

In the Matter of LICORERIA ROSES, INCORPORATED and UNION DE TRABAJADORES DE LA INDUSTRIA LICORERA, ARECIBO LOCAL (C. G. T.)

*Case No. 24-R-13.—Decided April 14, 1944*

*Fiddler, McConnell, and Gonzalez*, by *Mr. Herbert S. McConnell*, of San Juan, P. R., for the Company.

*Mr. Victor M. Bosch*, of San Juan, P. R., for the C. G. T.

*Mr. Hipolito Marciano*, of San Juan, P. R., for the F. L. T.

*Mr. William R. Cameron*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Union de Trabajadores de la Industria Licorera, Arecibo Local, affiliated with the Confederacion General de Trabajadores de Puerto Rico, herein called the C. G. T., alleging that a question affecting commerce had arisen concerning the representation of employees of Licoreria Roses, Incorporated, Arecibo, Puerto Rico, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David Karasick, Trial Examiner. Said hearing was held at Arecibo, Puerto Rico, on February 18, 1944. The Company, the C. G. T., and Union de Trabajadores de la Industria Licorera de Arecibo, affiliated with the Federacion Libre de los Trabajadores de Puerto Rico, herein called the F. L. T., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. At the hearing the Company moved for dismissal of this proceeding on the ground that the definition of commerce as contained in the National Labor Relations Act does not apply to Puerto Rico, and that therefore the Board is without jurisdiction. The Trial Examiner reserved ruling upon this motion for the Board. This motion is hereby denied.<sup>1</sup> The Trial Examiner also reserved ruling on a motion by the F. L. T. for dismissal on the grounds that the C. G. T. had not presented evidence of designation by a substantial

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<sup>1</sup> See *Matter of Ronrico Corporation and Puerto Rico Distilling Company*, 53 N. L. R. B. 1137, and cases therein cited

55 N. L. R. B., No. 240.

number of employees, and that its designations authorized representation by an individual rather than by the C. G. T. For reasons hereinafter appearing this motion is also hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board. The F. L. T. requested oral argument. This request is hereby denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Licoreria Roses, Incorporated, is a Puerto Rico corporation having its principal place of business and only plant at Arecibo, Puerto Rico, where it is engaged in the bottling of distilled spirits for insular consumption and for exportation. During the year 1943 the Company purchased rum from local distilleries, amounting in value to more than \$100,000, and purchased bottling supplies amounting in value to approximately \$108,000, of which 90 percent was obtained from points outside of Puerto Rico. During the same period the Company sold finished products amounting in value to approximately \$1,300,000 inclusive of taxes, of which amount \$800,000 represented shipments to points outside of Puerto Rico. We find, contrary to the contention of the Company, that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Union de Trabajadores de la Industria Licorera, Arecibo Local, is a labor organization affiliated with the Confederacion General de Trabajadores de Puerto Rico, admitting to membership employees of the Company.

Union de Trabajadores de la Industria Licorera de Arecibo is a labor organization affiliated with the Federacion Libre de los Trabajadores de Puerto Rico, which in turn is the State Branch of the American Federation of Labor, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

By letter dated December 20, 1943, the C. G. T. notified the Company of its claim to represent a majority of the Company's employees, and requested a collective bargaining conference. The Company replied by letter of December 21, 1943, that it had a contract with the F. L. T. which would expire on December 31, 1943, and that in view of the conflicting claims of the C. G. T. and the F. L. T. it could not recognize

the C. G. T. unless it was certified as bargaining representative by the Board.

On January 1, 1943, the Company and the F. L. T. entered into a contract in writing for the term of 1 year, with provision for automatic renewal in the absence of written notice for termination to be given by either party to the other not less than 30 days prior to its expiration date. The Company contends that this contract was renewed on January 1, 1944, and is presently in effect. The record discloses that there is some doubt as to whether the automatic renewal clause, correctly interpreted, indicates that following its initial term of 1 year the contract was thereafter to be renewed for successive yearly periods, or whether it was to become of indefinite duration subject to termination at any time by giving of the required notice. Assuming, however, the former interpretation to be correct, the record nevertheless discloses that prior to December 21, 1943, the F. L. T. had presented to the Company the terms of a proposed new collective bargaining agreement, and the Company in its letter to the C. G. T., above-mentioned, stated that its contract with the F. L. T. would terminate on December 31, 1943. Inasmuch as the parties themselves had evinced their intent to waive the operative effect of the automatic renewal clause, and to treat the contract as terminable on December 31, 1943, we find that the claim of the C. G. T. made shortly prior to the expiration date of the 1943 contract was timely and that the contract is not a bar to a determination of representatives in this proceeding.

