

In the Matter of THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, SAN JUAN, PUERTO RICO, BRANCH¹ and UNION DE EMPLEADOS DE BANCOS DE PUERTO RICO (C. G. T.)

Case No. 24-C-64.—Decided August 30, 1945

DECISION

AND

ORDER

On November 29, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, on February 15, 1945, the respondent filed exceptions to the Intermediate Report and a supporting brief. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On July 19, 1945, the Board heard oral argument at Washington, D. C. The respondent was represented by counsel who participated in the argument; the Union did not appear.

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, save as they are inconsistent with our findings, conclusions, and order hereinafter set forth.

The Trial Examiner has found that on August 22, 1944, and at all times thereafter, the Union represented a majority of the respondent's 44 employees in an appropriate unit and that the respondent unlawfully refused to bargain collectively with the Union at all times after August 22, 1944. The finding of majority representation as of August 22 is based on evidence which shows that during July 1944, 22 employees paid union dues for June; that between August 1 and 15, 1944,

¹ The respondent was erroneously referred to in the formal papers as "The Chase National Bank San Juan (Puerto Rico) Branch" Pursuant to a stipulation made at the hearing between Board's counsel and the respondent's counsel, the name of the respondent was corrected to read as above.

3 additional employees paid union dues; and that on August 7 another employee signed a union membership application. Such evidence ordinarily would be sufficient to warrant a finding of majority representation. But, in view of the circumstances set forth below, these figures are not wholly persuasive. Upon the entire record, we are unable to conclude that the Union actually represented a majority of the employees at any time material herein.

There is no evidence in the record of any union activity among the employees of the respondent before the early part of June 1944, at which time employee Luis Manuel Vazquez and several of his friends started an organizing campaign among the employees of the various banks in San Juan, Puerto Rico, including the employees of the respondent. As a result of this campaign, Union De Empleados De Bancos De Puerto Rico, an unaffiliated labor organization herein called the U. E. B., was formed in late June or early July 1944. Between July 14 and 22, 1944, 15 of the respondent's employees paid dues to, and thereby became members of, the U. E. B. On July 22, 1944, however, at a regular meeting of the U. E. B., a majority of the members present voted to affiliate with Confederacion General De Trabajadores, herein called the C. G. T.² On July 27, 1944, the C. G. T. issued a certificate of affiliation to the U. E. B.

Thereafter, the affiliated U. E. B., herein called the Union, attempted to collect dues and obtain membership applications from the respondent's employees. The results of these efforts are summarized as follows: Of the 15 employees mentioned above, who had paid dues to the unaffiliated U. E. B., 7 subsequently also paid dues to the Union, and 4, without paying dues, signed membership applications therein. None of the remaining 4, however, made a dues payment after the affiliation, signed a membership application in the Union, or otherwise indicated a desire to be represented by the Union. Nine other employees, who were not members of the unaffiliated U. E. B. paid dues to the Union between July 31 and August 18, 1944. One other employee in this group signed a membership application in the Union on August 7, 1944. Thus, when the Union requested recognition on August 22 1944, only 21 of the 44 employees in the appropriate unit had unambiguously and affirmatively designated the Union, as distinguished from the unaffiliated U. E. B., as their bargaining agent either by paying dues or by signing membership applications subsequent to the affiliation.

It is apparent that, in making his finding of majority representation, the Trial Examiner counted the four employees, mentioned above,

² The record is not clear with respect to the number of the respondent's employees who attended the U. E. B. meeting of July 22. However, there is evidence in the record indicating that some of the respondent's employees, who were members of the U. E. B. at that time, were opposed to the affiliation.

who paid dues to the U. E. B. in July prior to its affiliation with the C. G. T., but who thereafter failed to pay dues or to sign a membership application in the Union. However, in our opinion it is doubtful whether such designation of the unaffiliated U. E. B. by these four employees necessarily served to authorize the Union to act as their bargaining representative on August 22, when the alleged refusal to bargain occurred. This is especially true in view of the showing that some of the respondent's employees were opposed to the affiliation and that although the Union actively campaigned, with much success, among the respondent's employees, the four employees in question failed to indicate in any objective manner their adherence to the Union.

Upon the whole record, we are not sufficiently satisfied that the Union at any time material herein ever represented a majority of the respondent's employees in the appropriate unit. We shall accordingly dismiss the 8 (5) allegation of the complaint.

