

IN THE MATTER OF NEW ENGLAND GROCER SUPPLY CO. and DISTILLERY,
RECTIFYING AND WINE WORKERS' INTERNATIONAL UNION OF
AMERICA, LOCAL NO. 8 (AFL)

Case No. 1-R-1737.—Decided March 9, 1944

Mr. Frank Kozol, of Boston, Mass., and *Mr. Harold Seder*, of Worcester, Mass., for the Company.

Mr. Louis J. Blender, of Boston, Mass., for the Union.

Mr. Thomas B. Sweeney, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the Distillery, Rectifying and Wine Workers' International Union of America, Local No. 8 (AFL), hereinafter referred as the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of the New England Grocer Supply Co., hereinafter called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel G. Zack, Trial Examiner. Said hearing was held at Worcester, Massachusetts, on February 9, 1944. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

New England Grocer Supply Co., a Massachusetts corporation, has its principal place of business in Worcester, Massachusetts. It is engaged in the wholesale distribution of foods and beverages, including

alcoholic beverages. During the calendar year 1943 its gross volume of sales amounted to \$3,750,000. Ninety percent of the groceries, as well as alcoholic beverages, purchased by the Company was purchased and delivered from points outside the State of Massachusetts. Between 5 and 7 percent of the food sales is made to places outside the State of Massachusetts. The sale of alcoholic beverages, however, is confined to the State.

II. THE ORGANIZATION INVOLVED

Distillery, Rectifying and Wine Workers' International Union of America, Local No. 8, is a labor organization affiliated with the American Federation of Labor, admitting to membership the liquor salesmen employed by the Company.

III. THE QUESTION CONCERNING REPRESENTATION

It was stipulated at the hearing that a question concerning representation had arisen in that the petitioner both orally and in writing had requested the Company to bargain with it as representative of a majority of the Company's liquor salesmen; the Company refused to deal with the Union until and unless the Union was certified by the National Labor Relations Board.

A statement of the Field Examiner introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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

The Union contends that the appropriate unit should consist of all liquor salesmen employed by the Company. The Company contends that the appropriate unit should consist of all salesmen irrespective of their classification.

The Company employs approximately 20 salesmen, 7 of whom are classified as liquor salesmen and the balance as grocery salesmen. The liquor salesmen are required to obtain a license in accordance with the laws of the Commonwealth of Massachusetts as a condition precedent to the selling of liquor within the State, and receive as compensation commissions at a rate in excess of that accorded grocery salesmen. They do not solicit grocery accounts; their sales meetings are

¹ The Field Examiner reported that the Union had submitted six application cards; that the cards, with the exception of one, were dated in December 1943; and that there are six employees in the appropriate unit.

held separately; and the Company maintains separate departments or divisions as well as separate accounts with respect to its liquor and grocery business. In order to carry on the liquor business, it is necessary for the Company to obtain special licenses, both Federal and State, and to operate separate trucks licensed solely for the transportation of liquor. In addition, the Union under its constitution and bylaws is authorized to accept only the liquor salesmen for membership. In view of the foregoing, we are of the opinion that the liquor salesmen constitute a separate appropriate unit.

We find that the liquor salesmen, exclusive of 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 an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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 the 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 New England Grocer Supply Co., Worcester, Massachusetts, 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 First 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, 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 or not they desire to be represented by Distillery, Rectifying and Wine Workers' International Union of America, Local No. 8 (AFL), for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.