

this defunctness of Local 715, we find that the existing bargaining contract between that organization and Gulf is not a bar to a present determination of representatives. As we have noted above, Warren's contract is not a bar in any event.

We find that questions affecting commerce exist 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 following employees of Gulf Oil Corporation and Warren Petroleum Corporation constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

(a) All employees of Gulf Oil Corporation in the McElroy pool and in the area known as "Sand Hills Pool," but excluding all clerical, administrative, technical, and plant patrol employees and supervisors as defined in the Act.

(b) All production and maintenance employees of the Warren Petroleum Corporation Waddell Gasoline Plant located near Crane, Texas, but excluding all office and clerical employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

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**Sea-Land Service, Inc.<sup>1</sup> and Insular Labor Organization (ILO) of Ponce, Independent, Petitioner.** *Case No. 24-RC-1773. June 8, 1962*

#### DECISION AND DIRECTION OF ELECTION

On September 14, 1961,<sup>2</sup> the Petitioner duly filed the instant petition under Section 9(c) of the National Labor Relations Act seeking to represent a unit comprised of the Employer's stevedoring employees at the port of Ponce, Puerto Rico.<sup>3</sup> The Regional Director for the Twenty-fourth Region administratively dismissed this petition on September 15 "inasmuch as the unit of employees for which the Petitioner seeks to act as representative is inappropriate for the purposes of collective bargaining." Thereafter, the Petitioner, in accordance with Section 102.71 of the Board's Rules and Regulations, as amended,

<sup>1</sup> The Employer's name appears as amended at the hearing. Hereafter, the Employer will be referred to as Sea-Land.

<sup>2</sup> Unless otherwise indicated, all dates will refer to 1961.

<sup>3</sup> The unit requested by the Petitioner includes all stevedores and employees engaged in loading and unloading vessels, including truckdrivers, motor operators, checkers, gate-men, hatch tenders, mechanics, and mechanic-helpers, but excluding watchmen and supervisors as defined in the Act.

filed with the Board a timely request for review of the Regional Director's administrative action.

By letter dated January 24, 1962, the Board granted the Petitioner's request for review since it raised substantial and material issues of fact which could best be resolved on the basis of a hearing. Accordingly, the petition was reinstated and the Regional Director was directed to issue a notice of hearing in the proceeding. Hearings were held before Juan A. Sedillo, hearing officer, at Santurce, Puerto Rico, on February 1 and 12 and 13, 1962. On the latter date, the Regional Director, in accordance with Section 102.67(h) transferred this case to the Board for decision.

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Board has considered the record and briefs in this case and hereby finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent employees of the Employer.<sup>4</sup>
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner, as noted previously, seeks to represent a single port unit of Sea-Land's employees engaged in stevedoring and related functions. The Intervenor, on the other hand, contends that a multi-port or islandwide unit is the only appropriate unit. The Employer took no position with respect to the appropriate unit question.

The record discloses that Pan Atlantic Steamship Corporation, the predecessor company to Sea-Land,<sup>5</sup> began to operate a trailership service between the continental United States and Puerto Rico in 1958. On July 16, 1958, Pan Atlantic granted recognition to the I.L.A., the Intervenor herein, and the parties entered into a prehire contract which covered the Employer's islandwide loading and unloading operation for a 3-year period. During that time, Pan Atlantic's operations were confined to the ports of San Juan and Ponce. Sea-Land's operations are today likewise confined to these two ports.

In the summer of 1958 Pan Atlantic also entered into hiring hall arrangements with the I.L.A. (Local 1575 represented the San Juan employees and Local 1855, those in Ponce) establishing an exclusive re-

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<sup>4</sup> The International Longshoremen's Association, District Council of the Ports of Puerto Rico, International Longshoremen's Association, AFL-CIO, hereafter referred to as the I.L.A., was permitted to intervene in this proceeding on the basis of its colorable contractual interest

<sup>5</sup> Although the instant record indicates that Pan Atlantic Steamship Corporation became Sea-Land Service, Inc in April 1960, the Board continued to acknowledge the existence of the former corporate entity (Pan Atlantic) as of August 1961 (see 132 NLRB 868).

ferral system for stevedores and warehousemen under which job preference was given to I.L.A. members. The I.L.A. then filed a representation petition and, following a consent election, it was certified on September 5, 1958, as the collective-bargaining representative of a unit of Pan Atlantic's stevedore employees at the ports of San Juan and Ponce.