In reaching this conclusion, we are not unmindful of the fact that the respondent engaged in other serious unfair labor practices, as revealed by the Intermediate Report, which were calculated to, and did, frustrate the efforts of its employees to organize for the purpose of collective bargaining. Like the Trial Examiner, we find discriminatory the discharge of Vazquez and the actions of the respondent in urging its employees to surrender their union affiliations. The remedial provisions of our order, set forth below, will adequately safeguard the statutory right of the employees to resume and continue their concerted activities in behalf of the Union, or any other labor organization of their choosing.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Union De Empleados De Bancos De Puerto Rico (C. G. T.), or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Union De Empleados De Bancos De Puerto Rico (C. G. T.), or any other labor organization, to bar-

gain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining, or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Luis Manuel Vazquez immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;

(b) Make whole Luis Manuel Vazquez for any loss of pay he has suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period, including the \$100 which the respondent gave him in lieu of notice of discharge;

(c) Post at its bank in San Juan, Puerto Rico, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Chairman of the Puerto Rico Labor Relations Board, shall, after being duly signed by the respondent's representatives, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Chairman of the Puerto Rico Labor Relations Board in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent refused to bargain collectively with Union De Empleados De Bancos De Puerto Rico (C. G. T.), within the meaning of Section 8 (5) of the Act, be, and it hereby is, dismissed.

APPENDIX A

N. L. R. B. 557
(9-1-44)

NOTICE TO ALL EMPLOYEES

Pursuant to a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Union De Empleados

De Bancos De Puerto Rico (C. G. T.) or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed; and make them whole for any loss of pay suffered as a result of the discrimination.

Luis Manuel Vazquez.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
SAN JUAN, PUERTO RICO, BRANCH,
By _____

(Representative)

(Title)

Dated _____

NOTE: Any of the above-named employees presently serving in the Armed Forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

Messrs. Stephen M. Reynolds and Gilberto Ramirez, for the Board.

Fuddler & Gonzales, by Messrs. Jose G. Gonzales and Tomas I. Nido, of San Juan, Puerto Rico, for the respondent.

STATEMENT OF THE CASE

Upon an amended charge duly filed on September 19, 1944, by Union De Empleados De Bancos De Puerto Rico, affiliated with the Confederacion General de Trabajadores de Puerto Rico,¹ herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-fourth Region (San Juan, Puerto Rico), issued its complaint, dated September 19, 1944, against The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and amended charge, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

¹ Confederacion General de Trabajadores de Puerto Rico is referred to herein as C. G. T.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondent: (1) since July 15, 1944, interrogated its employees regarding their union memberships and activities; (2) warned its employees against becoming or remaining members of the Union; (3) threatened its employees with reprisals because of their union activities; (4) caused to be prepared and circulated among the employees, a petition purporting in part to accomplish the withdrawal or resignation from the Union of the signatories to the said petition; (5) caused to be prepared and circulated among its employees, letters of resignations from the Union and after certain of the employees had signed the said letters mailed the signed letters to an official of the Union; (6) discharged Luis Manuel Vazquez on August 15, 1944, and thereafter refused to reinstate him to his former or to a substantially equivalent position, because he joined and assisted the Union and engaged in concerted activities with his fellow employees for the purposes of collective bargaining or other mutual aid or protection; (7) on August 22, 1944, and at all times thereafter, although duly requested, refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit, although the Union had been designated as their representative for such purpose by a majority of such employees; and (8) by the foregoing acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent filed an answer denying the commission of the alleged unfair labor practices. The answer admitted, however, the allegations of the complaint as to its corporate existence and the nature and character of the business transacted by it. The answer affirmatively alleged that Vazquez was discharged for the reason that the respondent did not consider him to be a person fit for performing the duties for which he was employed. The answer also affirmatively alleged that it did not refuse to bargain collectively with the Union and that it is now ready and willing to bargain collectively with any duly authorized representative of the majority of its employees provided proof is furnished the respondent that the said representative in fact does represent the majority of the employees. The answer contains three motions to dismiss the complaint. The first motion is based on the ground that the Board is without jurisdiction over the respondent or over the subject matter of this case. The second and third motions are based on the ground that a copy of the amended charge was not annexed to or served upon the respondent at the time of the service of the complaint and notice of hearing. Several days prior to the date set for the hearing, the Board served upon the respondent, and upon its counsel, copies of the amended charge.

Pursuant to notice, a hearing was held on October 2, 3, 4, 11, and 12, 1944, at San Juan, Puerto Rico, before Howard Myers, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. Before the introduction of any evidence, counsel for the respondent moved to dismiss the complaint on the grounds that the branch herein involved is located in Puerto Rico and that The Chase National Bank of the City of New York was created by, and is existing under, the banking laws of the United States and as such it is not within the purview of the Act and therefore the Board has no jurisdiction over the respondent or over the subject matter in this case.² Decision thereon was reserved.

² The respondent's counsel also pressed the motions, contained in the answer, to dismiss the complaint for failure to serve a copy of the amended charge with the complaint. As stated above, this motion was subsequently withdrawn.

