

Editorial "El Imparcial," Inc.; Universal Advertising Agency, Inc.; Highley Advertising Co.; Franklin Stores of P.R., Inc.; Borinquen Music Corp. (Casa Wurlitzer); Gomez Hermanos, Inc.; Goodyear Western, Inc.; Puerto Rico Home Home Appliances, Inc.; Volkswagen de Puerto Rico, Inc.; Gonzalez Padin Distributing Corp.; Singer Sewing Machine Co.; F. W. Woolworth Co.; Eastern Airlines.

(c) Notify the Regional Director for the Twenty-fourth Region, in writing, within 20 days from the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.

It is further recommended that unless the Respondent shall within 20 days from receipt of this Intermediate Report notify said Regional Director in writing it will comply with the foregoing recommendations, the National Labor Relations Board issue an order in accordance with the above.

And it is also recommended that the portions of the complaint, as amended, alleging the violation of Section 8(b)(4)(i)(B) in respect to Cerveceria Corona, Inc., and Goodyear Western, Inc., and of Section 8(b)(ii)(B) in respect to Publicidad Badillo, Inc., and Star Publishing Corp., be dismissed.

APPENDIX

NOTICE TO ALL MEMBERS AND OTHER PERSONS CONCERNED

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT break windows or cause any to be broken, or cause any other damage to the property of, or threaten, or otherwise coerce or restrain any of the companies listed below, or any other person engaged in commerce or in any industry affecting commerce, where an object thereof is forcing or requiring any of them or any other such person to forego advertising in El Imparcial or to cease doing any other business with Editorial "El Imparcial," Inc.

The companies above referred to are: Franklin Stores of Puerto Rico, Inc., Borinquen Music Corp. (Casa Wurlitzer); Gomez Hermanos, Inc.; Goodyear Western, Inc.; Puerto Rico Home Appliances, Inc.; Volkswagen de Puerto Rico, Inc.; Gonzalez Padin Distributing Corp.; Singer Sewing Machine Co.; F. W. Woolworth Co.; Eastern Airlines; Universal Advertising Agency, Inc.; and Highley Advertising Co.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS,
LOCAL 901, IBTCW & H OF AMERICA,

Labor Organization.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Plaza Provision Company (P.R.) and Teamsters, Chauffeurs, Warehousemen and Helpers, Local 901, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case No. 24-RC-1593. December 1, 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 Marie B. Poston, hearing officer. 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 is engaged in commerce within the meaning of the Act.

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 Petitioner seeks a unit of all drivers, helpers, and warehousemen employed by the Employer at all of its warehouses in Puerto Rico. The Employer contends that the unit should conform to the unit previously found appropriate by the Board in its Decision and Direction of Elections issued December 7, 1960, in Cases Nos. 24-RC-1410 and 24-RC-1415,¹ involving the same operations. In that decision the Board directed elections in two units: one of salesmen and the other of production and maintenance employees, including warehousemen, checkers, inventory clerks, the janitor, truckdrivers, and special and route salesmen.² The Board included the special and route salesmen in the latter unit under its holding in *The Valley of Virginia Cooperative Milk Producers Association*, 127 NLRB 785, that driver-salesmen, like truckdrivers, should be included in production and maintenance units unless the parties agree to exclude them or some labor organization seeks to represent them separately. In the present case, issues are raised solely with respect to the unit placement of special and route salesmen and the janitor.

The Board has reconsidered its holding in the *Valley of Virginia* case and decided to modify its policy with respect to the unit placement of alleged driver-salesmen.

Our experience has shown us that the duties of employees who drive truck or automobiles and distribute products of their employer from their vehicles may vary greatly, depending upon the given employer's sales and distribution policies and practices. In some instances, the employees have little or no function in making or promoting sales of the employer's products but are essentially deliverymen or truckdrivers. In others, their function is clearly selling and sales promotion, and driving vehicles is merely an incident of such function. There are also instances where the employees perform both functions and a determination as to which predominates will depend upon a close examination of all the facts as to their duties and employment conditions.

We believe that where the employees in question are shown to be engaged in selling their employer's products and they drive vehicles and make deliveries of such products as an incident of such sales

¹ Not published in NLRB volumes.

