

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, DISTRICT COUNCIL OF PORTS OF PUERTO RICO, AFL, AND ITS AFFILIATED LOCALS 1740 AND 1674 *and* CENTRAL ROIG REFINING COMPANY, INC.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, DISTRICT COUNCIL OF PORTS OF PUERTO RICO, AFL, AND ITS PRESIDENT E. G. MORENO *and* FRANCISCO VEGA OTERO D/B/A COMPANIA DE TRANSPORTE FRANCISCO VEGA OTERO

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, DISTRICT COUNCIL OF PORTS OF PUERTO RICO, AFL, ITS PRESIDENT E. G. MORENO AND ITS LOCAL 1740 *and* PUERTO RICO STEAMSHIP ASSOCIATION. *Cases Nos. 24-CD-2, 24-CD-3, and 24-CD-4. October 23, 1952*

Decision and Determination of Dispute

STATEMENT OF THE CASE

This proceeding arises under Section 10 (k) of the Act, which provides that "whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of Section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen. . . ."

On May 28, 1952, Central Roig Refinery Company, herein called Roig Refinery, filed charges against International Longshoremen's Association, District Council of Ports of Puerto Rico, herein called the ILA, and its affiliated Locals 1740 and 1674. On May 29, 1952, Francisco Vega Otero, d/b/a Compania de Transporte Francisco Vega Otero, herein called Vega Otero, filed charges against the ILA and its president, E. G. Moreno. On June 4 and 17, 1952, the Puerto Rico Steamship Association, herein called the Association, filed charges and amended charges against the Council, its president, and its Local 1740. The charges alleged that the Respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (b) (4) (D) of the Act.

Thereafter, pursuant to Section 10 (k) of the Act and Sections 102.71 and 102.72 of the Board's Rules and Regulations, the Regional Director investigated the charges and, after consolidating the cases for purposes of hearing, provided for a hearing upon due notice to all parties. A hearing was held before George L. Weasler, hearing officer, on August 14, 15, 18, and 19, 1952. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.¹

¹ Asociacion de Choferes y Empleados de Camiones de Caguas, affiliated with Asociacion de Choferes de Puerto Rico, Inc., the certified representative of the employees of Vega Otero, was mailed a copy of the notice of hearing but did not enter an appearance or intervene.

The rulings of the hearing officer 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 but none was filed.

Upon the entire record in the cases the Board ² makes the following:

FINDINGS OF FACT

1. The businesses of the Employers

(a) *Central Roig Refining Company, Inc.*

Central Roig Refining Company, Inc., is a Puerto Rico corporation completely owned by the partners of Antonio Roig Sucesores, which manufactures refined sugar at Yabucoa, Puerto Rico. The partnership also manufactures raw sugar at Central El Ejemplo, Humacao, Puerto Rico. During the 12-month period preceding the hearing Roig shipped outside of Puerto Rico approximately 38,000,000 pounds of refined sugar and approximately 32,500,000 pounds of raw sugar valued in excess of \$1,750,000.

The parties stipulated, and we find, that both the partnership and Central Roig Refinery, Inc., are engaged in commerce within the meaning of the Act.

(b) *Vega Otero*

Vega Otero, d/b/a Compania Transporte Francisco Vega Otero, is engaged in a trucking business in San Juan, Caguas, and Humacao, Puerto Rico. The greater portion of the Company's income is derived from hauling sugar under contract for the Eastern Sugar Associates and Antonio Roig Sucesores. During the 12-month period preceding the hearing this Company transported sugar valued in excess of \$5,000,000 for the two companies to the piers at San Juan for shipment outside Puerto Rico.

The parties stipulated, and we find, that Vega Otero is engaged in commerce within the meaning of the Act.

(c) *Puerto Rico Steamship Association*

The Association is a membership association of companies engaged in the various ports of the Island of Puerto Rico in the loading and unloading of vessels, receipt and delivery of cargo and related operations, and the transportation of such cargo between ports in Puerto Rico and ports of the United States and foreign countries. The total

² Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

value of such cargo transported from Puerto Rico to the United States and foreign countries during the 12-month period preceding the hearing was \$337,000,000. During the same period the value of cargo transported from the United States and foreign countries to Puerto Rico was in excess of \$200,000,000. Included among the Association's members are the Bull Insular Lines, Inc., and the Lykes Lines Agency, Inc.

