

IN the Matter of BULL-INSULAR LINE, INC., THE INSULAR DOCK COMPANY, PIER 3, INC., PYRAMID DOCK CO., INC., F. BENITEZ REXACH, INC., and UNION EMPLEADOS DE MUELLES DE PUERTO RICO, AFFILIATED WITH THE C. G. T.

Case No. 24-R-14.—Decided May 2, 1944

Messrs. James R. Watson and Robert S. Fousek, for the Board.

Hartzell, Kelley and Hartzell by Mr. Rafael O. Fernandez, and Messrs. R. Rodriguez Sanchez, Andres Ramon, and Alfonso Valencia, of San Juan, P. R., for Bull-Insular.

Mr. Henry G. Molina, of San Juan, P. R., for the Dock Companies.

Ramos Antonini & Gutierrez Franqui by Mr. Victor Gutierrez Franqui, and Messrs. Victor M. Bosch, and Enrique Cornier Martinez, 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 Empleados de Muelles de Puerto Rico, affiliated with the C. G. T.,¹ herein called the C. G. T., alleging that a question affecting commerce had arisen concerning the representation of employees of Bull-Insular Line, Inc., herein called Bull-Insular, and The Insular Dock Company, Pier 3, Inc., Pyramid Dock Co., Inc., and F. Benitez Rexach, Inc., herein called the Dock Companies, and together with Bull-Insular Line, Inc., herein called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before David Karasick, Trial Examiner. Said hearing was held at San Juan, Puerto Rico, on February 21, 23, 24, and 25, 1944. The Companies, the C. G. T., and Union de Trabajadores de Muelles y Ramas Anexas de Puerto Rico (UTM) and International Longshoremen's Association (ILA) Puerto Rico Dis-

¹ The name of the petitioning union as it appears herein is that set forth in the petition as finally amended at the hearing

trict Council, both affiliated with the Federacion Libre de los Trabajadores de Puerto Rico (FLT), the State Branch of the American Federation of Labor, herein jointly 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. 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 C. G. 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 COMPANIES

Bull-Insular Line, Inc., a Maine corporation, prior to the war was engaged in the transportation of passengers and freight to and from the United States and the West Indies. Since April 1942, Bull-Insular has been acting as berth subagent of the United States War Shipping Administration in the United States, Puerto Rico, the Dominican Republic, and the Virgin Islands, in which capacity it is engaged in the discharging and loading of vessels, and the receipt and delivery of cargo. Bull-Insular is the wholly-owned subsidiary of A. H. Bull Steamship Company, a New Jersey corporation, the principal office of which is located in New York City. Bull-Insular maintains offices in San Juan, Puerto Rico, and in various ports in the West Indies.

The Insular Dock Company, Pier 3, Inc., Pyramid Dock Company, Inc., and F. Benitez Rexach, Inc., are Puerto Rican corporations, which own and operate docks in the Harbor of San Juan, Puerto Rico. The principal officers and the operating manager of each of the dock companies are the same; the vice president of Bull-Insular is the president of each of the Dock Companies; and A. H. Bull Steamship Company owns all of the stock of each of the Dock Companies, with the exception of qualifying stock owned and held by the directors, as required by Law.

Bull-Insular and the Dock Companies, for the purposes of this proceeding only, admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Union Empleados de Muelles de Puerto Rico is a labor organization affiliated with the Confederacion General de Trabajadores de Puerto Rico, admitting to membership employees of the Companies.

