

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 24

OBRATUR PUERTO RICO, CORP.<sup>1</sup>

Employer

and

Case 24-RC-8325

UNION DE CARPINTEROS DE PUERTO RICO  
Petitioner

**DECISION AND ORDER**

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:<sup>2</sup>

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<sup>1</sup> The Employer's name appears as [amended](#) at the hearing.

<sup>2</sup> The Employer's brief was duly considered. Petitioner's brief, filed on June 12, 2003, was not considered because it was untimely filed. On June 16, 2003 Petitioner filed what appears to be a motion for additional time to file brief. This Motion is also denied as untimely.

1. The hearing officer's rulings made at the hearing are free from prejudicial errors and are hereby affirmed. <sup>3</sup>

2. The parties stipulated, and I find, that the Employer, Obratur Puerto Rico, Corp., is a Puerto Rico corporation engaged in the general building and construction work in the Commonwealth of Puerto Rico, with its main offices located in Rio Grande, Puerto Rico. During the past calendar year, it had a gross volume of business in excess of \$500,000. During the same period of time it purchased and caused to be delivered directly to its place of business in Rio Grande, Puerto Rico goods and materials valued in excess of \$50,000 from points and places located outside the Commonwealth of Puerto Rico.

Based on the above, I find that the Employer is engaged in commerce within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

3. The parties stipulated, and I find, that the Petitioner, Unión de Carpinteros de Puerto Rico, is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and 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.

Petitioner seeks to represent a unit consisting of all construction workers, including carpenters, carpenter's helpers, masons, mason's helpers, laborers, lumbers [sic], maintenance employees, electricians, electrician's helpers, rodmen, and light equipment operators employed by the Employer at its construction project Paradisus Hotel Resort, Coco Beach, Rio Grande, Puerto Rico. The Employer contends that the petition should be dismissed on the basis of the imminent cessation of the project.

The record reveals that the Employer; a subsidiary of Obratur Sar, with its principal office located in Spain, is a Puerto Rico corporation dedicated to the construction business. The Employer was hired by Desarrolladora del Norte S. en C., S.E. (herein Desarrolladora), to complete the construction of Paradisus Hotel Resort,

located in Rio Grande, Puerto Rico. <sup>4</sup>

According to the agreement executed by Desarrolladora and the Employer on April 2, 2002, the construction project is to be concluded within 16 ½ months from the date of commencement, which the record reflects as May 20, 2002. Pedro López Bravo, project manager of the Employer, testified without contradiction that the construction commenced on May 20, 2002, and that the project is to be completed by October 5, 2003 <sup>5</sup>. The anticipated opening date of the Hotel is October 31, 2003.

Because special finishing details are the only remaining work on the project, during the months of June through October 2003, approximately 130 foreign skilled workers will be hired to do this specialized work. These particular employees are classified as woodwork and aluminum structures installers, topping and marble installers using mechanical means, mechanical smooth plaster trowel, and concrete waterproof gunite installers. The undisputed record evidence reflects that upon completion of this work, these skilled workers will return to their country of origin. During this same period, the number of regular workers will decrease from approximately 225 to 20. In addition, there is no dispute that impermeabilization, installation of equipment, roof tile activities, gazebo and bridge activities, gypsum work activities, kitchen equipment installation activities, domestic water pumping activity, fire water pumping activity, hot water equipment activity, chill water equipment activity, irrigation systems, electrical substation and transformer activity, air conditioning equipment activity, emergency

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<sup>4</sup> The local company previously hired could not comply with the requirements or the deadlines for the construction of the project, and after causing a year's delay in the completion of the Hotel, Desarrolladora del Norte, S.en C., S.E. terminated the contract with the local construction company and hired Employer to complete the project. The record also revealed that Obratur Sar just finished an identical project for Desarrolladora in Cancún, Mexico.

<sup>5</sup> The Agreement between Employer and Desarrolladora states that the Employer is liable for any and all damages suffered by Desarrolladora as a result of the failure to complete the work by the Substantial and Final Completion dates. According to this contract, a penalty of \$16, 000 is to be imposed if the work is delayed between 41 to 50 days. In the case of a delay which exceeds 60 days, Desarrolladora shall have the right to terminate the contract. See Employer's Exhibit 1, Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997, Addendum 1, Article 3.

generator activity, main distribution panel activity, and “palatas” (landscaping) are all subcontracted activities that are to be begin June 2003.

The record reflects that by October 5, 2003, a total of 30 employees will remain; of which there will be 20 regular workers and 10 foreign skilled workers. Further, the Employer will maintain a skeletal work force to do any repairs or revisions requested by the owners prior to the October 31, 2003 opening date. The Employer’s project manager López Bravo further testified without contradiction that bad weather would not affect the ending date of the project because the majority of the work remaining was essentially interior work, which work is not ordinarily affected by weather conditions. The record also reflects that the construction system used is of a vertical type, which means that different stages of construction are done at the same time, and one stage need not be completed before another stage is started in other areas of the project. The record evidence further shows that the Employer does not have any other scheduled projects in Puerto Rico or in the Continental United States. Thus, once this project is over, the employees will be terminated with no expectancy to be rehired.

The Board has consistently held that when a job is scheduled for completion within a three to four month period, no useful purpose is served by determining the representation of the employees. *In the matter of Fraser-Brace Engineering Company, Inc.*, 38 NLRB 1263, 1264 (1942), *In the matter of Fruco Construction Company*, 38 NLRB 991, 993 (1942). In *M. B. Kahn Construction Co., Inc.*, 210 NLRB 1050 (1974), the Board dismissed a petition where four months of work remained before the project ended.

In these circumstances, in accordance with the Board’s findings in the above cited cases, I find that it would not effectuate the purposes of the Act to conduct an election at this time, and I shall dismiss the petition.

#### **ORDER**

It is hereby **ORDERED** that the petition filed herein be, and it hereby is **DISMISSED**.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **July 3, 2003**.<sup>6</sup>



Dated June 19, 2003 at San Juan, Puerto Rico.

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Marta M. Figueroa  
Regional Director  
Region 24  
National Labor Relations Board

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<sup>6</sup> In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.