

All office clerical employees, excluding professional employees, managerial and confidential employees, guards, all other employees,⁶ and supervisors as defined in the Act.

All plant clerical employees including timekeepers, but excluding professional employees, managerial and confidential employees, guards, all other employees,⁷ and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

cal units. The timekeepers work from stations on the production floor and time the work of production employees. They work the same shift hours as the employees whose work they time. We find contrary to the Petitioner's contention, that the timekeepers are plant clerical employees, and accordingly we shall include them in the plant clerical unit. *Badenhausen Corporation*, 113 NLRB 867.

⁶ The parties agreed that the following employees should be specifically excluded from any unit or units found appropriate: Employees of the industrial relations department, chief accountant, assistant chief accountant, budget analysts, cost accountants, artists, technical illustrators, photographer-printer, designers, engineers, laboratory assistants, laboratory helpers, draftsmen, model shop employees, chemists, laboratory technicians, timestudy and methods analysts, methods engineers, tool designers, quality control analysts, outside expeditors, traveling auditors, collectors, cashiers, sales representatives, field service men, and secretaries to the sales manager, chairman of the board, division manager, assistant division manager, manager of factory accounting, manager of general accounting, works manager, director of purchases, and director of engineering.

⁷ *Ibid.*

San Juan Mercantile Corporation and Jose A. Cintron Rivera (on behalf of 17 other employees), Petitioner and International Longshoremen's Association, District Council of the Ports of Puerto Rico, Local 1575

San Juan Mercantile Corporation and ILA, District Council of the Ports of P. R., ILA-IND., Petitioner

San Juan Mercantile Corporation and its agent Orlando Bravo and ILA, District Council of the Ports of P. R., ILA-IND., Petitioner. Cases Nos. 24-RD-27, 24-RC-922, and 24-RC-924. January 4, 1957

DECISION, ORDER, 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 Robert J. Cannella, 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 Employer is engaged in commerce within the meaning of the Act.

2. The Decertification Petitioner in Case No. 24-RD-27, an employee of the Employer, asserts that International Longshoremen's Association, District Council of the Ports of Puerto Rico, Local 1575,

hereinafter referred to as ILA-1575, which is currently recognized by the Employer, is no longer the representative of certain employees of the Employer as defined in Section 9 (a) of the Act.

ILA, District Council of the ports of P. R., ILA-IND., hereinafter referred to as ILA, the Petitioner in Cases Nos. 24-RC-922 and 24-RC-924; Union de Trabajadores de Muelles y Ramas Anexas de P. R., District Council #15, IBL-AFL-CIO, hereinafter referred to as UTM; Union de Estibadores de Mayaguez, P. R. Ind., hereinafter referred to as UEM; and Union de Empleados de Muelles de P. R., Local 1901, IBL-AFL-CIO, hereinafter referred to as UDEM (the latter three unions being Intervenors in Cases Nos. 24-RC-922 and/or 24-RC-924) are labor organizations claiming to represent certain employees of the Employer.

3. For the reasons set forth in paragraph numbered 4, below, questions affecting commerce exist 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, in Cases Nos. 24-RC-922 and 24-RC-924;¹ but none exists in Case No. 24-RD-27.

Cases Nos. 24-RD-27 and 24-RC-922

4. The Decertification Petitioner in Case No. 24-RD-27, an employee of the Employer, asserts that ILA-1575, is no longer the collective-bargaining representative of the Employer's checkers at the Employer's operations in the port of San Juan.² ILA-1575 contends that checkers alone do not now constitute an appropriate unit, and that the only appropriate unit should include both the Employer's stevedores and checkers at the port of San Juan. In Case No. 24-RC-922, ILA, which is now the recognized bargaining agent of the Employer's stevedores at the port of San Juan, seeks an election in a unit that includes both these stevedores and the checkers in question. UTM seeks to represent the Employer's stevedores at the port of San Juan, but unlike the ILA, would exclude the checkers from such unit. The Employer takes no position on these matters.

The record reveals that the Employer's checkers at the port of San Juan perform, essentially, the clerical work involved in delivering cargo to consignees and receiving cargo from shippers on the Employer's piers and in the Employer's warehouses. In performing this work checkers are separately supervised. Their services, moreover, are utilized whether or not ships are at the docks. On the other hand,

¹ The Employer presently recognizes the ILA, Petitioner in Cases Nos. 24-RC-922 and 24-RC-924, as the sole collective-bargaining representative of its employees in the units sought by the ILA. The ILA, nevertheless, desires to receive a formal Board certification. See *General Box Company*, 82 NLRB 678.

