

In the Matter of THE ROYAL BANK OF CANADA (SAN JUAN BRANCH)  
and UNION DE EMPLEADOS DE BANCOS DE PUERTO RICO, AFFILIATED  
WITH CONFEDERACION GENERAL DE TRABAJADORES DE PUERTO RICO  
(C. G. T.)

*Case No. 24-C-65.—Decided April 17, 1946*

*Mr. Gilberto Ramirez*, for the Board.

*Brown, Newson and Cordova*, by *Mr. Enrique Cordova Diaz*, of San  
Juan, Puerto Rico, for the respondent.

*Mr. Thomas A. Ricci*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon an amended charge duly filed on February 5, 1945, by Union de Empleados de Bancos de Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico (C. G. T.), 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 March 5, 1945, against The Royal Bank of Canada (San Juan Branch), San Juan, Puerto Rico, 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) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notices of hearing thereon were duly served upon the respondent, the Union, and the Confederacion General de Trabajadores de Puerto Rico, herein called the C. G. T.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that the respondent discouraged and warned employees against engaging in collective activities and against affiliation with or activities on behalf of the Union; (2) that the respondent questioned employees about their union affiliation and activities; (3) that the respondent discharged and thereafter refused to reinstate Aurea Ester Pineiro, Helion Cruz Ginorio, and Monserrate Lopez, on September 6,

1944, January 26, 1945, and February 28, 1945, respectively, because they had joined and assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection; and, (4) that, by said acts, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On March 16, 1945, the respondent filed its answer in which it admitted some allegations of the complaint, but denied that it had engaged in any unfair labor practice. As a separate defense, the answer challenged the jurisdiction of the Board on the ground that Puerto Rico is not a territory within the meaning of the Act.

Pursuant to notice, a hearing was held at San Juan, Puerto Rico, on March 19, through March 23, 1945, before Earl L. Bellman, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. Neither the Union nor the C. G. T. was represented at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the opening of the hearing, the Trial Examiner granted, in part, a motion by the respondent for a bill of particulars, and the particulars were stated orally on the record by counsel for the Board. In the course of the hearing, the Trial Examiner granted, without objection, a motion of counsel for the Board to amend the complaint by adding thereto allegations that management representatives had attended a union meeting for the purpose of surveillance and had questioned applicants for employment concerning their union affiliation. The Trial Examiner also granted a motion of the respondent to amend its answer so as to deny the added allegations, and the answer was thus amended. At the close of the hearing, the Trial Examiner granted a motion to conform the pleadings to the proof with respect to names, dates, and other minor recitals. During the course of the hearing, the Trial Examiner ruled on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On November 28, 1945, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, finding that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint, except as to the allegations with respect to discrimination against Aurea Ester Pineiro within the meaning of Section 8 (3) of the Act. The Trial Examiner recommended that the respondent cease and desist from the commission of such unfair labor practices and take certain affirmative action, and

that the complaint be dismissed as to Pineiro.<sup>1</sup> Thereafter, on December 28, 1945, the respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to notice, the Board, on March 4, 1946, heard oral argument in Washington, D. C. The respondent, represented by counsel, participated in the argument; neither the Union nor the C. G. T. appeared. The Board has considered the Intermediate Report, the respondent's exceptions and brief, the oral argument before the Board, and the entire record in the case, and finds the exceptions to be without merit insofar as they are inconsistent with the findings, conclusions, and orders hereinafter set forth.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

The Royal Bank of Canada (San Juan Branch), a foreign corporation organized under the laws of the Dominion of Canada, with its principal office and bank in Montreal, Canada, conducts a general banking business in San Juan, Puerto Rico, by virtue of a Certificate of Registration issued by the government of Puerto Rico on June 28, 1907.<sup>2</sup> In opening the San Juan Branch, its capital was supplied by the Montreal office. The San Juan Branch carries an interbank account with the Montreal bank. The respondent's capital is assessed for taxation purposes in Puerto Rico at about \$650,000. The Puerto Rican deposits of the respondent are approximately \$10,000,000. In the course of business, the respondent's San Juan Branch carries on general transactions with institutions, firms, and individuals residing outside Puerto Rico.

The respondent contends that the Board lacks jurisdiction in this proceeding inasmuch as Puerto Rico is not a territory within the meaning of Section 2 (6) of the Act.<sup>3</sup> We have rejected this contention in the *Ronrico Corporation* case.<sup>4</sup> For the reasons stated in our decision therein, we find no merit in the respondent's contention.

