

AGIP, USA, Inc. and Office & Professional Employees International Union, Local 153, AFL-CIO, Petitioner. Case 2-RC-15718

May 18, 1972

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Mary W. Taylor of the National Labor Relations Board.

Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, by direction of the Regional Director for Region 2, this case was transferred to the Board for decision. Thereafter, the Petitioner and the Employer each filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

The Petitioner seeks to represent all office clerical employees, including buyers, who are employed by the Employer at its New York, New York, office. The Employer does not contest the appropriateness of the unit described by the Petitioner. However, the Employer maintains that it is owned and controlled by the Italian Government, and that, as an instrumentality of a foreign government, it should not be subject to the jurisdiction of the National Labor Relations Board.

The Employer, a Delaware corporation with its principal place of business in New York, New York, serves as a purchasing agent in the United States of America for the companies operated by Ente Nazionale Idrocarburi, herein after referred to as ENI. ENI is wholly owned by the Italian Government and is one of three divisions of the Ministry of Partecipazione Nazionale, an arm of the Italian Government which is headed by a cabinet minister who is appointed by the government in power. ENI was established for the purpose of procuring and developing sources of energy from gas, oil, coal, and nuclear power for Italy's use. There are some 200 companies in the ENI complex and its operations are world-wide in scope.

The record demonstrates what is, in effect, a parent-subsidiary relationship between ENI and the Employer. ENI has financial control over the Employer's operations by virtue of its ownership of approximate-

ly 97 percent of the Employer's corporate shares. ENI also exercises control over the appointment of the Employer's corporate officers and directors. All five members of the Employer's board of directors are employed by ENI and were appointed as directors by ENI. The Employer's president is a general director of ENI and resides in Italy, as do two other of the Employer's directors. The Employer's day-to-day operations are handled by Mr. Giancarlo Gini, a director and executive vice president of the Company. Mr. Gini and the head of accounting and personnel, Mr. Calorio, were assigned to the New York office by ENI. Both are Italian nationals. Also employed in the Employer's New York office are approximately 50 office clerical employees, all of whom were hired in the United States of America and are presumably American citizens.

With respect to the operations of the Employer's New York office, Mr. Gini testified that while he is considered to be the operating head, he is in constant touch with Employer's President Grandi in Rome. All policy decisions emanate from Rome and Mr. Gini's role is merely to implement these policy directives. For example, all labor relations policy for ENI companies, including the Employer, is established in Rome by the labor relations experts employed by ENI. Mr. Gini testified that he receives specific guidelines covering such matters as salaries and fringe benefits for employees and he is required to adhere to these directions. Also, such matters as the leasing of office space require express approval from Rome.

As previously indicated, the Employer serves as a purchasing agent in the United States of America for the companies operated by ENI. Purchase orders from ENI companies are sent directly to the Employer who then negotiates the purchase of the requested materials or machinery from American manufacturers. ENI companies requesting such service pay the Employer a commission for each purchase. This commission is set by ENI and it is designed only to cover the Employer's operating costs. Last year, the Employer purchased equipment and materials in the United States of America valued in excess of \$30 million and arranged for its shipment outside the country.

On the basis of the foregoing, particularly the evidence establishing the existence of a close relationship between the Employer and ENI, an instrumentality of the Italian Government, we deem it inappropriate to assert jurisdiction in this proceeding without reaching the question of whether, in fact, the Board has legal jurisdiction over the employees of the Employer. Accordingly, we shall dismiss the petition.¹

¹ *British Rail-International, Inc.*, 163 NLRB 721.

ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.

MEMBER FANNING, dissenting:

I dissent from the refusal to assert jurisdiction herein.

The Employer is an American corporation employing American workmen who work within the continental limits of the United States of America. The Employer purchases upwards of \$30 million worth of American materials and goods and arranges for their transshipment to various companies around the world. Quite obviously the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and its operations far surpass the minimum requirements for assertion of jurisdiction under current and mandatory Board jurisdictional standards.

The sole basis for declining to assert jurisdiction herein is the fact that the Employer is owned by foreign corporations which in turn are partly owned by corporations or entities owned by the Italian Government. Although the Employer traces the complex ownership strands to a conclusion that approximately

96 percent of the ownership of the Employer ultimately resides in the Italian Government, the fact remains that the Employer is not a wholly owned agency of the Italian Government, much less is it a wholly owned corporation of the United States Government, a necessary condition for the exemption of a corporation performing comparable functions for that government.² Even assuming the word "Government" used in Section 2(2) includes foreign governments, it is apparent the Employer does not qualify for the exemption given such employers.³

As the Act was intended to be a "bill of rights both for American workingmen and their employers,"⁴ I would assert jurisdiction herein, for my colleagues do not point to any legislative history suggesting that Congress intended that American employees lose those rights when working for foreign interests in this country.

² Sec. 2(2) of the Act states, "The term 'employer' . . . shall not include the United States or any wholly owned Government corporation . . ."

³ Cf. *British Rail-International, Inc.*, 163 NLRB 721, where the employer was an agency of the British government and a substantial number of employees involved were British nationals. Here all the employees are American nationals.

⁴ *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 371 U.S. 931.