² It appears that the term checkers used in this record includes delivery clerks, receiving clerks, tally clerks, and gatemen.

stevedores load and unload cargo from ships, and are employed only when ships are at the docks. Because of differences in the nature of their work, checkers, unlike stevedores, are not hired from a shapeup, have a greater semblance of permanency of employment, and are paid on a weekly basis. In addition, checkers receive 5 cents per hour more than the stevedores, and do not work the same hours.

However, despite these differences, the collective-bargaining history reveals that these checkers and stevedores have been customarily included in the same bargaining unit. Thus, on October 24, 1950, at a time when the Employer was a member of the Puerto Rico Steamship Association, the ILA and the Association entered into a collective-bargaining agreement which included, in the same unit, stevedores and checkers employed by the members of the Association.³ This agreement was thereafter amended and extended to December 31, 1953. On June 30, 1953, the Employer withdrew from membership in the Association, but continued to operate under the Association's bargaining agreement with the ILA. Subsequently, the Employer and the ILA specifically agreed to extend to December 31, 1955, the Association's contract insofar as it applied to both the Employer's stevedores and checkers.

On March 4, 1955, ILA-1575 was certified by the Board as the exclusive bargaining agent of the Employer's checkers at the port of San Juan.⁴ However, on March 15, 1955, the Employer and ILA-1575 entered into an agreement providing that the Employer's checkers would continue to be covered by the "current" contract that also covered the Employer's stevedores. Subsequently, on February 17, 1956, the Employer and the ILA amended and extended to December 31, 1957, the collective-bargaining agreement covering both the Employer's stevedores and checkers.

In view of the foregoing, it is clear that even though the Board, in early 1955, found that the Employer's checkers at the port of San Juan constituted a separate appropriate unit, the Employer, ILA-1575, and the ILA have since continued to bargain for the Employer's checkers as part of a longstanding unit comprising both checkers and stevedores. Under these circumstances, we find that the existing bargaining unit is one which comprises both the Employer's stevedores and the Employer's checkers at the port of San Juan. As the Decertification

³ It appears that one local of the ILA was to represent the stevedores and another local was to represent the checkers.

⁴ *San Juan Commercial Company, et al*, 111 NLRB 599. The Board found, on a contract-bar issue, that as there was considerable dissension in the local representing the checkers because of the expulsion of the ILA from the AFL, and as the "checker" local went out of existence, the existing contract could not serve as a bar to an election. However, in that case, unlike the present case, the appropriateness of a separate checker unit was not raised, the parties having agreed that the Employer's checkers at the port of San Juan could constitute a separate appropriate unit.

Petitioner is here seeking to decertify less than this existing unit, we shall dismiss the decertification petition filed in Case No. 24-RD-27.⁵

In Case No. 24-RC-922, the ILA is now seeking to be certified as the collective-bargaining representative in the existing unit comprising stevedores and checkers at the port of San Juan. The UTM, on the other hand, would exclude the checkers. The Employer takes no position on this matter. Although the checkers have different job functions and duties and do not interchange with the stevedores, both are engaged in the performance of a phase of the principal function of loading and unloading ships' cargoes. Moreover, from the nature of their work, it appears that there is considerable contact between the checkers and stevedores, and both have interests in common. Under these circumstances, and as the checkers at the port of San Juan are now, and have heretofore been, included in a unit with stevedores at this port, we find that the broader unit is the appropriate unit and shall direct an election therein.⁶

Case No. 24-RC-924

In this case the ILA seeks to be certified as the collective-bargaining representative of the Employer's stevedores and checkers at the port of Mayaguez. The Employer currently recognizes the ILA as collective-bargaining representative of these employees. The UTM and UDEM, Interveners in this case, would exclude the checkers from the unit.⁷ The Employer takes no position on this issue.

The facts concerning the position and duties of checkers and stevedores at the port of Mayaguez are the same as those set forth above for the port of San Juan. Moreover, the bargaining history for the two ports is similar, showing that the Employer's checkers have been bargained for as part of a stevedore unit for many years, and that they are currently covered by an existing contract which includes both the checkers and stevedores.⁸ Under these circumstances, and

⁵ *United States Steel Corporation, American Steel and Wire Division, Cyclone Fence Department* (not reported in printed volumes of Board Decisions and Orders); see *United States Time Corporation*, 108 NLRB 1435. Cf. *Bull Insular Line, Inc. et al.*, 107 NLRB 674, 683, where, based on a separate bargaining history for checkers, the Board granted a separate unit of checkers. However, there, unlike the present case, no party was seeking to include checkers with the stevedores. Cf. also *San Juan Commercial Company, et al.*, *supra*, footnote 4.

⁶ See *New York Shipping Association and its Members*, 107 NLRB 364

⁷ The UDEM was permitted to intervene at the hearing but submitted its showing of interest to the Regional Director the day following the hearing. However, as it appears that the showing of interest was dated before the close of the hearing, we shall permit the UDEM to appear on the ballot. *Cramet, Inc.*, 112 NLRB 975; *General Electric Company*, 89 NLRB 726, 728; *United Boat Service Corporation*, 55 NLRB 671, 675-676.