The aforementioned exclusive referral arrangements later became the subject matter of an unfair labor practice proceeding (*Pan Atlantic Steamship Corporation, supra*) wherein the Board found on August 10, 1961, that, by maintaining and enforcing these hiring hall arrangements, Pan Atlantic and the I.L.A. violated Section 8(a) (1), (2), and (3) and 8(b) (2) and 8(b) (1) (A) of the Act, respectively. Having found that the Respondent-Employer rendered unlawful assistance to the Respondent-Union, the Board ordered both the Respondents to cease giving effect to the unlawful hiring hall arrangements and ordered Pan Atlantic to cease recognizing the two I.L.A. locals until they demonstrated their majority representative status pursuant to a Board-conducted election.<sup>6</sup>

On August 29 the I.L.A. filed a petition in a companion case (24-RC-1753) seeking a unit of the Employer's stevedores at the ports of San Juan and Ponce, and entered into a consent-election agreement with Sea-Land providing for an election to be held in that unit on September 22. The Union de Trabajadores de Muelles, hereafter referred to as the UTM, an independent local long associated with the Puerto Rican waterfront, sought to intervene on August 29 and to participate in the election. However, on September 13, UTM withdrew its request to intervene, apparently because it had executed an agreement with the Petitioner (I.L.A.) on September 11, whereby I.L.A. Local 1855 was to be merged with UTM Local 1903.

The Ponce employees, at that time represented by Local 1855, conducted a meeting on September 13 in which they voted to disaffiliate from the I.L.A. and to form the ILO, an independent labor organization.<sup>7</sup> As mentioned previously this newly formed labor organization<sup>8</sup> filed the instant petition on September 14 requesting a unit of the Employer's stevedores limited to the single port of Ponce. On September 22, while the appeal from the Regional Director's dismissal of

<sup>6</sup> Although both Respondents were ordered to post the customary notices for a 60-day period, the parties were subsequently permitted to waive this requirement, thus considerably shortening the posting period.

<sup>7</sup> The decision to disaffiliate from the I.L.A. was apparently attributable to the fact that the merger of Local 1855 with Local 1903 of the UTM was to be consummated without the prior approval of Local 1855's membership.

<sup>8</sup> The Intervenor contends that the ILO is not a "labor organization" within the meaning of Section 2(5) of the Act. However, the record indicates that 75 percent of the employees at Ponce participated in the formation of the ILO, and that the purpose of this organization is to represent the workers "with the Employer as to bargaining and other things." We find, therefore, that the ILO is a labor organization within the meaning of the Act. *Dove Manufacturing Company*, 128 NLRB 778, 779.

this petition was pending, the Regional Director conducted an election in Case No. 24-RC-1753 among the stevedoring employees at the ports of San Juan and Ponce. The tally of ballots showed that at San Juan 177 votes were registered for the I.L.A., no votes were registered against the I.L.A. and 12 votes were challenged. However, at Ponce none of the approximately 75 eligible voters appeared at the polls apparently in protest of the Regional Director's dismissal of the ILO's petition for a single-port unit. The Regional Director delayed any certification pending the Board's resolution of the instant case.

With respect to the question of the appropriateness of a single-port unit, the record further discloses that Ponce is located on the south side of Puerto Rico, 12 to 15 hours by vessel from San Juan on the north; that 12 percent of all the Employer's cargo passes directly through the Ponce port; that the Ponce stevedores are hired, fired, and paid by the Employer's Ponce personnel and subject to their immediate supervision; that San Juan stevedores do not work at Ponce, and that minor grievances of a local nature are handled in Ponce. All these factors indicate that the Ponce stevedores are a clearly identifiable group possessing a substantial degree of common interests and that, to the extent explicated above, Sea-Land's operations at Ponce are independent from those at San Juan.

