

SAN JUAN COMMERCIAL COMPANY *and* UNION DE EMPLEADOS DE MUELLES DE P. R., LOCAL 24927, AFL, PETITIONER

SAN JUAN MERCANTILE CORPORATION *and* UNION DE EMPLEADOS DE MUELLES DE P. R., LOCAL 24927, AFL, PETITIONER. *Cases Nos. 24-RC-733 and 24-RC-734. February 10, 1955*

Decision and Direction of Elections

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Vincent M. Rotolo, 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 these cases, the Board finds:

1. The Employers¹ are engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employers.

3. Questions affecting commerce exist concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

The Intervenor contends that its contracts covering the checkers sought herein are a bar. The Employers take no position on the contract bar issue.

Bargaining History of San Juan Mercantile Corporation

On October 24, 1950, the International Longshoremen's Association, District Council of the Ports of Puerto Rico, Intervenor herein,² and the Puerto Rico Steamship Association entered into a collective-bargaining agreement covering stevedores and checkers employed by the members of the Association. Mercantile was a member of the Association at the time. The contract was signed by the District Council and the various Locals of the Intervenor, including Local 1575, delegated to represent, among others, Mercantile's stevedores, and Local 1674, representing, among others, Mercantile's checkers. On March 6, 1952, this agreement was amended and extended to December 31, 1953. Thereafter, Mercantile withdrew from membership in the Puerto Rico Steamship Association, but the parties continued to operate under the bargaining agreement.

On October 5, 1953, the Intervenor, on behalf of Local 1575 and Local 1674,³ proposed to Mercantile by letter that the existing collec-

¹ San Juan Commercial Company is hereinafter described as "Commercial" and San Juan Mercantile Corporation is hereinafter described as "Mercantile."

² The Intervenor also entered an appearance on behalf of its Local 1575.

³ Although the letter appears to indicate that the District Council would administer the contract, the record shows that the letter was sent on behalf of Local 1575 and Local 1674.

tive-bargaining agreement be extended to December 31, 1955, but that the economic clauses of the contract be left open for further discussion. On October 28, 1953, the Petitioner notified Mercantile by letter that the Employer's clerks and maintenance employees had designated it as their bargaining agent and that it would submit, at a later date, a proposed draft of a collective-bargaining agreement for 1954.⁴ On December 31, 1953, the Employer and the Intervenor extended certain articles of the existing agreement to January 30, 1954; and on February 2, 1954, the parties entered into a stipulation agreement extending the 1950 collective-bargaining agreement, except for salary and social benefit clauses, to December 31, 1955.⁵ The stipulation agreement also provided in pertinent part:

In view of the existing situation on account of the Elections conducted on January 26, 1954, the result of which I. L. A. has objected, the parties agree that at the termination of the controversy existing between this organization and U. T. M. because of said elections by means of the pertinent legal procedures and the final decision of the competent Authority under the Act, the San Juan Mercantile Corporation will be free at its discretion to sign a contract with the entity it deems more convenient to its interests.

The Intervenor and Mercantile disagree as to the reasons why the foregoing clause was included in the stipulation agreement. The Intervenor contends that the clause was added because it had challenged the result of an election conducted by the Board in the case of *Bull Insular Line, Inc., et al.*, 108 NLRB 900, and the parties entertained doubt as to whether or not the Board would order a new election and include the employees of Mercantile as urged by the Intervenor in its objections to the election.⁶ On the other hand, Mercantile contends that the quoted clause was included, in part, because it wanted to maintain a neutral position between the Petitioner and the Intervenor and the Petitioner had notified it by the letter of October 28, 1953, that it represented the checkers.

Bargaining History of San Juan Commercial Company

Commercial and the Intervenor, with its affiliated Locals, executed a collective-bargaining agreement on April 20, 1951. This agreement covered Commercial's stevedores and the checkers, represented by

⁴ It does not appear that the Petitioner did in fact submit the proposed draft nor did it file its petition until May 25, 1954.

⁵ The salary and social benefit clauses were to be negotiated at a later date when other local steamship companies have reached agreement on such clauses. At the time of the hearing, Mercantile and the Intervenor had not negotiated such provisions.

⁶ In that proceeding, the Board had directed separate elections for the stevedores and the checkers of members of the Puerto Rico Steamship Association, and the Regional Director had excluded the employees of Mercantile because it had resigned from the Puerto Rico Steamship Association.

Local 1575 and Local 1674, respectively. Both of these Locals approved the agreement. Thereafter, the agreement was modified and extended to December 31, 1953. In December 1953, the Intervenor notified Commercial of its desire to extend the existing collective-bargaining agreement, and on January 4, 1954, the parties executed an agreement to extend the 1951 contract to December 31, 1955.⁷

Status of Local 1674, International Longshoremen's Association

Local 1674 was established to represent clerks and maintenance employees, including the timekeepers, office workers, paymasters, and checkers in the Port of San Juan. In addition, sublocals of 1674 represented such employees in other ports. The membership of this Local was made up, in part, of approximately 260 employees of the members of the Puerto Rico Steamship Association,⁸ and the two Employers herein involved.

