

IN the Matter of THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY
AND SAN ANTONIO COMPANY *and* UNION DE EMPLEADOS DE MUELLES
DE PORTO RICO, AFFILIATED WITH THE INTERNATIONAL LONGSHORE-
MEN'S AND WAREHOUSEMEN'S UNION (CIO) AND THE CGT

Case No. 24-R-16.—Decided October 24, 1944

Hartzell, Kelley & Hartzell, by Messrs. Jose L. Novas and Rafael O. Fernandez, of San Juan, P. R., for the Company.

Mr. Benjamin Ortiz, of San Juan, P. R., for the CGT.

Mr. Hipolito Marciano, of San Juan, P. R., for the FLT.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION

AND

DIRECCIÓN OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Union de Empleados de Muelles de Puerto Rico, affiliated with the International Longshoremen's and Warehousemen's Union (CIO) and the CGT,¹ herein called the CGT, alleging that a question affecting commerce had arisen concerning the representation of employees of The New York and Porto Rico Steamship Company and San Antonio Company, San Juan, Puerto Rico,² herein jointly called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James R. Watson, Trial Examiner. Said hearing was held at San Juan, Puerto Rico, on September 20, 1944. The Company, the CGT and Union de Trabajadores de Muelles y Ramas Anexas (UTM), and International Longshoremen's Association (ILA), Puerto Rico District Council, both affiliated with the Federacion Libre de los Trabajadores de Puerto Rico (FLT), State Branch of the American Federation of Labor, herein jointly called the FLT, appeared and participated. All parties 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 hear-

¹ Name as amended at the hearing

² Name as amended at the hearing.

ing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The New York and Porto Rico Steamship Company is a Maine corporation with offices in San Juan, Puerto Rico, and various ports in the Dominican Republic. It is a wholly owned subsidiary of the Atlantic Gulf and West Indies Lines, a New York corporation, which has its principal office in New York City. Prior to the war, The New York and Porto Rico Steamship Company was engaged in the business of transporting passengers and freight to and from the United States and West Indies. Since April 1942, it has been acting as berth subagent of the United States War Shipping Administration in the United States, Puerto Rico, and the Dominican Republic, in which capacity it is engaged in loading and discharging vessels, and the receipt and delivery of cargo.

San Antonio Company, a Maine corporation, owns and operates Pier #9 in the Harbor of San Juan, Puerto Rico. It, too, is a wholly owned subsidiary of the Atlantic Gulf and West Indies Lines. Its principal officers and operating managers are the same as those of The New York and Porto Rico Steamship Company in Puerto Rico.

The New York and Porto Rico Steamship Company and San Antonio Company, 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 de Empleados de Muelles de Puerto Rico, affiliated with the International Longshoremen's and Warehousemen's Union (CIO), and the Confederacion General de Trabajadores de Puerto Rico, is a labor organization admitting to membership employees of the Company.

Union de Trabajadores de Muelles y Ramas Anexas; and International Longshoremen's Association, Puerto Rico District Council, both affiliated with the Federacion Libre de los Trabajadores de Puerto Rico, State Branch of the American Federation of Labor, are labor organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated January 4, 1944, The CGT's parent organization, Confederacion General de Trabajadores de Puerto Rico, notified the

Company that, as the representative of a majority of the Company's employees, it was preparing a proposed collective bargaining agreement to be submitted to the Company within a few days. The Company replied on January 7, 1944, that it was already committed to negotiate with the FLT. While the Company does not now assert that this proceeding is barred, the FLT urges that a certain unsigned agreement with the Company, allegedly made pursuant to the Company's commitment in another agreement completed on December 31, 1943, precludes a present determination of representatives.

On December 31, 1943, the Company and other steamship companies in Puerto Rico concluded an agreement with the FLT covering stevedores, who are not involved in this proceeding. However, said contract contained a clause providing that "The Companies agree to discuss with the union wages and working conditions of checkers and watchmen . . . , and when it is agreed the same will form part of this contract." The checkers and watchmen apparently comprise the major portion of the employees with whom we are concerned herein. This contract was not actually signed until June 1, 1944, retroactively effective as of January 1, 1944, for the reason that, as the Company's auditor, G. Santa O'Neill, testified, the parties were contemplating negotiations regarding the checkers and watchmen. Upon the Company's refusal to recognize the CGT's claim to representation, the CGT, on January 15, 1944, filed the petition herein. Subsequent thereto, but prior to June 1, when the Company signed the stevedore contract mentioned above, it appears that the Company and the FLT reached an agreement with respect to checkers and watchmen, but which the Company declined to sign because of the pendency of the instant proceeding. This is the agreement which the FLT argues constitutes a bar to an investigation and certification of representatives. Since it is apparent from the foregoing facts that, prior to the time when the Company was apprised of the CGT's claim to representation, no effective contract between the Company and the FLT was in existence concerning wages and working conditions of the checkers and watchmen, neither the stevedore agreement, signed June 1, 1944, nor the unsigned agreement covering the checkers and watchmen, operates as a bar to a present determination of representatives.³

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the CGT represents a substantial number of employees in the unit hereinafter found appropriate.⁴

³ See *Matter of Henry Weis Manufacturing Company, Incorporated*, 49 N. L. R. B. 511. See also *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

⁴ The Field Examiner reported that the CGT submitted 138 authorization cards bearing the names of persons appearing on the Company's pay roll of either December 1943, January 1944, or February 1944, and that there were 343 employees in the alleged appropriate unit.

