CONRADO FORESTIER D/B/A CANTERA PROVIDENCIA *and* BENITO CORDERO, PETITIONER *and* CONFEDERACION GENERAL DE TRABAJADORES DE PUERTO RICO, AUTENTICA. *Case No. 24–RD–22. March 4, 1955*

Decision and Order

Upon a decertification petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph M. Chandri, 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:

The Employer operates a stone quarry in Mayaguez, Puerto Rico. During the 12-month period preceding the hearing, the Employer's gross sales approximated $124,000, and its purchases $55,000. All sales and purchases were made within Puerto Rico, but 72 percent of its purchases originated outside the Territory.

There is no question that the Employer's operations fail to meet any of the standards recently decided by the Board as necessary for the assertion of jurisdiction. The sole issue stems from the fact that the Employer's business is located in a Territory of the United States. Since the promulgation of the new jurisdictional standards, the Board has held where specially applicable rules have been established, similar enterprises situated in the Territories are required to conform to the same jurisdictional criteria as are applicable in the 48 States.[1] In those earlier cases, the Board indicated that no exception as to the Territories was warranted: that the impact on commerce of business operations having their situs in the Territories is no greater than that of similar enterprises located in the 48 States. We believe that the same principle has application here. Accordingly, in the present case and in future cases the Board's entire jurisdictional standards will be uniformly applied in the Territories as in the several States.

The Employer's operations do not satisfy the inflow or outflow tests of the applicable standard as outlined in *Jonesboro Grain Drying Cooperative*, 110 NLRB 481. We find therefore that it will not effectuate the policies of the Act to assert jurisdiction.

[The Board dismissed the petition.]

MEMBER MURDOCK, dissenting:

I dissent from the refusal to assert jurisdiction in the instant case. I likewise dissent from the important announcement by the majority that in future cases the Board will no longer assert jurisdiction in

[1] *The Virgin Isles Hotels, Inc.*, 110 NLRB 558 (hotel); *Sixto Ortega d/b/a Sixto*, 110 NLRB 1917 (retail bakery); *Union Cab Company*, 110 NLRB 1921 (local taxicab operation).

any of the Territories on a plenary basis, but instead will apply *all* of the Board's jurisdictional standards adopted for the U. S. as the test for the assertion of jurisdiction in the Territories as well. The one virtue I can find in the majority's announcement is that it removes the presently existing confusion as to what is the Board's jurisdictional policy in the Territories. This confusion has been created by recent decisions (from which I likewise dissented) which made more limited inroads into the plenary policy, and which left in considerable doubt what the Board's actual policy was in any particular Territory and, indeed, whether there was any uniform policy with respect to the Territories. Two of these decisions were expressly confined by the Board to the peculiar type of business involved over which the Board does not assert jurisdiction in the U. S.—a hotel in the Virgin Islands,[2] and a taxicab operation in Alaska.[3] On the same day the latter case issued the Board dismissed a case involving a retail bakery in Puerto Rico which did not meet the U. S. retail standard. The majority therein made the general announcement that in future cases involving businesses for which the Board had established "specially applicable standards" for the U. S., it would apply the same standards in Puerto Rico.[4] I pointed out in my dissent in that case that no one knew and the majority did not define which of the U. S. standards were "specially applicable," and that the limitation of the announcement to Puerto Rico further left in doubt what the Board's policy was in Alaska and Hawaii. But it is clear that the instant case now substitutes a different policy for that announced in *Sixto Ortega* and removes all ambiguities and confusion with the clear announcement that *all* U. S. jurisdictional standards are *generally* applicable, not only in Puerto Rico, but in *all* Territories.[5] If the Board cannot have a correct jurisdictional policy with respect to the Territories there is at least some virtue in having a certain policy.

In view of the fact that the Board for the first time in its history has made the important decision in this case to abdicate entirely its plenary jurisdictional policy for cases arising in all Territories, I am constrained to write a full dissent from this action despite the fact that some of the points have been included in dissents from the prior cases which made more limited inroads into the plenary policy.

The sole basis given by the majority for the determination to abandon the Board's long-standing plenary jurisdictional policy for the Territories and to substitute the restrictive U. S. standards is, that

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[2] *The Virgin Isles Hotels, Inc.*, 110 NLRB 558.

[3] *Union Cab Company*, 110 NLRB 1921.

[4] *Sixto Ortega*, 110 NLRB 1917.

[5] I note that the majority also implicitly but necessarily decides the issue expressly reserved in *Sixto Ortega*—whether the Act is applicable to the Commonwealth of Puerto Rico—thereby removing the confusion which *Sixto Ortega* created on that point.

"the impact on *commerce* of business operations having their situs in the Territories is no greater than that of similar enterprises located in the 48 States." [Emphasis supplied.] Such a statement wholly ignores and flies in the face of a contrary determination made by the Congress in Section 2 (6) of the Act. Congress therein specifically defined "commerce" with respect to Territories differently from the definition applicable to the 48 States. With respect to the States it defined "commerce" in terms of movements "among" or "between" States—across State lines. But with respect to a Territory, it defined "commerce" to include "trade . . . *within* . . . any Territory" [emphasis supplied] as well as across Territorial lines. The courts have pointed out [6] that

> . . . Congress can constitutionally regulate purely *intraterritorial* commerce. And we think there can be no doubt that Congress must have intended to exercise this power when in Section 10 (a) of the National Labor Relations Act it gave the Board authority to prevent any person from engaging in any unfair labor practice affecting commerce, and in Section 2 (6) of the Act defined commerce to include "*trade . . . within . . . any Territory.*" [Emphasis supplied.]