Union de Trabajadores de Muelles y Ramas Anexas de Puerto Rico, and International Longshoremen's Association, Puerto Rico District

Council, are labor organizations affiliated with the Federacion Libre de Los Trabajadores de Puerto Rico, the State Branch of the American Federation of Labor, admitting to membership employees of the Companies.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated December 23, 1943, the C. G. T. notified the Companies of its claim to representation of the latter's clerks and other dock employees and requested a collective bargaining conference. By letter dated December 28, 1943, the Companies replied, refusing to recognize the C. G. T., in view of the pendency of negotiations with the F. L. T., and referring the C. G. T. to the Board:

A statement of the Regional Director introduced in evidence at the hearing, indicates that the C. G. T. represents a substantial number of employees in the unit hereinafter found to be appropriate.²

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

IV. THE APPROPRIATE UNIT

The C. G. T. seeks a unit composed of all employees of the Companies working in San Juan, excluding stevedores, longshoremen, sugar pier gangs, dock motormen, employees in the main office, and supervisory employees.³ The unit sought by the C. G. T. may be described as comprising, in substance, clerks of various categories, maintenance employees, and watchmen. The F. L. T. contends that the unit sought by the C. G. T. is not appropriate, in that it does not include the employees of all companies conducting a similar business on the Island of Puerto Rico. The C. G. T. and the F. L. T. agree, however, that the appropriate unit should include the following classifications of employees: cargo inspectors aboard, cargo inspectors ashore, crane oilers, crane painters, delivery clerks, dock seamen, electricians, gatemen, guards,

² The Regional Director reported that the C. G. T. submitted 311 authorization cards, of which 219 bore the names of persons appearing in the Companies' employment records for the months of December 1943 and January 1944, containing 399 names within the unit claimed by the C. G. T. to be appropriate. Of the cards submitted, 38 were undated, 3 were dated in May 1943, and the balance bore dates from August 1943, through January 1944. Of the cards which corresponded with names in the employment records, the C. G. T. appeared to have been designated by 14 of 32 regular, and 180 of 307 irregular, employees of Bull-Insular within the unit claimed appropriate by the C. G. T., and by a total of 25 persons distributed among the 60 employees of the various Dock Companies, within said unit.

The Regional Director also reported that the F. L. T. submitted a membership list containing 116 names among clerks and checkers of all steamship companies in San Juan, of which 45 were the names of persons appearing on the above-mentioned employment records as irregular employees of Bull-Insular.

³ The record indicates that the excluded classifications of stevedores, longshoremen, sugar pier gangs, and dock motormen, have been included in yearly written contracts on an Island-wide basis as the result of collective bargaining by the F. L. T., hereinafter discussed.

janitors, mechanics, messengers, maintenance employees, office, window, stamping and utility clerks, pier storage employees, pilots and sailors of launches, porters, assistant storekeepers, receiving clerks, sugar pier clerks, tally clerks, timekeepers, paymasters, and timekeeper-paymasters. The C. G. T. and the F. L. T. also agree that foremen, office employees in the main office, and head watchmen, should be excluded, but disagree as to acting chief delivery clerks, chief receiving clerks, head cargo inspectors aboard, pursers, head storeroom keeper, and head paymaster, the C. G. T. contending that these employees should be included, and the F. L. T. that they be excluded. The Companies take no position with respect to the composition of the appropriate unit.

The record discloses that the F. L. T., which has been in existence for more than 40 years, has since 1920 succeeded in securing collective bargaining contracts on behalf of stevedores. Although originally on a limited basis, since 1934 such contracts have been Island-wide in scope. The clerks, and other classifications of employees with which we are here concerned, were not included in these contracts and no written contract on their behalf has been executed on an Island-wide basis by any labor organization. On January 3, 1938, because of a failure to agree upon the terms of a contract to replace the expired yearly contract of 1937, a strike occurred among the workers in all ports throughout the Island, which continued for 39 days, and was terminated by agreement to submit to arbitration. On May 26, 1938, a duly selected Board of Arbitration issued its decision, the terms of which were applied retroactively to January 1, 1938, and were accepted by the parties in lieu of a written contract for that year. The demands of clerks, and other employee classifications with which we are here concerned, were considered by the arbitrators, and increases were granted in their pay. The F. L. T. maintains that for several years prior to 1938 it had been presenting claims on behalf of the clerks and other classifications, as well as the stevedores, and that since 1938 it has pressed its claim to represent these classifications and has secured increases and other benefits for them, though in the absence of written contracts.⁴ The C. G. T. presented evidence that demands were also made for several years, on behalf of the clerks and others here involved, by the U. D. E. M.,⁵ a

