

In the Matter of J. M. PORTELA & COMPANY, INC. and UNION DE TRABAJADORES DE LA INDUSTRIA LICORERA DE ARECIBO, F. L. T.

*Case No. 24-R-27.—Decided March 27, 1945*

*Messrs. Juan Piza and Juan M. Rosso, of Arecibo, Puerto Rico, for the Company.*

*Messrs. Rafael Aponte and Angel M. Collazo, of Arecibo, Puerto Rico, for the Federation.*

*Mr. Juan Vazquez, of Arecibo, Puerto Rico, for the C. G. T.*

*Miss Ruth E. Bliefeld, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Union de Trabajadores de la Industria Licorera de Arecibo, affiliated with the Federation Libre de los Trabajadores de Puerto Rico, herein called the Federation, alleging that a question affecting commerce had arisen concerning the representation of employees of J. M. Portela & Company, Inc., Arecibo, Puerto Rico, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gilberto Ramirez, Trial Examiner. Said hearing was held at Arecibo, Puerto Rico, on October 19, 1944. The Company, the Federation, and Union de Trabajadores de la Industria Licorera, Local de Arecibo, affiliated with the Confederacion General de Trabajadores de Puerto Rico, herein called the C. G. T., appeared and participated.<sup>1</sup> 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 hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

---

<sup>1</sup> The Federation objected to the C. G. T.'s motion to intervene on the ground that the employees of the Company were dissatisfied with the C. G. T. and had designated the Federation as their bargaining representative. The Trial Examiner overruled the objection, and his ruling is hereby upheld.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

J. M. Portela & Company, Inc., a Puerto Rican corporation, doing business in Arecibo, Puerto Rico, is engaged in ageing, blending, bottling, and selling rum. During 1943 the Company purchased raw materials valued at approximately \$142,000, which amount included approximately \$50,000 which was spent in the continental United States. In excess of 70 percent of the production for 1943 was sold in the mainland, and during the first 9 months of 1944 over 50 percent of the Company's production was sold in the mainland of the United States. It is estimated that purchases of raw materials from the mainland will be in excess of \$50,000 during the calendar year 1944.

The Company admits 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 de Arecibo, affiliated with the Federacion Libre de los Trabajadores de Puerto Rico,<sup>2</sup> is a labor organization admitting to membership employees of the Company.

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

### III. THE QUESTION CONCERNING REPRESENTATION

The Federation on July 25, 1944, filed a petition for investigation and certification of representatives. On October 17, 1944, the Company and the C. G. T. signed a contract recognizing the C. G. T. as the collective bargaining representative of the Company's employees. The C. G. T. moved to dismiss the present petition on the ground that this contract constitutes a bar to a present determination of a collective bargaining representative. The Company will not, apparently, recognize the Federation without a certification by the Board.

In November 1943 a consent election was held among the employees of the Company, as a result of which the C. G. T. was informed by the Regional Director on November 12, 1943, that it had received a

<sup>2</sup> The Federacion Libre de los Trabajadores de Puerto Rico is a branch of the American Federation of Labor.

majority of the votes cast in the election and had therefore been designated as the exclusive bargaining representative of the employees of the Company. The C. G. T. was opposed in the election by the Federation, the petitioner in this case.

Negotiations between the Company and the C. G. T. started early in January 1944. An agreement was reached on all points in a proposed contract, with the exception of the wage scale, during the first day of negotiation. No further action was taken by the C. G. T. until April 25, 1944, when it sent a letter to the Company stating that it was sending a copy of the contract with the salary scale approved by the employees in the plant and that a representative of the C. G. T. would come to the Company's offices on April 27, 1944, to sign the contract. On April 29, 1944, the president of the C. G. T. appeared, and at that time the Company stated that the contract presented differed from the contract they had discussed in January. The Company asked permission to prepare the contract as it was discussed in January 1944 for submission to the workers. Leave was granted, and about 4 or 5 days later the Company gave one of the employees in the plant a copy of the contract it had prepared, for submission to the C. G. T. On May 14, 1944 a representative of the C. G. T. informed the Company that the employees were dissatisfied with the wage scales in the contract.