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<sup>1</sup> Neither counsel for the Board nor the Union filed exceptions to the Intermediate Report. In view of the absence of such exceptions, and in accordance with the recommendations of the Trial Examiner, we shall dismiss the complaint insofar as it alleges that the respondent violated Section 8 (3) of the Act with respect to Pineiro.

<sup>2</sup> In addition, the Bank of Canada maintains two other branch banks in Puerto Rico, one at Santurce and the other at Mayaguez. The respondent's branch manager at San Juan, Horace M. Grindell, also has supervision over the Santurce and Mayaguez branches.

<sup>3</sup> Apart from such contention, the respondent admitted at the hearing that it is engaged at its San Juan Branch in commerce within the meaning of the Act. However, our jurisdictional finding, as hereinafter indicated in Section IV, is based on the fact that the respondent's unfair labor practices occurred within the Territory of Puerto Rico. See *Matter of The Chase National Bank*, 63 N. L. R. B. 656.

<sup>4</sup> *Matter of Ronrico Corporation and Puerto Rico Distilling Company*, 53 N. L. R. B. 1137.

## II. THE ORGANIZATION INVOLVED

Union de Empleados de Bancos de Puerto Rico, affiliated with Confederacion General de Trabajadores de Puerto Rico, is a labor organization admitting to membership employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

During the summer of 1944, the Union commenced organizational activities among the respondent's employees as part of a general campaign to organize the employees of banks in San Juan and vicinity, including the respondent's Santurce Branch. Early in the campaign, a union meeting was held at Santurce. Later, in July or August 1944, a union meeting, well attended by employees of banks around San Juan and of other Puerto Rico banks, was held at the Ateneo Puerterriqueno in San Juan. Local newspapers gave publicity to the Union's organizational campaign. Bank officers at the San Juan Branch knew of the Union's activities virtually from their inception. Federico Saavedra, the respondent's assistant accountant at San Juan, a management representative, was displeased with the Union's organizational activity.<sup>5</sup>

According to credible testimony of Horace M. Grindell, the respondent's bank manager at San Juan, when he learned of the union activity, he asked Miguel Mendez, Letizia Bozzo, and Roberto Villaneuva, at that time the respective heads of the current accounts, proof, and collection departments, "what the situation was in [their] department[s], with respect to the union membership." In his testimony Grindell admitted, and we credit such testimony, that he asked ordinary bank employees whether they belonged to the Union and that he showed employee Louis Garcia a list of the employees and asked him to indicate by check marks those who belonged to the Union. Mendez, Bozzo, Assistant Accountant Saavedra, and Jose Ferrer de Cottes, the assistant bank manager at San Juan, also credibly testified that Grindell asked them to ascertain which employees under their supervision were union members. Bozzo, Villaneuva, and Ferrer, in their testimony, which we credit, admitted that they made inquiries of employees as to their union membership.<sup>6</sup> We find no merit in

<sup>5</sup> Saavedra testified, in part: ". . . I didn't like . . . it . . . they should have advised me they were organizing this kind of union, and in the first place to have presented the case over to the manager, and tell him that the union was being organized, and the bank should have been notified officially about it."

<sup>6</sup> While Mendez testified that he made no such inquiry of any employee, he admitted that he gathered the information requested by Grindell by listening to conversations among employees. While Saavedra testified that he did not ascertain the union status of employees, as Grindell had requested him to do, Saavedra admitted that he had discussions with employees about the Union in which he expressed his displeasure with their union activities.

Grindell's explanation given at the hearing that he resorted to such questioning to ascertain the Union's status as representative in order to determine whether the respondent was under obligation to deal with the Union. Such inquiries by an employer interfere with, restrain, and coerce employees in the exercise of their right, guaranteed under the Act, to make an untrammelled choice of a collective bargaining representative.<sup>7</sup>

In addition, we credit the testimony of Israel Torres and Alberto Texidor that when they applied for employment at the bank in December 1944 and January 1945, respectively, Accountant Eugene Guest, who interviewed them, inquired as to their union affiliation.<sup>8</sup>