Moreover, the Board has frequently been called upon to weigh the relative merits of a single versus a multiport or islandwide unit of stevedores in Puerto Rico,<sup>9</sup> and has recognized the appropriateness of a single port unit on numerous occasions.<sup>10</sup> Significantly, many of the identical criteria upon which the Board has previously relied for approval of single port units are also present here.<sup>11</sup>

We are not unmindful of the 3-year bargaining history between Pan Atlantic, predecessor to Sea-Land, and the I.L.A. on the basis of a multiport stevedoring unit. Clearly, however, this bargaining history was tainted by the fact, described above, that Pan Atlantic rendered unlawful assistance to the I.L.A. throughout the entire contract period. The Board itself terminated this bargaining relationship in August 1961 by issuing a broad 8(a)(2) remedy ordering Pan Atlantic to withhold recognition from the I.L.A. until it demonstrated its majority status pursuant to a Board-conducted election.<sup>12</sup> In accordance with established precedent, we do not consider controlling this tainted bargaining history in making the instant "appropriate unit" determination.<sup>13</sup>

<sup>9</sup> See case cited in *Bull Insular Line, Inc.*, 107 NLRB 674, 678 at footnote 16

<sup>10</sup> See, e.g., *Bull Insular Line, Inc.*, 63 NLRB 154; *Bull-Insular Line, Inc.*, 71 NLRB 38, and cf. *Lykes Brothers Steamship Company, Inc.*, 74 NLRB 55, and *Bull Insular Line, Inc.*, 107 NLRB 674, 680.

<sup>11</sup> See the Board's rationale in the cases cited at footnote 10, *supra*.

<sup>12</sup> See *supra*.

<sup>13</sup> *Pacific Maritime Association*, 110 NLRB 1647, 1651 Also, cf. *New Ideas, Inc.*, 25 NLRB 265; *Southern Bell Telephone and Telegraph Company*, 55 NLRB 1058, *Wilson &*

In addition to the absence of any controlling valid multiport bargaining history, and the facts, *supra*, establishing the separate identity of the Ponce operations, the continued presence of certain other factors, including, *inter alia*, the frequent changes in union affiliation, the intraunion conflicts, and the vacillating policies of the unions themselves with respect to the appropriateness of single or multiport units, illustrate that industrial relations on the Puerto Rican waterfront are still in a state of flux, and that a single port bargaining unit is appropriate at this time in order to assure employees the fullest freedom in exercising the rights guaranteed by the Act. Although the factors cited by our colleagues establish that a multiport unit might also be appropriate, they do not establish that the single-port unit sought herein is inappropriate.<sup>14</sup>

On the basis of all the foregoing, and our review of the entire record, we hold, contrary to the Regional Director, that a single port unit is appropriate herein. We find, therefore, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All stevedores and other employees of Sea-Land Service, Inc., at the port of Ponce, Puerto Rico, engaged in the loading and unloading of vessels, including truckdrivers, motor operators, checkers, gatemen, hatch tenders, mechanics, and mechanic helpers, but excluding watchmen and supervisors as defined in the Act.<sup>15</sup>

Accordingly the case is hereby remanded to the Regional Director for the Twenty-fourth Region for the purpose of holding an election in the unit found appropriate herein. Also the Regional Director is hereby directed to invalidate the aforementioned election conducted in Case No. 24-RC-1753.<sup>16</sup>

[Text of Direction of Election omitted from publication.]

MEMBERS RODGERS and BROWN, dissenting:

Contrary to our colleagues, we are of the opinion that a multiport or islandwide unit is the only appropriate unit in the instant case. The record clearly reveals: (1) The Employer's operations at Ponce

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*Company, Inc.*, 64 NLRB 1124; *Pacific Telephone and Telegraph Company*, 80 NLRB 107; and *Gibbs Corporation*, 81 NLRB 1029.