It is also to be noted that by contrast, in framing the Fair Labor Standards Act, where "commerce" is defined as "trade . . . among the several States or from any State to any place outside thereof," Congress did not define commerce differently with respect to Territories but instead defined the term "State" to include "any territory or possession of the United States." [7] The Supreme Court has heretofore pointed out that when Congress describes the commerce which is regulated differently in different Federal acts that—"In so describing the range of its control, Congress is not indulging stylistic preferences;" but is "deciding what matters are to be taken over by the Central government. . . ." [8] *A fortiori*, when in one Act like Taft-Hartley, Congress not only defines the commerce which is regulated with respect to Territories differently from that defined in other Federal acts, but also differently from the definition with respect to States in the very same Act—Congress was obviously indulging in something more than mere "stylistic preferences." When it told this Board in Section 2 (6) that the Act regulates "trade . . . *within* . . . any Territory" although not trade within States, I regard this as a legislative mandate the Board is bound to respect. The majority, however, obliterates the distinction which Congress drew as between States and Territories in defining "commerce" and chooses to ignore the mandate.

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[6] *N. L. R. B.* v. *Gonzales Padin Company*, 161 F. 2d 353 (C. A. 1).
[7] Sec. 3 (b), Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 USCA 201.
[8] *Polish National Alliance* v. *N. L. R. B.*, 322 U. S. 643, 647.

The majority's sole asserted reason for its action in adopting U. S. standards which are largely predicated on inflow and outflow as the test for jurisdiction in the Territories—that the impact on "commerce" of business operations in the Territories is no greater than that of similar enterprises located in the States—is thus revealed as resting on a legal premise which is patently false in the face of Section 2 (6) of the Act. While I do not believe that any policy considerations could justify the action, the majority give no indication of what considerations impel them to take this radical step contrary to a long-established rule of plenary jurisdiction in the Territories. There is even lacking the sometimes hollow generality about "effectuating the purposes of the Act." Surely the Congress, employers, employees, and labor organizations in the Territories who are denied the benefits of the Act, and the interested public, are entitled to know what considerations are deemed sufficient to move a majority of this Board to retreat from a plenary policy in the Territories. As I noted in my *Breeding Transfer Company* dissent [9] from the cutting of the Board's jurisdiction in the U. S. by the adoption of the new standards, that action was explainable by a previously expressed desire to reallocate more authority to the States. Here, however, there is no meaningful explanation available of what moves a majority of the Board to further shrivel its jurisdiction by making a major cut in the area of its jurisdiction over the Territories.

A further important consideration is the fact that the cutting of the Board's plenary jurisdiction will mean an absence of any regulation or control of industrial disputes in these excised areas in the Territories. And the stringent U. S. industry standards, like the $3,000,000 gross receipts tests for utilities and local transit systems, may well exclude enterprises which are of great importance to the economy of the Territories whose cities may not be large enough to have utilities meeting the U. S. standards. To my knowledge neither Alaska nor Hawaii has any administrative machinery to do this work. Moreover, although there is an Insular Board in Puerto Rico, our own decisions have previously pointed out that under judicial decisions, even where such machinery is set up, local authorities are powerless to act even in cases where the Board declines jurisdiction. In the *Panaderia* case,[10] the Board said:

> Section 10 (a) of the amended Act permits the National Labor Relations Board to cede jurisdiction over cases to any State or Territorial agency only if the provisions of the State or Territorial statute applicable to the determination of such cases are not

[9] 110 NLRB 493

[10] *Panaderia Sucesion Alonso*, 87 NLRB 877, 879.

inconsistent with the corresponding provisions of the amended Act. Because the differences between the present Federal and Insular statutes are substantial, the National Labor Relations Board may not cede jurisdiction over any cases to the Insular Board. An attempt to define an appropriate area for action by the Insular Board over cases involving essentially local business enterprises has proved unworkable and has been abandoned by the Insular Board.[9] The Supreme Court of Puerto Rico itself has recently held [10] that Section 10 (a) of the Labor Management Relations Act, 1947, prohibits the Insular Board from exercising jurisdiction over matters which are within the scope of the Federal Act. Thus, at the present time, even if we were to decline jurisdiction in the instant case, the Insular Board would be powerless to act.

[9] Puerto Rico Labor Relations Board, Third Annual Report, pp. 8–9.
[10] *Bayamon Transit Company, Sucesora* v *Puerto Rico Labor Relations Board, et al.*, 70 P. R. Sup. Ct. No. 3, p. 292 (July 15, 1949).

In other words, the majority's action can only constitute a contribution to chaos in the areas now excised from the Board's jurisdiction in the Territories, whether or not it is motivated by a desire to withdraw in favor of local authorities. If it is so motivated, the withdrawal is subject to the additional objection that it is a circumvention of the cession requirements of Section 10 (a) of the Act—an objection I similarly earlier made with reference to the U. S. standards themselves and explicated in my *Breeding Transfer* dissent.

I further note that while this decision clarifies the question of the Board's policy with respect to jurisdiction over Territories, it necessarily leaves confused the question whether the Board will continue to follow the old plenary policy in the District of Columbia with respect to which Congress has defined "commerce" in Section 2 (6) as it has with respect to Territories, or whether the U. S. standards are applicable there too.

In conclusion, I submit that when the Act itself directs this Board to exercise jurisdiction over all trade *within* the Territories; when the Board has proceeded on that basis for a number of years without comment or alteration of the statute by the Congress; when the exercise of such plenary jurisdiction is supported by the courts; and when a rescission of such jurisdiction will leave commerce within those areas unprotected, I cannot but believe that this Board is derelict in the performance of its statutory duty when it retreats from a plenary policy in the Territories. I can find no legal or policy justification for such action and the majority fails to give any.