

CENTRAL MERCEDITA, INC.¹ and UNION DE TRABAJADORES DE OBRA, DEPOSITO Y TRANSPORTACION DE CENTRAL MERCEDITA, INDEPENDENT, PETITIONER. *Case No. 24-RC-347. September 18, 1952*

Decision and Direction of Elections

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Robert J. Cannella, 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 [Chairman Herzog and Members Murdock and Peterson].

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.²

3. Amalgamated presently represents an industrial unit of employees in the Employer's sugar refinery and mill, for which unit Amalgamated was certified as bargaining agent by the Board. Said unit is currently encompassed by a collective bargaining agreement between Amalgamated and the Employer. Amalgamated contends that the employees in the unit sought (consisting of employees engaged in the Employer's garage and warehouse departments and maintenance of company-owned dwellings) are included in the aforesaid industrial unit, and that its contract is, therefore, a bar to these proceedings. However, the record conclusively discloses that the employees in the unit sought are not in any manner represented by Amalgamated or related to its collective bargaining contract with the Employer. Furthermore, the record discloses that all determinations, relating to the instant employees, have been administratively made by the Employer, and that they are presently unrepresented by any bargaining agent. We find, therefore, that the Amalgamated's contention is without merit, and that its contract constitutes no bar to these proceedings.

We find further that 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.

¹ The Employer's name appears as amended at the hearing.

² Intervenors in this proceeding are: (a) Union de Trabajadores de Factoria, Refineria y Ramas Anexas de la Industria, Azucarera, Local 1781, Amalgamated Trade Unions' Council, ILA-AFL (hereinafter called Amalgamated), and (b) Union Independiente Trafico, Vias y Obras Depto. Electrico (hereinafter called Vias y Obras), which latter intervenor has been known heretofore on the Board's records as Union Independiente de Taller, Vias y Obras de Central Mercedita. Vias y Obras will appear on the ballot in these proceedings under its name as changed.

4. The appropriate units:

The Petitioner seeks a unit confined to the production and maintenance employees of the Company's warehouse and garage departments³ and such of the maintenance employees of the Company as are engaged in the maintenance and repair of company-owned employee dwellings.

The Intervenor Amalgamated contends, in effect, that these employees should be added to the production and maintenance employees of the Employer's sugar refinery and mill covered by Amalgamated's current collective bargaining agreement.

The Intervenor Vias y Obras opposes inclusion of the garage department employees in the unit sought by the Petitioner. It contends that such employees should be added to the unit of electrical shop employees and railroad and maintenance-of-ways employees at the Employer's mill, for which it was certified as bargaining agent by the Board on July 20, 1951.

The Employer takes a neutral position.

The record shows that the employees sought by the Petitioner, approximately 100 in number, comprise, in effect, 3 separate departments, each of which is under separate immediate supervision, but all of which, together, are under the same ultimate supervision. About one-half of the employees in the garage department, however, work under the same supervision as do certain of the maintenance-of-ways employees represented by the Intervenor Vias y Obras, and apparently possess similar skills and have the same general working conditions. The remaining workers involved in the petition (other than the garage department employees) apparently have interests and skills similar to certain of the industrial employees represented by the Intervenor Amalgamated. It thus appears that there are certain factors which would support the addition of the garage department employees to the unit represented by Intervenor Vias y Obras, and the addition of the remaining workers to the unit represented by Intervenor Amalgamated.⁴ The latter union, however, unlike Vias y Obras, has made no showing of interest among these employees, thus precluding effective consideration of its request for addition of these workers to the unit it currently represents.

On the other hand, there are factors herein which support the grant of the Petitioner's unit request. The employees concerned generally have separate immediate supervision, and there is no interchange of employees with the existing represented units. Although the record shows that the other employees of the Employer are currently covered by four individual bargaining agreements, none of the unions holding

³ The garage department is composed of two groups of employees, those who maintain and drive the company-owned automobiles, and those who maintain and drive the company trucks. The two groups are administratively consolidated into the one garage department.

⁴ *National Oats Company*, 93 NLRB 939.

such contracts has heretofore represented or bargained for any of the employees the Petitioner seeks. Thus, these employees constitute a residual production and maintenance group which we would establish as a separate unit, without regard to other factors, so as not to deny them the opportunity of obtaining the benefits of collective bargaining, if they so desired.⁵

However, since the garage department employees may appropriately be included in the unit currently represented by Vias y Obras, or in the residual unit sought by the Petitioner, we shall poll the garage department employees separately in order to determine their desires. If a majority selects the Intervenor Vias y Obras, these employees may be added to the unit such union currently represents. If a majority selects the Petitioner, these employees may be bargained for as part of the residual unit we have found appropriate herein.

To determine the desires of the employees as to scope of unit, we shall direct that separate elections by secret ballot be held in the following voting groups:

Group 1: All production and maintenance employees of the Company's garage department, but excluding all other employees of the Employer, office clericals, administrative, executive, and professional personnel, watchmen, foremen, guards, and supervisors as defined in the Act.

Group 2: All production and maintenance employees of the Company's warehouse department and all those employees of the Company engaged in the maintenance and repair of company-owned dwellings, but excluding all other employees of the Employer, the carpenter foremen, draftsmen, land surveyors, "measurers," contractors, warehouse foremen, the four confidential clerks at the warehouse, administrative, executive, and professional personnel, guards, and supervisors as defined in the Act.⁶

If a majority of the employees in Group 1 select the Intervenor Vias y Obras, they will be included in the unit of the Employer's workers presently represented by the said Intervenor. If a majority of the employees, in Group 2 only, select the Petitioner, the employees in that voting group will constitute a separate appropriate unit. If a majority of employees in each group cast their ballots for the Petitioner, they together will constitute a single appropriate unit.

The Regional Director conducting the elections is directed herein to issue a certificate of representatives or of results of elections in accord with the foregoing.

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

⁵ *Jordan Marsh Company*, 85 NLRB 1503; *The A. G. Stafford Company*, 96 NLRB No. 97.

⁶ The exclusions in both voting groups were stipulated by the parties at the hearing.