

In the Matter of BULL INSULAR LINE, INC., THE NEW YORK & PORTO RICO STEAMSHIP Co., WATERMAN DOCK COMPANY, LYKES BROS. STEAMSHIP Co., INC., AND McCORMICK STEAMSHIP COMPANY and UNION No. 6 DE ESTIBADORES DE MUELLES Y MARINOS DEL PUERTO DE GUANICA (CIO-CGT)

Case No. 24-R-129.—Decided August 6, 1945

Mr. Gilberto Ramirez, for the Board.

Hartzel, Kelly & Hartzel, by *Mr. Jose Novas*, of San Juan, P. R., for the Companies.

Mr. Enrique Cornier, of San Juan, P. R., for Union No. 6.

Mr. Hipolito Marciano, of San Juan, P. R., for the UTM and the ILA.

Mr. Nathan Saks, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Union No. 6 de Estibadores de Muelles y Marineros del Puerto de Guanica (CIO-CGT), herein called Union No. 6, alleging that a question affecting commerce had arisen concerning the representation of employees of Bull Insular Line, Inc., The New York & Porto Rico Steamship Co., Waterman Dock Company, Lykes Bros. Steamship Co., Inc., and McCormick Steamship Company, herein called the Companies, 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 April 11, 12, 13, 14, 16, 17, and 18, 1945. The Company, Union No. 6, Union de Trabajadores de Muelles y Ramas Anexas de Puerto Rico, herein called the UTM, and International Longshoremen's Association; Puerto Rico District Council, herein called the ILA, both affiliated with Federacion Libre de Los Trabajadores de Puerto Rico, State Branch of the American Federation of Labor, 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 hearing 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 COMPANIES

Bull Insular Line, Inc., a Maine corporation, The New York & Porto Rico Steamship Co., a Maine corporation, Waterman Dock Company, a Puerto Rico corporation, Lykes Bros. Steamship Co., Inc., a Louisiana corporation, and McCormick Steamship Company, a Puerto Rico corporation, each has its principal office in Puerto Rico, in San Juan.

Prior to the war, each of the Companies operated a general steamship business between Puerto Rico and various ports of the United States, transporting passengers and freight. Since April 1942, the Companies have been acting as berth subagents of the United States War Shipping Administration in the United States and Puerto Rico, in which capacity they have been engaged in the loading and discharging of vessels, and the receipt and delivery of cargo.

Each of the Companies admits, and we find, that each is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Union No. 6 de Estibadores de Muelles y Marinos del Puerto de Guanica (CIO-CGT),¹ affiliated with Union de Empleados de Muelles de Puerto Rico and Confederacion General de Trabajadores de Puerto Rico, is a labor organization admitting to membership employees of the Companies.

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

III. THE QUESTION CONCERNING REPRESENTATION

The Companies have refused to grant recognition to Union No. 6 as the exclusive bargaining representative of certain of their employees

¹ While Union No. 6, by virtue of its designation in its petition, apparently claims affiliation with the Congress of Industrial Organizations, and while the UTM and the ILA make a contrary contention, the record is not sufficiently clear to make a determination of this question.

until Union No. 6 has been certified by the Board in an appropriate unit.

The ILA and the UTM contended at the hearing and in their joint brief that the "Insular-wide contract" between them and the Companies for 1945 and 1946 constitutes a bar to a present determination of representatives. As noted hereinafter in Section IV, the "contract" to which they refer consists actually of a contract with the ILA and another with the UTM covering the same period of time, and each purporting to cover all stevedores employed by the Companies at all ports on the Island of Puerto Rico. Since it is obvious that the same employee unit cannot be represented exclusively by each of two separate labor organizations at the same time, clearly the contracts alleged to be a bar can no more be effective for that purpose than a membership-only contract.² Accordingly, we find that there is no bar to a present determination of representatives for employees in the unit hereinafter found to be appropriate.

A statement of a Board agent, introduced into evidence at the hearing, indicates that Union No. 6 represents a substantial number of employees in the unit hereinafter found appropriate.³

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

Unit No. 6 seeks a unit of all stevedores, water boys, and bag sewers of the Companies in the port of Guanica, Puerto Rico. The record discloses that the employees in the unit, petitioned for are employed and paid through the South Porto Rico Sugar Company acting as agent for the Companies. There are no temporary transfers of employees of the Companies between the port of Guanica and other ports of Puerto Rico, and the employees at Guanica are subject to a separate common supervision, and perform identical or similar duties related to the loading or unloading of ships at the port. It is clear, therefore, that the employees at Guanica constitute a group possessing substantial common interests which appropriately may bargain as a separate unit.

The Companies, the UTM, and the ILA contend, however, that the appropriate bargaining unit consists of all stevedores employed by the

² *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512; *Matter of Pressed Steel Car Company, Inc.*, 46 N. L. R. B. 262.

³ The Field Examiner reported that Union No. 6 submitted 125 membership cards; that the names of 113 persons appearing on the cards were listed on the pay rolls of The New York & Porto Rico Steamship Co. for the periods ending April 15, 1943 and March 19, 1944, respectively; and that there was an average of 155 employees in the alleged appropriate unit during these periods. Neither the UTM nor the ILA submitted any proof of representation in the alleged appropriate unit, but both claimed an interest in the proceeding because of their contracts with the Companies purporting to include the employees in the alleged appropriate unit.