Employee Cruz,<sup>9</sup> the secretary-general of the Union, credibly testified that, sometime in July 1944, he was told by Saavedra in a conversation in the bank that he could offer Cruz "many things" if Cruz helped him, that Cruz should not have his affairs decided by "other persons" who wanted to exploit him, and that Saavedra did not understand how Cruz was going to try to tie the bank's hands by means of a collective bargaining agreement, because if left free, Saavedra could "do more" for Cruz. Saavedra denied that he ever discussed the Union with Cruz; Saavedra admitted, however, that he considered Cruz a good prospect for advancement, that for this reason he had offered Cruz opportunities at the bank, and that he, Saavedra, "disapproved of the Union's activities." Cruz also testified that early in August 1944, Manager Grindell called Cruz to the manager's office and asked what he expected to gain by his union activities. According to Cruz, when he replied that the Union expected to submit an agreement to the bank manager, Grindell answered, in Cruz' words, that "before he would sign an agreement with us he would close the branch and leave." Grindell testified that he recalled the August conversation with Cruz "very vaguely," that he might have discussed the Union with him, but that he would not "attempt to reconstruct the conversation." He denied having asked why Cruz favored the Union or having threatened to close the bank in the event that the Union were successful. In view of the evidence of widespread discussion by officers of the respondent with employees generally about the Union, we credit Cruz and find that the conversations mentioned above occurred substantially as he testified.

Louis Garcia was employed at the respondent's Santurce Branch for several years before December 1944, when he was transferred to

<sup>7</sup> See, for example, *Matter of Libbey-Owens Ford Glass Company*, 63 N. L. R. B. 1.

<sup>8</sup> Guest testified that, as to Torres, such an inquiry "might have occurred," and, as to Texidor, that he did not ask whether the applicant was a union member, but "I inquired about what he thought of perhaps union activities."

<sup>9</sup> Helion Cruz Ginorio, one of the employees alleged in the complaint to have been discriminatorily discharged, was commonly known as Cruz, and was so referred to in the record.

the San Juan Branch. Late in August 1944, according to his uncontradicted testimony, he had a conversation near his home in Santurce with Maximo Valdes, who was then the head of the collection department at the San Juan Branch, in which Valdes told Garcia that unions were for Negroes, sugar cane and dock workers, and that bank employees were of a higher class and should not descend to the level of such people.<sup>10</sup> We credit Garcia with respect to his conversation with Valdes; and, considering all the circumstances, particularly the fact that during the same period the Union held meetings which were attended by employees of both the Santurce and San Juan Branches, we consider Valdes' statements to Garcia as part of the respondent's general anti-union conduct. The record also shows uncontradicted testimony of two employees of the San Juan Branch, Gloria Aleman and Monserrate Lopez, which we credit, that Valdes inquired as to their union affiliation, Aleman adding that Valdes said that there was no need of strangers in the bank.

Cruz credibly testified that in the latter part of September 1944, he was called to the office of Manager Grindell, who asked how Cruz was getting along with his work, how the Union was progressing, and whether Cruz intended to continue as a union member. According to Cruz, Grindell stated that he was willing to help Cruz "organize an association of employees of The Royal Bank only," and that he, Grindell, would circulate a memorandum to help Cruz form such an organization to give parties, engage in charitable activities and present petitions and claims to the respondent on behalf of the employees. Inasmuch as Grindell spoke about the Union to a number of employees and in view of the fact that he recalled a previous talk about the Union with Cruz only vaguely, we do not credit his denial of this particular conversion and credit Cruz' testimony, as did the Trial Examiner.

On September 3, 1944, Maximo Valdes, then the respondent's acting assistant accountant, and Alverado Perez, who was in charge of letters of credit, both admittedly supervisory employees, attended a meeting of the Union at which the respondent's employees as well as employees of other banks were assembled. Perez testified that Cruz, the Union's secretary-general, had invited him to the meeting, and that Valdes, who did not testify, had told Perez that he too had been invited by Cruz. Perez further testified, without contradiction, that, at the start of the meeting, Antonio Martorelli, the Union's president, asked the two supervisors to take seats in the front portion of the room. Cruz specifically denied having invited either Perez or Valdes to the meeting. Hernan Polo, the Union's vice-president, testified that it had been the policy of the Union since its inception, and its by-laws so pro-

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<sup>10</sup> Valdes did not testify.

vided, not to admit supervisory employees to membership. In view of the respondent's admitted determination to keep itself informed of its employees' interest in the Union, we credit Cruz' testimony and find that Perez and Valdes were not invited to the meeting. Notwithstanding Martorelli's suggestion that the supervisors take other seats, we are of the opinion, and we find, that Valdes and Perez attended the September 3 meeting for the purpose of surveillance inasmuch as they came uninvited and such tactics appear to fit logically into the respondent's general scheme of anti-union conduct.

