Crown Cork de Puerto Rico, Inc. *and* Union Independiente de Trabajadores de la Crown Cork and S. I. U. de Puerto Rico, Caribe Y Latinoamerica a/s S. I. U. of North America, AFL-CIO, Party to the Contract

S. I. U. de Puerto Rico, Caribe Y Latinomerica, a/s S. I. U. of North America, AFL-CIO *and* Union Independiente de Trabajadores de la Crown Cork

Crown Cork de Puerto Rico, Inc. *and* Union Independiente de Trabajadores de la Crown Cork, Petitioner. Cases 24-CA-3787, 24-CA-3820, 24-CB-980, and 24-RC-5775

July 19, 1979

DECISION AND ORDER REMANDING PROCEEDING TO ADMINISTRATIVE LAW JUDGE

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On February 7, 1979, Administrative Law Judge Irwin H. Socoloff issued his Decision in this proceeding.[1] Thereafter, Respondent Employer and Respondent Union filed exceptions and supporting briefs, and the Charging Party Union filed further exceptions and a supporting brief.

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 record and the Decision in light of the exceptions and briefs and has decided to remand this case to the Administrative Law Judge for further credibility determinations and the issuance of a Supplemental Decision.

In his Decision, the Administrative Law Judge found that Respondent Employer (hereinafter called Respondent) was responsible for various acts in violation of Section 8(a)(3), (2), and (1) of the Act, and that Respondent Union had violated Section 8(b)(2) and (1)(A) of the Act. Included among these violations was the finding that the discharge of Heriberto Padua on September 24, 1976,[2] was based soley on union considerations and therefore violative of Section 8(a)(3). The legality of this discharge is related to several other issues litigated before the Administrative Law Judge, including the status of the strike that commenced on the afternoon of September 24 which was found by the Administrative Law Judge to have been an unfair labor practice strike from its inception, the strikers' entitlement to recall upon application which was found by the Administrative Law Judge to be applicable to those strikers when the president of the Charging Party Union requested reinstatement on their behalf on October 22, and the eligibility of the striker replacements to vote in the election conducted on October 29 whose entitlement the Administrative Law Judge found to be without support based on the prior events outlined above. While these findings with respect to events which succeeded Padua's discharge do not necessarily derive their sole support from the status of Padua's discharge as other unfair labor practices were found to have occurred before that date, the series of events nevertheless establishes that the legality of Padua's termination is an important element in the General Counsel's arguments with respect to these other events.

The record, however, reveals substantial conflicts in the testimony with respect to what occurred during the events which led to Padua's discharge, and also reveals that the Administrative Law Judge failed to make credibility resolutions to resolve these conflicts. The evidence presented by Padua's supervisor, Jose David Carrasquillo, indicates that Padua responded to one of his instructions with obscene language and that he threatened to tear the supervisor's head off if a report was filed. Carrasquillo further testified that he wrote a report concerning this incident and submitted the report to Plant Superintendent Francisco Gonzales. The General Counsel, on the other hand, called three witnesses to the exchange between Carrasquillo and Padua,[3] whose testimony does not indicate that Padua threatened Carrasquillo or was otherwise disrespectful.

The record shows that Respondent utilized this written report submitted by Carrasquillo as the basis for Respondent's conclusion that Padua had been insubordinate, had shown a lack of respect, and had threatened physical harm to a supervisor,[4] and that his actions warranted his immediate termination. However, the Administrative Law Judge, by not making credibility findings with respect to the event referred to in the written report, has precluded a finding with respect to the merits of Carrasquillo's accusations against Padua. The Administrative Law Judge, instead, based his findings on the manner with which Respondent reacted to Carrasquillo's report.

[1] S. I. U. de Puerto Rico, Caribe y Latinoamerica a/s S. I. U. of North America, AFL-CIO, was the Intervenor in the representation proceeding, Case 24-RC-5775.

[2] All dates are 1976 unless otherwise indicated.

[3] These three witnesses were Padua, Miguel Carrasquillo, and Luis Pomar. A fourth witness to this event, Gilberto or Roberto Rodriquez, did not testify.

[4] Gonzales testified that he spoke with Rodriquez about the exchange between Carrasquillo and Padua, but that Rodriquez did not state any more than that he heard an argument between them but did not hear what was spoken.

Whether Padua misconducted himself as Carrasquillo asserted is necessarily material to any evaluation and review of the reason Respondent discharged Padua. We therefore remand the record to the Administrative Law Judge for credibility findings with respect to the Padua-Carrasquillo incident on September 23. Should it be found that Padua engaged in the misconduct attributed to him by Carrasquillo, then further consideration must be given to the issue of whether Respondent's treatment of Padua as a result of this misconduct was discriminatory in the light of past practice. On the other hand, should it be found that Padua did not engage in the misconduct as stated in the report prepared by Carrasquillo and relied on by Respondent, consideration must be given to whether the preparation of the report was motivated by unlawful factors, as well as the allegation of disparate treatment with respect to the handling of this disciplinary action taken against Padua.

In view of the importance of the conclusions with respect to Padua's discharge as it relates to several other issues litigated in this proceeding and outlined above, we shall refrain from ruling on the merits of the exceptions taken by the various parties to the remaining findings and conclusions of the Administrative Law Judge, pending the preparation of the Supplemental Decision ordered herein.

ORDER

It is hereby ordered that this case be remanded to the Administrative Law Judge for the purpose of making credibility determinations regarding the testimony of the witness referred to herein.

IT IS FURTHER ORDERED that the Administrative Law Judge shall prepare and serve on the parties a Supplemental Decision containing credibility determinations, findings of fact, conclusions of law, and recommendations to the Board, and that following service of such Supplemental Decision on the parties, the provisions of Section 102.45 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable.