

riers; we may not, under *Edelen Transfer*, add these figures to those representing the Respondent's revenue from interstate shipments.<sup>2</sup> We therefore find that the Respondent's operations do not have such an impact on interstate commerce as to justify the assertion of jurisdiction by the Board. Accordingly, we shall dismiss the complaint in its entirety.<sup>3</sup>

[The Board dismissed the complaint.]

MEMBERS MURDOCK and PETERSON took no part in the consideration of the above Decision and Order.

<sup>2</sup> *Edelen Transfer and Storage Company, Inc*, 110 NLRB 1881. We note that even if Riggio's revenue had been from interlining operations, the combined figures would have amounted only to \$47,785, which is considerably below the \$100,000 required in *Edelen Transfer*.

<sup>3</sup> For the reasons set forth in their dissenting opinion in *Edelen Transfer and Storage Company, supra*, Members Murdock and Peterson find that it would effectuate the policies of the Act to assert jurisdiction herein. However, as they deem themselves bound by the majority decision in the *Edelen* case, they concur in the dismissal of the complaint.

SIXTO ORTEGA D/B/A SIXTO and UNION #1 DE PANADEROS, REPOSTERAS RAMAS ANEXAS DE P. R., FLT, PETITIONER. *Case No. 24-RC-751. December 16, 1954*

### Decision and Order

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

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

In Santurce, Puerto Rico, the Employer operates under the same roof a bakery, a pastry shop, and a soda fountain. He sells no meals but serves ice cream sodas, sandwiches, coffee, lemonade, and other soft drinks, and makes retail sales of ham, cheese, apples, bread, and pastry. Gross sales for the enterprise in 1953 were in excess of \$200,000. All sales were local. Gross purchases totaled approximately \$139,000 and were all made locally, although \$20,000 worth of flour, purchased through a local agent, was directly shipped to the Employer from outside Puerto Rico.

The Employer contests jurisdiction on the ground that the Act, which is applicable to the Territories, is not applicable to the Commonwealth of Puerto Rico. We find it unnecessary to pass on the Employer's contention at this time, as we find, on other grounds, that it will not effectuate the policies of the Act to assert jurisdiction in this case. While it is true that the operations of this Employer are not wholly unrelated to commerce, the relationship to commerce is no greater here than in the case of a similar enterprise in any of the 48

States. The Employer is essentially a retail selling organization, a type of business operation for which the Board has established specially applicable jurisdictional standards, as set forth in the *Hogue and Knott* case.<sup>1</sup> We do not believe that the impact of this type of operation is sufficient either in the States or in Puerto Rico to warrant the assertion of jurisdiction when the particular enterprise involved does not meet the standards therein set forth. The Employer's business, tested against the *Hogue and Knott* standards, fails to meet the amounts which we have determined are necessary to justify our assertion of jurisdiction. We therefore find that it will not effectuate the purposes of the Act to assert jurisdiction in this case, and shall dismiss the petition. Moreover, in future cases involving other types of business or operations for which the Board has established specially applicable standards for taking jurisdiction in the 48 States, we shall apply the same standards for asserting jurisdiction in Puerto Rico.

[The Board dismissed the petition.]

MEMBER MURDOCK, dissenting:

I would assert jurisdiction over this Employer under the Board's authority to exercise plenary jurisdiction over enterprises engaged in commerce in the Territories, an authority long recognized by the Board and courts.<sup>2</sup> I find no merit in the Employer's contention that the Act which is admittedly applicable to the Territories is not applicable to the Commonwealth of Puerto Rico. The Board has previously considered and rejected just such a contention in *Xavier Zequeria*, 102 NLRB 874. I believe the discussion of this question in that case is dispositive of the issue and the Board's action in reserving the question in this decision is disturbing and confusing.

In addition I must dissent from the majority's action in abandoning the Board's long established policy of exercising plenary jurisdiction over labor relations matters in Puerto Rico. The majority's statement that although

it is true that the operations of this Employer are not wholly unrelated to commerce, the relationship to commerce is no greater here than in the case of a similar enterprise in any of the 48 States.

is directly counter to the definition of commerce in Section 2 (6) and (7) of the Act. As I pointed out in my dissenting opinion in *The Virgin Isles Hotel, Inc.*, 110 NLRB 558, to which I refer for a fuller exposition of my views on the issue here involved, "commerce" is differently defined with respect to Territories than with respect to the States, including within the definition "trade . . . within any territory." No sound reason exists, therefore, for the application of juris-

<sup>1</sup> *Hogue and Knott Supermarkets*, 110 NLRB 543.

<sup>2</sup> *N. L. R. B. v. Gonzalez Padin Co.*, 161 F. 2d 353 (C. A. 1).

dictional standards designed to measure the impact on commerce of enterprises operating in one of the States to enterprises operating in Puerto Rico or in other Territories over which this Board has plenary jurisdiction. I also point out in my *Virgin Isles Hotel* dissent that the cutting of the Board's plenary jurisdiction will mean an absence of regulation or control of industrial disputes in the excised areas in the Territories.<sup>3</sup>

Aside from the fact that the standard announced in this case is based upon an erroneous conception of what constitutes commerce in the Territories, it is further objectionable because it can only operate to cause confusion as to the extent to which this Board will assert jurisdiction in Puerto Rico and other Territories. What does the majority mean by its statement that

in future cases involving other types of business or operations for which the Board has established *specially applicable standards* [emphasis supplied] for taking jurisdiction in the 48 States, we shall apply the same standards for asserting jurisdiction in Puerto Rico.

What is meant by "specially applicable"? I take it that the retail standard is necessarily a *specially applicable standard* in this sense, and also the standard applied to the hotel industry. (See *The Virgin Isles Hotel, Inc., supra.*) But which of the other of the Board's jurisdictional standards are to be considered "specially applicable" standards? Surely not all of them, for if such were the case, the majority would have stated it was going to apply all the standards to operations in Puerto Rico. And is the policy announced herein to be applied also in Alaska and Hawaii, or does the Board intend to have different standards for different Territories? One of the primary reasons for having a jurisdictional plan is to avoid confusion and uncertainty as to what the standards are. It is 6 months since the majority announced a new jurisdictional plan, yet it appears that the confusion and uncertainty as to the standards for the Territories are only beginning.

In conclusion, when the Act itself directs this Board to exercise jurisdiction over all trade "within" the Territories and the District of Columbia; when the Board has proceeded on that basis for a number of years without comment or alteration of the statute by the legislature; and when the exercise of such plenary jurisdiction has been continually supported by the courts, it is singularly inappropriate now to restrict our performance of that statutory duty.

For the foregoing reasons, I would find that the Employer is engaged in commerce as defined in the Act and that it would effectuate the policies of the Act to assert jurisdiction herein.

<sup>3</sup> *Bayamon Transit Company, Sucesora v. Puerto Rico Labor Relations Board*, 70 P. R. Sup Ct No. 3, p. 292.