We deem it unnecessary to set forth in detail testimony as to other anti-union statements by officers of the bank during the Union's organizational campaign. In most instances, such as Saavedra's statement to the father of employee Monserrate Lopez that her union activities "wouldn't do her any good," and Ferrer's remark, "Bad, bad," after having inquired as to Lopez' union affiliation, the anti-union statements are specifically denied. We do not credit the denials inasmuch as the supervisors involved admitted having discussed the Union with employees and in view of the fact that the respondent was opposed to the Union generally. We find that Saavedra and Ferrer made such statements.

In addition to the foregoing acts, statements, and conversations by which the respondent made its attitude toward the Union known to its employees, the respondent also distributed, during the same period of union organizational activity, three circulars prepared and signed by its manager. On August 24, 1944, 5 days after the Union had made its initial demand for recognition, each employee received a copy of the first circular, by its terms intended to "give our employees the management's points of view." The first circular contained a lengthy discussion of privileges theretofore enjoyed by the employees and a statement of the manager's belief that, in the banking business, direct dealings between employer and employee on an individual basis were preferable to union activities. It also referred to a state of "complete harmony" without "intervention of outsiders" which had prevailed for many years, and to the importance of "discreetness" and a "sense of responsibility" necessary for advancement in the bank. The circular closed with a warning that, should the employees permit themselves to be influenced by "outsiders," a result unsatisfactory to the employees might be the outcome.

The second circular was distributed on September 8, 1944, 5 days after Valdes and Perez had attended the union meeting. The second circular listed a number of benefits which the respondent, on its own initiative, had granted to the employees. It also included the following statements: ". . . the close and good relations that have always reigned among us has been the principal factor in the agreeable en-

vironment which is one of the attractions of the Bank as a place in which to work . . . I [Manager Grindell] believe that you will oppose to the end any threat from inside or outside, to preserve your liberty, to progress by your own efforts and within your own limitations, and to enjoy as heretofore the privileges, liberties, and the comradeship among heads and companions.”

On February 5, 1945, the day before a scheduled election for a bargaining representative among the respondent's employees,<sup>11</sup> a third circular was distributed. It urged the employees to vote, saying that the election would “determine the course of future relations” and that the employees should vote “with a full sense of responsibility.”

It is clear from the foregoing summary of the evidence and from the record as a whole that with the inception of union activities among its employees, the respondent embarked upon a planned course of conduct, calculated to disparage the Union and to discourage membership therein, in which it threatened the employees with economic reprisal in the event of their continued affiliation therewith. From the time of Manager Grindell's statement to Cruz, early in August 1944, that the respondent would close the bank rather than sign a union contract, to the time of Assistant Accountant Saavedra's admonition to Monserrate Lopez' father, a month before her discharge in February 1945, that he should urge his daughter to quit the Union because such activities would “not do her any good,” the respondent's officers kept the employees aware of their opposition to outside union activities and of the fact that such activities entailed a risk of economic loss to the employees.

We also find that the three circulars distributed among the employees during the organizational campaign constitute an inseparable part of the respondent's coercive course of conduct and transgressed upon the exercise by the employees of their right to choose a bargaining representative without restraint or coercion. The respondent contends that the circulars merely express the management's opinion and, as such, fall within the area of expression protected by the free speech guarantee of the Constitution. We find it unnecessary to determine whether the circulars, standing alone, constitute restraint and coercion within the meaning of Section 8 (1) of the Act, although we note that they speak of “intervention of outsiders,” a danger that “outside interests” might bring a “result that might be unsatisfactory,” and the manager's belief that the employees would “oppose . . . any threat from inside or outside, to preserve their liberty . . . and to enjoy, as heretofore, the privileges, liberties, and the comradeship among heads

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<sup>11</sup> The election was to be held in accordance with the terms of a consent agreement signed by the respondent, the Union, and a Board agent on January 22, 1945. Because of the unfair labor practice charges filed herein on February 5, 1945, the Board's Regional Director cancelled the election.

and companions." Assuming, however, that the statements are not coercive in themselves, when viewed in conjunction with the other facts completing a pattern of coercive and illegal conduct, they acquire a coercive character in the eyes of the employees. Against a setting of coercive statements by officers of the bank coupled with the fact that between the distribution of the first and third circulars, the respondent implemented its verbal hostility toward the Union by discriminatorily discharging two of its employees, as hereinafter found, the statements made by Manager Grindell in the circulars cannot be segregated and evaluated as to what coercive effect, if any, they might have had upon the employees in the absence of other unlawful conduct.