Companies at all ports on the Island of Puerto Rico, including the port of Guanica, and allege that the history of collective bargaining has established the appropriateness of such a unit.

The parties agree, and it is clear, that since 1934 the Companies have in many instances bargained as an employer group with the unions involved in this proceeding. The principle issue is whether or not bargaining with the multi-employer group has been conducted on the basis of the Island-wide unit proposed by the Companies, the ILA, and the UTM.

From 1934 to 1937, the Companies negotiated contracts through a Steamship Committee with the UTM covering all stevedores employed at all Puerto Rican ports.⁴ No contract was negotiated in 1938 during an Island-wide strike by the stevedores which was settled by an arbitration award. In the same year, the ILA began its organizational efforts among the stevedores. In 1939, the Companies, the UTM, and the ILA apparently followed an informal tripartite agreement to abide by the terms of the 1938 arbitration award. However, in 1939, the Bull Insular Line, Inc., acting independently of the Steamship Committee, executed a written contract with a local union at the port of Guayanilla covering stevedores, and in 1941 executed a similar contract with a local union in the port of Fajardo. Also in 1939, the Local of the UTM functioning at Guanica severed its relationship with the UTM and later in 1940 affiliated with CGT, becoming Union No. 6, the petitioner herein. Since 1940, the Steamship Committee has dealt with the ILA and the UTM in separate negotiation conferences with each organization for the ports at which the union involved apparently claimed a majority.⁵ The record shows that, despite the common affiliation of the UTM and the ILA, the two organizations have competed in obtaining membership from among the stevedores at various Island ports, and that the stevedores at some of the ports have shifted from one organization to the other on several occasions. In 1941, Union No. 6 and The New York & Porto Rico Steamship Co., the only one of the Companies operating at Guanica at that time, negotiated and signed a separate contract covering the port, but since that time have been unable to reach an agreement although the Union conducted a strike at that port in 1944 and again in 1945.

It is obvious, therefore, that since 1938 the collective bargaining of the Companies with the UTM and the ILA with respect to the stevedores in Puerto Rico has not been conducted on a true Island-wide

⁴ The Steamship Committee is an informal association composed of representatives of the several Companies. The Committee has possessed no formal authority to bind any of the Companies, and contracts negotiated have always been referred to each of the Companies for its approval and signature.

⁵ While the separate contracts negotiated by the Steamship Committee with the ILA and the UTM have each purported to be Island-wide in scope, obviously two different labor organizations can not represent exclusively the same employee unit at the same time.

basis, but rather on a shifting multi-port basis of considerably narrower scope. Moreover, these variable divisions in the ranks of the Island-wide group of stevedores are reflected in the history of the employer group personified by the Steamship Committee. Thus, in 1939, one of the Companies and, in 1941, two of the Companies, negotiated and executed separate contracts with labor organizations without the assistance of the Steamship Committee.

In view of the foregoing, and upon the entire record in the case, we are of the opinion that the history of collective bargaining among the stevedores in Puerto Rico does not establish the appropriateness of an Island-wide unit.⁶ To the contrary, the fact that stevedore groups at the several Island ports since 1937 have shifted affiliation from one union to another, particularly between the UTM and the ILA, is indicative of the appropriateness at this time of units confined to separate ports.⁷

Accordingly, we find that all stevedores, water boys, and bag sewers⁸ employed by the Companies at the port of Guanica, Puerto Rico, excluding all supervisory employees with the 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 find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. As heretofore stated, Union No. 6 called a strike in 1945. The strike is still in progress, and the record does not disclose that any new employees have been hired. Under these circumstances, we shall select the payroll immediately preceding the date of the strike for purposes of determining eligibility to vote. We shall therefore direct that those eligible to vote in the election shall be those employees in the appropriate unit who were employed during the payroll period immediately preceding the 1945 strike, subject to the limitations and additions set forth in the Direction.⁹

⁶ Cf. *Matter of Rayonier, Incorporated, Grays Harbor Division*, 52 N. L. R. B. 1269.

⁷ See *Matter of Bull Insular Line, Inc.*, 56 N. L. R. B. 189.

⁸ There is no dispute among the parties with respect to the inclusion of water boys and bag sewers within a unit of stevedores.

⁹ Although neither the UTM nor the ILA has submitted proof of any representation in the unit herein found appropriate, in view of their alleged contractual interest, we shall accord each of them a place on the ballot, with leave to withdraw, if they so desire, by giving notice to that effect to the Regional Director within ten (10) days after the date of this Decision and Direction of Election.

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 Bull Insular Line, Inc., The New York & Porto Rico Steamship Co., Waterman Dock Company, Lykes Bros. Steamship Co., Inc., and McCormick Steamship Company, 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 1945 strike, including employees who did not work during the 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 Union No. 6 de Estibadores de Muelles y Marineros del Puerto de Guanica, affiliated with the Union de Empleados de Muelles de Puerto Rico and the Confederacion General de Trabajadores de Puerto Rico, or by Union de Trabajadores de Muelles y Ramas Anexas de Puerto Rico, affiliated with the Federacion Libre de los Trabajadores de Puerto Rico, State Branch of the American Federation of Labor, or by the International Longshoremen's Association, affiliated with the Federacion Libre de los Trabajadores de Puerto Rico, State Branch of the American Federation of Labor, for the purposes of collective bargaining, or by none of these labor organizations.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.