

Wells Fargo Armored Service Corporation of Puerto Rico and Congreso de Uniones Industriales de Puerto Rico. Case 24-CA-5524

August 23, 1988

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT**

On March 25, 1988, Administrative Law Judge Donald R. Holley issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed limited exceptions and a brief in support of the judge's decision.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Wells Fargo Armored Service Corporation of Puerto Rico, Rio Piedras, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Failing and refusing to recognize and bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with any duly certified representative of its employees in the following appropriate unit:

¹ We find merit in the General Counsel's request that the notice be posted in Spanish as well as English. We shall modify the recommended Order accordingly.

On May 20, 1988, the Respondent filed a motion to admit new evidence and dismiss the complaint pursuant to a disclaimer of interest dated May 5, 1988, that it had received from the Union. The Union stated in effect that it no longer was interested in representing the unit employees. In its motion, the Respondent contends the Union's disclaimer relieves it of any obligation to bargain with the Union and that the present controversy is moot. The General Counsel's opposition to the motion contends that although the Union's disclaimer relieves the Respondent of bargaining with that particular Union, it does not negate the judge's finding that the Respondent violated the Act and that it has an obligation to bargain in good faith with any other labor organization that is duly selected by the unit employees to represent them. The General Counsel also states that the unit employees are entitled to a Board order and the posting of a notice for without such their Sec. 7 rights will have been chilled. In this regard, the General Counsel requests that the judge's recommended Order be modified to require the Respondent to bargain with any duly certified representative of its employees in the designated appropriate unit. We find merit to the Respondent's motion only to the extent that it requests admission of the Union's disclaimer. However, in agreement with the General Counsel, we find that the issues are not moot and the complaint should not be dismissed. Furthermore, in order to effectuate the purposes of the Act, we shall order the Respondent to bargain with any duly certified representative of its unit employees.

All mechanics and mechanic helpers employed by Respondent at its Rio Piedras facility in San Juan, Puerto Rico, excluding all other employees, guards and supervisors as defined in the Act."

2. Substitute the following for paragraphs 2(a) and (b).

"(a) On request, recognize and bargain with any duly certified representative of the employees in the aforesaid appropriate unit with respect to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

"(b) Post at its Rio Piedras, San Juan, Puerto Rico facility copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to recognize and bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with any duly certified representative of the employees in the following appropriate unit:

All mechanics and mechanic helpers employed at our Rio Piedras facility in San Juan, Puerto Rico, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain collectively with any duly certified representative of all employees in the appropriate unit with respect

to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

**WELLS FARGO ARMORED SERVICE
CORPORATION OF PUERTO RICO**

Virginia Milan Giol, Esq., for the General Counsel.
Thomas Franklin, Esq., of Atlanta, Georgia, for the Respondent.
Arturo Figueroa, for the Union.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. On an original charge filed by Congreso de Uniones Industriales de Puerto Rico (the Union) on 10 February 1987 and an amended charge filed on 31 March 1987, the Regional Director for Region 24 of the National Labor Relations Board issued a complaint on 31 March 1987 that alleged, in substance, that by withdrawing its recognition of the Union as the exclusive collective-bargaining representative of specified employees on or about 11 August 1986, Wells Fargo Armored Service Corporation of Puerto Rico (the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act. By timely answer, Respondent denied it had violated the Act as alleged. Although Respondent admitted in its answer that it withdrew recognition from the Union on or about 11 August 1986, it pleaded affirmatively that "1. The six month statute of limitations has expired on the basis of this charge. 2. The Union's certification year expired on 9 January 1986. 3. The Union made no effort to represent the employees from October 1985 until March 1986."

