Electrical, Radio and Machine Workers of America, Railway Equipment Workers Local No 610, <sup>1</sup> affiliated with the C I O.....	2369
Total number of ballots cast for neither organization.....	95
Total number of challenged ballots.....	75

<sup>1</sup> Subsequent to the filing of the petition in this proceeding, the parent Union changed its name to United Electrical, Radio and Machine Workers of America. No objection was made to the above corresponding change of name on the ballot.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

The Company, incorporated in Pennsylvania in 1869, has its principal business office and factory at Wilmerding, Pennsylvania. It also maintains sales and service offices in the following cities: New York City; Boston, Massachusetts; Washington, District of Columbia; Atlanta, Georgia; Pittsburgh, Pennsylvania; Chicago, Illinois; St. Paul, Minnesota; Denver, Colorado; Topeka, Kansas, Cleveland, Ohio; St. Louis, Missouri; Houston, Texas; San Francisco, California; Seattle, Washington; Los Angeles, California;

Tokyo, Japan; Mexico City, Mexico; and Sao Paulo, Brazil. The Company wholly owns the following subsidiaries: American Brake Company, National Brake and Electric Company, Westinghouse Air Brake Home Building Company, Westinghouse Pacific Coast Brake Company, and Wilmerding Corporation. The Company also partially owns Union Switch and Signal Company and Westinghouse International Brake and Signal Company.

The Company's principal products are airbrake equipment for steam railroads, electric railways, trucks, and busses. Only two or three other companies in the United States manufacture railroad airbrakes.

It was stipulated by the Company that approximately 58 per cent of the materials purchased by the Company come from states other than Pennsylvania and that 99.9 per cent of these materials are received by railroad. It was also stipulated by the Company that approximately 70 per cent of the finished products are shipped outside the State of Pennsylvania and that 99 per cent are shipped by railroad. The Company's products are shipped to practically every state in the United States and to most of the principal foreign countries.

## II. THE ORGANIZATIONS INVOLVED

United Electrical and Radio Workers of America, Railway Equipment Workers Local No. 610, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership production and maintenance employees of the Company, and excludes supervisory, clerical, and salaried employees.

United Employees Association of the Westinghouse Airbrake Company is a labor organization without outside affiliation. It admits to membership all employees of the Company, except officers and employees in supervisory capacities.

## III. THE QUESTION CONCERNING REPRESENTATION

On May 28, 1937, and June 9, 1937, the U. E. R. W. met with the Company and asked it to recognize that union as the exclusive bargaining representative for the production employees of the Company. This request the Company rejected on the ground that there was another organization within the plant asking for the same rights. On June 10, 1937, the Company posted on its bulletin boards a notice to its employees that it had been approached by two committees, representing two different organizations of its employees, each demanding recognition as exclusive bargaining representative for the employees; the notice announced that, without proof of its authority to represent the workers the Company could recognize neither committee as exclusive representative, and suggested that either group peti-

tion the Board to hold an election whereby the employees could select the organization which they wished to have represent them. On July 2, 1937, the Company wrote to the Regional Director setting forth its position substantially as announced in the above notice and agreeing to an election to be held by the Board, "providing the terms and conditions thereof are mutually acceptable to the two organizations involved."

We find, therefore, that a question has arisen concerning the representation of employees of the Company.

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and with foreign countries, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE APPROPRIATE UNIT

The U. E. R. W. in its original petition stated as the appropriate unit "5000 production workers." At the hearing it amended its petition as to the appropriate unit to read as follows: "all hourly paid and piece-rate production workers, excluding inspectors, excluding all supervisory employees (within this classification, superintendents, foremen, assistant foremen, and group leaders) and excluding all clerical and salaried employees (within this classification, time-study clerks, production clerks, time clerks, and shop clerks)."

The Association contends that the appropriate unit should consist of all nonsupervisory employees of the Company including production, maintenance, engineering and drafting, and clerical employees.

As of August 31, 1937, for the purposes of the issues here involved, the Company's employees at its Wilmerding, Pennsylvania, plant may be classified as follows:

Production employees:	
Supervisory.....	165
Non-supervisory.....	4947
Engineering and drafting employees:	
Supervisory.....	33
Non-supervisory.....	251
Clerical employees:	
Supervisory.....	30
Non-supervisory.....	513
Janitors and miscellaneous general office employees:	
Supervisory.....	0
Non-supervisory.....	23

Hospital department employees:	
Supervisory-----	2
Non-supervisory-----	3
Relief and pension department employees:	
Supervisory-----	2
Non-supervisory-----	19
Officers-----	13
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Total-----	6001
Supervisory-----	245
Non-supervisory-----	5756

The Company's assistant works manager testified that between June 16, 1937, the date of the filing of the petition in this proceeding, and August 31, 1937, the date of the pay roll submitted at the hearing and upon which the above classification of employees is based, no employees were dropped from the pay roll and 94 summer workers were added to the pay roll. These summer workers were taken on during the school vacation period; and between August 31, 1937, and the date of the hearing approximately 50 per cent of these summer workers had left the employ of the Company to return to school.