This motion was renewed at the end of the Board's case, at which time the undersigned denied the motion. Counsel for the respondent then moved to dismiss the complaint for lack of proof. The motion was denied. Board's counsel then moved to conform the complaint to the proof with respect to minor discrepancies, such as misspelled words, typographical errors, and the like but not to include any new unfair labor practices. The motion was granted over the objection of the respondent's counsel. At the conclusion of the taking of evidence, the respondent's counsel moved to conform the answer to the proof. The motion was granted. Respondent's counsel then moved to dismiss the complaint for lack of proof. Decision was reserved. The motion is hereby denied. Oral argument, in which Board's counsel and the respondent's counsel participated, was heard at the conclusion of the taking of the evidence and is part of the record. Time to file briefs with the undersigned was given all parties. No briefs have been received.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Chase National Bank of the City of New York, the world's largest bank, was organized under the banking laws of the United States. Its head office is at 18 Pine Street, New York, New York. It has 35 or 36 branches throughout the City of New York, a branch in Puerto Rico, and foreign branches in Panama, Cuba, and England. Its capitalization is 110 million dollars, its surplus is 110 million dollars and its deposits amount to approximately 5 billion dollars. The Puerto Rico branch, the only branch involved in this proceeding, was opened in 1933, after permission was obtained from the Comptroller General of the United States and from the Insular Government of Puerto Rico. Its offices are located in San Juan. Control over the activities of this branch is vested in the head office officials who appoint the managers and the other superiors of the branch and pass upon all salary increases. The average deposits of this branch vary from 8 to 10 million dollars, approximately \$75,000 or \$100,000 of which represents money deposited by the head office. The branch's average deposits with the head office vary from 8 to 10 million dollars. Through the head office, this branch purchases and sells stocks and bonds on the New York Stock Exchange for the accounts of its customers. It makes loans to individuals and firms located within the United States; it also opens letters of credit, in substantial amounts, for the accounts of manufacturers located in the United States; it handles accounts for Puerto Rican Companies who do business in the United States and helps finance the shipment of commodities between the United States and Puerto Rico; it cashes travelers' checks and checks drawn on banks located throughout the United States and sends these checks to the head office for collection; it facilitates the handling of its customers' businesses with banks in the United States and services the needs of its customers who may be travelling abroad; and it has substantial amounts of money on deposit with a bank located in New Orleans, Louisiana, and with a London bank.

The undersigned finds that the respondent's operations affects commerce within the meaning of the Act.³ Moreover, Section 2 (6) of the Act confers jurisdiction

³ See *N. L. R. B. v. Bank of America Ass'n*, 130 F. (2d) 624 (C. C. A. 9), cert denied 318 U. S. 791, rehearing on petition for cert denied 319 U. S. 782; *American National Bank of St. Paul v. N. L. R. B.*, 144 F. (2d) 268 (C. C. A. 8), *N. L. R. B. v. Northern Trust Company*, 56 Fed. Supp. 335 (U. S. Dist. Ct. Ill.); *N. L. R. B. v. American National Bank and Trust Co. of Chicago*, decided July 3, 1944 (U. S. Dist. Ct. Ill.)

on the Board over an employer whose business is confined exclusively "within the District of Columbia or any Territory" of the United States⁴

II THE ORGANIZATION INVOLVED

Union De Empleados De Bancos De Puerto Rico is a labor organization affiliated with Confederacion General de Trabajadores de Puerto Rico and admits to membership employees of the respondent

III THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion; the discriminatory discharge of Vazquez*

1. Chronological statement of the facts

There is no evidence in the record of any union activity among the employees of the respondent prior to June 1944. During the latter part of that month or early in July, Luis Manuel Vazquez, respondent's first teller,⁵ spoke to various employees regarding the Union and invited them and employees of other Puerto Rico banks to attend meetings of the Union⁶ During the formative stages of the Union, Vazquez became one of its officers and one of his duties was the collection of dues from the respondent's employees who desired to join the Union. Between July 14 and July 31, twenty-two of the forty-five non-supervisory employees then in the respondent's employ paid their June dues to Vazquez.⁷ Three additional employees paid him dues in August. Vazquez's membership and activities in behalf of the Union soon came to the knowledge of the respondent's supervisory officers. Thus, around the middle of July, Kenneth Spinning, respondent's assistant manager, asked Vazquez whether he was the Union's president. Vazquez replied that he was not its president, but was one of its members. Also in July, according to the undenied credible testimony of Vazquez, Russell Ferrer, the then head of the current account department and admittedly a supervisory employee, had several talks with Vazquez regarding the Union and the progress it was making in organizing the respondent's employees. During one of these talks Ferrer told Vazquez, according to the latter's credible undenied testimony, that he thought the Union was "something good" and that eventually the Union would succeed in its organizational drive. In another conversation, Vazquez quotes Ferrer as saying that Charles J. Schaer, the respondent's manager, was trying to ascertain who, among the respondent's employees, was the leader of the Union. In still another conversation, Ferrer told Vazquez that, in his opinion, it was more advantageous for the Union not to affiliate with the C. G. T.⁸ Furthermore, Jose Antonio Gonzalez, Fred M. Ahles and Domingo Rinaldi, admittedly supervisory employees, testified that in July they knew that Vazquez was a member of and active on behalf of the Union. Schaer admitted that in July he also was cognizant of the Union's organizational drive and that he knew that Vazquez and several other employees were members of the Union.

