

The Union's bylaws no doubt impose a measure of restraint on its members, as such, but they do not restrain or coerce employees in the right to refrain from union membership or activity. The proviso to Section 8 (b) (1) (A) permits the Union to prescribe rules with respect to acquisition or retention of membership. If the Union's rules affect membership of those who choose to procure their own jobs rather than get them through the Union or as permitted by the Union, the Union's rules are protected under the aforesaid proviso so long as the Union does not cause or attempt to cause an employer to discriminate against such member except as authorized in Section 8 (a) (3) of the Act. Because it has been found that the Union did not cause or attempt to cause CBS to discriminate against Kanaga, I find that the Union did not restrain or coerce him or other employees in the exercise of rights guaranteed in Section 7 of the Act.

Upon the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. CBS is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2 (5) of the Act.
3. The Union did not cause or attempt to cause CBS to discriminate against Kanaga in violation of Section 8 (a) (3) of the Act and, hence, did not violate Section 8 (b) (2) of the Act.
4. The Union did not restrain or coerce Kanaga or other employees in the exercise of the rights guaranteed in Section 7 of the Act by refusing to clear, dispatch, refer, or assign Kanaga to work as a stagehand for CBS in violation of Section 8 (b) (1) (A) of the Act.

[Recommendations omitted from publication.]

Brown & Root Caribe, Inc. and Sindicato de Empleados de Equipo Pesado, Construcción y Ramas Anexas de P. R., Sindicato de Trabajadores (Packinghouse) de P. R., UPWA-AFL-CIO, Petitioner. *Case No. 24-RC-1039. December 13, 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 Frank H. Parlier, hearing officer.¹ 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 contests the Board's jurisdiction. The Employer was incorporated in 1957 to engage in the construction business in Puerto Rico. It is presently engaged in building a chemical plant for Union Carbide Caribe, Inc. The Employer is a subsidiary of Brown & Root, Inc., herein called Brown, a Texas corporation, which also does construction work and is admittedly engaged in commerce. According to a letter submitted by the Employer after the hearing and incorporated into the record by agreement as an exhibit, the Employer's manager is in charge of all aspects of the operation, including the hire and discharge of employees, wages, vacations and

¹ The Petitioner's name appears herein as amended at the hearing.

other benefits, labor relations, accounts, and tax returns. The manager is not an officer or employee of Brown. The letter further states with respect to the two corporations that there is "common ownership" and that their boards of directors have certain members in common. Much of the Employer's personnel has been furnished by Brown. Upon the entire record, including the common ownership, the interlocking directorates, the fact that both corporations do construction work, and that Brown supplied the Employer with much of its personnel, we find that Brown and the Employer constitute a single employer for jurisdictional purposes. As Brown has heretofore been found to be engaged in commerce within the meaning of the Act,² we find that the Employer is also engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

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.

4. We find, in substantial accord with the agreement of the parties, that 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 heavy equipment operators, mechanics, mechanics' helpers, and greasers at the Employer's construction project on the Ponce-Guayanilla road in Puerto Rico, excluding truckdrivers, light equipment operators, all other construction employees, executive, administrative, and professional personnel, office clerical employees, watchmen, guards, and all supervisors as defined in the Act.

5. The Employer moves to dismiss on the ground that the petition was prematurely filed, and on grounds relating to the adequacy of the Petitioner's showing of interest. The petition, filed on July 23, 1957, alleged that there were 10 employees in the appropriate unit. At the time of the hearing, held on September 5, 1957, there were about 35 employees in the unit, and the Employer was increasing its overall work force every day. It appears that the Employer expects to reach the employment peak in a few months with 100 to 125 employees and that the new employees will not perform essentially different functions from those of present employees. As the employees did at the time of the hearing constitute a substantial and representative segment of the ultimate complement,³ we find that the petition is not prematurely filed. However, with respect to the adequacy of the Petitioner's showing, we find, in view of the expansion of the unit

² *Brown and Root, Inc.*, 112 NLRB 1068.

³ *Cf. Springfield Body & Trailer Co.*, 112 NLRB 1287.

that has taken place since the filing of the petition, that the showing does not meet our requirements as to substantial representation before we conduct an election. Accordingly, our direction of an immediate election herein shall be subject to the submission by the Petitioner of a sufficient showing of interest among the employees in the unit when such unit was substantial and representative.⁴ As already found, that occurred as of the time of the hearing. In the circumstances, we deny the motion.

[Text of Direction of Election omitted from publication.]

MEMBER JENKINS took no part in the consideration of the above Decision and Direction of Election.

⁴ Cf. *Mrs. Tucker's Products, Division of Anderson, Clayton & Company, Inc.*, 106 NLRB 533 at 535.

Albert Lea Cooperative Creamery Association¹ and General Drivers, Inside Workers & Helpers, Local Union No. 845, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,² Petitioner

Albert Lea Cooperative Creamery Association and United Packinghouse Workers of America, AFL-CIO, Petitioner. Cases Nos. 18-RC-3357 and 18-RC-3369. December 13, 1957

DECISION, ORDER, AND DIRECTION OF ELECTION.

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Clarence A. Meter, 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 Murdock and Jenkins].

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.
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.

¹ The name of the Employer appears as corrected at the hearing.

² The Board having been notified by the AFL-CIO that it deems the Teamsters' certificate of affiliation revoked by convention action, the identification of this union is hereby amended.