

Porto Rican American Sugar Refinery, Inc. and Wadelmiro Arroyo, Petitioner. *Case No. 24-RC-1288. November 25, 1959*

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 Juan A. A. Sedillo, 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 Fanning].

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 Petitioner¹ claims to represent certain employees of the Employer.

3. The Employer and Union de Trabajadores de Muelles y Ramas Anexas de P. R., District Council, Ind., Intervenor, contend that an existing contract, effective from January 1, 1959, to December 31, 1961, is a bar to this proceeding. The Petitioner asserts that the contract contains unlawful provisions and therefore cannot serve as a bar.

The contract provides, in part:

Starting on January 1, 1959 and up to December 31, 1961, the Union commits itself to supply to the Employer upon the latter's request all the raw and refined sugar stevedores, boxed cargo and miscellaneous cargo stevedores, sewers and waterboys employed at the pier, dock and warehouse at Playa de Ponce or anywhere the Employer requests.

Both parties agree that all the employees in all the classifications covered by this Agreement shall enjoy the privilege of employment and the Employer shall give hiring preference according to seniority, provided the work performed is efficient and reasonable for the wages paid, and the Employer shall see that all this is not violated.

Both parties further agree that during the months of active operations, such as grinding season, if a greater number of men is required for stevedoring of sugar and other products, the Union shall supply the Employer the number of workers required by the Employer in order to do the work, and the Employer shall recog-

¹The Employer contended that the Petitioner, an individual, is not a labor organization and therefore is not entitled to file a petition for an election. As Section 9(c) of the Act permits not only labor organizations but also, among others, any individual, acting in behalf of employees, to file a petition for certification as bargaining representative, we find the Employer's contention to be without merit.

nize these men as occasional workers who will have a badge or card different from that of the permanent or regular workers so that same be hired according to the needs of the Employer, provided the Seniority Preference Clause has been complied. It is further agreed that after the grinding season these substitute or temporary workers shall not be hired as regular or permanent workers.

* * * * *

The Employer shall reserve the right to remove from work any of the workers supplied by the Union if they lack knowledge or skill to do the work that is going to be performed or engage in dilatory practices (slow down process), as well as for disrespectfulness towards the supervisors

We construe the contract, insofar as it relates to extra employees, as one requiring the contracting Union to supply any workers needed by the Employer and requiring the Employer to employ the workers so furnished by the Union on a seniority basis, reserving only to the Employer the right to dismiss employees hired for cause stated. So construed, the contract is an exclusive hiring arrangement which does not conform to Section 8(a)(3) of the Act as it contains no safeguards against discrimination.² As the contract contains illegal hiring provisions, we find that the contract is not a bar to an election.³

Accordingly, we find that 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 unit, as amended at the hearing, of all cleaning (or maintenance) employees, stevedores, bag sewers, waterboys, and tally clerks at the Employer's warehouse and piers in Playa de Ponce, Puerto Rico, excluding all executive, administrative, professional and office clerical employees, guards, watchmen, and supervisors as defined in the Act.

While the Employer and Intervenor generally agree that the proposed unit is appropriate,⁴ the Employer contends that it has only one employee working as a tally clerk, and that this employee, one Diaz, is a supervisor. It also contends that only one of its employees⁵ performs cleaning work and, spends only a portion of his time at that duty. His remaining time is spent as a stevedore. Diaz spends most of his time working as a tally clerk; he is also assistant to the Em-

² *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al.*, 119 NLRB 883, 894-897.

³ *Keystone Coat, Apron and Towel Supply Company, et al.*, 121 NLRB 880.

⁴ The Employer contends that the Petitioner's unit description should be clarified to make clear that employees at its plant in Mercedita Central, Puerto Rico, some miles distant from its Playa de Ponce location, are not included in the unit sought. As this unit specifically covers employees at Playa de Ponce only, we find it unnecessary to require further clarification.

⁵ This employee was not identified by name.

ployer's warehouse superintendent at Playa de Ponce, and takes charge in the absence of the latter. However, there is no evidence in the record that he has authority to hire, discharge, or promote other employees, or to make effective recommendations as to any change in the employment status of other employees, or to exercise any other supervisory function. We find that Diaz is not a supervisor within the meaning of the Act. Accordingly, we include him.

The only objection to inclusion of the cleaning employee in the unit is that this employee works most of his time as a stevedore, a classification which was included in the unit by agreement of all the parties. As this particular employee works as both a stevedore and a cleaner, categories which we are including in the unit, we shall include him in the unit.

Accordingly, we find that all cleaning (or maintenance) employees, stevedores, bag sewers, waterboys, and tally clerk at the Employer's warehouse and piers in Playa de Ponce, Puerto Rico, excluding all executive, administrative, professional, and office clerical employees, guards, watchmen, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

[Text of Direction of Election omitted from publication.]

Jefferson Downs, Inc.¹ and Independent Mutuel Clerks Guild of Louisiana, Petitioner. *Case No. 15-RC-2039. November 25, 1959*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Edward A. Champagne, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

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

1. The employer, a Louisiana corporation, operates a racetrack in Jefferson Parish, Louisiana, and has no other base of operation outside that locality. At the time of the hearing in this matter, Jefferson Downs, Inc., had been in business for approximately 1 year and had conducted only one operation, a 45-day spring meeting lasting from March 9 to May 2, 1959. Formerly known as Magnolia Park, which conducted only night harness racing and is now bankrupt, Jefferson Downs is presently operating under the direction and supervision of the United States District Court for the Eastern District of Louisiana.

During the Employer's sole meeting to date, the total amount of \$6,692,800 was wagered of which the track was entitled to a sliding

¹ Employer's name appears as amended at the hearing.

² The hearing officer granted the motion of Local 328, Pari-Mutuel Clerks Guild of Louisiana, to intervene in this matter.