The record shows that on or about September 5, 1953, there was dissension among the membership of Local 1674,⁹ and after September 23, 1953, when the International Longshoremen's Association was expelled from the American Federation of Labor, there was a difference of opinion among the members of Local 1674 concerning the affiliation of the District Council with the International Longshoremen's Association. Thereafter, Local 1674 called a general membership meeting for October 24, 1953, but this meeting was suspended because of the absence of a quorum. The last general membership meeting of Local 1674 was held on June 28, 1953, and its executive board has not met since September 5, 1953. Further dissension occurred within the Local during December 1953, after the Board ordered an election among the checkers in related classifications, employed by members of the Puerto Rico Steamship Association in the *Bull Insular Line* case, and many members, including the Local's delegate to the District Council, campaigned for the Petitioner.¹⁰ Although Local 1674 had a complete list of officers and executive board members prior to January 26, 1954, after the election described above, all of the Local's officers joined the Petitioner, and by February 1954, Local 1674 was entirely inactive.¹¹ On March 14, 1954, the Intervenor met and adopted a resolution giving the representation of the checkers, em-

⁷ Although the Intervenor's local unions did not sign the January 4 agreement, the agreement provided that neither the Intervenor or its locals would request higher salaries or social benefits than other steamship companies agreed to pay in their respective collective-bargaining contracts.

⁸ Approximately 170 members were employed by various companies within the Association.

⁹ It appears that after August 1953 members started defaulting on their dues.

¹⁰ The Petitioner and the Intervenor appeared on the ballot in that proceeding, and the Petitioner was thereafter certified as collective-bargaining representative for checkers and related classifications.

¹¹ Only 21 members who were maintenance workers employed by the Waterman Line paid their dues in February and no members paid dues in March.

ployed by the two Employers here involved, and who were formerly represented by Local 1674, to Local 1575. The Intervenor did not notify the Employers involved herein of this action.

During February 1954, substantially all of the checkers employed by Commercial notified it that they intended to or had joined the Petitioner, and on April 8, they formally notified Commercial, by letter, to discontinue the checkoff of dues in the Intervenor. On May 25, 1954, the Petitioner notified Commercial that it represented all of its checkers and requested a collective-bargaining meeting. The petition in Case No. 24-RC-733 was also filed on May 25, 1954.

On May 8, 1954, Mercantile notified the Petitioner that its contract with the Intervenor provided that it could negotiate with the Union ultimately determined as its employees' collective-bargaining representative, but as the definite and final decision of said controversy was still pending, it intended to act under the contract with the Intervenor. The Petitioner filed its petition in Case No. 24-RC-734 on May 25, 1954, seeking to represent Mercantile's checkers. Thereafter, on or about June 3, 1954, Mercantile received a copy of a resolution adopted by its checkers repudiating the agreement with the Intervenor and authorizing the Petitioner to represent them.

We have carefully considered the facts presented in these cases and conclude that in view of the circumstances surrounding the contracts between the Employers and the Intervenor, these contracts no longer stabilize industrial relations. Under all the circumstances of these cases, including the fact that considerable dissension existed in Local 1674, arising, in part, because of the expulsion of the International Longshoremen's Association from the AFL, the fact that Local 1674 is no longer in existence, and the additional fact that the contract between the Intervenor and Mercantile appears to be in the nature of an interim agreement, we find that an immediate election is warranted. Accordingly, we find that the current contracts between the Employers and the Intervenor do not bar these proceedings.

We find that questions affecting commerce exist concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate units :

In accordance with the agreement between the parties, we find that the following constitute units appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act :

(A) All delivery clerks, receiving clerks, tally clerks, and gatemen of the San Juan Mercantile Corporation working at the Port of San Juan, excluding all other employees, executives, professional employees, guards, the paymaster, and other supervisors within the meaning of the Act.

(B) All employees of the San Juan Commercial Company, employed at the Army terminal in Catano, Puerto Rico, engaged in the checking of cargo being loaded or unloaded at said Army terminal, excluding all other employees, executives, professional employees, guards, paymaster, and all supervisors within the meaning of the Act.

[Text of Direction of Elections omitted from publication.]

CIBA STATES LIMITED *and* LOCAL UNION #532 OF LEAD BURNERS JOINT COUNCIL OF UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF UNITED STATES AND CANADA, AFL, PETITIONER. *Case No. 4-RC-2472. February 10, 1955*

Supplemental Decision and Direction

Pursuant to the Decision and Direction of Election issued herein on November 5, 1954,¹ an election was conducted on December 3, 1954, under the direction and supervision of the Regional Director for the Fourth Region, among the employees in the unit heretofore found appropriate. At the close of the election, a tally of ballots was furnished each of the parties in accordance with the Board's Rules and Regulations. The tally shows that 2 valid ballots were cast for the Petitioner, no ballots were cast for the Intervenor, Toms River Chemical Employees Union, no ballots were cast against the participating labor organizations, 3 ballots were challenged, and no ballots were void. No objections to the election were filed within the time provided therefor.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director, acting pursuant to the Board's Rules and Regulations, investigated the issues raised by the challenges, and on December 17, 1954, issued his report and recommendations on challenges. The Regional Director recommended that the challenge to 1 ballot be sustained, that the challenges to 2 ballots be overruled, and that the Board amend its appropriate unit finding. On December 30, 1954, the Petitioner filed exceptions to the Regional Director's report.

The Board has considered the Regional Director's report, the exceptions, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Regional Director except insofar as they are inconsistent herewith.

1. In the absence of any exception thereto, we adopt the Regional Director's recommendation that the challenge to the ballot of James Conklin be sustained.

¹ Not reported in printed volume of Board Decisions and Orders.