

In our opinion, the Employer, by its conduct in this proceeding, exceeded the bounds of neutrality imposed by the statute and thereby unlawfully intruded upon its employees' rights independently to file a decertification petition with the Board. The Employer's attorney advised the employees as to their rights in decertification proceedings, supplied the Petitioner with the decertification forms, filed the petition with the Board, and recommended another attorney only after the hearing officer made it clear that an attorney cannot represent both the Employer and the decertification petitioners. In addition, the plant superintendent permitted the decertification petition to be circulated on company time and property and also permitted the attorney for the decertification petitioners to interview each employee privately at the plant on company time, while refusing permission to the Union's representative to have access to employees on company property. Although the Board has held that certain types of assistance do not necessarily invalidate a decertification petition,⁴ in view of the foregoing and the entire record in this proceeding, we are convinced that the Employer improperly assisted the Petitioner in filing the decertification petition and that the rights of the employees to file decertification petitions under Section 9 (c) (1) (A) have been thereby abridged.⁵ Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

⁴ See *Belden Brick Company*, 114 NLRB 52; *Clackamas Logging Company*, 113 NLRB 229.

⁵ *Bond Stores, Inc.*, 116 NLRB 1929; *Gold Bond, Inc.*, 107 NLRB 1059, 1060.

Sucesion J. Serralles, Central Mercedita, Inc., and Porto Rico American Sugar Refinery, Inc. and Union de Trabajadores de Muelles y Ramas Anexas de Ponce, P. R., Local 1903, IBL-AFL-CIO, Petitioner. Case No. 24-RC-1012. July 8, 1957

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, the parties stipulated that the transcript in Case No. 24-RC-974 shall constitute the entire record in this proceeding. The hearing officer's rulings made at the hearing in Case No. 24-RC-974 are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

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

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

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

3. A question affecting commerce exists 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.

4. The Petitioner seeks to represent a separate unit of electrical shop, railway, and maintenance-of-way employees. The Employer and the Intervenor, Union de Trabajadores de Factoria, Refineria y Ramas Anexas de la Industrial Azucarera, Inc., contend that the electric shop employees should be included in the larger production and maintenance unit of mill employees and that the railway and maintenance-of-way employees should be excluded from any unit as agricultural laborers.

The Employers operate extensive sugar plantations, a sugar mill and a sugar refinery. The same interests control all three aspects of the Employers' operations. In 1951 the Board found that the unit which the Petitioner seeks to represent could be appropriate and directed a separate election in that group.¹ Following an election won by the Petitioner's predecessor, the Board found the unit appropriate and certified the winning union. Thereafter, the Employer and that union entered into collective-bargaining contracts for employees in the certified unit.²

In view of the Board's previous decision, the certification and the subsequent bargaining history, we find that a unit of electrical shop and railroad and maintenance-of-way employees who are not agricultural laborers may be appropriate. On the other hand, as the Board has previously indicated, they may also be included in the larger unit now represented by the Intervenor. In these circumstances, we shall not make a unit determination until we have first ascertained the desires of the employees involved.

The Employers have two railroad systems. One of 26-inch gauge is located on the Employers' sugar plantations adjacent to the mill and refinery and is used exclusively for carrying the Employers' own harvested cane to the mill area. Workers on this railroad system, including those engaged in maintenance, spend all their time on the plantation lands. We find that, under the Supreme Court's holding in the *Waialua* case,³ the workers on the plantation railroad system are "agricultural laborers" and hence excluded from the definition of employee contained in Section 2 (3) of the Act. We shall therefore exclude them from the voting group.

¹ *Asociacion Cooperativa Lafayette*, 94 NLRB 911.

² In 1953 the Employers signed two separate contracts for employees in this certified unit, one covering employees on the plantation railway system and the other for the electrical shop employees and railway workers on the 1-meter gauge railway system located within the mill area.

³ *Maneja v. Waialua Agricultural Co.*, 349 U. S. 254. Accord: *Olaa Sugar Company, Limited*, 114 NLRB 670; *Clinton Foods, Inc.*, 108 NLRB 85.

The second railroad system is of 1-meter gauge and is located in the mill area. Through the close of the 1956 grinding season, the yard railroad was used to haul freight cars loaded with cut cane from the terminus of a publicly owned railroad to the mill for grinding. Most of this cane came from the fields of independent farmers. The yard railroad employees were supervised by the mill's civil engineer, were carried on the mill payroll and received pay and other benefits different from those accorded to the plantation railroad workers. The Employers conceded that under this method of operation, the yard railroad workers were employees within the meaning of the Act. However, they contend that the public railroad system is in bankruptcy and has ceased to operate, that henceforward no cane will be received at the mill over the public railroad, and that the yard railroad will no longer be used to haul cane from the railroad terminus to the mill. In the future, the Employers assert, the yard railroad will be used only for hauling and storing the Employers' own cane and its workers will be transferred to the agricultural payroll. The precise nature of the duties to be performed by the yard railroad employees in the future is too unclear at the present time to enable the Board to make a determination as to whether they are or will be "agricultural laborers." Accordingly, we shall permit them to vote subject to challenge and a later determination, if necessary, of their status.

We shall direct an election by secret ballot in the following voting group:⁴ All electrical shop employees at the Employers' mill in Mercedita, Puerto Rico, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

If a majority of employees in the voting group vote for the Petitioner they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director is instructed to issue a certification of representatives to the Petitioner for the unit described in paragraph numbered 4, which the Board, under such circumstances, finds to be appropriate for the purposes of collective bargaining. If a majority vote for the Intervenor, they will be taken to have indicated their desire to be included in the broader unit represented by the Intervenor, and the Regional Director is instructed to issue a certification of results indicating that the employees in the voting group described in paragraph numbered 4, are to be deemed part of the broader unit and the Intervenor is authorized to bargain for them as part of such unit.

[Text of Direction of Election omitted from publication.]

⁴As previously stated, yard railroad employees will be permitted to vote subject to challenge and a later determination, if necessary, as to whether they are included in the unit.