⁴ The F. L. T. has presented a proposed contract for 1944 covering clerks and other dock employees here involved, as well as stevedores. The president of the F. L. T. and the controller of Bull-Insular (who is also treasurer of the Dock Companies) testified that a preliminary agreement had been entered into between the F. L. T. and all steamship companies in Puerto Rico, whereby clerks and other dock employees formerly omitted would be covered by a contract in writing during 1944. However, the terms of such contract relating to clerks, etc., had not yet been negotiated at the time of the hearing, allegedly because of the pendency of this proceeding.

⁵ Union de Dependientes y Demas Empleados de los Muelles de San Juan, Puerto Rico. The parties stipulated at the hearing that this union was organized on or about February 20, 1938; was granted a charter by International Longshoremen's and Warehousemen's Union (C. I. O.) on February 1, 1939; was recorded as an association not for pecuniary benefit in

union which the C. G. T. considers to have been the predecessor of its present organization of dock workers, and which participated in the 1938 strike and in the arbitration proceedings subsequent thereto.

Testimony given at the hearing indicates that since 1934, it has been the custom for all the steamship companies doing business in Puerto Rico to negotiate jointly the above-mentioned yearly contracts covering stevedores and similar classifications throughout the Island. The F. L. T. has followed the practice of submitting in October or November of each year, the proposed terms of a new contract to be in effect during the following calendar year, and, after consideration thereof, the companies customarily have met with the F. L. T. for final negotiations. While the record discloses no formal organization of the steamship companies doing business in Puerto Rico, it has been the practice each year, prior to the opening of negotiations, for the companies to appoint a committee to conduct such negotiations on their behalf. The record does not define however the extent of the authority delegated to such committee in the conduct of negotiations, nor does it indicate in what manner the resulting contracts covering stevedores have been executed, whether separately by each company or by the committee on behalf of all.⁶

We have found a multi-employer or association-wide unit to be appropriate only where it was clearly shown that the employer-members had in some manner, either by formal understanding⁷ or by established practice,⁸ assumed in advance of negotiations conducted at regular intervals an obligation to adhere to the results of bargaining conducted by the representatives of the group. It is not established in the instant case, however, that the steamship companies doing business in Puerto Rico have delegated to their committee of representatives the authority to bind them by contracts negotiated by the employer committee, or that their customary manner of joint negotiation with regard to the stevedores is of such a nature as to establish an obligation on the part of each of the several companies to adhere to the results of such negotiations. We are of the opinion, therefore, that the evidence

the Office of the Executive Secretary of Puerto Rico as Union Number 1, de Dependientes y Demas Empleados de los Muelles, San Juan; and that the latter organization, in accordance with the records of the Executive Secretary, was dissolved on March 13, 1939. The parties further stipulated that a labor organization under the name of Union de Empleados de Muelles de Puerto Rico, Local de San Juan, was affiliated with the C G T on September 15, 1943.

⁶ The written agreement to submit to arbitration which terminated the 1938 strike, introduced in evidence in the form of an English translation of the Spanish original, appears to have been executed on the part of the employers only by the negotiating committee, i. e., by the "Representatives of Steamship Companies serving Puerto Rico" over the sole signature of their "Chairman."

⁷ See *Matter of United Fur Manufacturers Association, Inc.*, 49 N L R. B. 1405; *Matter of Hyman-Michaels Company, et al.*, 11 N L R B 796.