⁴ Cf. *N. L. R. B. v. Central Dispensary & Emergency Hospital* (Ct. of Appeals D. C.) decided November 13, 1944.

⁵ In June 1944, Vazquez was appointed first teller. Prior thereto he was second teller. The first teller occupies the first cage, the busiest of all 4 teller cages. Among other things, he is permitted to have \$60,000, in cash in his cage. The other tellers, as of June through September 1944, were permitted to have only \$20,000 in their respective cages at any one time. The first teller also handles the pay rolls for the respondent's larger customers.

⁶ The Union also admits to membership employees of other Puerto Rico banks.

⁷ The June dues were collected in July and the July dues were collected in August.

⁸ Despite Ferrer's advice, the Union affiliated with the C. G. T. on or about July 22, 1944.

Sometime in the latter part of July, Vazquez asked Schaer for a raise in salary stating that he had not received an increase in over a year,⁹ that his then position warranted a larger salary due to the fact that it entailed more responsibility, that his wife was in poor health and had resigned her job, and that because of the loss of his wife's income they could not live on his salary. Schaer replied that he would look into the matter and would advise Vazquez of his decision. Not having heard from Schaer, Vazquez wrote him on August 3 as follows:

Twenty days ago, more or less, I talked to you in relation with my salary, seeing that, as I told you, I have not received any increase since a year ago.

You said to me that you would investigate my case, but as up to date I have known nothing regarding the matter and having I now more necessity than before, since my wife, because of health, has been obliged to resign her job, and because (at the same time) the position I hold is of greater importance than before, is why I remind you of this matter.

Expecting to receive your accustomed attention and cooperation in the matter, I remain,

On August 15, Schaer called Vazquez to his office and told him, according to Schaer's testimony, that since he admittedly could not live on his salary he was discharged because it was contrary to the respondent's policy to keep anyone in its employ who could not live within his income.

Just before closing time on August 15, Domingo Rinaldi, the head of the credit department and admittedly a supervisory employee, told the collection department employees, according to the testimony of employee Roberto Miranda Rosario,¹⁰ that Vazquez was discharged because of his activities on behalf of the Union and that since the employees were joining the Union, the respondent had decided not to accept the proposal of the Puerto Rican Hospital Association to make available to the respondent's employees that his association's hospitalization plan and the respondent had decided to discontinue granting small loans to the employees.¹¹ Concerning this incident, Rinaldi testified as follows:

I happened to go down to the men's toilet, which is opposite the collection department. And when I was going out from the men's toilet I saw a bunch of the employees talking over there. It was about three o'clock, when they were almost leaving. They were talking about helping Vazquez, and I joined the conversation and gave a very personal opinion. It was my own, personal opinion which I stated there. I said that by joining the union there was nothing to be gained, but that I knew a proposition had been submitted to the banks by the Puerto Rican Hospital Association, known as the Blue Cross, which I knew they had asked the banks, if they would have 100 per cent membership, there would be a special rate, and it seemed to me that it would be approved by the banks. And they would be benefited by that. . . . As I was saying, that was my personal opinion, and I felt there was a proposition submitted to the banks and that that proposition was that if the banks would assure 100 per cent membership for the Blue Cross, they would get a special rate, and that, I knew, was being favorably considered by the bank. And I felt that by this union movement, we would lose that benefit. We would not obtain that benefit. I also said that so far the employees of the Chase Bank were securing loans from the bank, that the bank had no objection, so far, to

⁹ Sometime in the early part of 1943, Vazquez's salary was raised from \$75 to \$100 per month.

¹⁰ Also referred to in the record as Roberto Miranda.

¹¹ It is the respondent's custom to allow the employees to borrow money to defray the cost of unforeseen emergencies. No interest is charged and the loans are repaid in installments deducted from the borrower's salary semi-monthly.

granting the loans. But that eventually, if we were not loyal to our institution, we would lose that privilege. That was my own, personal opinion.

Rinaldi denied that he told the employees that Vazquez was discharged for union activities. He testified, however, that that statement was made in his presence and he attributed it to one of the employees to whom he was addressing his remarks. In view of the admission by Rinaldi of the above quoted anti-union statements and his other admitted anti-union statements and activities, as more fully set out below, the undersigned finds that, besides making the above quoted remarks, he told the collection department employees on August 15, that Vazquez was discharged because of his union activities. Furthermore, Gloria Lugo¹² testified that sometime in August, Rinaldi told her that he was not adverse to the employees joining a union but that she and the other employees should not join the C. G. T. because that organization "was composed for chauffeurs and stevedores etc." While not specifically denying that he made the statement attributed to him by Lugo, Rinaldi testified that the only time he talked to Lugo about the Union was when he advised her to sign the petition, which was being circulated, informing Schaer that the employees did not want the Union to represent them. The undersigned finds that Rinaldi made the statement attributed to him by Lugo.

