

**American Chemical Corporation and Congreso de
Uniones Industriales de Puerto Rico, Petitioner.**
Case 24-RC-5376

November 26, 1974

DECISION AND DIRECTION

BY MEMBERS FANNING, KENNEDY, AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election, a secret-ballot election was conducted on May 31, 1974,¹ among the employees in the stipulated unit described below. The tally of ballots furnished the parties show that of approximately 32 eligible voters, 11 cast ballots for and 4 cast ballots against the Petitioner, and 17 were challenged. Thereafter, the Employer filed objections to the conduct of the election.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director, in accordance with the National Labor Relations Board Rules and Regulations, conducted an investigation and on August 7 issued and served upon the parties his Report on Objections² and Challenged Ballots, in which he recommended that the challenged ballots of 10 employees including Georgina Cubas, Teodoro Collazo, and Abel Seda be sustained; that the other 7 challenges³ be overruled and the ballots opened and counted; and that a revised tally of ballots be issued.

Thereafter, the Employer filed a request for review in the nature of exceptions to the Regional Director's recommendation that the challenges to the ballots of Cubas, Collazo, and Seda be sustained.

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.

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The parties stipulated, and 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:

All production and maintenance employees at the Employer's plant in Urb. Industrial Luchetti, Bayamon, Puerto Rico, excluding all office clerical employees, guards, and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the Employer's request for review, and hereby adopts the Regional Director's findings and recommendations, as modified herein.

The Regional Director found as follows with respect to Collazo and Seda: They were employed by the Employer on May 23 as permanent replacements for two economic strikers. As they began their employment after the eligibility date of May 22, they were ineligible to vote.

The Employer, which concedes that Collazo and Seda did not start working until the morning of May 23, contends, *inter alia*, that they were hired on May 22 and were therefore eligible to vote.

In determining employee eligibility, the Board has long adhered to the rule that, in order to be eligible to vote, an individual must be employed *and* working on the established eligibility date, unless absent for one of the reasons set out in the direction of election or the stipulation for certification upon consent election.⁴ Under this rule, the Board has held consistently that employees who are hired on the eligibility date, but do not report for work until a later date, are ineligible to vote. Thus, even assuming that Collazo and Seda were hired on the eligibility date of May 22, we find that they were ineligible to vote. Accordingly, we agree with the Regional Director that the challenges to their ballots should be sustained.

However, for the reasons given below, we find merit in Respondent's contention that Georgina Cubas was eligible to vote.

The Regional Director made the following findings concerning Georgina Cubas:

She is the sister of President Jose M. Cubas and has been employed in the Puerto Rico plant since it was opened 12 years ago. Prior thereto, Cubas was employed as a supervisor at her brother's plant in Cuba.

Georgina Cubas is the only part-time female production employee and her duties consist of packing items for shipment or distribution. Due to her poor health, her brother, among other company officials, reduced her workweek from the normal 40 hours to 20 and she rides to and from the plant with her brother who also works 20 hours weekly because of his advanced age of 78 years. She lives with her husband, a salesman for the firm, in a house immediately adjacent to that occupied by her brother. Of the 23 employees in the unit, 19 earn

¹ All dates below refer to 1974

² As indicated in the report, the Regional Director granted the Employer's request for withdrawal of its objections.

³ Jose de Soto, Ramon Niebla, Angel Manuel Diaz Cruzado, Ramon Elpidio Narvaez, Orlando Rodriguez Calderon, Francisco Santos, and Jose Vizcarrondo Castro

⁴ See *Roy N Lotspech Publishing Co.*, 204 NLRB 517 (1973), and cases cited therein.

a lower wage than Georgina Cubas but the Employer alleges her higher wage is due to her seniority, a statement borne out by comparison with other long term hourly paid employees' wages.

The second largest single block of stock in the firm is controlled by members of the Cubas family. However, this interest does not constitute a majority of the stock and Georgina Cubas does not appear as a stockholder.

The Regional Director concluded, "in view of the special circumstances surrounding [Georgina Cubas'] employment at the plant, [that] she cannot share a community of interest with other unit employees. . . ."

The Employer contends that Georgina Cubas does not enjoy a special status at the Employer's plant which allies her interests with those of management. We agree.