The case was heard in Hato Rey, Puerto Rico, on 26 October 1987. All parties appeared and were afforded full opportunity to participate. On the entire record, including posthearing briefs filed by the parties, and from my observation of the demeanor of the witnesses who appeared to give testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Tennessee corporation authorized to do business in the Commonwealth of Puerto Rico, engages in the transportation of money and valuables by means of armored trucks and related security services, and operates a facility located in Rio Piedras, San Juan, Puerto Rico. In the normal course of its business operations, it annually performs services valued in excess of \$50,000 for banks and other enterprises within the Commonwealth of Puerto Rico which are engaged in interstate commerce, such as Banco Popular de Puerto Rico and Banco de Ponce. It is admitted, and I find, that Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The facts in the instant case are not in dispute.¹ Summarized, the record reveals the following

On 9 January 1985 the Union was certified by the Board as the exclusive collective-bargaining representative of employees in the following unit:

All mechanics and mechanic helpers employed by the Employer [Respondent] at its San Juan Branch located at Rio Piedras, Puerto Rico, excluding all other employees, guards and supervisors as defined in the Act.²

At the time of the certification, Respondent employed two mechanics and one mechanic helper. The unit consisted of two employees at the time of the hearing because one mechanic had left Respondent's employ.

After an exchange of correspondence, the parties engaged in negotiations in Puerto Rico on 19, 20, 21, and 22 August 1985, and 1, 2, and 3 October 1985. Thomas Franklin, assistant vice president of labor relations, and Luis A. Berrios, vice president-general manager of Puerto Rico operations, represented Respondent. Arturo Figueroa, the Union's president, and Charles E. Ayala, an employee and a member of the bargaining unit, represented the Union.

Disagreement on undisclosed economic and noneconomic matters prevented the parties from reaching agreement on a contract during negotiations.

On 7 October 1985 Respondent, through Franklin, sent the Union a final offer. The letter transmitting the final offer was placed in the record, but the final offer was not. The body of Franklin's letter states:³

Enclosed you will find a completed copy of the final offer of Wells Fargo in our collective bargaining. This copy represents the entire contract which includes agreed upon language and nonagreed upon final positions of Wells Fargo.

It has become very evident to me that you do not know how to conduct the art to negotiations. Your continual refusal to make counter proposals or to change positions leaves us at impasse.

This is Wells Fargo's final position on all issues. You are naturally free to pursue whatever course of action you choose. A copy of the final offer has been given to each of the mechanics. Please let Mr.

¹ Counsel for the General Counsel conducted her case-in-chief by adding testimony through two union representatives and one employee, and through the introduction of certain documentary evidence. The witnesses testified in a straightforward manner and I credit their uncontroverted testimony. Respondent elected to rest without presenting a defense at the conclusion of the General Counsel's case.

² Appropriateness of the unit is not in dispute.

³ G.C. Exh. 11.

Berrios know what the decision is regarding acceptance or rejection of this contract.

On 10 October 1985, Franklin sent the Union a second letter, which contained essentially the same verbage contained in the above-quoted letter.⁴

The Union did not immediately respond in writing to Franklin's October letters. Instead, its president, A. Figueroa, contacted Respondent General Manager Berrios in November and December 1985, and in January and February 1986, to request that Respondent schedule a meeting at which negotiations would be continued. The record fails to reveal that the Union made any counter-proposals to Respondent's last offer. A. Figueroa credibly testified that Berrios "intertained" him during the above described telephone conversations by telling him negotiations were Franklin's problem and he would attempt to contact Franklin.

By letter dated 10 March 1986, the Union demanded in writing that Respondent meet with it to continue negotiations. Berrios forwarded the letter to Franklin. By letter dated 7 April 1986, Franklin responded to the Union's 10 March letter stating, *inter alia*:

I have been informed that you have contacted our San Juan office and that you wish to continue negotiations between your union and our company.

I would like to point out a few factors to you: Your certification began on January 9, 1985. Clearly, one year of presumed representation has expired. Additionally, we last met in October at which time, in essence, you refused to bargain and we declared impasse. We presented you with our final offer in October and heard nothing from you as to whether or not your people had accepted it or not. I do not see that anything has changed between now and then. I do not see what could be accomplished nor do I understand the purpose of continuing negotiations. You have our final offer.