Neither the U. E. R. W. nor the Association objected to the grouping together of production and maintenance employees. Included among those classified as nonsupervisory production employees are 25 to 30 watchmen, who patrol the plant and check on fire hazards and on persons and vehicles entering or leaving the plant gates; they are unarmed, and are not guards or police officers. The miscellaneous general office employees include wash and scrub women. They together with the janitors are under the supervision of the maintenance department. No facts were presented at the hearing to indicate that all the Company's nonsupervisory production and maintenance employees should not be included within the same bargaining unit.

The record indicates that at the Company's plant group leaders and working group leaders, as well as foremen and assistant foremen, are supervisory employees. The working group leaders, in addition to producing themselves, supervise the work of the other employees in the group; they receive the orders for the group and have the duty of seeing that the workers in the group perform their work properly. Accordingly, group leaders and working group leaders have been excluded from the bargaining unit containing the non-supervisory employees.

The engineering and drafting employees handle the development and testing of new equipment. A substantial number of them are engineers, designers, draftsmen, tracers, and testers, and are university graduates or have received training at technical schools. The economic interests of these employees are on an entirely different plane from those of the production and maintenance workers. Also

included among the nonsupervisory engineering and drafting employees are approximately 40 or 50 semi-skilled mechanics and unskilled workers, who assist the engineers in erecting equipment for testing purposes, and approximately 70 inspectors who, under the direction of the engineering and drafting department, check materials manufactured by the production employees. These employees are an integral part of the engineering and drafting department, and have no community of interest with the production and maintenance employees. Accordingly, all the employees in the Company's engineering and drafting departments have been excluded from the bargaining unit.

The clerical employees of the Company's Wilmerding, Pennsylvania, plant are stationed both at the main office of the Company, which is some distance away from the plant, and at the plant itself. The plant clerical employees include: shop clerks, who take care of handling orders, distribute work sheets, assemble time sheets, and forward them to the cost department; cost clerks, who calculate the cost of various machines and equipment on individual orders; time study men, who check the time required to complete any given operation in the production process, make sure that tools and machines are in proper shape and that conditions are normal for proper production, and indirectly assist in determining rates of pay for production employees; timekeepers, who keep records of the working time of employees and prepare and send these records to the paymaster; production clerks, who check incoming orders, production of orders as they are completed, and disposition of parts; pay office clerks; and purchasing department clerks. The work of the Company's clerical employees brings them into close and intimate relations with its officers, foremen, and other supervisory employees. The dissimilarity in interests between the clerical and the production and maintenance employees in a plant like that of the Company, and the difference in the type of work performed by them, prompt us to exclude the clerical employees from the bargaining unit.

The employees in the hospital and the relief and pension departments are doctors, nurses, and clerks. The dissimilarity of their work, their training, and their interests from those of the production and maintenance employees prompts us to exclude these employees from the unit.

We find that all the production and maintenance employees of the Company at its Wilmerding, Pennsylvania, plant, except superintendents, foremen, assistant foremen, group leaders, working group leaders, inspectors, clerical employees, and all employees in the engineering and drafting departments, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the Company's employees the full benefit of their right to self-

organization and collective bargaining and otherwise to effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

No evidence was introduced at the hearing upon the basis of which we could make a finding that a majority of the employees in the appropriate unit has designated and selected a representative for the purposes of collective bargaining. We, therefore, directed an election by secret ballot to determine their representative.

In accordance with our usual practice, we directed that the employees in the appropriate unit who were on the Company's pay roll for the week including the date of the petition, June 16, 1937, should be eligible to vote in the election.

We find that United Electrical and Radio Workers of America, Railway Equipment Workers Local No. 610, has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

On the basis of the above findings of fact, and upon the entire record in the proceeding, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Westinghouse Airbrake Company at its Wilmerding, Pennsylvania, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the production and maintenance employees of the Company at its Wilmerding, Pennsylvania, plant, except superintendents, foremen, assistant foremen, group leaders, working group leaders, inspectors, clerical employees, and all employees in the engineering and drafting departments, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. United Electrical and Radio Workers of America, Railway Equipment Workers Local No. 610, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

#### CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor



Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Electrical and Radio Workers of America, Railway Equipment Workers Local No. 610 has been designated and selected by a majority of the production and maintenance employees of the Westinghouse Airbrake Company at its Wilmerding, Pennsylvania, plant, except superintendents, foremen, assistant foremen, group leaders, working group leaders, inspectors, clerical employees, and all employees in the engineering and drafting departments, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, United Electrical and Radio Workers of America, Railway Equipment Workers Local No. 610 is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.