

fined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[The Board vacated the Decision and Order issued on July 18, 1957.]

[Text of Direction of Election omitted from publication.]

Molinelli, Santoni & Freytes, S. en C., d/b/a Panaderia La Reguladora and Panaderia La Francesa; Puig & Abraham, d/b/a Panaderia La Bombonera; Panaderia El Diamante; Panaderia La Jerezana; Panaderia Bairoa, Inc., d/b/a Panaderia Bairoa; Panaderia La Castellana; Panaderia Sixto Ortega; La Puertorriquena, Inc., d/b/a Panaderia La Puertorriquena; Panaderia La Placita; Panaderia Los Andes; Panaderia La Borinquen; Panaderia La Moderna; Panaderia Villa Palmeras; and American Bakery, d/b/a Dixie Bakery Products¹ and Union Local de Panaderos de San Juan, affiliated with Federacion Libre de los Trabajadores de Puerto Rico, Petitioner. Case No. 24-RC-966. August 9, 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 H. Stephen Gordon, hearing officer. The hearing officer's rulings made at the hearing 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 Rodgers and Jenkins].

Upon the entire record in this case,² the Board finds:

1. The parties agree that none of the Employers here involved, separately considered, meet the Board's jurisdictional standards, but that, when considered collectively, their combined annual direct inflow meets the requirements set forth in the *Jonesboro* case.³ The Intervenor,⁴ although admitting that it has in the past entered into

¹ The names of the Employers appear above as amended at the hearing.

² Prior to the hearing in this case, Petitioner also filed petitions for separate units of employees of four of the above Employers. Cases Nos. 24-RC-968, 24-RC-969, 24-RC-970, and 24-RC-971. As a result, the Regional Director, on October 23, 1956, ordered that these cases be consolidated with the instant case for purposes of hearing. At the hearing, however, Petitioner requested permission to withdraw all its petitions except the one seeking a multiemployer unit and, upon approval by the Regional Director of this request, it was granted by the hearing officer.

³ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

⁴ Union #1, de Panaderos Reposteros y Ramas Anexas de Puerto Rico, affiliated with Federacion Libre de los Trabajadores de Puerto Rico, herein called the Intervenor.

contracts covering at least 10 of these Employers, contends that the only appropriate units are separate units for each Employer, and that the instant petition should therefore be dismissed on jurisdictional grounds.

Inasmuch as we hereinafter find that a multiemployer unit is appropriate for the purposes of collective bargaining,⁵ we find no merit in this contention, for, under these circumstances, the relevant criterion in determining the Board's jurisdiction is the effect upon interstate commerce of the combined operations of all of the Employers.⁶ Accordingly, as the combined direct inflow of these Employers, all engaged in the manufacture and sale of bakery products, exceeded \$500,000 in value for the year ending June 30, 1956, we find that the Employers are engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction in this case.⁷

2. The labor organizations involved claim to represent certain employees of the Employers.⁸

3. A question affecting commerce exists 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 14 Employers here involved are all organized under the laws of Puerto Rico and operate bakeries in the metropolitan area of San Juan, and most are individual proprietorships. Petitioner seeks a multiemployer unit of all bread bakers and their helpers. The Intervenor, on the other hand, contends that separate units of each Employer's employees are the only appropriate units. The Employers agree with the Petitioner that the multiemployer unit is alone appropriate for bargaining purposes. The Petitioner and the Employers contend that there is a bargaining history on a multiemployer basis of 16 years, but the Intervenor alleges that there is no formal association of Employers and that, in fact, all prior contracts have been negotiated on a single-employer basis.

The Employer Association

The record shows that in 1953 the Intervenor appointed a negotiating committee to meet with 10 of the Employers for the purpose of

⁵ See paragraph numbered 4, *infra*.

⁶ *Electrical Contractors of Troy and Vicinity*, 116 NLRB 354.

⁷ *Jonesboro Grain Drying Cooperative*, *supra*. The record also shows that the annual combined direct inflow of the 10 Employers whose employees are found to constitute an alternative appropriate unit in paragraph numbered 4, *infra*, meets the Board's current jurisdictional standards.

⁸ The Intervenor was permitted to intervene on the basis of its contractual interest. The Intervenor and 10 of the above Employers executed a contract effective from July 15, 1953, to July 15, 1957, and for another 4 years thereafter absent 60 days' notice by either party prior to July 15, 1957. Subsequent to the effective date of this contract, two other Employers here involved became parties to it. However, none of the parties urges this contract as a bar to this proceeding.

discussing terms of a proposed contract.⁹ The number of Employers represented at the various bargaining sessions fluctuated from one meeting to another; however, those Employers attending the sessions were empowered to represent and to negotiate for those absent, and, both before and during the bargaining negotiations, the Employers met together to decide what demands of the Intervenor could be met and what counterproposals should be made. Furthermore, the record shows that there was never any negotiation on any individual employer basis and that the negotiations resulted in a single contract, the provisions of which were uniformly applicable to all employers who had participated in the joint negotiations. After all terms were agreed upon, the Intervenor had the contract drawn up in final form and thereafter secured the signatures of all 10 Employers. These Employers have bargained in this manner for periods ranging from 6 to 16 years.