If you wish, you can let me know your opinion as to these items.

The Union responded to Franklin's 7 April 1986 letter by demanding in writing on 15 July 1986 that Respondent meet with the Union to conclude negotiations within 20 days.

Respondent admits in its answer that it withdrew recognition from the Union on or about 11 August 1986. Withdrawal of recognition was accomplished by a letter from Franklin to A. Figueroa dated 8 August 1986. A. Figueroa credibly testified he did not receive the letter until on or after 11 August 1986.⁵ The body of Franklin's letter states:⁶

A copy of your 15 July, 1986 letter has been referred to me. As you are aware, I wrote you a

⁴ G.C. Exh. 12.

⁵ The date of 8 August was a Friday. The letter was mailed in Atlanta, Georgia, on 8 August, and Figueroa testified his office is closed on Saturday and Sunday and he could not have received the letter until Monday, 11 August, at the earliest.

⁶ G.C. Exh. 16(a).

letter on 7 April, 1986 explaining the company's position.

I will remind you of the facts. Your union's certification began on January 9, 1985. The one year of presumed certification expired seven (7) months ago. The company presented you with a final offer and heard nothing from you. If you were willing to accept that offer, you should have signed the contract and returned it. You did not do so. All issues have been discussed and negotiated. There would be no point in further negotiations.

In considering the factors present here:

1. The union did not accept the final offer.
2. The employees did not strike the company.
3. The best offer was made in October 1985 and you did not contact the company again until April 1986. Your union abandoned the unit.
4. The union's certification year expired in January 1986. Thus, union no longer represents the mechanics.

I hope this clarifies [sic] the issue and our position in this matter.

By letter dated 19 August 1986 A. Figueroa informed Franklin he did not agree with the allegations and or position of Respondent set forth in Franklin's 8 August 1986 letter, and he demanded that Respondent meet with the Union within 15 days to continue negotiations. Respondent did not respond. Subsequently, by letters dated 14 October 1986, 17 February 1987, 13 March 1987, the Union requested that Respondent meet to continue negotiations. Respondent did not reply until 3 April 1987. At that time, Franklin informed the Union, that Respondent would not meet further with it until ordered to do so by the Board.⁷

The original charge was filed in the instant case on 10 February 1987. It alleges that Respondent violated Section 8(a)(1) and (5) of the Act by "refusing to meet to negotiate a collective bargaining agreement alleging the Union no longer represents the employees." The charge was amended on 31 March 1987 to allege specifically that Respondent violated Section 8(a)(5) of the Act on 11 August 1986 by "unlawfully withdrawing recognition from the . . . Union and thereafter refusing to meet to negotiate a collective bargaining agreement."

Analysis and Conclusions

Respondent interposes two defenses in the instant case, i.e., it claims the complaint is time barred by Section 10(b) of the Act and it claims it possessed a good-faith doubt that the Union represented a majority of the unit employees when it withdrew recognition by the letter dated 8 August 1986. I find both contentions to be without merit.

Respondent's contention that the complaint is time barred by Section 10(b) of the Act is grounded on a contention that the original charge, which was filed on 10 February 1987, failed to specifically allege that it had

⁷ G.C. Exh. 22.

violated Section 8(a)(5) by withdrawing recognition from the Union during the 6-month period preceding the filing of the charge. Respondent contends, in effect, that the complaint is based on the amended charge, which did specifically allege withdrawal of recognition, and was not filed until 31 March 1987, a date more than 6 months after 11 August 1985.

In *National Licorice v. NLRB.*, 309 U.S. 350 (1940), and in *NLRB v. Fant Milling Co.*, 360 U.S. 301 (1959), the Supreme Court rejected contentions that the Board is limited in framing complaints to specific matters alleged in a charge. In *Fant Milling*, the Court addressed the issue now before me stating (at 307):

A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. *Labor Board v. I & M Electric Co.*, 318 U.S. 9, 18. The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act.