It is well settled that the mere coincidence of a family relationship between an employee and a member of management does not negate the mutuality of employment interest which an individual shares with fellow employees, absent evidence that because of such relationship the employee in question enjoys a special status which allies the employee's interests with those of management.⁵

Contrary to the Regional Director, we find no evidence of special status. As his report states, the higher wage rate received by Georgina Cubas stems from her seniority and is not attributable to her kinship with the Employer's president. Nor is there any evidence to show that the adjustment in her hours was not available to other employees who were in poor health. Although the Cubas family owns a minority of the Employer's stock, Georgina Cubas herself is not a stockholder and there is no evidence that she is economically dependent on her brother.⁶ Accordingly, in the absence of a demonstration of special status for this employee, we find that Georgina Cubas was eligible to vote in the election. We shall therefore direct that the Regional Director open and count the ballot of Georgina Cubas as well as those of the seven employees whose challenges were overruled and prepare and serve upon the parties a revised tally of ballots.

DIRECTION

It is hereby directed that the Regional Director for Region 24 shall, within 10 days from the date of this Direction, open and count the ballots of Georgina

⁵ *Adam D. Goettl and Gust Goettl, d/b/a International Metal Products Corporation*, 107 NLRB 65, 66-67 (1953), *Pargas of Crescent City, Inc.*, 194 NLRB 616 (1971), *Weyerhaeuser Company, Soft Disposable Division*, 211 NLRB 1012 (1974)

⁶ Cf. *Caravelle Wood Products, Inc.*, 200 NLRB 855 (1972), *Economy Cash Stores, Inc., a/k/a Cardinal Food Town*, 202 NLRB 930 (1973)

Cubas, Jose de Soto, Ramon Niebla, Angel Manuel Diaz Cruzado, Ramon Elpidio Narvaez, Orlando Rodriguez Calderon, Francisco Santos, and Jose Vizcarondo Castro, and thereafter prepare and serve upon the parties a revised tally of ballots, upon the basis of which he shall issue the appropriate certification.

MEMBER FANNING, dissenting in part and concurring in part:

Contrary to my colleagues, I would adhere to the Regional Director's conclusion that Georgina Cubas, sister of the Employer's president, Jose M. Cubas, was ineligible to vote in the election because she does not share a community of interest with the other employees in the appropriate unit.⁷

Under Section 9(b) of the Act, the Board has the responsibility of determining the unit appropriate for collective bargaining "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act. . . ." The Board has long held that the best way to assure this freedom is to include in the unit found appropriate only those employees who share a community of interest with each other.⁸

Members of the Cubas family control the second largest block of the Employer's stock. As indicated above, the top official of the Employer is President Jose M. Cubas. In addition to his granting Georgina Cubas the privilege of a reduced workweek, the president and his sister regularly ride to and from the plant together and live in adjoining homes.

As the Board recognized in *Parisoff Drive-In Market, supra*, and *Cardinal Food Town, supra*, where the owners of a substantial block of an employer's stock are members of the same family and related to one another as well as to the challenged employee and one of the owners is president of the company, it is more likely that the business interests of the company will be synonymous with the interests of the family to which the employee belongs. Thus, Georgina Cubas' interest as a member of the governing family may well outweigh her interest as an employee, and, to that extent, her interest may be entirely different from the interest of the other employees whose sole stake in the Company is that they work there.

As the brother of Georgina Cubas is the president and active in the management of the Employer, it is a "virtual certainty" that as his sister she "would get a more attentive and sensitive ear to [her] day-to-day and long-range work concerns than would other employees."⁹ While her accessibility to management

⁷ However, I agree with my colleagues' adoption of all other recommendations of the Regional Director

⁸ *Economy Cash Stores, Inc., a/k/a Cardinal Food Town, supra*; *Parisoff Drive-In Market, Inc.*, 201 NLRB 813 (1973), *Caravelle Wood Products, Inc., supra*.

⁹ *Cardinal Food Town, supra*.

through her kinship and daily companionship with the president may not always result in easily identifiable special privileges or favorable working conditions, the fact that she has this special access to him and is herself a member of the governing family gives her a status and area of interest not shared by the rest of the employees.

In view of the foregoing, I would conclude that the interests of Georgina Cubas are more closely allied with those of management than with those of her fellow employees. Accordingly, I would sustain the challenge to her ballot and direct that it remain unopened and uncounted.