While the Employers are not bound together in any formal association, that fact does not preclude our finding that such an informal group constitutes a single employer for the purposes of collective bargaining.¹⁰ In the case at bar, the record clearly shows participation by these 10 Employers in a pattern of joint bargaining with the Intervenor. Thus the 1953 contract was signed by all participating Employers as a single document,¹¹ names all signatory employers as "PARTY FOR THE FIRST PART" and thereafter refers to them collectively as "the employer" or as one of the "parties" to the contract, and the duration clause provides for automatic renewal ". . . unless one of the parties notifies the other party sixty days prior to its expiration. . . ." This contract provides, *inter alia*, uniform hours, wage scales, hospitalization, holiday and vacation benefits, sick leave and union-security provisions, and general shop rules and regulations for employees of all the Employers. It also contains a clause relating to grievances, which provides for a grievance committee to be composed of 2 representatives of the Intervenor and 2 representatives selected by the Employers, collectively.

In view of this history of joint bargaining, we find that the employees of the foregoing 10 Employers may appropriately be combined in a single multiemployer unit for the purposes of collective bargaining.¹²

⁹ The employer-group included all Employers who are parties to this proceeding except Panaderia Villa Palmeras, Panaderia La Moderna, Panaderia Los Andes, and Panaderia La Borinquen.

¹⁰ *John-Tyler Printing and Publishing Company*, 112 NLRB 167; *Metz Brewing Company*, 98 NLRB 409.

¹¹ The Intervenor's contention that there is in fact no multiemployer bargaining history apparently rests on the fact that once joint negotiations were concluded and the final agreement drawn up, each Employer executed the contract itself rather than delegating the right to execute the agreement to a representative or representatives with power to so bind the entire group. We find no merit in this contention.

¹² See *Electrical Contractors of Troy and Vicinity*, *supra*; *Santa Clara County Pharmaceutical Association*, 114 NLRB 256; *Metz Brewing Company*, *supra*.

There remains for consideration the question of including in the unit the employees of the other four Employers.

Panaderia Villa Palmeras: This Employer did not commence operations until 1954. Although it did not engage in the negotiations leading up to the 1953 agreement between the Intervenor and the 10 Employers discussed above, its proprietor affixed its signature to this contract in 1954. Furthermore, Villa Palmeras stated at the hearing that it considers itself part of the multiemployer group and desires to bargain on a joint basis in the future and to be bound by subsequent multiemployer contracts.

Panaderia La Moderna: Like Villa Palmeras, La Moderna did not engage in the negotiations resulting in the 1953 contract, as it did not come into existence until 1955. However, in 1954, La Moderna's proprietor executed the 1953 contract on behalf of Panaderia La Carmelita, a bakery which thereafter went out of business. As a result, the proprietor still considered himself bound by that agreement when he started La Moderna's operations in 1955. La Moderna also signified at the meeting that it desired to continue as part of the multiemployer group and to engage in joint negotiations in the future as a member of this association.

Panaderia Los Andes: This Employer at no time executed the 1953 agreement, although it signed a 1-year contract with the Intervenor in 1954, which provided the same wage scales for the classifications of employees sought by the Petitioner as did the 1953 contract.¹³ At the hearing, Los Andes stated that it considers itself a member of the multiemployer group at the present time and that it desires to negotiate jointly in conjunction with the other employers for future contracts covering all of their employees.

Panaderia La Borinquen: This Employer has been in operation for only a little more than a year, and has never been a signatory to an agreement with any labor organization. La Borinquen testified at the hearing that it wishes to bargain as a member of the employer-group and that it desires to be bound by any jointly negotiated contracts.

In determining the scope of bargaining units, the Board's policy has always been that single-employer units are presumptively appropriate where there is no history of collective bargaining on a broader basis.¹⁴ However, the Board will find appropriate a multiemployer unit limited to those employers who have for a substantial period of time personally participated in joint bargaining or delegated the power to bind them in collective bargaining to a joint agent, and

¹³ This contract expired in 1955, and has not been renewed. It covered pastry-makers and their helpers as well as bread bakers and their helpers. This Employer testified that, although it was aware of the joint contract between the Intervenor and the multiemployer group at the time it entered into this separate contract, it did not at that time consider itself eligible to join that group inasmuch as it was a newly established business.