UEM was also permitted to participate at the hearing in this case but failed to submit a showing of interest. Accordingly, we shall not accord it a place on the ballot in the election hereinafter directed.

⁸ The Board has not previously directed a separate election for checkers at the port of Mayaguez, as it did at the port of San Juan.

for the reasons set forth above with respect to Case No. 24-RC-922, we find that the appropriate unit in this case likewise includes the Employer's checkers.

In accordance with our determinations herein, and on the basis of the entire record, we find that the following constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(A) All stevedores on shore and aboard ships, waterboys, winchmen, sewers, hatchtenders, motormen, fingerlift operators, coopers, mechanics, blacksmiths, carpenters, electricians, mechanic helpers, blacksmith helpers, carpenter helpers, electrician helpers, laborers, and all other workers, delivery and receiving clerks, tally clerks, gatemen, and all employees engaged in the manual operation of loading and unloading ships and the classification of cargo, maintenance of equipment, piers, and warehouses working at the port of San Juan for the Employer, excluding all office clerical employees, guards, and supervisors as defined in the Act.

(B) All stevedores on shore and aboard ships, waterboys, winchmen, sewers, hatchtenders, motormen, fingerlift operators, coopers, mechanics, blacksmiths, carpenters, electricians, mechanic helpers, blacksmith helpers, carpenter helpers, electrician helpers, laborers, and all other workers, delivery and receiving clerks, tally clerks, gatemen, and all employees engaged in the manual operation of loading and unloading ships and the classification of cargo, maintenance of equipment, piers, and warehouses working at the port of Mayaguez for the Employer and its agent Orlando Bravo, excluding all office clerical employees, guards, and supervisors as defined in the Act.

5. The record shows that the employment of the stevedores herein involved is intermittent. Accordingly, because they believed that in these circumstances the Board's customary eligibility standard, namely, those employees appearing on the payroll immediately preceding the date of the Board's Direction of Election, should not be applied, the parties stipulated that all employees in the included classifications, except the delivery and receiving clerks, tally clerks, and gatemen, who have been employed by the Employer for a minimum of 210 hours between July 1, 1955, and June 30, 1956, should be eligible to vote. The parties further agreed and stipulated that as the delivery and receiving clerks, tally clerks, and gatemen have more permanent employment, the Board's normal eligibility requirement should be applied to these employees, and that only those delivery and receiving clerks, tally clerks, and gatemen who were employed during the payroll period immediately preceding the date of the Direction of Election should be eligible to vote.

We believe that by accepting the stipulation of the parties in its entirety, we would disenfranchise certain otherwise included employees hired after June 30, 1956, who should be permitted to vote. Accordingly, we hereby modify, in part, the parties' stipulation to provide that all employees in the included classifications, except the delivery and receiving clerks, tally clerks, and gatemen, who have been employed by the Employer for a minimum of 210 hours within the past 12-month period immediately preceding the date of the issuance of this Decision and Direction of Election, shall be eligible to vote.⁹ We shall adopt the stipulation of the parties concerning the eligibility of delivery and receiving clerks, tally clerks, and gatemen, and hereby find that employees in these classifications who were employed during the payroll period immediately preceding the date of this Decision and Direction of Elections are eligible to vote.

[The Board dismissed the petition in Case No. 24-RD-27.]

[Text of Direction of Elections omitted from publication.]

MEMBER BEAN took no part in the consideration of the above Decision, Order, and Direction of Elections.

⁹ See *American Fruit and Steamship Company*, 88 NLRB 207.

American Broadcasting Company, a Division of American Broadcasting-Paramount Theatres, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. and Composers and Lyricists Guild of America, Petitioner. Case No. 1-RC-4231. January 4, 1957

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act,¹ a hearing was held before Norman H. Greer, hearing officer.² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

¹ The original petition also named Don Lee Broadcasting Company as an Employer, and requested a unit of employees of the Employers employed at Los Angeles, Chicago, and New York. At the hearing, Petitioner amended its petition to delete all reference to Don Lee Broadcasting Company and to the Employers' employees located in Chicago.

² The request for oral argument of Songwriters Protective Association, herein called SPA, is hereby denied as, in our opinion, the record and briefs adequately present the issues and the positions of the parties.

³ The hearing officer granted the Employers a continuing exception to his ruling that testimony and evidence regarding composers' relations with the Employers be permitted to cover a 1-year period prior to the commencement of the hearing in this case. In view of the casual and intermittent nature of such relationships, here in issue, the hearing officer's ruling is affirmed.