

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**ENERGY SERVICES PUERTO RICO, INC.
AND HORNBECK/LEEVAC MARINE
OPERATORS, INC., A SINGLE EMPLOYER ^{1/}
Employer**

and

**Case No. 26-RC-8267
(formerly 24-RC-8188) ^{2/}**

**INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS,
ILA, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: ^{3/}

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that Energy Services Puerto Rico, Inc., hereinafter referred to as ESPRI, and Hornbeck/LEEVAC Marine Operators, Inc., hereinafter referred to as H/L, are Louisiana corporations with an office and place of business located in Penuelas, Puerto Rico, where they are engaged in the business of the operational management of vessels owned by LEEVAC Marine, Inc. Although the Petitioner declined to amend its petition at the hearing to reflect the correct names of

the employers, in its brief the Petitioner conceded ESPRI and H/L are the employers and act as a single employer as asserted by the Employer. Based on the record evidence, I find ESPRI and H/L have common ownership, common management, functional interrelation of operations and centralized control of labor relations; thus, they are a single employer and are hereinafter referred to singularly as the Employer. **Radio Union v. Broadcast Service of Mobile**, 380 U.S. 255 (1965).

3. During the past 12 months, a representative period, the Employer had gross revenues in excess of \$500,000 and purchased goods and materials valued in excess of \$50,000 directly from suppliers located outside the Commonwealth of Puerto Rico. Accordingly, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

4. The Petitioner, who I find to be a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer.

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

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: ^{4/}

Included: All unlicensed crewmen, including engineers, deckhands, tankermen, able-bodied seaman (AB) and ordinary seaman (OS), employed by the Employer in its Puerto Rico/Caribbean fleet.

Excluded: All other personnel, office clerical employees, guards, mates and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by, International Organization of Masters, Mates and Pilots, ILA, AFL-CIO.

ELECTION NOTICES

Your attention is directed to Section 102.30 of the Board's Rules and Regulations, which provides that the Employer must post the Board's official Notice of Election at least three (3) full working days before the day of the election, excluding Saturdays, Sundays, and holidays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 24 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Regional Director for Region 24 shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Region 24 Regional Office, La Torre de Plaza, Suite 1002, 525 F. D. Roosevelt Avenue San Juan, PR 00918-1002 on or before August 3, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be

Employer in Penuelas, Puerto Rico as managers and/or supervisors within the meaning of the Act. The Employer, conversely, contends that these individuals are not supervisors and that their community of interest mandates their inclusion in any appropriate unit. The Employer asserts that the mates are supervisors within the meaning of the Act while the Petitioner asserts that no determination of that issue is necessary because it is not seeking to represent the mates.

Introduction

H/L has employees at its offices in Mandeville, Louisiana and Brooklyn, New York as well as Puerto Rico. ESPRI only has employees in Puerto Rico and was incorporated in 1999 to comply with certain laws of Puerto Rico concerning the employment of native Puerto Ricans. The warehouse for supplies and materials is located in Brooklyn.

The parties stipulated the following individuals have the authority to hire, fire, discipline or effectively recommend such; thus, they are supervisors within the meaning of Section 2(11) of the Act:

Carl Annessa	Vice President of Operations
Gregory Broudeaux	Human Resources Manager
Michael Romanelli	Operations Manager, Puerto Rico
Stan Chelluck	General Manager, Northeast
Edward Lai	Assistant Manager, Northeast
Brian Bickford	Operations Manager, Northeast barge fleet
C. K. Wang	Operations Manager, Northeast tug fleet
Pablo Lozes	Port Engineer, Northeast barge fleet
Ed Escabado	Port Engineer, Northeast tug fleet
Patrick Blanchard	Captain, Yabuca vessel -- Puerto Rico
Johnny Farmer	Captain, Yabuca vessel -- Puerto Rico
Mark Beres	Captain, Tradewinds vessel -- Puerto Rico
William Fulford	Captain, Tradewinds vessel -- Puerto Rico
Michael Larkins	Captain, Caribe vessel -- Puerto Rico
Leon Hoover	Captain, Caribe vessel -- Puerto Rico
Michael Smith	Captain, Ponce vessel -- Puerto Rico

Craig Charpentier

Captain, Ponce vessel -- Puerto Rico

Furthermore, the parties stipulated that the captains/masters for H/L in the Northeast and Gulf of Mexico possessed the authority to hire and fire employees and thus were supervisors within the meaning of the Act.

The parties also stipulated that Ricardo Rodriguez, the office manager in Puerto Rico, and the IT specialists, personnel coordinator and clerical administrative secretary in Brooklyn, New York were office clerical employees.

An Appropriate Bargaining Unit

From the date of its inception in 1997 until late 1999, LEEVAC Marine, Inc. owned 9 barges that the Employer's employees were employed on. In December 1999 and 2000, 2 of the 9 barges were sold. On June 1, 2001, LEEVAC Marine, Inc. acquired 9 barges, the Spenton Bush Redstar Group, from a division of Hess Oil. Thus, as of June 2001, there were 16 barges.