Upon the basis of the entire record, we find that, by the totality of its conduct in discouraging and warning its employees against engaging in concerted activities and against affiliation with or activities on behalf of the Union, in questioning them as to their affiliation, in having representatives of management attend a union meeting for the purpose of surveillance, in questioning applicants for employment as to their union affiliation, and in distributing circulars publicizing its opposition to the Union, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### B. *The discharges*

#### 1. Helion Cruz Ginorio

Cruz began work for the respondent as an employee in its proof department on September 18, 1943. After 4 months in the proof department, he was transferred to the current accounts department where he worked for 5 months under the supervision of Miguel Mendez. In June 1944, Cruz was promoted to a position as bank teller, a position which he retained until October 13, 1944, when he was transferred to the proof department. A month later, he was again assigned to work under Mendez' supervision in the current accounts department where he remained until January 26, 1945, when, pursuant to a 30-day notice given on December 26, 1944, he was discharged. The complaint alleges that Cruz was discharged because of his union activities; the respondent contends that he was dismissed because his work had been unsatisfactory and because he had made false entries on his time sheets.

Cruz became secretary-general of the Union in August 1944, and occupied that position at the time of his discharge. The respondent was aware of his activities on behalf of the Union, and, as set forth above, the bank's officers endeavored to persuade him to discontinue such activities. Thus, in July 1944, during the early stages of the union campaign, Assistant Accountant Saavedra promised Cruz

“many opportunities” if Cruz would cooperate with Saavedra, and in the following month, Manager Grindell told Cruz that the respondent would close the bank rather than sign a collective bargaining contract. Late in September 1944, Grindell offered to assist Cruz in the formation of “an organization of employees of the Royal Bank only.” According to other employees who credibly testified to subsequent conversations with the bank’s officers, the respondent continued its anti-union campaign throughout the remaining period of Cruz’ employment. Finally, according to Cruz’ testimony, when he refused a request by Saavedra for Cruz’ resignation on December 26, just before he was given the 30-day notice of discharge, on the asserted ground that he must first consult the Union, Saavedra stated: “That is what killed you.” Saavedra denied that portion of Cruz’ testimony concerning the Union. Considering the entire record, particularly Saavedra’s admitted opposition to the Union, we credit Cruz’ testimony, as did the Trial Examiner.

The respondent denies that Cruz’ union activities motivated its decision to discharge him and, as indicated above, the respondent asserts that it discharged Cruz for unsatisfactory work and falsification of time sheets. More particularly, the respondent rests its assertion of Cruz’ incompetence on four unaccountable errors in his daily balances while acting as a teller between June 30 and October 13, 1944, and on Mendez’ general statement that Cruz’ work was poor while he was in the current accounts department from November 13 to December 26, the day that he was given final notice of discharge. As to the time-sheet errors, the record shows that on five occasions before December 26, Cruz entered his time incorrectly.<sup>12</sup>

The record shows that during his approximately 3½ months tenure as a teller, Cruz had 3 shortages, 1 each on July 31, August 4, and August 9, the largest being \$69.38, and a single overage, on September 5, of \$47.90. Such differences in daily balances, however, were not uncommon among the respondent’s tellers. During the year 1944, there were 37 instances of differences of at least \$10 among 11 tellers, of whom many worked only part of the year. There is unimpeached testimony that 2 other tellers, who had 5 and 6 unaccounted shortages or overages, each in amount exceeding \$10, were discharged, one “because of generally poor performance as a teller,” and the other “because he fell short of what was required of a teller.” However, the record is silent as to other elements of their work record. A third

<sup>12</sup>In further support of its contention that falsification of his time sheets justified Cruz’ discharge, the respondent also relied upon a 25-minute change, from 1 to 1:25 p. m., on January 18, 1945, in the handwriting of Assistant Manager Ferrer, the correctness of which Cruz disputed at the hearing. Inasmuch as this alleged false entry occurred more than 3 weeks after Cruz was given final notice of discharge, it is obvious that it could not have been a factor in the decision to discharge him.

teller, who was not discharged, had 7 separate unaccounted differences during a period of 7½ months. We also deem it significant that on August 16, after 3 of Cruz' 4 errors had occurred, Cruz was given a special raise of \$150 per year. In view of the above circumstances, and the fact that Cruz was not removed as a teller until more than a month after his last such error, and then, according to Assistant Accountant Saavedra's admission, in order that Cruz might instruct inexperienced employees in the proof department, we are of the opinion that his work as a teller was not unacceptable to the respondent, and we find that the errors which he made as a teller were not a contributing factor in the respondent's decision to discharge him.