We find that the Association is engaged in commerce within the meaning of the Act.

2. The dispute

(a) *The facts*

Vega Otero, who has a collective bargaining agreement with the Asociacion de Choferes y Empleados de Camiones de Caguas, certified as bargaining representative for his employees on April 17, 1952, hauls both raw and refined sugar to the piers at San Juan. At Central El Ejemplo, following a practice of many years, the *raw* sugar is placed aboard Vega Otero's trucks by the employees of Central El Ejemplo and then is stacked in the truck by the employees of the trucker. The unloading and stacking of the *raw* sugar at the piers at San Juan are done by stevedoring employees of the steamship companies or companies affiliated with them.

A different procedure, however, and one which has been the practice at least for approximately 16 years, is followed for loading and unloading *refined* sugar from Roig Refinery. The loading of refined sugar on Vega Otero's trucks at the refinery and the unloading and stacking of this sugar on the piers are done by the trucker's own employees and not by the stevedore employees of the steamship companies. It is this work—the unloading and stacking of *refined* sugar at the piers at San Juan—which is in dispute.

On May 6, 1952, while employees of Vega Otero were unloading and stacking Roig's refined sugar at pier #9 of the Bull Insular Lines, an ILA picket line was established. The employees of Vega Otero stopped work and gathered outside the pier. When an official of the Bull Lines spoke to the president of ILA Local 1740, he was told that the ILA stevedores thought that the unloading and stacking of refined sugar should be done by them. The picket line, however, was removed at the instructions of E. G. Moreno, president of ILA, who stated that the matter had been postponed for 15 days. On the same day Moreno told another official of the Bull Lines that the picket line was set up because the ILA stevedores wanted the unloading of the refined sugar at the piers to be done by the dock workers and not by the employees of the trucking company.

On June 1 or June 2, 1952, the employees of Vega Otero began to unload refined sugar from the Roig refinery at the Bull Line's pier #1 in San Juan. Stella Royo, the official of Vega Otero who testified, left the pier after the work began. When he returned, he found his men outside the pier. They told him that the ILA men had chased them off the pier. At that time Stella Royo talked with three officials of the ILA—Ortiz, Gordils, and Caban. They told him "you are not supposed to unload refined sugar, because that belongs to us." Stella Royo then sought and received police protection. When the police asked Gordils if the men were on strike, Gordils said that they were not on strike but, "we don't want these people that come from the island to unload this refined sugar here." While this conversation was taking place, the ILA pickets appeared in front of the pier. The pickets' placards bore the following statements in Spanish: "All the work in the waterfront is under the jurisdiction of the ILA. The stacking of sugar is part of our contract on the piers. We demand that it be fulfilled"; "The work on the piers is for the workers on the piers. We do not permit that imported workers who get lower salaries than ours," [sic] and "The sugar stevedores demand that our contract be fulfilled; to stack on the piers is the jurisdiction of the pier workers." Despite the police protection, Vega Otero's workers refused to cross the picket line, and the men who were loading raw sugar on the steamship *Glencoe* of the Bull Lines also stopped work. Later that day the refined sugar was hauled back to the refinery, and from that date until after the issuance of a restraining order by the Federal district court, on July 2, 1952, Vega Otero made no further effort to unload sugar at the San Juan piers.

During this period Vega Otero was having much the same difficulty with his deliveries of Roig's refined sugar to the Lykes Agency. On May 7, 1952, the assistant manager of Lykes Lines was informed by Ortiz of the ILA that if he received any more refined sugar from Roig, the ILA would set up a picket line at the piers. The next morning, May 8, there was a picket line in front of the Lykes Lines piers #12 and #13 which the checkers, represented by ILA Local 1674, and other employees of the Lykes Lines would not cross. When Otero's trucks brought refined sugar from Roig's refinery to pier #13, they found this picket line there. After some conversation between representatives of Lykes Lines and Vega Otero and an official of ILA, the picket line was removed; but after about one-half hour the pickets reappeared in front of the pier, and Caban, Ortiz, and Gordils of the ILA arrived. These three ILA officials and the representative of Vega Otero then conferred with Moreno who agreed to permit Vega Otero to finish unloading the trucks upon which work had been started. Vega Otero's employees, however, despite the

pickets, finished unloading the entire shipment. On May 10, 1952, ILA stevedores at pier #13 refused to load Roig's refined sugar aboard the S. S. *Jean Lykes*, and this vessel left without its complete cargo.³

(b) *Contentions of the parties*

The Employers—the charging parties—assert that by the above conduct the Respondents violated Section 8 (b) (4) (D) of the amended Act.