By letter dated August 19,¹³ the Union advised the respondent that it represented a majority of the respondent's employees. The letter also requested the respondent to recognize the Union as the exclusive collective bargaining representative of the employees and to fix a date for a conference to begin negotiations.¹⁴ The San Juan newspaper the next day, August 23, carried an article in which it told of the Union's demands upon the respondent. Shortly after the employees arrived at work that morning, Isabel Cordero¹⁵ told Fred M. Ahles, the auditor of the respondent's operations and admittedly a supervisory employee, that some of the employees had informed her that morning that they wanted to resign from the Union and asked her to so notify Schaer. Ahles then

¹² Also referred to in the record as Gloria Vazquez.

¹³ The respondent did not receive the letter until August 22.

¹⁴ The respondent's refusal to bargain collectively with the Union is discussed below in Section III B.

¹⁵ The respondent disputes the supervisory status of Cordero. Schaer testified that Cordero "is in charge of the signature file and has, at the same time, something to do with the exchange department, in that she helps out and indicates [to the employees] what is to be done, by reason of the fact that she has had more experience than those who are working in the exchange department." All transactions involving the purchases and sales of stocks and bonds on the New York Stock Exchange, for the accounts of the respondents' customers, go through the exchange department, in which department four persons including Cordero, are employed. Schaer, in his testimony, also referred to Cordero as the "signature clerk" and stated that her duties as such were to check the signatures appearing on checks, drafts, letters addressed to the respondent and corporate resolutions. Schaer further testified that he considered Cordero to be on a "higher level" than the non-supervisory employees. At the hearing, several employees referred to Cordero as being the head of the exchange department. The credible testimony reveals that Cordero directs and assigns, the work of the other employees in the exchange department. Despite the above findings regarding Cordero's duties, the record is not sufficiently clear to support the contention of the Board that Cordero was, during all the times material herein, a supervisor. She did, however, exercise general authority over the employees in the exchange department and was in a strategic position to translate to the employees therein the policies and desires of the management. It is clear that she did exactly that. In circulating the petition of August 23, and in her talks with certain employees, as described below, Cordero stressed the fact that the management would prefer that the employees withdraw from the Union. In doing these things Cordero was emulating the example set by the management. The respondent is therefore held accountable for her anti-union statements and activities. See *International Ass'n of Machinists v. N. L. R. B.*, 311 U. S. 72, *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514; and *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584.

said that Cordero should not go to Schaer for he would handle the situation and would prepare a memorandum addressed to Schaer informing him that the signatories thereto did not want the Union to represent them and that he would submit the memorandum to Schaer after it had been signed by the employees¹⁶ Ahles then prepared a memorandum or petition addressed to Schaer captioned as follows:

The undersigned employees do not accept the C. G. T as their bargaining agent and request that you do not consider them as representing the majority of the employees of this Bank.

We feel that if we wish anything from the Bank we ourselves can go to you and talk the matter over without any outside help.

Those of us who are now members of this organization have decided to resign immediately.

After signing the petition and after having it signed by other supervisory and non-supervisory employees, Ahles handed the petition to Cordero who signed it and during working hours went throughout the respondent's bank and obtained the signatures of all the employees, supervisory and non-supervisory who were at work that day, except two non-supervisory employees who refused to sign the petition.¹⁷ Later that day, Ahles presented the signed petition to Schaer who, after reading it, said "this is fine" Ahles and Cordero testified that when they presented the petition to an employee they asked him or her whether he or she wished to sign it, then if he or she replied in the negative they did not in any way threaten the employee Rinaldi, however, testified that when he noticed that Gloria Lugo was reluctant to sign the petition, he went over to her and told her to sign the petition and thereby "show some gratitude [and] be grateful for the help the [respondent] has given her and [that] she was not living up to that standard" and she then signed the petition Rinaldi also testified that before Lugo signed the petition he told her that he did not think that she was "loyal" to the respondent because she had joined the Union Rinaldi also admitted that before the petition was circulated, he and "some of the employees talked things over in the morning, and then, in the afternoon, we decided we would not accept anybody to bargain for us and that if any bargaining was to be done we would do it ourselves" Lugo's testimony is substantially in accord with that of Rinaldi. Pablo Munoz testified that Cordero asked him on two or three occasions to sign the petition. Each time he refused. When Munoz became perturbed because of Cordero's insistence that he sign the petition she told Munoz, according to his credible testimony, that he should not resent it "because she had been sent by Mr. Ahles" to get Munoz to sign the petition.¹⁸ Roberto Miranda Rosario testified that Ahles asked him to sign the petition; he told Ahles he would consider the matter; and that, as he was leaving for the day, Cordero said to him "Miranda, they are going to give you the last chance to sign" the petition Rosario did not sign the petition. Cordero denied making that statement to Rosario. The undersigned rejects her denial and credits Rosario's testimony. Munoz and Rosario were the two employees who did not sign the petition.