As further proof that Cruz' work was unsatisfactory, the respondent offered uncontradicted testimony that in the early part of December 1944, while Cruz was in the current ledger department, daily balances were not achieved during a period of several days in which Mendez, the section head, was absent.<sup>13</sup> In addition, Mendez testified that while Cruz' work had been "very good" during his stay in the current ledger department in the early portion of 1944, and Mendez had requested his transfer back to that department in November 1944, for the purpose of training inexperienced workers, Cruz' work had deteriorated during November and December and Mendez had voiced his dissatisfaction to Cruz several times during that period.

Although at the hearing before the Trial Examiner, the respondent blamed Cruz for the fact that the department books were unbalanced during Mendez' absence, Mendez testified that Cruz' ledger "balanced at sight." In addition, Saavedra testified that no one was in charge of the department during Mendez' absence. That the respondent did not attribute such errors to Cruz at the time that they occurred, is shown by the fact that about 2 weeks later Cruz was left in charge of the current ledger department while Mendez substituted for another employee in another department. Equally unconvincing is Mendez' general testimony that Cruz' work was unsatisfactory inasmuch as his testimony in this respect was inconsistent. Thus, at one point, he testified that at the time of Cruz' discharge, on December 26, conditions in the current ledger department were "very poor" and such as "they have never been before," but he also testified that during the 6 months prior to the hearing, which included the period of Cruz' last employment in the current ledger department, conditions had improved to such an extent that Mendez could check the balances within 15 minutes, instead of several hours as previously required. Cruz denied that he was ever told that his work was unsatisfactory, and Mendez admitted that he had not recommended Cruz' discharge until the day

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<sup>13</sup> It had been expected that Mendez would be absent only on Saturday, a day on which the bank was closed to the public.

that Cruz was given notice of discharge. Considering all the evidence relative to Cruz' work record, that he was promoted to teller, that from there he was sent to the proof department to assist in its reorganization, that his work in the proof department was admittedly satisfactory, and that his transfer to the current accounts department a month before his discharge was occasioned by the respondent's belief that he could help establish an improved ledger system there, we are convinced, and we find, that Cruz' work was not unsatisfactory. Such alleged incompetence, therefore, could not have been the reason for his discharge.

As to the other ground advanced by the respondent for Cruz' discharge, namely, falsification of time records, the time sheets show, and Cruz admits, that on 4 occasions during December 1944, he miscalculated his daily total time worked, once crediting himself with 45 minutes less, and on each of the other 3 occasions with 30 minutes more. Once, on December 6, 1944, he entered his arrival as 8 a. m., and 2 days later, at the request of the bank manager, Cruz changed this entry to 8:15 a. m. Such occurrences were common among the respondent's employees. The record shows that during 1944, of 40 employees, 11 had credited themselves with excessive totals on several occasions, some 3 and 4 times in a single week, and 5 had entered their arrival in advance of the actual hour, 1 of them on 4 separate occasions. None of these employees was discharged. There is undisputed testimony that another employee, Hilda Mendez, was discharged when she was caught "red-handed" entering her starting time incorrectly, because "she had a record of that sort of thing," and after a "frank admission on her part that she was doing it deliberately." There is no such showing as to Cruz. Except for 1 possible exception, his errors were in calculation of time worked.

It is clear that the errors on Cruz' time sheet were not the real reason for his discharge. The respondent considered his error of December 6 so trivial that it was not called to his attention for 2 days. In fact, Cruz credibly testified that Saavedra did not give these errors as a reason for the discharge on December 26.<sup>14</sup> Although Saavedra testified that he knew of the errors in computation when they occurred, there is no convincing evidence that they were brought to Cruz' attention prior to the day of notice of discharge, December 26.<sup>15</sup> Had all Cruz' time-sheet errors been overlooked by the pay-roll accountant, and none of them was, Cruz would have been overpaid about 50 cents.

Upon consideration of the entire record, we are convinced that the real reason for Cruz' discharge was his continued adherence to the

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<sup>14</sup> We do not credit Saavedra's denial

<sup>15</sup> Saavedra's testimony, that Manager Grindell mentioned one of them to Cruz, was not corroborated by the manager. We do not credit Saavedra.