The Respondents, represented by counsel, participated in the hearing and cross-examined witnesses. They, however, presented no witnesses and made no clear statement of position on the merits of this proceeding. Neither the Respondents nor the charging parties argued in summation at the hearing or filed briefs with the Board.

(c) *Applicability of the statute*

The charges, which were duly investigated by the Regional Director, allege a violation of Section 8 (b) (4) (D) of the amended Act, and the Regional Director was satisfied that upon the basis of such investigation, a violation of that section has been committed. As stated, the Respondents presented no testimony, and the facts upon which we base our findings are uncontroverted on the record.

On the record before us, we find that there is reasonable cause to believe that the Respondents engaged in activities proscribed by Section 8 (b) (4) (D) of the Act, with the object of forcing or requiring Vega Otero to assign the work of unloading and stacking refined sugar on the piers at San Juan to members of their organization rather than to Vega Otero's own employees who are members of another labor organization. We therefore find that the dispute in question is properly before us for determination in a proceeding under Section 10 (k).

(d) *The merits of the dispute*

The record shows that the Respondents have no rights under any contract with Vega Otero upon which to predicate a lawful claim to the work in dispute. Nor is Vega Otero failing to conform to any order or certification of the Board determining the bargaining representative for the employees performing the work in dispute. To the contrary, Vega Otero has recognized, bargained with, and executed a contract with the certified representative of his employees. Neither is there any question that Vega Otero has assigned the work to his own employees.

³The record indicates that there were other instances of refusals by the stevedores to load sugar aboard vessels during July. As the record before us, however, does not clearly prove that the Respondents instigated or were responsible for these incidents, we have not considered them in our determination of this dispute.

These facts are determinative of the present dispute. The Board has held that Sections 8 (b) (4) (D) and 10 (k) "do not deprive an employer of the right to assign work to his own employees, nor were they intended to interfere with an employer's freedom to hire, subject only to the requirement against discrimination as contained in Section 8 (a) (3)."⁴ Consequently, in determining this dispute, it is sufficient on the facts before us that Vega Otero assigned the work to its own employees and that the Respondents engaged in proscribed activities to force or require Vega Otero to assign this work to their own members.

Accordingly, we find that the Respondents are not lawfully entitled to force or require Vega Otero to assign the work of unloading from its trucks and stacking refined sugar on the piers at San Juan, Puerto Rico, to their members rather than to employees of Vega Otero.⁵

Determination of Dispute

On the basis of the foregoing findings of fact and the entire record in this case, the Board makes the following determination of the dispute, pursuant to Section 10 (k) of the amended Act:

1. International Longshoremen's Association, District Council of Ports of Puerto Rico, AFL, its president E. G. Moreno, and its Locals 1740 and 1674 are not, and have not been lawfully entitled to force or require Francisco Vega Otero, d/b/a Compania de Transporte Francisco Vega Otero to assign the work of unloading and stacking refined sugar on the piers at San Juan, Puerto Rico, to members of their organizations rather than to employees of Vega Otero.

2. Within ten (10) days from the date of this Decision and Determination of Dispute, each of the Respondents shall notify the Regional Director for the Twenty-fourth Region, in writing, as to what steps the Respondents have taken to comply with the terms of this Decision and Determination of Dispute.

⁴ *United Brotherhood of Carpenters and Joiners of America, et al. (Stroh Brewery Company)*, 88 NLRB 844; *Juneau Spruce Corporation*, 82 NLRB 650.

⁵ *Direct Transit Lines*, 92 NLRB 1715.

JOHN IRVING STORES OF CHICAGO, INC., THE NATIONALLY FAMOUS MARY JANE SHOE STORES OF ILLINOIS, INC., and CHICAGO JOINT BOARD, RETAIL, WHOLESALE & DEPARTMENT STORE UNION, C. I. O., PETITIONER. *Case No. 13-RC-2664. October 23, 1952*

Decision and Order

On May 13, 1952, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the 101 NLRB No. 21.