¹⁴ E. g., *Arden Farms*, 117 NLRB 318.

thereafter have executed the resultant contracts.¹⁵ The mere adoption of such contracts by an employer who, although having an opportunity to do so, has not participated in joint bargaining directly or through an agent, will not afford sufficient basis for including his employees in the multiemployer unit.¹⁶ However, where a petitioner seeks to enlarge an existing multiemployer unit consisting of members of an employer association by adding thereto employees of a new member who has manifested its desire to be bound in the future by joint action, the Board has permitted such expansion of the unit in the absence of any objection thereto by any other party.¹⁷

We have carefully considered the case at bar in the light of the foregoing principles, giving special consideration to the fact that here we are dealing with new employers who have had as yet no opportunity to engage in—or to refrain from engaging in—joint bargaining, due to their recent formation. We believe that under such circumstances the employees of such new employers may appropriately be added to the existing unit, provided no party objects. Accordingly, the question now to be determined is whether, in view of our decision herein as to the other Employers involved, the Intervenor can be said to oppose the inclusion of Villa Palmeras, La Moderna, Los Andes, and La Borinquen in the multiemployer unit herein found appropriate.

At the hearing the Intervenor did not specifically oppose the addition of the employees of the 4 new Employers to a unit comprising the employees of the other 10 Employers; rather, it took the more general position that 14 separate-employer units were alone appropriate. However, we have already rejected this contention to the extent of finding that the 10 Employers who have bargained jointly in the past constitute an appropriate bargaining unit, and the record does not indicate what the Intervenor's unit position would have been with respect to Villa Palmeras, La Moderna, Los Andes, and La Borinquen had it anticipated that the Board would make such a unit determination. We find, therefore, subject to the condition stated below, that a multiemployer unit consisting of employees of all 14 Employers involved herein is appropriate, and shall direct an election therein on the assumption that the Intervenor does not oppose the inclusion of the 4 above-named Employers in such unit.

However, in the event that the Intervenor does in fact oppose the inclusion of employees of these 4 Employers in the multiemployer unit, it may so advise the Regional Director within 10 days from the date of issuance of this Decision and Direction of Election. In such event, the Regional Director is directed to dismiss the instant petition,

¹⁵ E. g., *Highway Transport Association of Upstate New York, Inc., et al.*, 116 NLRB 1718.

¹⁶ *Ibid.*

¹⁷ *Block Cut Manufacturers, Inc.*, 111 NLRB 265; *Denver Heating, Piping and Air Conditioning Contractors Association*, 99 NLRB 251.

insofar as it pertains to Villa Palmeras, La Moderna, Los Andes, and La Borinquen, on the ground that it will not effectuate the purposes of the Act to assert jurisdiction over these Employers,¹⁸ and the Regional Director is further directed to proceed with an election in a unit composed of employees of the 10 remaining Employers, which unit, under these circumstances, the Board finds constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The parties agree as to categories to be included in the unit. We find, in accord with such agreement, and subject to the conditions stated above, that the following employees of all the Employers constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:¹⁹

All bread bakers and their helpers at the Employers' plants located in the metropolitan area of San Juan, Puerto Rico,²⁰ excluding all other employees, pastrymen, office clerical employees, administrative employees, professional employees, executive personnel, watchmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

¹⁸ As already stated, none of these Employers, considered alone, meets the Board's jurisdictional standards.

¹⁹ The unit conforms to that contained in the 1953 contract.

²⁰ The plants of the Employers are at the following locations: Panaderia La Reguladora, 22 Calle Guadalcanal, Barrio Venezuela, Rio Piedras, Puerto Rico; Panaderia La Francesa, Pda. 6, Puerto de Tierra, San Juan, Puerto Rico; Panaderia La Bombonera, 101 San Justo, San Juan, Puerto Rico; Panaderia El Diamante, Calle Mercado, San Juan, Puerto Rico; Panaderia La Jerezana, Calle Navis, Stop 15, Santurce, Puerto Rico; Panaderia Bairoa, Calle Sanchez, Stop 22, Santurce, Puerto Rico; Panaderia La Castellana, 242 Ponce de Leon Avenue, Stop 23½, Santurce, Puerto Rico; Panaderia Sixto Ortega, 1610 Ponce de Leon Avenue, Santurce, Puerto Rico; Panaderia La Puertorriquena, Calle Loiza esq. Corchado, Santurce, Puerto Rico; Panaderia La Placita, Calle Dos Hermanos, Stop 19, Santurce, Puerto Rico; Dixie Bakery Products, Calle Nueva Pda. 23, Santurce, Puerto Rico; Panaderia Los Andes, Avenue Eduardo Conde esq. Corton, Villa Palmeras, Santurce, Puerto Rico; Panaderia La Borinquen, Calle Webb 602, Barrio Obrero, Santurce, Puerto Rico; Panaderia La Moderna, 372 Gautier Benitez, Santurce, Puerto Rico and Panaderia Villa Palmeras, 302 Calle Providencia, Villa Palmeras, Santurce, Puerto Rico.

The Royal Lumber Company and Construction, Building Material Drivers, Warehousemen and Helpers Local Union 311, I. B. T. C. W. & H. of A., AFL-CIO, Petitioner. Case No. 5-RC-2086. August 13, 1957

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election entered into by the Petitioner and Employer on November 7, 1956, an election was conducted on November 16, 1956, under the direction and