Union despite repeated efforts by the respondent to prevail upon him to cooperate with it in its anti-union purposes. Accordingly, we find that the respondent, by discharging Helton Cruz Ginorio, discriminated in regard to his hire and tenure of employment to discourage membership in the Union and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## 2. Monserrate Lopez

Lopez worked in the proof department of the bank from the time she was hired on July 3, 1944, until February 28, 1945, when, in accordance with a notice of discharge given on February 1, 1945, she involuntarily quit the bank. She joined the Union in July 1944. On August 24, 1944, according to her uncontradicted testimony, which we credit, Acting Accountant Maximo Valdes questioned Lopez as to her union affiliation and learned from her that she belonged to the Union. On December 23, 1944, at a Christmas party given by Lopez' father, Assistant Accountant Saavedra advised the father to urge his daughter to quit the Union, as such activities "wouldn't do her any good." In the middle of January 1945, Ferrer, head of the collection department, said to Lopez, "Bad, bad," when, in answer to an inquiry from Ferrer as to her union status, Lopez replied that she still belonged to the Union. Letizia Bozzo, Lopez' immediate supervisor, admitted at the hearing before the Trial Examiner, that on January 20, 1945, 10 days before Lopez was given notice of discharge, Bozzo made an investigation among her subordinates as to whether Lopez was still a member of the Union.<sup>16</sup>

The complaint alleges that Lopez was discharged because of her adherence to the Union. The respondent denies the existence of any discriminatory motive in her discharge; it asserts, rather, that she was released because her work was unsatisfactory and because she failed to have her teeth fixed, a condition which adversely affected her personal appearance.

We are of the opinion that the record does not support the respondent's contention that it considered Lopez' work unsatisfactory. She was retained at the expiration of her probationary period which ended on October 3, 1944. On January 1, 1945, 1 month before being given notice of discharge, she received a "special increase" of \$100 a year. The sole evidence relative to her work was given by Bozzo, who testified that Lopez pretended not to hear when asked to work on machines. On cross-examination, however, Bozzo admitted that when told, Lopez "regularly" went to her machine and that she never "talked

<sup>16</sup> In the course of the investigation, Bozzo stated to her subordinates that Manager Grindell had requested the desired information.

back" to her supervisor. Manager Grindell testified that at the time of the decision to discharge Lopez, Bozzo reported to Grindell that Lopez failed to do her work and left the bank during working hours without excuse. Bozzo did not corroborate Grindell's testimony. Both Bozzo and Saavedra, Bozzo's supervisor, admitted at the hearing that they had never told Lopez that her work was unsatisfactory prior to the discharge. Moreover, Saavedra also admitted that, on several occasions during Lopez' employment, he had told her father that there were no complaints about her work and that she was "doing fairly well." From the foregoing testimony, it is clear that Lopez' work was not unsatisfactory and that the respondent was not influenced by her work record in its decision to discharge her.

We are also convinced that the condition of Lopez' teeth did not contribute to the respondent's decision to discharge her. Admittedly, she was told at the time of her employment in July that she was required to have several missing teeth replaced, that she was reminded of this matter several times, and that Saavedra spoke to her father about it while Lopez worked at the bank. However, the respondent did not consider the correction of her denture a prerequisite for her continued employment. Although she had not corrected her denture condition, she was retained as a permanent employee at the expiration of her probationary period. Moreover, the record shows that she worked facing a wall, and we find, as Bozzo testified, that Lopez never dealt with the public. Besides, in reducing its staff, the respondent retained a non-union employee whose personal appearance, according to Bozzo, was "not very good."

In discharging Lopez, the respondent, under unusual circumstances, as appears below, reversed a prior decision to discharge another employee, Amparo Lopez, who was not a member of the Union. When, late in January 1945, the probationary period of Amparo Lopez, an employee in the proof department, was about to expire, Accountant Guest consulted Bozzo, and because of Bozzo's "responses" to Guest's inquiries concerning employees in Bozzo's department, Guest decided to discharge Amparo and told Bozzo of his decision. According to Bozzo, on her own initiative she went to Manager Grindell on the next day and recommended that Monserrate Lopez be discharged instead of Amparo. Grindell testified that, after hearing Bozzo's suggestion, he summoned Guest and that Guest immediately reversed his decision, with the result that Amparo was retained and Monserrate discharged. Guest testified that never before nor since had a subordinate supervisor bypassed him in matters of discharge by going directly to the manager and that he knew of no reason why it had happened in this instance. No evidence was offered to support the respondent's explanation of the reversal in decision, namely, that Monserrate was

less efficient than Amparo. On the other hand, Bozzo admitted at the hearing that she knew Amparo was not a union member and that Monserrate was the only union adherent in her department. Under all the circumstances, particularly the statements of disapproval at to Lopez' union activities by management representatives, their repeated inquiries as to her reaction to their union opposition and her indifference thereto, the absence of any convincing explanation of her discharge by the respondent, and the fact that by its action the respondent singled out the only union adherent in the proof department, we are persuaded that Lopez was discharged because of her membership in the Union. Accordingly, we find that, by discharging Monserrate Lopez, the respondent discriminated in regard to her hire and term of employment to discourage membership in the Union, in violation of Section 8 (3) of the Act, and 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 the operations of the respondent set forth in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce within the Territory of Puerto Rico, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