² The petitioner in those cases, a labor organization other than the Petitioner herein, subsequently was permitted to withdraw its petitions with prejudice.

activity, they are essentially salesmen and have interests more closely allied to salesmen in general than to truckdrivers or to production and maintenance or warehouse employees.

The record in the instant case³ shows that the Employer is a wholesale distributor of food products and other provisions in the Commonwealth of Puerto Rico. It has five sales districts which are serviced by three warehouses. One of the warehouses, at Hato Rey, near San Juan, has a separate supervisor and it services three districts, each of which has a sales manager who is over sales employees in his district. The other two districts each has a sales manager who is over all employees in his district. Route salesmen operate out of the warehouses within prescribed routes. They drive trucks or station wagons. They sell all lines of the Employer's products and deliver merchandise from their vehicles. Special salesmen, except those formerly classified as merchandisers, have the same duties but carry only one line of products. The special salesmen who used to be merchandisers drive a truck, assist in the promotion of a special line of products, set up displays, and sell from their trucks. There are other salesmen, classified as products managers, advertising men, wholesale salesmen, and specialists, engaged in sales and promotion work, who travel by automobile.

All salesmen, including those whose placement is in dispute, are paid a salary plus incentive bonuses in connection with sales promotions. Warehousemen and truckdrivers receive a straight salary. There is no interchange between route or special salesmen and warehouse employees or truckdrivers. Fringe benefits, such as vacations, sick leave, accident insurance, and Christmas bonuses, are the same for all employees.

On the basis of the foregoing and the entire record, we are of the opinion that the route and special salesmen involved are truly salesmen. Contrary to the Employer, we are not persuaded that they are merely deliverymen or truckdrivers. We find, therefore, that the interests of the route and special salesmen are diverse from those of the warehousemen and truckdrivers and we shall exclude them from the requested unit.⁴

We find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

³ The Board has taken official notice of the record in Cases Nos. 24-RC-1410 and 24-RC-1415, a prior proceeding involving the Employer. Except as to the duties of the special salesmen formerly classified as merchandisers, the record in the instant case does not indicate any substantial change in the duties of the employees involved since the hearing in the prior proceeding. The facts here set forth, therefore, are derived in part from the record in the earlier proceeding.

⁴ The cases of *The Valley of Virginia Cooperative Milk Producers Association, supra*; *Don Kerr, Inc.*, 129 NLRB 526; and other similar cases, to the extent that they are inconsistent herewith, are hereby overruled. The prior decision to the contrary in Cases Nos. 24-RC-1410 and 24-RC-1415 is likewise overruled.

All drivers, helpers, and warehousemen employed by the Employer at all of its warehouses throughout the Commonwealth of Puerto Rico, including the janitor,⁵ but excluding route salesmen, special salesmen, former merchandisers, all other sales personnel, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS, dissenting:

As indicated in the majority opinion the duties of the driver-salesmen in question have not changed substantially since the hearing in Cases Nos. 24-RC-1410 and 24-RC-1415, involving the same operations of the Employer. The Board decided in those cases that the driver-salesmen should be included in a unit of the Employer's production and maintenance employees. As the same employees are involved herein, I would adhere to the Board's prior determination of the appropriate unit. The majority's departure from the previously approved unit would seem to lend controlling weight to extent of organization factors.

⁵ As the janitor was included in the warehouse unit previously found appropriate, and no persuasive reason is advanced at this time for a contrary disposition, he is included herein.

Superior Graphite Company and Oil, Chemical and Atomic Workers International Union, AFL-CIO. *Cases Nos. 13-CA-4093 and 13-CA-4160. December 1, 1961*

DECISION AND ORDER

On September 15, 1961, Trial Examiner Charles W. Schneider issued his Intermediate Report herein, finding that the Respondent engaged in unfair labor practices and recommending that it cease and desist therefrom and take affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and the General Counsel filed a brief in support of the Intermediate Report.

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 McCulloch and Members Rodgers and Leedom].

The Board has considered the Intermediate Report, the exceptions and brief, and the entire record. The Board affirms the Trial Examiner's rulings and adopts his findings and conclusions.