

The West Indian Co., Ltd. and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 901, I.B. of T.C.W. and H. of America, Petitioner. *Case No. 24-RC-1493. January 6, 1961*

DECISION ON APPEAL

On August 19, 1960, the Petitioner filed a petition with the Regional Director for the Twenty-fourth Region, subsequently amended on August 31, 1960, seeking an election in a unit of all autogarage and gas station employees, mechanics and helpers, and gas station attendants employed at the Employer's multiple operations located at Charlotte Amalie, Virgin Islands. On September 9, 1960, the Regional Director dismissed the petition on the ground that the petition was not filed in timely manner. Pursuant to the Board's Rules and Regulations, the Petitioner filed an appeal from the Regional Director's dismissal of the petition, asserting in substance that the Department of Agriculture and Labor of the Virgin Islands was without jurisdiction to proceed with respect to the Employer's operations, and that the Regional Director therefore erroneously ruled that in the light of these proceedings, the present petition was untimely filed with this Board. For the reasons set forth hereinafter, the Regional Director's dismissal of the petition is sustained.

OPINION

The issue presented by this appeal is whether the certification of the Commissioner of Agriculture and Labor of the Virgin Islands granted to the Virgin Islands Labor Union Local 1812, AFL-CIO, is a bar to the petition filed in this proceeding.

The facts indicate that both the Petitioner and Virgin Islands Labor Union Local 1812, AFL-CIO, filed petitions on July 28, 1960, at approximately the same time with the Virgin Islands Department of Agriculture and Labor under the law therein provided by the Virgin Islands Code, and that both participated on the ballot. It appears further that Virgin Islands Labor Union Local 1812, AFL-CIO, received a majority of the valid votes cast, and was certified as the exclusive bargaining representative. On August 12, 1960, that Union and the Employer entered into a collective-bargaining agreement, which is currently in effect. On August 19, 1960, the Petitioner, although it lost in the aforesaid election, filed a petition with this Board.

It further appears that, although the challenge procedures of the Virgin Islands do not conform to the Board's, the parties voluntarily participated in an election, and that such election was conducted without substantial deviation from due process requirements. The Board concludes that, in view of the above circumstances, the dismissal of the instant petition was in accord with the Board's policy of attribut-

ing the same effect to elections conducted by responsible State agencies as to elections conducted by the Board, where, as here, such elections afford the employees involved an opportunity to express their true desires as to a collective-bargaining agent, and are not attended by irregularities. As the election conducted by the Virgin Islands agency was conducted within the last 12 months, the Regional Director was warranted in dismissing the petition. See *Bluefield Produce & Provision Company*, 117 NLRB 1660, 1663; *Olin Mathieson Chemical Corporation*, 115 NLRB 1501. We conclude, accordingly, contrary to the contention of the Petitioner, that in dismissing the petition herein, the Regional Director properly applied these principles.

MEMBER KIMBALL, dissenting:

I dissent from the determination of the majority to adhere, in this case, to its practice of recognizing an election conducted by a State or Territorial agency within the 12-month limitation of Section 9(c)(3). Noting that the Board clearly has jurisdiction in this case,¹ I rely upon Section 4(a) of the Rules and Regulations of the Labor Relations Act, Title 24, Chapter 3, Virgin Islands Code, which provides that the "Commissioner [of the Virgin Islands Department of Agriculture and Labor] shall not assume jurisdiction in any certification affecting businesses trading in interstate commerce when the National Labor Relations Board has jurisdiction." I would, therefore, conclude that the election and subsequent certification issued by the Commissioner were null and void *ab initio*. I would further find that, even if the election held by the Commissioner were otherwise valid under the laws of the Virgin Islands, the Board's Decision in *Bluefield Produce & Provision Company*, 117 NLRB 1660, 1663, is distinguishable from the instant case on the ground that, in that case, it was not contended by any party that the election therein was attended with any irregularities, whereas in this case the appellant contends, *inter alia*, that the unit was arbitrarily determined; there was no advance agreement as to voting eligibility, as required by the Virgin Island statute; and challenged, but not properly identified, ballots were arbitrarily allowed to be counted. I would, therefore, overrule the Regional Director's dismissal of the petition.

¹ *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261; *Southwest Hotels, Inc.*, 126 NLRB 1151, and Section 2(6) of the Act.

Westinghouse Electric Corporation, Sharon Transformer Division and Sharon Westinghouse Employees Association, Petitioner. *Case No. 6-RC-2621. January 6, 1961*

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 Joseph Mark Maurizi, hear-
129 NLRB No. 132.