

Central San Vicente, Inc. and Sindicato de Trabajadores de la Industria Azucarera de P. R., UPWA-AFL-CIO, Petitioner.
Case No. 24-RC-955. February 19, 1957

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a 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 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.¹
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act for the following reasons:

On November 24, 1954, the Employer and the Intervenor executed a 3-year collective-bargaining agreement effective from January 1, 1955, until December 31, 1957, and providing for wage renegotiations for the 1957 grinding season upon 60 days' notice before December 31, 1956. On July 9, 1956, the parties amended this agreement by making wage adjustments effective retroactively to June 26, 1956; changing certain loan fund provisions; and changing the duration clause to be effective until December 31, 1958.

The Petitioner contends that this latter agreement is subject to application of the Board's premature extension rules and that, therefore, its petition filed on September 4, 1956, and timely with respect to the expiration of the initial 2 years of the preceding 3-year² contract warrants the direction of an election. The Employer and the Intervenor contend that the petition is barred because (1) the agreement of July 9 was executed during the dead season and before the Petitioner's claim on September 4, 1956; (2) the original contract was one of unreasonable duration and therefore they had a right to terminate it at any time and negotiate a new contract which would meet the Board's standards; and (3) in any event the July 9 contract should not be regarded as a premature extension because of the "special circumstances" brought about by the passage of a new minimum wage law in June 1956 necessitating changes in their contract.

¹ Union de Trabajadores de Factoria, Talleres, Vias y Obras de Vega Baja, P. R., FLT, hereinafter called the Intervenor, currently represents the employees involved in this proceeding.

² There is no assertion or evidence that 3-year contracts are customary in the industry involved.

The Board has held that an extension agreement executed within the initial 2-year period of a contract of unreasonable duration is a premature extension and cannot bar a petition which is filed timely with respect to the expiration of the reasonable and permissible 2-year bar period of the original contract.³ We find no merit in the contention that because the extension agreement was entered into during the dead season and prior to the Petitioner's claim, it bars this proceeding. The language used in the *South Porto Rico Sugar Co.*,⁴ case, and relied upon in support of this contention, was not intended to mean that the contract there involved had in fact ceased to exist because the dead season had begun.⁵ The cited case dealt with the question of whether an election, to be held in the next peak season after the expiration of the contract, could be properly directed before the stated terminal date of the contract and in no way involved the premature extension doctrine.

Similarly, we find no merit in the second contention, for contracts of unreasonable duration, unlike those which are no bar from their inception,⁶ are regarded as valid for contract-bar purposes during their initial 2-year period and are treated in a different manner for purposes of applying the premature extension doctrine.⁷ Nor is it significant whether the extension agreement was an amendment or a new contract for this purpose⁸ as argued by the parties in support of this contention.

Further, we find no merit in the plea of "special circumstances." The record discloses that the seasonal employees who receive the minimum wage scale had been laid off before the new minimum wage law became effective and were not to return until after the parties would have had an opportunity to revise wages under the contract's wage reopening clause. That the parties regarded such a change necessary at the time they made it in order to maintain the wage differential in favor of the "year-around" employees to foster industrial peace is not sufficient cause to permit an exception to the application of the premature extension rule, for the wage rates could have been altered without extending the contract.⁹

³ *Fawcett-Dearing Printing Company*, 106 NLRB 21. Also see *Cushman's Sons, Inc.*, 88 NLRB 121; *Heintz Manufacturing Company*, 116 NLRB 183.

⁴ *South Porto Rico Sugar Co.*, 100 NLRB 1309

⁵ The statement here considered is as follows: " . . . The Employer's production operations are seasonal and have ceased for this year. It is therefore apparent that, for seasonal employees who comprise the bulk of those in the unit, the contract relied upon by the Employer and the Confederation has ceased to be effective in practice. It is equally clear that the petition raises a question concerning the representation of employees for the next season "

⁶ See for example *Kenrose Manufacturing Company, Inc.*, 101 NLRB 267

⁷ See cases cited in footnote 3, *supra*.

⁸ See *Congoleum-Nairn, Inc.*, 115 NLRB 1202, 1203

⁹ See *Wyman-Gordon Co.*, 117 NLRB 75; *International Minerals & Chemicals Corporation*, 113 NLRB 53 (economic reasons); *Kennedy Van Saun Manufacturing and Engineering Corporation*, 108 NLRB 1662; *Barber Motors, Inc.*, 99 NLRB 193 (change in rates made necessary by revised wage schedule by Wage Stabilization Board) stating "while

In view of the foregoing, we find that the contract effective from January 1, 1955, was one of unreasonable duration and that the petition herein was filed timely with respect to the expiration of that contract's reasonable first 2-year period. It does not therefore bar this proceeding. Further, we find that the contract executed on July 9, 1956, is a premature extension, having been executed before the expiration of the first 2 years of the initial contract. Accordingly this latter agreement may not bar an election.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees, including railway and maintenance-of-way employees and all shop employees employed by the Employer at its sugar mill in Vega Baja, Puerto Rico, but excluding hotel and hospital workers, managers, department heads, and their assistants, laboratory technicians, warehouse clericals, office clericals, timekeepers, telephone operators, sugar boilers, cane weighers with permanent work during the grinding season, guards, executives, and all supervisors as defined in the Act.¹⁰

5. The Employer's operations are seasonal, beginning in January and ending in June of each year. Inasmuch as the current season has already begun and peak seasonal employment will occur within our usual time for holding elections, we shall direct an immediate election in this case.

[Text of Direction of Election omitted from publication.]

the Board has recognized the necessity for contractual changes because of fluctuating economic conditions, the Board has carefully preserved the rights of employees to change their bargaining representative at predictable and reasonable intervals." Cf. *Septon Fibre Can Company*, 109 NLRB 360

¹⁰ The unit described is in accord with the stipulation of the parties.

Plankinton Packing Company (Division of Swift & Co.) and Office Employees International Union, Local No. 9, AFL-CIO, Petitioner. *Case No. 13-RC-4897. February 19, 1957*

SUPPLEMENTAL DECISION, CERTIFICATION OF RESULTS OF ELECTION, AND DIRECTION

Pursuant to a Board Decision and Direction of Elections,¹ separate elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Thirteenth Region among the Employer's employees in the two units found appropriate: (a) a unit of office clerical employees; and (b) a unit of plant clerical employees. Thereafter, a tally of ballots in each election was fur-

¹ 116 NLRB 1225

117 NLRB No 52.