The next day (August 24) Cordero told Ahles that some of the employees wanted to notify the Union that they were resigning from it and asked Ahles if

¹⁶ Ahles admitted that he had read the newspaper article before Cordero spoke to him about the memorandum and that he was adverse to the employees joining or remaining members of the Union

¹⁷ Schaer and Spinning, the assistant manager, also did not sign the petition

¹⁸ Cordero denied that she asked Munoz or any employee more than once to sign the petition. The undersigned was not impressed with Cordero's truthfulness and therefore credits Munoz's testimony.

the Union was to be apprised of the contents of the petition which was submitted to Schaer Ahles replied that the Union would not receive any direct notice of the petition and suggested to Cordero that the employees send individual letters of resignation to the Union Ahles then said that he would prepare letters of resignation for the employees to send to the Union He then called upon Emma Marin Marquez¹⁹ and asked her to prepare such letters She asked Ahles what to write Ahles then told her to ask Rinaldi because he understood Spanish and the employees would probably understand the letter better if the letters were written in Spanish Rinaldi dictated the letter although he knew, as indicated by his testimony, that he should not dictate such a letter After Marquez had typed a draft of what he had dictated she handed it to Rinaldi for his approval, which he gave Marquez then proceeded to type a great many letters of resignation²⁰ She signed one and then asked four other employees to sign They did so Marquez then took the 5 signed letters and the remaining unsigned letters to Ahles The latter kept the signed letters and instructed Marquez to place the unsigned ones on a desk so that the employees may see them Marquez placed the letters on Cordero's desk During the course of the day, 10 additional employees signed letters of resignation These letters were handed to Ahles, who mailed the 15 letters to the Union in one envelope.²¹

2 Concluding findings

It is clear from the above recital of facts that the respondent was opposed to its employees joining the Union and forcibly brought that fact to the employees' attention when it discharged Vazquez on August 15, and when it prepared and circulated the petition of August 23, and when it prepared and distributed the letters of resignation The respondent's contention that it did not discharge Vazquez in violation of the Act is not supported by the record On the contrary, the record is replete with credible evidence that Vazquez's membership and activities in behalf of the Union was the sole reason for his discharge In support of the contention that Vazquez was discharged because he asked for a salary increase and gave as one of his arguments the fact that he could not live on his salary, the respondent called as a witness, Harry F Besosa, at present a Colonel in the United States Army and since 1909, counsel and resident vice-president for various surety companies who write surety bonds covering bank employees After being qualified as an expert on the issuance and cancellation of fidelity bonds, Besosa testified when and how those bonds are cancelled by a surety company; the details of this testimony is not necessary to set forth here because it is not relevant to the issues herein On cross-examination, however, Besosa was asked whether he had ever heard of any instance where an employee was discharged because he asked his employer for a wage increase and gave as a reason the fact that he could no longer live on the salary he was receiving, Besosa answered as follows:

Oh, no, no. No, that may be very usual. If a man says, "I want a raise because I cannot live on what I am earning", that is so when he is not living

¹⁹ Also referred to in the record as Emma Marin.

²⁰ The letters read as follows:

Mr M MARTORELL
 Pres. Association Union Empleados de Bancos
 c/o Credito y Ahorro Ponceño
 San Juan, Puerto Rico

SIR. I shall appreciate that from this date you withdraw my name as an active member of this association which you now preside

I desire to let you know that when making this determination I have done so in a voluntary manner suitable to my best interests

²¹ Ahles personally paid the postage.

on what he is earning, he may be in debt. When we want an advance we make all kinds of requests and statements that, of course, are not prejudicial to one's self.

The undersigned is convinced, and finds that Vazquez was discharged because he was a member of and active in behalf of the Union and that the respondent's contention that he was discharged because he admitted he could not live on the salary he was earning was a pretext which the respondent seized upon to rid itself of the organizer and the guiding spirit of the Union's organizational drive among the respondent's employees.

The respondent also contended that it had engaged in no unfair labor practices with respect to the preparation and circulation of the petition of August 23 and the preparation and distribution of the letters of resignation, since the request for them emanated from the employees. However, the gist of the unfair labor practices here is the manner in which the petition and the letters of resignation were prepared and circulated and the circumstances under which the employees were requested to sign them; that is, by persons of supervisory capacity or character. This is especially true since the petition and letters of resignation were circulated with the approval and assistance of the respondent after receiving advice from the Union that it had been designated the exclusive representative of the employees and had requested that it be recognized as such. Such circumstances places the respondent in a position where it must strictly refrain from any type of interference and adhere to a "hands off" attitude. The acts described above were not indicative of such an attitude and it, therefore, is immaterial whence came the impulse to prepare and circulate the petition and letters of resignation.²²

The undersigned finds upon the entire record in the case, that by making the anti-union statements and engaging in anti-union activities, as found above, including the preparation and circulation of the petition of August 23, and the preparation and distribution of the letters of resignation, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further finds that the respondent, by discharging Luis Manuel Vazquez, discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the Union, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The refusal to bargain collectively