The barges are stationed in one of three areas, Puerto Rico/Caribbean, Northeast – Brooklyn or the Gulf of Mexico. During the period that there were 9 barges, one was stationed exclusively in the Northeast, one was exclusively in the Gulf of Mexico, three had jobs in each of the three areas and four had jobs in two of the three areas. Of the 290 "barge months", 155 of them were devoted to jobs in Puerto Rico/Caribbean, 75 in the Northeast and 60 in the Gulf of Mexico.

Before the recent acquisition of the Spenton Bush Redstar Group, the Employer only had 7 unlicensed employees, all tankermen, on the 2 barges, Energy 6501 and Energy 6502, stationed in the Northeast. The 7 tankermen are Don Charpentier, Jeron Morris, John Smith, Wayne Lowe, Jerry Ewing, Jesse Stiles and Tom Dreyfus. Of these

tankermen, Stiles and Dreyfus have not worked in Puerto Rico/Caribbean in 2000 and 2001. Charpentier was hired in the fall of 1999 in Puerto Rico and work there until October 2000. According to Annessa, Vice President of Operations, in October 2000, "we moved him up there" to New York and he has not returned to Puerto Rico. Smith and Lowe were last employed in Puerto Rico in early 2000 and mid-2000, respectively, at which time they transferred to the Northeast. Ewing began in Puerto Rico in 1997 and remained there until a medical leave of absence in late-1999. When Ewing returned in the spring of 2000, he was briefly stationed in Puerto Rico until H/L "moved him up there (New York)". Morris was initially hired in Puerto Rico where he remained until being "transferred to the Northeast" in January 2001. None of the 7 tankermen has returned to Puerto Rico since their transfer to the Northeast.

In the few weeks since the acquisition of the Spenton Bush Redstar Group, all of the newly acquired unlicensed crewmen, approximately 96 employees, have remained in the Northeast.

Of the 27 unlicensed crewmen in Puerto Rico, Annessa testified that 2 ESPRI employees temporarily worked in the Northeast for 4 to 5 months in the winter of 2000-2001. Annessa did not identify the two employees. Previously, Annessa testified that ESPRI was formed in order to employ Puerto Ricans in Puerto Rico. Additionally, port captain/operations and training coordinator Rafael Hernandez "worked successive hitches in the Northeast as a tankerman" in the winter of 1999-2000. No other unlicensed employees in Puerto Rico have worked in the Northeast or the Gulf of Mexico.

In the maritime industry, the Board has held "units of seagoing personnel should be fleet-wide in scope". **Moore-McCormack Lines, Inc.** 139 NLRB 796, 798 (1962); **Inter-Ocean Steamship Co.**, 107 NLRB 330 (1953); Thus, the Employer asserts that fleet-wide means all vessels in Puerto Rico/Caribbean, the Gulf of Mexico and the Northeast. The Petitioner asserts that fleet-wide means all vessels in Puerto Rico/Caribbean.

In **Moore-McCormack Lines**, the employer was engaged in the operation of ships from Atlantic, Gulf and Pacific Coast ports. One union, National Maritime Union, was certified by the Board to represent the unlicensed seamen aboard the vessels operating out of the Atlantic and Gulf Coast ports while another union, Sailors Union of the Pacific, was recognized to represent the seamen at its Pacific Coast ports. Thus, in **Moore-McCormack Lines**, fleet-wide did not mean employer-wide. In other maritime industry cases, the Board has focused on whether a single vessel unit or a fleet-wide unit is appropriate. See **Ocean Tow, Inc.**, 99 NLRB 480 (1952); **Inter-Ocean**, *supra*. In the case at bar, the Petitioner is not seeking a single vessel unit.¹

In determining whether "fleet-wide unit" in the case *sub judice* means the Puerto Rico/Caribbean fleet or the Northeast, Gulf of Mexico and Puerto Rico/Caribbean fleet, I will review the factors utilized by the Board in determining whether a single facility or multi-facility unit is appropriate. In this situation, the Board reviews the following factors: extent of local autonomy in running the facility's daily operations, the supervision of the employees' daily work, extent of employee interchange, geographic proximity,

¹ Since the Petitioner is not seeking a single vessel unit, then the burden to establish the appropriateness of such a unit, alluded to by the Employer in its brief when it references **Owens-Illinois Glass Co.**, 136 NLRB 389 (1962) is inapplicable.

centralized control of labor relations, similarity of skills, functions and working conditions and bargaining history, if any. **D & L Transportation**, 324 NLRB 160 (1997).

