

their desire to be part of the existing guard unit, and the Petitioner may bargain for them as part of such unit.

[Text of Direction of Election omitted from publication in this volume.]

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SUCESORES DE ABARCA, INC. *and* AMALGAMATED TRADE UNION'S COUNCIL, PETITIONER. *Case No. 24-RC-445. November 21, 1952*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before George L. Weasler, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The Employer operates a machine shop and foundry in Miramar, Santurce, Puerto Rico. It is also engaged in the business of repairing ships at a drydock located next to its grounds. The record reveals that the Employer is presently under contract with the United States Navy for the repair of Navy ships.

The Petitioner seeks to represent, as a separate appropriate unit, those employees of the Employer employed aboard the ships in the process of repair at the drydock. These shipboard employees perform services as mechanics, welders, and laborers on an intermittent basis as the need for work arises. The Employer and the Intervenor herein, the Union de Macanicos Auxiliaries y Ramas Anexas, move that the petition be dismissed on the grounds: (1) That an existing contract between them, which allegedly covers the employees sought, constitutes a bar to this proceeding, and (2) that the unit sought by the Petitioner is not appropriate for collective bargaining purposes. The Petitioner argues that the existing contract is not a bar because its benefits do not extend to the requested employees. For the reasons discussed below the motion is hereby denied.

The Employer and the Intervenor have had successive collective bargaining agreements covering employees of the Employer since 1941. The current contract, executed June 26, 1952, expires June 25, 1956. Although paragraphs 1 and 9 of the contract purport to include the employees sought by the Petitioner, paragraph 9 makes it clear that these employees do not derive any of the benefits provided for the other employees under the contract. The record shows that the employees sought are not entitled to vacation or insurance benefits accorded the permanent employees under the contract; nor does the contract guarantee the former a minimum rate of pay as it does the latter. Each shipboard employee concerned in this proceeding, however, is required to pay 30¢ per week as union dues to the Intervenor in any week in which he works 24 or more hours. The record further reveals that during the existence of the various contracts between the Employer and the Intervenor over the last 11 years, only on one or two occasions were the grievances of the shipboard employees discussed.

Upon all the evidence adduced at the hearing it is clear that the existing contract between the Employer and the Intervenor does not, in fact, cover the employees sought by the Petitioner for collective bargaining purposes. Therefore, we find the contention of the Employer and the Intervenor that their contract constitutes a bar to this proceeding to be without merit.<sup>1</sup>

The question remains whether or not the unit sought by the Petitioner is appropriate for collective bargaining purposes.

As hereinbefore noted, the group sought by the Petitioner consists of maintenance employees employed on an intermittent basis aboard ships in the process of repair by the Employer. The evidence shows that the average number of weeks worked by these employees during the period from January 3, 1952, through September 3, 1952, was 10.2, and that the number employed at the time of the filing of the petition was 37. When employed they perform their services under the exclusive supervision of James Lynn, an engineer employed by the Employer. The amount of work for each employee and the number of times he will be called to work is determined by Lynn. Neither the permanent inside employees nor their supervisors have any contact with the shipboard employees except on those occasions when Lynn requires a skilled mechanic to come aboard ship to perform an exceptionally difficult job. The shipboard employees, however, are never required to work in any of the plants of the Employer. The permanent employees are employed in the Employer's foundry and in other shops operated by the Employer.

Lynn testified that the work performed by the shipboard employees differs substantially from the work performed by the permanent em-

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<sup>1</sup> *Queensbrook News Company, Inc.*, 98 NLRB 84.

ployees. The wage rates of the former are not related to nor dependent upon the wage rates of the latter. Although the employees sought are employed on an intermittent basis, the record reveals the same men are usually hired from a pool of these employees and that a number of them have been employed by the Employer for 1 or 2 years.

Under the circumstances we find that the employees sought by the Petitioner are in effect regular part-time employees whose conditions and interests of employment are substantially different from those of the permanent employees, and that they may be represented as a separate appropriate unit.<sup>2</sup>

We therefore find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act: All shipboard employees employed on an intermittent basis by the Employer at the drydock utilized by the Employer in Miramar, Santurce, Puerto Rico, excluding all permanent employees employed in the Employer's foundry and shops, administrative, executive, and professional employees, office clerical employees, guards, watchmen, firemen, and all supervisors as defined in the Act.

5. The determination of representation :

In view of the intermittent nature of the employment of the employees involved in the petition, we have modified our usual direction of election to provide that only those employees within the appropriate unit described in paragraph 4 whose names appear on three or more payrolls of the Employer in the 8 months preceding this Direction shall be eligible to vote.<sup>3</sup>

[Text of Direction of Election omitted from publication in this volume.]

<sup>2</sup> See *Mario Mercado e Hijos d/b/a Central Rufina, Inc.*, 92 NLRB 1509, and *Temphon Trading Company, Inc.*, 88 NLRB 597, in which the Board held that where the conditions of employment of part-time or casual employees employed aboard ships differ substantially from those of the permanent employees of the Employer, such part-time or casual employees as a group constitute a separate appropriate unit.

<sup>3</sup> *Mario Mercado e Hijos d/b/a Central Rufina, Inc.*, *supra*.

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ALTAMONT KNITTING MILLS, INC. and UNITED TEXTILE WORKERS OF AMERICA, AFL, PETITIONER. *Case No. 4-RC-1629. November 21, 1952*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, hearings were held before Bernard Samoff and Harold 101 NLRB No. 109.