

Canterbury of Puerto Rico, Inc. and Confederacion Laborista de Puerto Rico, Petitioner. Case 24-RC-5733

June 29, 1976

DECISION ON REVIEW

BY MEMBERS FANNING, PENELLO, AND WALTHER

On March 19, 1976, the Acting Regional Director for Region 24 issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Acting Regional Director's decision, contending that the Acting Regional Director erred on substantial factual issues. By telegraphic order dated April 14, 1976, the Board granted the Employer's request for review. Thereafter, the Petitioner filed a brief on review.

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 considered the entire record in this case with respect to the issue under review, including the Petitioner's brief on review, and makes the following findings:

The Employer is a Puerto Rican corporation engaged in the manufacture of leather belts in Mayaguez, Puerto Rico.

The Employer argued at the hearing and in its request for review that the Acting Regional Director erred in directing an election because the Employer anticipated ceasing its operations in May 1976 out of economic necessity. In support of this position, the Employer introduced into evidence a corporate resolution of November 14, 1975, directing that all manufacturing activities be terminated within 6 months and that all machinery and inventory be sold or otherwise disposed of. The Employer also introduced certain documents that indicate Employer has sustained financial losses since 1974.

Despite this evidence of prospective plant closure, the Acting Regional Director directed an election because he concluded that the Employer's anticipated cessation of operations was an insufficient basis upon which to bar the election. He based his conclusion on the fact that the Employer had applied for and received in 1975 an extension of its tax exemption for the 12-year period ending 1987. Furthermore, the Acting Regional Director was administratively advised that the Employer's employee complement increased from 110 to 113 from the close of the hearing to the date of the Direction of Election.¹

In granting the Employer's request for review, the Board requested the parties to make an offer of proof as to matters pertaining to the alleged plant closure which have occurred since the close of the hearing. The Petitioner submitted a statement on review in which it alleged that the Employer will continue its operations, but under a different name. The Employer did not respond to this allegation, nor did it proffer any evidence regarding the additions to its employee complement at a time when it was supposedly ceasing operations. Furthermore, our review of the record has disclosed that the Employer's attorney, when asked why the Employer applied for a 12-year tax exemption if it contemplated ceasing operations, responded "It is because we would like to continue and because we are doing everything we can to make it possible."

Under these circumstances, we agree with the Acting Regional Director's conclusion that the Employer's stated intention to cease operations is too speculative a basis to bar an election. Accordingly, we affirm the Regional Director, and remand this case to him for the purpose of conducting an election pursuant to his Decision and Direction of Election, except that the eligibility payroll period therefor shall be that immediately preceding the date of issuance of this Decision of Review. [*Excelsior* footnote omitted from publication.]

¹ Employer complained it was denied due process by the Acting Regional Director's reliance on this fact, which was not in the record. However, as indicated *infra*, our grant of review has accorded the Employer an opportunity to make offers of proof bearing on these and related matters, it has chosen not to respond. We therefore find that the Employer has not been prejudiced.