We have found that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) thereof, by the coercive statements of its supervisors, set forth above, by distributing the anti-union circulars of August 24, 1944, September 8, 1944, and February 5, 1945, and by interrogating its employees concerning their union activities. We have also found that the respondent has violated Section 8 (3) of the Act by discriminatorily discharging two employees. Accordingly, we shall order the respondent to cease and desist from in any manner interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We shall also order the respondent to take certain affirmative action designed to effectuate the policies of the Act. Having found that the respondent discriminated in regard to the hire and tenure of employment of Helion Cruz Ginorio, we shall order that the respondent offer to him immediate and full reinstatement to his former or a sub-

stantially equivalent position without prejudice to his seniority and other rights and privileges. We shall also order that the respondent make Helion Cruz Ginorio whole for any loss of pay that he may have 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<sup>17</sup> during that period.

The record discloses that, subsequent to her discriminatory discharge by the respondent, and at least until the hearing herein, Monserrate Lopez was unemployed. She testified at the hearing, on March 19, 1945, that since February 28, 1945, the effective date of her discharge, she had made no effort whatsoever to find other employment. Her loss of earnings during that 19-day period is therefore found to be a willfully incurred loss for which the respondent should not and will not be directed to reimburse her.<sup>18</sup> It is, however, possible that since the hearing herein, Lopez has obtained, or made a reasonable effort to obtain, other employment, or will do so hereafter. We shall therefore order the respondent to offer Lopez immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and to make her whole for any loss of pay that she has suffered or may suffer because of the respondent's discrimination against her, by payment to her of a sum of money equal to the amount which she normally would have earned as wages during the period from the date on which she obtained or shall obtain other employment, or on which she made or shall make a reasonable effort to obtain other employment, to the date of the respondent's offer of reinstatement, less her net earnings during such period.

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

#### CONCLUSIONS OF LAW

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

2. By discriminating in regard to the hire and tenure of employment of Helion Cruz Ginorio and Monserrate Lopez, the respondent

<sup>17</sup> 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*, 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.

<sup>18</sup> See *Matter of The Ohio Public Service Company*, 52 N. L. R. B. 725.

has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. 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.

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

5. The respondent has not discriminated in regard to the hire and tenure of employment of Aurea Ester Pineiro, within the meaning of Section 8 (3) of the Act.

### 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 Royal Bank of Canada (San Juan Branch), San Juan, Puerto Rico, 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, affiliated with the Confederacion General de Trabajadores de Puerto Rico, or in 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 their 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, affiliated with the 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 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 Helion Cruz Ginorio and Monserrate Lopez immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole Helion Cruz Ginorio for any loss of pay that he may have 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 from the date of the respondent's discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Make whole Monserrate Lopez for any loss of pay that she has suffered or may suffer by reason of the respondent's discrimination against her, by payment to her of a sum of money equal to the amount which she normally would have earned as wages from the date on which she obtained or shall obtain other employment, or on which she made or shall make a reasonable effort to obtain other employment, to the date of the respondent's offer of reinstatement, less her net earnings during such period;

(d) Post at its bank in San Juan, Puerto Rico, copies of the notice attached hereto, marked "Appendix A," together with copies of a Spanish translation thereof. Copies of said notice and of said Spanish translation, to be furnished by the Chairman of the Puerto Rico Labor Relations Board as Agent of the National Labor Relations Board, shall, after being duly signed by the respondent's representative, 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 respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Chairman of the Puerto Rico Labor Relations Board as Agent of the National 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 HEREBY FURTHER ORDERED that the complaint, insofar as it alleges that the respondent discriminated against Aurea Ester Pineiro within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

## APPENDIX A

### 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, affiliated with the 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 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.

Helen Cruz Ginorio  
Monserrate Lopez

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 ROYAL BANK OF CANADA (SAN JUAN BRANCH),  
*Employer.*

Dated ----- By -----  
(Representative) (Title)

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.