More recently, in *NLRB v. Antonio's Restaurant*, 648 F.2d 1206 (9th Cir. 1981), the court discussed sufficiency of a complaint and applicability of Section 10(b), stating (at 1210):

Actions before the Board are not subject to the technical pleading requirements of a private lawsuit. *North American Rockwell Corp. v. NLRB*, 389 F.2d 866, 870 (10th Cir. 1968). The charge need not be technically precise so long as it generally informs the party charged of the nature of the alleged violations, and the general allegations in the charge may later be supplemented or amplified by more specific allegations which "relate back" to the date the charge was filed.

In sum, it is clear that the complaint allegation that Respondent unlawfully withdrew recognition from the instant Union on 11 August 1986 is closely related to the allegation in the original charge, which asserted Respondent had violated Section 8(a)(1) and (5) by "refusing to meet and negotiate a collective-bargaining agreement alleging the Union no longer represents the employees." The filing of the amended charge, which alleged specifically that Respondent violated Section 8(a)(1) and (5) by withdrawing recognition from the Union, constituted proper, but unnecessary action. Contrary to Respondent, the more specific allegation related back to the date the original charge was filed. Accordingly, Section 10(b) of the Act is not applicable here.

Remaining for resolution is Respondent's claim that the Union's actions from the time Respondent made a final offer on 7 October 1985, until 10 March 1986, the date the Union requested in writing that negotiations be resumed, legally entitled it to withdraw recognition from

the Union by letter dated 8 August 1986. As noted, supra, Respondent admits in its answer that it withdrew recognition from the Union on or about 11 August 1986.

In *Terrell Machine Co.*, 173 NLRB 1480 (1969), enfd. 427 F.2d 1088 (4th Cir. (1990)), the Board set forth the legal principles to be applied in situations when an employer seeks to withdraw recognition from an established bargaining representative, stating, inter alia:

It is well settled that a certified union, upon expiration of the first year following its certification, enjoys a rebuttable presumption that its majority representative status continues. This presumption is designed to promote stability in collective-bargaining relationships, without impairing the free choice of employees. Accordingly, once the presumption is shown to be operative, a prima facie case is established that an employer is obligated to bargain and that its refusal to do so would be unlawful. The prima facie case may be rebutted if the employer affirmatively establishes either (1) that at the time of the refusal the union in fact no longer enjoyed majority representative status; or (2) that the employer's refusal was predicated on a good-faith and reasonably grounded doubt of the union's continued majority status. As to the second of these. As to the second of these, i.e., "good faith doubt," two prerequisites for sustaining the defense are that the asserted doubt must be based on objective considerations and it must not have been advanced for the purpose of gaining time in which to undermine the Union.

In the instant case, the considerations, which allegedly caused Respondent to withdraw recognition from the Union, are set forth in Franklin's 8 August 1986 letter. They are:

1. The union did not accept the final offer.
2. The employees did not strike the company.
3. The best offer was made in October 1985 and you did not contact the company again until April 1986. Your union abandoned the unit.
4. The union's certification year expired in January 1986. Thus, union no longer represents the mechanics.

In its brief (at 4), Respondent clarifies its position concerning the first three numbered items set forth above by contending "The Company believed that the union's lack of action on the final offer and the lapse of time between the final offer on 7 October 1985 and the letter on 10 March 1986 indicated that the union lacked support of its unit members." I find the contention to be without merit. Similar contentions were made and rejected by Judge Michael O. Miller, with subsequent Board approval, in *Flex Plastics*, 262 NLRB 651 (1982). There, it was observed that the Board discussed the duty of an employer during a period of impasse in *International Medication Systems*, 253 NLRB 863 (1980), stating, inter alia, at fn. 3:

We have long held that, while an impasse may suspend bargaining for a time, it "does not relieve an employer from the continuing duty to take no action . . . which amounts to a withdrawal of recognition of the Union's representative status." *Central Metallic Casket Co.*, 91 NLRB 572, 574 (1950). Thus whether the parties arrived at an impasse is irrelevant to an evaluation of Respondent's asserted good faith and reasonably grounded doubt of the Union's majority status.