A statement of the Field Examiner introduced in evidence and of the Trial Examiner read into the record at the hearing indicate that the C. G. T. represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>2</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

The parties are agreed that the appropriate unit comprises all employees of the Company, excluding executive, administrative, office and clerical employees, watchmen, and supervisors. A question arose at the hearing, however, concerning blending room assistants, whom

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<sup>2</sup> The Field Examiner reported that the C. G. T. submitted a petition containing 39 signatures, of which 37 were the names of persons on the Company's pay rolls for December 15 and 22, 1943, containing the names of 116 permanent, temporary and part-time employees. The Trial Examiner stated that of 45 employees listed on the above pay rolls as permanent employees the C. G. T. appeared to have been designated by 14, and of 71 listed as temporary employees the C. G. T. appeared to have been designated by 23. Although the petition was in the form of collective bargaining authorization to an individual rather than to a labor organization, the record clearly discloses that such authorization was intended to be of the individual solely in his representative capacity, and we therefore find that it effectively indicates designation of the C. G. T.

The F. L. T. relies upon its contract as sufficiently establishing its interest.

the C. G. T. and the F. L. T. would include, but whom the Company contends should be excluded on the ground that they bear a confidential relationship to management.

The Company employs two blending room assistants whose duty it is to blend rum, under the direction and supervision of the Company's chemist. Although considerable training is necessary for the proper performance of their duties, no technical education is required. They are not given information concerning the Company's blending formulas, but acquire some familiarity therewith through experience in the performance of their work. Although they may thus possess some information which the Company considers to be in the nature of trade secrets, it does not appear that they possess any confidential information relating to the Company's labor relations. In view of the foregoing, we shall include the blending room assistants.

We find that all employees of the Company, including blending room assistants, but excluding executive, administrative, office and clerical employees, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

Since July 1943, at which time the Company began the bottling of rum for export purposes, the Company has frequently employed numerous employees additional to those whom it regularly employs when preparing rum only for insular consumption. Such extra employees, although considerable in number, have nevertheless been hired only for short periods of temporary employment and, because of factors in the Company's business, relating to the availability of bottling supplies and shipping space, their periods of employment have been at irregular intervals and of varying duration. It is the Company's practice, when additional employees are needed, to cause notice of this fact to be circulated in the community by word of mouth, and to hire all that thereafter seek employment. Not always the same employees, however, are on each occasion hired, and there is great variation among the individual employees in the number of hours worked. Although the Company has been operating under a closed-shop contract with the F. L. T., neither party has sought to require these temporary employees to become members of the Union. The C. G. T. and the F. L. T. agree that the temporary employees should not be eligible to vote. The Company takes no position in regard thereto. The record clearly discloses that they are not regular part-time employees, such as to have substantial interests in common with the Company's permanent employees in the results of collective bargaining; we find, accordingly,

that the temporary employees are not eligible to vote in the election.<sup>3</sup>

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction. The Regional Director is hereby authorized to use appropriate symbols in connection with the names of the parties upon the official ballot, in the conduct of the election.<sup>4</sup>

### DIRECTION OF ELECTION

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, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Licoreria Roses, Incorporated, Arecibo, Puerto Rico, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-fourth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Union de Trabajadores de la Industria Licorera, Arecibo Local (C. G. T.), or by Union de Trabajadores de la Industria Licorera de Arecibo (F. L. T.), for the purposes of collective bargaining, or by neither.

<sup>3</sup> At the hearing the C. G. T. and the F. L. T. suggested that the Board define those eligible to vote as all employees, within the unit, who have been continuously and permanently employed for 6 consecutive months or more up to December 31, 1943, and that all other employees be considered as temporary and not entitled to vote. We are of the opinion, however, that the temporary employees are better defined as those who are employed only at such times as the Company is preparing orders for exportation. The reference to temporary employees, herein, therefore, is to such employees as fall within the latter definition.

<sup>4</sup> The record discloses that many of those eligible to vote are not able to read or write, and that familiar symbols indicative of the respective labor organizations are available for use. The C. G. T. requested that its name appear on the ballot above its symbol, consisting of an "Anvil," and the F. L. T. that its name appear above its symbol, a "Hammer." These requests are hereby granted.