On July 25, 1944, the Federation filed its petition for certification of representatives. Subsequent to this date, on August 16, 1944, the C. G. T. informed the Company by letter, that the Secretary General of the C. G. T. would appear on August 18, 1944, to sign the contract. No one appeared on that date, and it was testified that the representatives did not call upon the Company because there was as yet no agreement as to the wage scale. On October 1, 1944, representatives of the C. G. T. and the Company finally reached an agreement, which was embodied in the contract signed by the Company and the C. G. T. on October 17, 1944. The latter date is subsequent to the date of the Notice of Hearing in this case, which was received by the Company and the C. G. T. on October 14, 1944.

The C. G. T. urges that the contract of October 17, 1944, be deemed a bar to a determination of representatives at this time. That contract, however, was not signed until after the contracting parties were advised, by the Notice of Hearing, of the Federation's claim to represent the Company's employees.<sup>3</sup> It is true that at the time the petition herein was filed, in July 1944, only 8 months had elapsed since the consent election which resulted in the informal certification of the C. G. T. as the statutory representative of the employees involved. In view of the recency of the consent election, it would have been better

<sup>3</sup> See *Matter of Elicor, Inc.*, 46 N. L. R. B. 1035.

practice if the petition had been promptly dismissed as premature;<sup>4</sup> and if the circumstances were different, we would be inclined to hold that the petition, *per se*, was inoperative to prevent the subsequent contract from effectively barring a present determination of representatives.<sup>5</sup> Nevertheless, the petition remained pending, and the Notice of Hearing, received by the Company and the C. G. T. on October 14, slightly more than 11 months after the date of the certification, served as actual notice to those parties that a question concerning representation existed. This date, clearly, was an appropriate time to proceed with an investigation to determine whether or not the employees desired to select a new bargaining representative to succeed the C. G. T.<sup>6</sup> Accordingly, since the contracting parties were advised of the existence of a valid question of representation at an appropriate time following the certification of the C. G. T., and several days prior to October 17, when they signed that contract, the contract presents no bar to a determination of representatives in this proceeding.<sup>7</sup>

A statement of a Board agent introduced into evidence at the hearing, indicates that the Federation represents a substantial number of employees in the unit hereinafter found appropriate.<sup>8</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 agreed, and we find in accordance with their agreement, that all production and maintenance employees, excluding the two road salesmen, the chauffeur for one of the salesmen, the office employees, the supervisors, and all or any 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

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the em-

<sup>4</sup> See *Matter of Monarch Aluminum Mfg. Co.*, 41 N. L. R. B. 1, *Matter of Bohn Aluminum and Brass Corporation*, 57 N. L. R. B. 1684; N. L. R. B. Ninth Annual Report, p. 25

<sup>5</sup> Cf. *Matter of Portland Lumber Mills*, 56 N. L. R. B. 1336.

<sup>6</sup> See *Matter of New York and Cuba Mail Steamship Co.*, 9 N. L. R. B. 51; *Matter of Waterman Steamship Corporation*, 10 N. L. R. B. 1079.

<sup>7</sup> *Matter of General Chemical Company*, 48 N. L. R. B. 988

<sup>8</sup> The Field Examiner reported that the Federation submitted 19 authorization cards, all of which bear the names of persons appearing on the Company's pay roll of August 3, 1944, which contained the names of 50 employees in the appropriate unit, and all the cards were dated July 1944

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.<sup>9</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, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with J. M. Portela & Company, Inc., Arecibo, Puerto Rico, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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 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 Industria Licorera de Arecibo, affiliated with La Nacion Libre de los Trabajadores de Puerto Rico, or by Union de la Industria Licorera de Arecibo, affiliated with the Confederacion de Trabajadores de Puerto Rico, for the purposes of collective bargaining, or by neither.

---

<sup>9</sup> At the hearing the Unions requested that their names appear on the ballot as hereinafter set forth in the Direction of Election. The requests of the Unions that their insignia be shown on the ballots are hereby granted.