As stated above, the Puerto Rico/Caribbean operation has its own Operations Manager, Michael Romanelli, a stipulated supervisor. Romanelli is in charge of the day-to-day operations in the Puerto Rico/Caribbean operation. Furthermore, the Puerto Rico/Caribbean operation has its own port engineer, Glenn Harvey, and port captain/operations and training coordinator, Rafael Hernandez. The employees stationed on the four barges in the Puerto Rico/Caribbean operation are supervised by captains/masters who are assigned to those vessels. Thus, the employees have separate supervision in the Puerto Rico/Caribbean operation. Furthermore, the Northeast operation has its own management, including General Manager, Assistant Manager and Operations Managers, and direct supervisors -- the captains/masters.

The next factor to review is the extent of employee interchange. In reviewing this factor, temporary transfers are considered more important than permanent transfers. See **Bally's Park Place, Inc.**, 255 NLRB 63, 64 (1981). As the record evidence reflects, only two of the 27 bargaining unit employees stationed in Puerto Rico have been temporarily transferred to the Northeast operation. Furthermore, none of the 7 tankermen in the Northeast operation employed prior to the recent Redstar acquisition has been temporarily transferred to Puerto Rico. Instead, once the employees have been moved to the Northeast operation, they have not returned on a temporary or permanent basis to Puerto Rico. In **Hamilton Bros. Inc.**, 133 NLRB 868, 872-73 (1961), the Board found the factor of frequent interchange of employees, to be especially relevant in determining whether a fleet-wide or single-ship unit is appropriate.

Concerning geographic proximity, the three operations are located hundreds or thousands of miles apart, although this factor appears to have less relevance in the maritime industry where the vessels cover vast areas.

The record evidence reflects that the Employer's labor relations are handled on an employer-wide basis by Gregory Broudeaux, the Human Resources Manager, who is stationed in Louisiana.

There is a similarity in skills and functions of the unlicensed crewmen throughout the Employer's operations although the Northeast has more job positions than the Puerto Rico/Caribbean operation. Additionally, the unlicensed crewmen's wages and benefits are similar except for a cost of living differential for the Northeast employees and a Christmas bonus required under the laws of Puerto Rico for native Puerto Ricans.

Based on the record evidence and applicable caselaw, I find the Puerto Rico/Caribbean vessels are a separate fleet from the Northeast and Gulf of Mexico vessels due to separate day-to-day operations, separate supervision and a lack of temporary transfers between operations. Thus, I find the petitioned-for unit to be an appropriate unit.²

Supervisory Issues

The Employer seeks the inclusion of the port engineer, Glenn Harvey, and the operations and training coordinator/port captain, Rafael Hernandez. According to Carl Annessa, the Employer's vice president of operations, the port engineer does not have the authority to hire, fire or discipline employees. Annessa testified the port engineer

² In making such a finding, the issue of whether the warehouseman in Brooklyn should be included in the bargaining unit becomes moot.

assists the vessels' engineering department and coordinates necessary repairs when the vessels are in port.

The Petitioner introduced subpoenaed documents after the close of testimony, pursuant to agreement of the parties, which described the port engineer as a "management position" who assists the master with the "performance evaluations for fleet subordinates". Furthermore, the position requires five years of supervisory experience and the individual is paid on a salary basis, rather than the licensed crewmen's daily rate basis.

According to Annessa, the operations and training coordinator/port captain divides his time between being a senior tankerman for the operations in Puerto Rico (15%), filling in for tankermen on vessels due to absences (50%) and working like a port captain expediting the delivery of materials (35%). Annessa testified the coordinator does not have the authority to hire or fire employees although he performs evaluations of new employees on their "functional performance".

According to the Employer's job description for the operations and training coordinator/port captain, this individual recruits, interviews and trains tankermen and deck department unlicensed personnel in conjunction with the general manager and assists the master with the performance evaluations of fleet subordinates.

As noted above, Annessa, the Employer's witness, testified neither of these positions were supervisory within the meaning of the Act while the subpoenaed documents reflected certain aspects of supervisory authority under Section 2(11) of the Act. The Employer's citation to **Chevron, U.S.A., Inc.**, 309 NLRB 59, 69 (1992), and **Sunset Nursing Homes, Inc.** 224 NLRB 1271, 1272 (1976), for the proposition that job

descriptions or "paper authority" is insufficient to establish supervisory authority, is not dispositive of the case at bar. The job descriptions were received after the conclusion of testimony. Thus, the Petitioner did not have the opportunity to question a witness concerning the exercise of authority set forth in the documents. Accordingly, I find the record insufficient to determine whether the port engineer and/or the operations and training coordinator/port captain are supervisors within the meaning of the Act or whether they share a sufficient community of interest to mandate their inclusion in the unit found appropriate herein. Therefore, I shall allow these two individuals to vote by challenged ballot.

The Employer seeks a determination that the mates are supervisors within the meaning of the Act. The Petitioner is not seeking the mates as part of the bargaining unit. As there is no issue with respect to whether the mates should be included in the unit found appropriate herein, I find it unnecessary to rule on their supervisory status.

There are 27 employees in the bargaining unit.

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