Patently, neither the existence of an impasse nor the failure of the Union or the employees to accept the Company's final offer or strike enabled Respondent to legally withdraw recognition from the Union.

Turning to the contention the union inaction entitled Respondent to question the Union's majority status, I reject the argument for two reasons. First, I note that the facts, *supra*, fail to factually support Respondent's contention. In this regard, I have credited the testimony of the Union's president, which was to the effect that he contacted Respondent's general manager in November and December 1985, and in January and February 1986, to demand a resumption of bargaining. Moreover, I credit the same individual's assertion that Berrios merely "intertained" him by promising to contact Franklin, but accomplishing nothing. Clearly, if there was inaction during the period of impasse, it was respondent rather than union inaction. Assuming, *arguendo*, however, that the Union was inactive for a period of 4-5 months during late 1985 and early 1986, case precedent reveals that by demanding a resumption of bargaining through its 10 March 1986 letter, which reached Franklin, it engaged in activity that negated any inference to be drawn from alleged inactivity. *Flex Plastics*, *supra* at 657.⁸

Finally, the principles enunciated in *Terrell Machine* clearly reveal the mere expiration of the Union's certification year could not serve as the basis for Respondent's alleged formation of a good-faith doubt that the Union did not enjoy majority status on or about 11 August 1986.

In sum, I find, for the above-stated reasons, that Respondent has failed to rebut the presumption that the Union represented a majority of its employees in the unit admitted to be appropriate when Respondent withdrew recognition from the Union on or about 11 August 1986. Accordingly, I find, as alleged, that by engaging in such action, Respondent violated Section 8(a)(5) and (1) of the Act as alleged.

CONCLUSIONS OF LAW

1. Wells Fargo Armored Service Corporation of Puerto Rico is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(6) of the Act.

3. All mechanics and mechanic helpers employed by Wells Fargo Armored Service Corporation of Puerto Rico at its Rio Piedras facility in San Juan, excluding all

other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. By withdrawing recognition from Congreso de Uniones Industriales de Puerto Rico as the exclusive bargaining agent of Respondent's employees in the aforesaid appropriate unit on or about 11 August 1986, Respondent violated Section 8(a)(5) and (1) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully withdrew recognition from the Union as the exclusive bargaining agent of employees in the appropriate unit described above, and that it, on request, bargain collectively with the Union regarding the rates of pay, wages, hours of employment, and other conditions of employment of unit employees and, if an understanding is reached, embody such understanding in a signed agreement.

Finally, although the General Counsel requests that a visitatorial clause be included in any order issued in this case, I note the Board has declined to include such clauses in cases that do not appear to pose complicated compliance problems. See, for example, *Cherokee terminal*, 287 NLRB 1080 (1988). In my view, the order in this case will pose no significant compliance problems.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Wells Fargo Armored Service Corporation of Rio Piedras, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Congreso de Uniones Industriales de Puerto Rico as the exclusive bargaining representative of employees in the following appropriate unit.

All mechanics and mechanic helpers employed by Respondent at its Rio Piedras facility in San Juan, Puerto Rico, excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain collectively with the Union as the exclusive representative of all employ-

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁸ See also *Pioneer Inn*, 228 NLRB 1263, 1265 (1979), *enfd* 578 F.2d 835 (9th Cir. 1978), *Road Materials*, 193 NLRB 990 (1971)

ees in the appropriate unit with respect to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Rio Piedras, Puerto Rico facility copies of the attached notice marked "Appendix."¹⁰ Copies of

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.