

**Ponce Electric Company, Inc. and Union Local de Trabajadores de la Ponce Electric Company, Petitioner.** *Case No. 24-RC-1065. May 14, 1958*

### 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. 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 Bean and Jenkins].

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

The Employer is engaged in the retail sale, distribution, service, and repair of refrigerators, television sets, electric appliances, etc. in Puerto Rico. It is one of several dealers on the Island acting as agents for La Gran Cadena, wholesaler and importer. The Employer is located at Ponce, La Gran Cadena at San Juan. Ninety percent of the stock of the Employer, Ponce Electric, is owned by Juan Covas and his wife and the remaining 10 percent by Gabriel Covas, his brother. All of the stock of La Gran Cadena is owned by Juan Covas, and he is president of Ponce Electric and La Gran Cadena. He is also majority stockholder and president of other enterprises in Puerto Rico.

La Gran Cadena makes territorial assignments for its dealers and retains control of all credit transactions. Gabriel Covas is manager of Ponce Electric, and formulates and controls its labor policy. There is no interchange of employees between the Employer and La Gran Cadena. One attorney and one auditor, however, serve all the Covas corporations, although separate books of account are kept and separate tax returns are made.

All purchases made by Ponce are either directly or indirectly imported, and for the calendar year 1957, the total value of such purchases was approximately \$225,000, of which about \$65,000 represents direct imports. La Gran Cadena imports merchandise in excess of \$1,000,000 annually from the United States.

In view of the foregoing and the entire record, including the substantial identity of ownership and control of the corporations, the similarity in nature of the enterprises (and their interrelationships) and the close family ties, we find that the Employer and La Gran Cadena constitute a single employer for jurisdictional purposes.<sup>1</sup> Because the annual total of direct out-of-Puerto Rico purchases by

<sup>1</sup> *Standard Furniture Company*, 118 NLRB 35, *East Detroit Stevedore Co*, etc., 110 NLRB 929.

the corporation herein found to constitute a single employer exceeds \$500,000, we find that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction over this enterprise.<sup>2</sup>

2. The labor organization involved claims 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 appropriate unit:

The Petitioner requested virtually a production and maintenance unit with the usual exclusions. The Employer agreed generally with the Petitioner, and at the hearing the parties stipulated to the unit placement of several categories leaving others to the Board. There is no history of collective bargaining.

The parties stipulated to the inclusion of the following classifications: refrigeration mechanics; utility men who do plumbing and electrical work, install TV antennae and do paint and repair work; chauffeurs who drive trucks, load and unload merchandise; and laborers who clean and who also help with deliveries. The parties also agreed to exclude outside salesmen, office clerical employees, and apprentices or trainees.

The parties left to the Board the inclusion or exclusion of the following classifications:

*Warehouse clerk:* The duties of this employee are to obtain merchandise from the adjoining warehouse on order of the office, see to it that the goods are in proper condition, and have them put on trucks ready for delivery to customers. He is also responsible for keeping a perpetual inventory. There is no evidence that he has any supervisory duties. We find that the warehouse clerk is a plant clerical and we include him in the unit.

*Parts clerk:* There is one employee in the parts department, whose principal duty is to furnish the mechanics with parts needed for their work and to keep records. He is also responsible for keeping a perpetual parts inventory. In addition he sells parts to customers at a small counter in the parts department. We find that the parts clerk is a plant clerical and we include him in the unit.

*Paint department clerks:* There are three employees in the paint department who work under a paint supervisor. Two of these employees sell paint to customers over the counter. The third employee is a delivery boy who cleans the department and delivers merchandise to customers on a bicycle. We find that the delivery boy is a

<sup>2</sup> *F. Hilgemeyer & Bro., Inc.*, 108 NLRB 352, 354. Member Jenkins, accepting the definition of commerce contained in Section 2 (6) of the Act, would assert plenary jurisdiction over enterprises in Puerto Rico in accordance with the intent of the Congress as expressed in that subsection.

maintenance employee and we include him in the unit. As to the employees who sell paint over the counter, the record is devoid of evidence that they perform any other duties. The parties have agreed to exclude certain salesmen. As these employees are essentially salesmen, we shall also exclude them from the unit.

*Collectors:* These men come to the office every day to obtain a list of customer accounts for the purpose of making collections. They work exclusively outside the plant, and the Employer exercises no control over their hours or the manner of work. They are paid a salary and a commission on their collections. We find that the duties of the collectors are closely related to those of the salesmen, as are their conditions of work and we exclude them from the unit.

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 at the Employer's plant at Ponce, Puerto Rico, including refrigeration mechanics; utility men who do plumbing and electrical work, install TV antennae and paint and do repair work; chauffeurs who drive trucks, load and unload merchandise; the warehouse clerk, the parts clerk, the delivery boy in the paint department, but excluding all outside salesmen, paint department clerks, office clerical employees, apprentices or trainees, collectors, professional employees, TV mechanics,<sup>3</sup> watchmen, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>3</sup> In accordance with the agreement of the parties, we find that the TV mechanics are independent contractors and not employees, and we therefore exclude them from the unit.

**American Wire Weavers' Protective Association, AFL-CIO, and Ohio Division No. 2, American Wire Weavers' Protective Association, AFL-CIO and The Lindsay Wire Weaving Company.**  
*Case No. 8-CD-12. May 15, 1958*

### DECISION AND ORDER

This proceeding arises under Section 10 (k) of the Act which provides that "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of Section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen. . . ."

On October 31, 1957, The Lindsay Wire Weaving Company, herein called Lindsay or Employer, filed with the Regional Director for the

120 NLRB No. 130.