1. Appropriate unit

At the hearing, Board's counsel and the respondent's counsel stipulated, and the undersigned finds, that all telephone operators, clerks, stationery clerks, stenographers, bookkeeping machine operators, tellers, porters, collectors, the manager's junior secretary, mail clerks, night watchmen, secretaries, and cleaners, excluding the manager's secretary, branch auditors, accountants, the head of the collection department, the head of the credit department, the officers, the executives, and all other persons in a supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.²³ Board's counsel would exclude from the unit found appropriate,

²² In *Medo Photo Supply Corporation v. N. L. R. B.*, 321 U. S. 678, 687, the Supreme Court stated the employer "was not relieved from his obligations [under the Act] because the employees asked that they be disregarded

²³ No evidence was introduced with respect to the unit. The agreed unit is substantially the same as that alleged in the complaint. The undersigned finds no reason to disturb the stipulation.

and the respondent would include, Isabel Cordero. As found above, Cordero is not a supervisory employee. Under these circumstances, the undersigned finds that Cordero should be included in the unit found appropriate.

2 Representation by the Union of a majority in the appropriate unit

A list of persons, exclusive of the manager and the assistant manager, in the respondent's employ on August 22 was prepared by the respondent and introduced in evidence by Board's counsel. The list contains the names of 43 persons who are included in the unit hereinabove found appropriate.²⁴ Vazquez's name does not appear on the said list, although he should be in the unit. On behalf of the Board there was offered and received in evidence the Union's dues receipt book.²⁵ This book shows that during July 1944, twenty-two employees in the appropriate unit paid their June 1944 dues. Between August 1 and August 15, three additional employees paid dues. On August 7, 1944, employee Villahermosa signed a membership application which expressly authorized the Union to represent him for the purposes of collective bargaining.²⁶

The undersigned has compared the names appearing in the dues receipt book with the list prepared by the respondent and received in evidence as a Board exhibit and finds that, as of August 22, 1944, twenty-five employees of the respondent in the appropriate unit paid dues to the Union during the months of July and August 1944. The name of Villahermosa also appears on the aforesaid list. The undersigned accordingly finds that on August 22, 1944, and at all times thereafter, the Union was the duly designated collective bargaining representative of a majority of the respondent's employees in the unit found appropriate. Pursuant to Section 9 (a) of the Act, the Union was, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, hours of employment, and other conditions of employment.

3. The refusal to bargain

As found above, the Union by letter dated August 19, 1944, informed the respondent that it had been designated the collective bargaining representative by a majority of the respondent's employees and requested the respondent to recognize it as such representative, and to fix a date for a conference to open collective bargaining negotiations. Immediately thereafter the respondent embarked upon a campaign to dissipate the Union's majority. Thus, on August 23, the respondent obtained the signatures of all the employees in the appropriate unit, except two, to a petition which, in effect, was a repudiation of the designation

²⁴ The list also contains the names of 7 persons whom the respondent's counsel and Board's counsel stipulated should be excluded from the unit because of the supervisory or confidential nature of their duties.

²⁵ Vazquez testified, and the undersigned finds, that he collected the dues and gave to each member a duplicate of the receipt which appears therein. He further testified, and the undersigned finds, that the book correctly reflects the number of employees who paid dues.

²⁶ After the Union became affiliated with the C. G. T. it had some of the employees sign membership applications. The applications also designated the Union as the collective bargaining representative of the signatories thereto. Seventeen employees who had previously paid dues to the Union, signed membership applications. The undenied credible testimony shows that the Union did not insist that all those who had previously paid dues sign membership applications because the Union considered the dues-paying members to be members in good standing. The undenied credible evidence also shows that at the time of the hearing the dues paying members considered themselves to be members in good standing. After the membership applications had been checked by the respondent against its records, its counsel stated that the respondent did not question the authenticity or the genuineness of the signatures appearing on the applications.

of the Union as the collective bargaining representative of the employees. On August 24, the respondent prepared and distributed letters addressed to the Union stating that the signers thereof wished to resign from the Union. Fifteen employees signed such letters, which letters were then mailed to the Union by the respondent. After being advised by the Regional Director of the Board's San Juan Regional office that the Board was about to issue a complaint against the respondent, in which the Board would allege, among other things, that the respondent had refused to bargain collectively with the Union, and on the same day (September 19) that the complaint herein was mailed to the respondent, the latter wrote the Union acknowledging receipt of the Union's letter of August 19 and requesting the Union to submit proof that a majority of the employees had designated the Union as their representative for the purposes of collective bargaining.

