The majority has affirmed the Trial Examiner's ruling not requiring Murry and Montgomery to appear at the reopened hearing I agree with this affirmance of the Trial Examiner

MEMBER RODGERS took no part in the consideration of the above Order Reopening Record and Remanding Proceeding

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Raymond Construction Company of Puerto Rico [1] *and* Teamsters, Chauffeurs, Warehousemen and Helpers, Local 901, IBTCW & H of America, Petitioner. *Case No 24–RC–1256. January 20, 1960*

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 Henry R Martin, 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 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 labor organizations involved claim to represent certain employees of the Employer [2]

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

The Employer, having operations throughout the Island of Puerto Rico, is engaged in all phases of heavy construction, including port development work, powerplants, highway systems, and foundation construction During the past 2 years, the Employer has commenced 52 projects in Puerto Rico At the time of the hearing, it had four projects in operation, including the Palo Seco project here involved at which it is building the foundation and substructure of a powerplant

The Petitioner seeks to represent a unit of construction and maintenance employees at the Palo Seco project alone Since at least 1956, the Intervenor and the Employer have bargained for all employees of

[1] The name of the Employer appears as corrected at the hearing

[2] At the hearing, Union Insular de Trabajadores de la Construcion, FLT, herein called the Intervenor, intervened on the basis of a contract interest

the Employer in all of its construction projects throughout the Island of Puerto Rico. The Intervenor asserts that a contract between it and the Employer executed June 15, 1958, and effective until June 15, 1960, covering "all employees" of the Employer at all its projects in Puerto Rico, is a bar to the petition.[3] The Employer and the Petitioner contend that the contract is not a bar. At the time that the contract was signed, the Employer was engaged in construction work at other locations but it did not commence operations at the Palo Seco project until August 1, 1958, approximately 6 weeks after the execution of the June 1958 agreement. After the Palo Seco project was started in August 1958, however, the Employer applied the contract's checkoff provisions to employees at Palo Seco and made deductions from their salary for the months of August, September, and October, 1958. In November 1958, the Employer discontinued the checkoff; and, since that time, it has not recognized the Intervenor as representative of Palo Seco project employees.

At the hearing the Employer's witnesses testified that, when it commenced a new project, as at Palo Seco, it may transfer skilled "key personnel," mainly in the supervisory category, from other construction sites to the new project, but that it engages in new hiring for the bulk of its employees. The record herein does not show the type of projects which the Employer was operating either at the time the Palo Seco project was begun, or at the time of the hearing; it does not show the proximity of the projects to each other, or to the number or classification of employees at any project. It merely shows that some employees at other projects of the Employer have been transferred to Palo Seco, and that the Employer, at the Palo Seco project, has hired some employees who formerly worked for it at other projects. In accord with the Employer, we find that the majority of employees at the Palo Seco project were newly hired employees. The record does not show, and no party contends, that any interchange of employees takes place at any of the projects.

On the basis of the foregoing, we find that the Palo Seco project was, in August 1958, a new operation. As the contract was executed prior to the time that this project was established, the contract is not a bar to the petition.[4]

4. As stated previously, the Petitioner seeks a unit limited to construction and maintenance employees at the Palo Seco project. The Employer agrees with the Petitioner but the Intervenor asserts that an employerwide unit of construction and maintenance

[3] This contract by its terms does not provide for coverage of employees at projects to be opened in the future.

[4] *Miratile Manufacturing Company, Inc.*, 124 NLRB 48. In view of our determination, we do not pass on whether the contract is not a bar for other reasons urged.

employees at all the Employer's Puerto Rico projects is appropriate. The parties are thus in agreement as to the composition but not the scope of the unit. There are factors indicating that an employerwide unit may be appropriate. For example, the same job classifications of employees generally are employed at all projects and management policies at all projects are uniform, as are wages and working conditions. An employerwide unit is a type of unit specified in the Act and is presumptively an appropriate type of unit. Moreover, the Employer and Intervenor have bargained, since at least 1956, on an employerwide basis. However, the appropriateness of a broad unit does not preclude the appropriateness of a smaller one where there are, as here, factors indicating that the smaller unit may also be appropriate. Thus the Palo Seco project is under the direction of a project superintendent and there appears to be no interchange of employees between this and other projects. Also, like an employerwide unit, a projectwide unit is presumptively appropriate.[5] Moreover, the Board normally permits employees at a new project to decide whether or not they wish to be separately represented.[6] Accordingly, we find that either a separate unit, limited to employees at the Palo Seco project, or an employerwide unit, may be appropriate for purposes of collective bargaining. However, before making a final unit determination, we shall first ascertain the desires of the employees as expressed in the election hereinafter directed.

We shall, therefore, direct an election in a voting group consisting of the following employees employed at the Employer's Palo Seco project: All construction and maintenance employees, excluding office clerical employees, heavy equipment operators, greasers of heavy equipment, guards, foremen, and other supervisors as defined in the Act.

5. If a majority of the employees vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate unit, and the Regional Director is instructed to issue a certification of representatives to the Petitioner for that unit, which the Board, in the circumstances, finds to be appropriate for purposes of collective bargaining. If a majority of the employees cast their ballots for the Intervenor, they will be taken to have indicated their desire to be represented by the Intervenor as part of an employerwide unit and the Regional Director will issue a certification of results of election to that effect.

[Text of Direction of Election omitted from publication.]

[5] See *Miratile Manufacturing Company, Inc., supra,* and case cited therein.
[6] *Fleming & Sons, Inc*, 118 NLRB 1451, 1453.