⁸ See *Matter of Rayonier, Incorporated, Grays Harbor Division*, 52 N. L. R. B. 1269; *Matter of The Paterson Leitch Company*, 33 N L R. B. 485, *Matter of Stevens Coal Company*, 19 N L R B 98, 109, 110; *Matter of Alston Coal Company*, 13 N L. R B 683.

of employer organization among the steamship companies in Puerto Rico is not such as to justify a finding, on that basis, that an Island-wide unit is here appropriate.⁹

Furthermore, where we have held that a multi-employer unit covering employees of all members of an employer association was appropriate for the purposes of collective bargaining, such holding generally has been predicated upon an association-wide history of bargaining on behalf of the specific employees for whom representation was sought. Here the record discloses that neither the F. L. T. nor the C. G. T. has entered into collective bargaining contracts upon an Island-wide basis covering the clerks and other employees here involved. Although the F. L. T. claims to have succeeded in obtaining pay raises and other benefits on an Island-wide basis in behalf of such employees,¹⁰ the evidence does not establish such claims, nor does it show any consistent Island-wide bargaining history such as would preclude our finding a lesser unit appropriate for collective bargaining purposes.¹¹

We have frequently found that companies having interlocking corporate organization, such as do Bull-Insular and the Dock Companies, may constitute a single appropriate unit.¹² The employees of the Companies together are engaged in various tasks incidental to the loading or unloading of cargo vessels at the Companies' piers in the Harbor of San Juan. It is apparent under these circumstances that they have substantial interests in common in the results of collective bargaining. We find, accordingly, that the unit comprising the employees of Bull-Insular and the Dock Companies, sought by the C. G. T. in this proceeding, is appropriate. There remains for consideration the employee classifications upon which the C. G. T. and the F. L. T. are in disagreement.

Acting chief delivery clerks: In addition to four chief delivery clerks regularly employed as such, one or two persons are employed as acting chief delivery clerks when they are needed by reason of the number of vessels in port discharging cargo. The record indicates that they spend approximately 20 percent of their time in this posi-

⁹ See *Matter of Sagamore Manufacturing Co.*, 39 N. L. R. B. 909; *Matter of Bulk Sales Department, Gulf Refining Co.*, 21 N. L. R. B. 1033; *Matter of Sebastian Stuart Fish Co.*, 17 N. L. R. B. 352; *Matter of F. E. Booth & Company, et al.*, 10 N. L. R. B. 1491; *Matter of Aluminum Lane, et al.*, 8 N. L. R. B. 1325.

¹⁰ While as above stated, the clerks and other classifications were included in the terms of the 1938 arbitration award, this was not a contract negotiated by the parties, but was a settlement induced by a strike in which the stevedores and longshoremen were the leading participants.

¹¹ See *Matter of Union Collieries Coal Company, Oakmont, Pennsylvania*, 41 N. L. R. B. 961, 967, 968; *Matter of Pacific-American Fisheries, Inc.*, 23 N. L. R. B. 244; *Matter of Mobile Steamship Association, et al.*, 8 N. L. R. B. 1297, 1316, 1317

¹² See *Aaron Ferer & Sons, Inc., and Wiping Materials, Inc.*, 53 N. L. R. B. 770; *Matter of Arnolt Motor Company, Inc., and S. H. Arnolt, d/b/a Atlas Steel & Tube Company*, 52 N. L. R. B. 856; *Matter of Ken-Rad Tube and Lamp Corporation*, 42 N. L. R. B. 1235; *Matter of John Deere Tractor Company*, 40 N. L. R. B. 904

tion and the remainder working as delivery clerks. While serving as acting chief delivery clerks they supervise from 15 to 40 or more delivery clerks and, like the chief delivery clerks, have authority to hire, discharge, and discipline. In view of their supervisory authority, we shall exclude the acting chief delivery clerks.

Chief receiving clerks: There are four of these employees, who, like the acting chief delivery clerks, work only a portion of their time in this position. Although one of the chief receiving clerks spends approximately 90 percent of his time as such, two of the others are employed only 20 percent of their time in that capacity, and the fourth from 10 to 20 percent. While acting as chief receiving clerks these employees have authority to reject any of the employees employed to work under their supervision by the Chief of Personnel; may suspend such employees; and can effectively recommend discharge. We shall exclude the chief receiving clerks.

Head cargo inspectors aboard: Eight persons are employed at various times in this capacity as required when there are vessels to unload. When not employed in this classification, which occupies from 20 to 30 percent of their time, they generally work as tally clerks on vessels loading; one or more have also worked as purser. As head cargo inspectors aboard, they have authority to reject any of the cargo inspectors assigned to them, can suspend such employees from work, and have the power effectively to recommend discharge. We shall, therefore, exclude the head cargo inspectors aboard.