In its answer, and at the hearing, the respondent denied that the Union on August 22, or at any time thereafter, represented a majority of the employees in the appropriate unit and it argued that for that reason it has not been guilty of violating the Act in not recognizing the Union as the exclusive collective bargaining representative of its employees and with refusal to bargain collectively with the Union. In support of its position, it points to the petition of August 23, and the letters of resignation as evidence that the majority of the employees in the appropriate unit had repudiated the Union. The respondent cannot excuse its refusal to bargain on the basis of the alleged defections from the Union, even assuming that a number sufficient to destroy the majority had repudiated the Union on August 23 and 24, since these defections were induced by the respondent's unlawful conduct. It follows, therefore, that the respondent's unfair labor practices cannot operate to destroy the exclusive representative status of the Union previously established by the untrammelled will of the majority of the employees in the appropriate unit²⁷

The respondent's contentions that its reply to the Union's letter of August 19 was timely and that it, in good faith, doubted that the Union represented a majority of the respondent's employees and therefore it was exercising its legal rights when it demanded that the Union submit proof that it represented the majority of the employees are not supported by the record. On the contrary, the record is clear that at no time did the respondent intend to bargain collectively with the Union. Before the Union demanded recognition, the respondent instituted a course of conduct designed to forestall the activities of the Union and after the Union demanded recognition it attempted to destroy the Union's majority. The respondent, moreover, ignored the Union's letter demanding recognition until it was advised that the Board was about to issue a complaint charging the respondent with refusing to bargain collectively with the Union.

In view of the foregoing, and upon the entire record, the undersigned finds that the respondent on August 22, 1944, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with its operations as described in Section I above have a close, inti-

²⁷ See *Medo Photo Supply Corporation v. N. L. R. B.*, 321 U. S. 678; *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318, 339-40; *International Ass'n of Machinists v. N. L. R. B.*, 311 U. S. 72, 82. cf. *Franks Bros. Co. v. N. L. R. B.*, 321 U. S. 702, and *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, 359.

mate and substantial relation to trade, traffic and commerce within Puerto Rico and between Puerto Rico and the Continental United States and foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act

Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

Since it has been found that the respondent discharged Luis Manuel Vazquez on August 15, 1944, and thereafter refused to reinstate him, for the reason that he joined and assisted a labor organization and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection, it will be recommended that the respondent offer him immediate and full reinstatement to his former or substantially equivalent position.

It will be further recommended that the respondent make Vazquez whole for any loss of pay he may have suffered by reason of the discrimination, by payment to him of a sum of money equal to the amount he would normally have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings²⁸ during such period, including the \$100 which the respondent gave Vazquez in lieu of notice of discharge.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1 Union de Empleados De Bancos De Puerto Rico, affiliated with Confederación General de Trabajadores de Puerto Rico, is a labor organization within the meaning of Section 2 (5) of the Act

2. All telephone operators, clerks, stationery clerks, stenographers, bookkeeping machine operators, tellers, porters, collectors, the manager's junior secretary, mail clerks, night watchmen, secretaries, and cleaners, excluding the manager's secretary, branch auditors, accountants, the head of the collection department, the head of the credit department, the officers, the executives, and all other persons in a supervisory capacity, constituted, and now constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3 Union De Empleados De Bancos De Puerto Rico, affiliated with Confederación General de Trabajadores de Puerto Rico, was on August 22, 1944, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

²⁸ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge, and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v N. L. R. B.*, 311 U. S. 7.

4. By refusing on August 22, 1944, and at all times thereafter to bargain collectively with Union De Empleados De Bancos De Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Luis Manuel Vazquez, thereby discouraging membership in Union De Empleados De Bancos De Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law the undersigned recommends that The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Union De Empleados De Bancos De Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico, or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(b) Refusing to bargain collectively with Union De Empleados De Bancos De Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico as the exclusive representative of all the telephone operators, clerks, stationery clerks, stenographers, bookkeeping machine operators, tellers, porters, collectors, the manager's junior secretary, mail clerks, night watchmen, secretaries, and cleaners, excluding the manager's secretary, branch auditors, accountants, the head of the collection department, the head of the credit department, the officers, the executives, and all other persons in a supervisory capacity of the respondent;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist Union De Empleados De Bancos De Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Union De Empleados De Bancos De Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico as the exclusive representative of all telephone operators, clerks, stationery clerks, stenographers, bookkeeping machine operators, tellers, porters, collectors, the manager's junior secretary, mail clerks, night watchmen, secretaries, and cleaners, excluding the manager's secretary, branch auditors, accountants, the head of the collection department, the head of the credit department, the officers, the executives, and all other persons in a supervisory capacity of the respondent;

(b) Offer to Luis Manuel Vazquez immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges;

(c) Make whole Luis Manuel Vazquez for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of the discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during such period, including the \$100 which the respondent gave him in lieu of notice of discharge;

(d) Post immediately in places where the respondent usually posts notices to its employees in its bank at San Juan, Puerto Rico, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a), (b) and (c) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b) and (c) of these recommendations; and (3) that the respondent's employees are free to remain or become members of Union De Empleados De Bancos De Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico and that the respondent will not discriminate against any employee because of his membership or activity on behalf of that organization or any other labor organization;

(e) Notify the Regional Director for the Twenty-fourth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations file with the Board, Rochambeau Building, Washington, D C, an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

HOWARD MYERS,
Trial Examiner.

Dated November 29, 1944.