The Field Examiner also reported that the FLT submitted a certified list of persons containing 64 names appearing on the aforesaid pay roll.

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 CGT seeks a unit of all the Company's employees working on Piers #1 and #9 in San Juan, including watchmen, special agents (watching holds) checkers, dock hands, painters, timekeepers, mechanics, sailmakers, the storage clerk, electricians, carpenters, and the messenger, but excluding dock surgeons, stevedores, longshoremen, main office employees, the chief receiving clerk, pursers, the acting chief delivery clerk, the head cargo inspector aboard, the acting head watchman,⁵ the dock hand gang boss,⁶ the painters' foreman,⁷ and all other supervisory employees. Except for stipulating to the exclusion of the acting head watchman, the dock hand gang boss and the painters' foreman,⁸ neither the Company nor the FLT takes a position with respect to the composition of the unit sought by the CGT. However, the FLT challenges the propriety of a unit limited to the Company's above-described employees in San Juan and contends that only an Island-wide unit embracing all such employees of the Company in all ports in Puerto Rico is appropriate. The sole evidence in the record to support its contention is merely the fact that the Company employs checkers and watchmen at certain "out-ports" in Puerto Rico. However, the record indicates that these employees are not interchanged with those of the Company in San Juan. Under the circumstances, we are not satisfied that sufficient facts have been presented to warrant the conclusion that only an Island-wide unit is appropriate. Since it appears that the unit sought by the CGT substantially corresponds to that approved in the *Bull Insular* case,⁹ we find such a unit appropriate, but with the exceptions hereinafter noted.

The CGT would include the messenger. The record discloses that he works in the main office as an office boy and is considered an office employee by the Company. In view of the fact that the CGT requests the exclusion of main office employees and there is nothing to distinguish the messenger from other main office workers, we shall exclude him.

The CGT would also include the storage clerk. He is an employee of the accounting department which is in the main office, and works under the supervision of the auditor. He performs his duties in the receiving department where he keeps records of cargoes that are stored

⁵ Miguel Colon.

⁶ Francisco Alayon.

⁷ Rafael Toro.

⁸ The evidence indicates that these individuals come within our customary definition of supervisory employees.

⁹ See *Matter of Bull-Insular Line, Inc., et al.*, 56 N. L. R. B. 189.

and also prepares bills for the storage department. Inasmuch as it appears that he, too, is a main office employee, we shall exclude him.

Accordingly, we find that all the Company's employees working on Piers #1 and #9, in San Juan, Puerto Rico, including watchmen, special agents (watching holds), checkers, dock hands, painters, time-keepers, mechanics, sailmakers, electricians, carpenters, but excluding dock surgeons, stevedores, longshoremen, main office employees, the messenger, the storage clerk, the chief receiving clerk, pursers, the acting chief delivery clerk, the head cargo inspector aboard, the acting head watchman, the dock hand gang boss, the painters' foreman, 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 great majority of the Company's employees involved in this proceeding are employed on an irregular and intermittent basis, depending solely on the arrival of ships in the port. It appears that the Company maintains employment lists of such employees who are available whenever needed. Their names are retained on these lists for approximately 2 months and are removed if, during such period, they failed to report to the Company.

In view of the foregoing, and in accordance with the method of determining eligibility to vote provided for in the *Bull-Insular* case, *supra*, 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, and those employees who were employed any number of days during the months of July or August 1944 and whose names are contained in the employment lists of the Company as of the date immediately preceding the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The New York and Porto Rico Steamship Company and San Antonio Company, 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 July or August 1944 and whose names are contained in the employment lists of the Company as of the date immediately preceding this Direction, including employees who did not work during said pay-roll period or whose names were not contained in 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 those employees 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 Empleados de Muelles de Puerto Rico, affiliated with the International Longshoremen's and Warehousemen's Union (CIO) and the CGT, or by Union de Trabajadores de Muelles y Ramas Anexas (UTM) and International Longshoremen's Association (ILA), Puerto Rico District Council, both affiliated with Federacion Libre de los Trabajadores de Puerto Rico (FLT), State Branch of the American Federation of Labor, for the purposes of collective bargaining, or by neither.