Pursers: Although no employees of this classification have been employed at San Juan for several months, it is possible that they may again be employed at this port. The record discloses that pursers spend a majority or all of their time in this or one of the other classifications above discussed. All pursers have final authority to suspend or discipline the employees whom they supervise, or can recommend effectively their promotion. Inasmuch as it appears that pursers have supervisory authority within the meaning of our customary definition, we shall exclude them.

Head storeroom keeper and head paymaster: The head storeroom keeper is charged with the duty of repairing and protecting the equipment used in loading and unloading ships. He has authority to determine when it is necessary for him to have assistants, causes them to be hired, and has authority to discipline them and to lay them off. The head paymaster is bonded and is responsible for the money assigned to him to pay the stevedores. He supervises paymasters, time-keepers, and occasionally a few temporary clerical employees, and has complete authority to hire and discharge them. We shall exclude the head storeroom keeper and head paymaster.

We find that all employees of the Companies working in San Juan, including cargo inspectors aboard, cargo inspectors ashore, crane

oilers, crane painters, delivery clerks, dock seamen, electricians, gatemen, guards,¹³ janitors, mechanics, messengers, maintenance employees, office, window, stamping and utility clerks, pier stowage employees, pilots and sailors of launches, porters, assistant storekeepers, receiving clerks, sugar pier clerks, tally clerks, timekeepers, paymasters, and timekeeper-paymasters, but excluding foremen, office employees in the main office, head watchmen, acting chief delivery clerks, chief receiving clerks, head cargo inspectors aboard, pursers, head storeroom keeper, head paymaster, and all other 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

The employment by the Companies of clerical and maintenance employees, watchmen, and the other classifications involved in this proceeding is for the most part irregular and intermittent, only a comparatively small number being employed on a regular or continuous basis, for, as in the case of stevedores, the employment of the great majority of employees in these classifications depends solely on the arrival of vessels in port. Due to the present emergency and shortage of shipping, ships arrive with much less regularity than in normal times. These irregular employees depend on work along the docks for their livelihood, work wherever they can find employment, and, when not employed by these Companies, work for other employers, shifting from company to company along the water front in San Juan. The record discloses that the Companies maintain employment lists from which watchmen and employees in the clerical classifications are obtained whenever they are needed. It is the practice to retain each employee upon these lists for a period of 3 months following his last employment, during which time he is considered as available unless the Companies are informed to the contrary, in which latter event his name is removed from the list before expiration of the 3-month period.

In view of the foregoing, 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,¹⁴ and those who were employed

¹³ The record discloses that the Companies' guards, or watchmen, are neither armed nor militarized.

¹⁴ The above definition of eligibility is intended to cover the Companies' regular employees, whose inclusion on the above-mentioned employment lists is not shown by the record.

any number of days during any one or more of the 3 months of December 1943, January or February 1944 and whose names are listed on the employment lists of said Companies as of the date immediately preceding 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.¹⁵

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 Bull-Insular Line, Inc., The Insular Dock Company, Pier 3, Inc., Pyramid Dock Co., Inc., and F. Benitez Rexach, Inc., San Juan, 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, and those who were employed any number of days during any one or more of the 3 months of December 1943, January or February 1944 and whose names are listed on the employment lists of said companies as of the date immediately preceding this Direction, including employees who did not work during the said pay-roll period or were not listed on said employment lists 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 Empleados de Muelles de Puerto Rico, affiliated with the C. G. T., or by FEDERACION LIBRE, U. T. M.-I. L. A., for the purposes of collective bargaining, or by neither.

¹⁵ The parties respectively requested that their names appear on the ballot as follows: Union Empleados de Muelles de Puerto Rico, affiliated with the C G T, and FEDERACION LIBRE, U. T. M.-I L. A, followed, in each case, by an appropriate union symbol. The requests are hereby granted.