

In the Matter of PEBBLEFORD DISTILLERY COMPANY and DISTILLERY,  
RECTIFYING & WINE WORKERS INTERNATIONAL UNION OF AMERICA,  
AFL

*Case No. 9-R-1266.—Decided January 6, 1944*

*Mr. Jack B. Josselson*, of Cincinnati, Ohio, for the Company.

*Mr. Hobert Autterson*, of Lawrenceburg, Ind., and *Mr. Elmer Pope*,  
of Covington, Ky., for the AFL.

*Mr. Harry Haberthear*, of Cincinnati, Ohio, for the CIO.

*Mr. Louis Cokin*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition and amended petition duly filed by Distillery, Rectifying & Wine Workers International Union of America, A. F. L., herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Pebbleford Distillery Company, Wilder, Kentucky, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis M. Greeniger, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on December 3, 1943. The Company, the AFL, and United Distillery Workers Union, C. I. O., herein called the CIO, appeared at and participated in the hearing.<sup>1</sup> All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, counsel for the CIO moved to dismiss the petition. The Trial Examiner reserved ruling. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

<sup>1</sup> Although International Brotherhood of Firemen & Oilers, Local Union No. 49, AFL, was served with notice of hearing, it did not appear.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Pebbleford Distillery Company is a Kentucky corporation with its principal place of business at Wilder, Kentucky. It is engaged in the manufacture of alcohol for sale to the Defense Supply Corporation. It is also engaged in the aging and bottling of whiskey. The Company purchases raw materials valued in excess of \$250,000 annually; approximately 25 percent of which is shipped to it from points outside the State of Kentucky. The Company admits, for the purposes of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Distillery, Rectifying & Wine Workers International Union of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Distillery Workers Union is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On October 26, 1943, the AFL requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company referred the AFL to the Board.

On August 28, 1942, the Company and the CIO entered into an exclusive collective bargaining contract. The contract provides that it shall remain in effect until August 28, 1943, and from year to year thereafter unless either party thereto notifies the other of a desire to terminate not less than thirty (30) days prior to any annual expiration date. On July 13, 1943, the CIO notified the Company that it desired that the contract be opened up for the purpose of negotiating changes. No new written agreement has been entered into between the CIO and the Company. Inasmuch as the CIO opened up the contract prior to July 28, 1943, the date upon which the contract would have automatically renewed itself, we find that the contract does not constitute a bar to a determination of representation at this time.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the AFL represents a substan-

tial number of employees in the unit hereinafter found to be appropriate.<sup>2</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

We find, in substantial agreement with the parties, that all production and regular maintenance employees of the Company, excluding officials, clerical employees, extra maintenance employees, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The AFL requests that it appear on the ballot as "Distillery Workers Union, AFL." The request is hereby granted.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Pebbleford Distillery Company, Wilder, Kentucky, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations,

<sup>2</sup> The Field Examiner stated that the AFL presented 39 membership application cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of November 16, 1943. There are 68 employees in the appropriate unit. The CIO did not present any evidence of representation, but relied upon its contract as evidence of its interest in the instant proceeding.

among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Distillery Workers Union, AFL, or by United Distillery Workers Union, CIO, for the purposes of collective bargaining, or by neither.