<sup>14</sup> We note, in this connection, that in *Puerto Rican Steamship Association*, 116 NLRB 418, relied on by our colleagues, the Board relied heavily on the bargaining history and the selection of the islandwide unit in a prior election, because of the Board's 8(a)(2) finding, noted *supra*, neither of these factors is applicable here. And in *The New York & Puerto Rico Steamship Company, et al.*, 81 NLRB 1034, also cited by our colleagues, the parties had agreed on the scope of the unit.

<sup>15</sup> The parties were not in dispute as to the inclusion or exclusion of any of the above-listed employee classifications.

<sup>16</sup> The Intervenor contends that since the two-port election has already been conducted, Section 9(c)(3) precludes the Board from conducting another election within 1 year. However, since the Board has invalidated the prior election, it may now direct another election without contravening Section 9(c)(3)'s proscription. Cf. *Crown Upholstering Co.*, 110 NLRB 22.

and San Juan are centralized and integrated;<sup>17</sup> (2) similar terms and conditions of employment prevail at both ports;<sup>18</sup> and (3) for many years collective bargaining for the longshore employees throughout Puerto Rico has been carried out, in general, on an islandwide basis.<sup>19</sup>

The Board, as recently as 1956, thoroughly reexamined its "appropriate unit" policy with respect to stevedoring employees on the Puerto Rico waterfront in the *Puerto Rican Steamship Association* case.<sup>20</sup> There, after indicating that the established pattern of islandwide bargaining has had a salutary effect, the Board dismissed a petition for a Ponce unit of stevedores on the ground that a single-port unit was inappropriate. On the record before us, we are unable to perceive any cogent reason for departing from the views expressed in the *Puerto Rican Steamship Association* decision.

Thus, even without considering the bargaining history between Pan Atlantic and the I.L.A., we believe that a multiport unit is the only appropriate one in this case. Accordingly, we would affirm the Regional Director's dismissal of the instant petition and direct him to certify the results of the election previously conducted in Case No. 24-RC-1753.

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<sup>17</sup> Thus, the Employer's Puerto Rican operation is centralized under the control of a district manager in San Juan, the Company's principal office is in San Juan where clerical and payroll records for the Ponce employees are maintained, final settlement of grievances and labor disputes takes place in San Juan, the Company's major policy decisions are formulated in Newark, New Jersey, and then passed on to the San Juan office which completely supervises operations in Ponce, the stevedoring superintendent from San Juan also supervises the overall loading and unloading of ships at Ponce, the loading plans for all Ponce port calls are made at San Juan, and all ships destined for Ponce make a prior stop at San Juan. Moreover, there is some interchange of employees, for example, about 25 stevedores from Ponce worked at San Juan on approximately 7 occasions last year during which time they were supervised by San Juan personnel.

<sup>18</sup> The employees at both ports are subject to similar rates of pay, and enjoy similar benefits, privileges, and general working conditions. Likewise, the skills they exercise and the duties they perform are similar.

<sup>19</sup> Thus, the record discloses that the Puerto Rican Steamship Association, a multi-employer bargaining association of which Sea-Land is not a member, has bargained since the mid-1950's on the basis of islandwide units and that the companies which comprise this association handle 85 percent of the sea freight coming into and leaving all the ports on the island of Puerto Rico. Moreover, numerous other nonmember steamship companies have bargained on the basis of islandwide or multiport units in the past and continue to do so today.

<sup>20</sup> 116 NLRB 418. Also, cf. *The New York and Puerto Rico Steamship Company, supra*

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**The Great Western Sugar Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Petitioner. Case No. 17-RC-3454. June 8, 1962**

#### AMENDED DECISION AND DIRECTION

On August 10, 1961, the Board issued a Decision and Direction of Election<sup>1</sup> in the above-entitled case. On August 31, 1961, the Inter-

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<sup>1</sup> 132 NLRB 936.