

IN the Matter of PEPSI-COLA BOTTLING COMPANY OF KANSAS CITY and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL #953, AFFILIATED WITH THE A. F. OF L.

Case No. 17-R-736.—Decided April 11, 1944

Mr. John A. Weiss, of Kansas City, Mo., for the Board.

Mr. M. W. Borders, of Kansas City, Mo., for the Company.

Messrs. John J. Manning and *Clif Langsdale*, of Kansas City Mo., for the Teamsters.

Messrs. Roy Fulton and *Harry H. Terte*, of Kansas City, Mo., and *Mr. Martin J. O'Donoghue*, of Washington, D. C., for the Brewery Workers.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local #953, affiliated with the A. F. of L., herein called the Teamsters, alleging that a question affecting commerce had arisen concerning the representation of employees of Pepsi-Cola Bottling Company of Kansas City, North Kansas City, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Margaret L. Fassig, Trial Examiner. Said hearing was held at Kansas City, Missouri, on November 5, 1943. The Company, the Teamsters, and Brewery & Soft Drink Workers Local No. 46, Branch No. 2, affiliated with the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, herein called the Brewery Workers, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On December 8 the Board, being of the opinion that the record was insufficient, ordered that it be reopened for the taking of further

evidence. A hearing after due notice was held pursuant to said order on December 29, 1943, before Gustaf B. Erickson, Trial Examiner. The Board, the Company, the Teamsters, and the Brewery Workers appeared and 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 Examiners' rulings made at both hearings are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs. Upon the request of the Teamsters, and pursuant to notice to all parties, a hearing was duly held before the Board in Washington, D. C., on February 12, 1944, for the purpose of oral argument. All parties were represented by counsel and participated in the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Pepsi-Cola Bottling Company of Kansas City is a Missouri corporation engaged at its plant in North Kansas City, Missouri, in the business of manufacturing and bottling a beverage known as "Pepsi-Cola." The Company purchases, principally, syrup, sugar, flavoring, bottles and caps. During the calendar year of 1942, the Company's purchases were valued in excess of \$50,000, more than 50 percent of which was shipped to the Company from points outside the State of Missouri. During the same period, the Company's sales were valued in excess of \$75,000, approximately 5 percent of which was made to customers outside the State of Missouri.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local #953, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Brewery & Soft Drink Workers Local No. 46, Branch No. 2, affiliated with International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 31, 1942, the Company and the Brewery Workers entered into a contract which, by its terms, expired December 31, 1943. By a supplemental agreement executed in July 23, 1943, the term of this

contract was extended to December 31, 1945. By letter dated September 17, 1943, the Teamsters requested recognition as the exclusive bargaining representative for the Company's inside workers. The Company refused recognition on the ground that it was bound by a contract with the Brewery Workers which would not expire until December 31, 1943.¹ The Company and the Brewery Workers now contend that the extension agreement is a bar to a present determination of representatives. We find no merit in this contention. It is well settled that employees may seek a change of representative near the end of a contract term, and that the parties to a collective bargaining contract cannot by a premature extension of the term of the contract deprive the employees covered thereby of that right.²

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Teamsters represents a substantial number of employees in the unit hereinafter found appropriate.³

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 Teamsters requests a unit of the inside workers at the Company's plant. The Company and the Brewery Workers maintain that the unit requested is inappropriate because the Company is a member of an employer association which bargains with the Brewery Workers on an association-wide basis and that the only unit in which the Company's inside workers can properly be represented is one co-existent with the employer association.

For the past 30 years the Brewery Workers has organized employees of soft-drink plants in the Kansas City area. Each year prior to 1940 it met with a committee representing employers whose employees it had organized, and negotiated collective bargaining contracts. In 1940 the Brewery Workers suggested that all soft-drink plants in the city participate in the negotiations. Thereupon the Kansas City Bottlers Club, an association of soft-drink bottlers formed for the purposes of mutual aid and self-regulation, created a committee to handle negotiations for collective bargaining contracts with the Brewery Workers for all members of the Club who authorized the

¹ The Company at that time made no mention of the extension agreement

² See *Matter of Wichita Union Stockyards Company*, 40 N L R B 369, *Matter of Memphis Furniture Mfg Co*, 51 N L R B 1447

³ The Field Examiner reported that the Teamsters submitted 16 application for membership cards, all of which bore apparently genuine original signatures. That the names of 12 persons appearing on the cards were listed on the Company's pay roll of October 7, 1943, which contained the names of 16 employees in the appropriate unit; that the cards were dated in September 1943

The Brewery Workers relied upon its contracts to show its interest in the matter.

committee to represent them.⁴ At the time, a majority of the employees, of 2, possibly 3, of the 11 companies which authorized the committee to act for them, were members of the Brewery Workers.⁵ The 8 or 9 companies, including the predecessor of the Company,⁶ which had not theretofore recognized the Brewery Workers as the bargaining representative of their employees did not demand proof of the Brewery Workers' representative status in their plants.⁷ Nevertheless, in March 1941 the committee negotiated and all but 1 of the 11 companies signed identical closed-shop contracts with the Brewery Workers. The eleventh company signed a copy of the contract in which the check-off clause had been deleted.

In July 1942 the companies and the Brewery Workers entered into a second contract which was extended to December 31, 1945, by an agreement signed in July 1943.

The record indicates that the Brewery Workers at no time between the date of the formation of the employers' negotiating committee and September 1943, when the Teamsters began organizing the Company's employees, attempt to enlist as members the employees of the Company. At the time of the hearing it claimed only 1 member in the Company's plant; the other 15 employees, some of whom had been in the Company's employ for more than a year, were working under Brewery Workers' permits.

The Brewery Workers and the Company contend that the above-described course of dealing has established a bargaining unit comprising the employees of all the participating companies and that we are precluded thereby from finding that a unit confined to employees of the Company is appropriate. We cannot agree. It is true that a bargaining unit such as that advocated by the Brewery Workers and the Company might be deemed appropriate under proper circumstances, since the requisite multiple-employer bargaining agency has evidently been created in this instance,⁸ and since, no doubt, all of the employees who would comprise such a unit have sufficient work interests in common to be effectively represented for bargaining purposes in a single group. But such facts alone do not, in any case, establish

⁴ The Coca Cola and Canada Dry Companies are members of the Club but do not participate in the joint bargaining.

⁵ The Chairman of the Club's negotiating committee testified to this effect. He was unsure of the union status of one of the plants mentioned.

⁶ The Company was organized and joined the plan in 1941. At the time the Company's predecessor entered into the bargaining arrangements, only one of its employees was a member of the Brewery Workers.

⁷ It was evident from the testimony of the Chairman of the Club's negotiating committee that in at least some of the Companies involved, no employees were members of the Brewery Workers.

⁸ See *Matter of Shipowners Association of the Pacific Coast*, 7 N. L. R. B. 1002; *Matter of Stevens Coal Company*, 19 N. L. R. B. 98; *Matter of New Bedford Mfg. Association*, 47 N. L. R. B. 1345; *Matter of Central Foundry Company*, 48 N. L. R. B. 5; *Matter of F. L. Hartung Company*, 50 N. L. R. B. 1; Cf *Matter of F. E. Booth & Co.*, 10 N. L. R. B. 1491; *Matter of Sterling Steel Foundry*, 53 N. L. R. B. 896.

that a multiple-employer unit satisfies the requirements of Section 9 (b) of the Act,⁹ absent some indication that the employees in each of the constituent groups which, themselves, comprise natural and inherently appropriate bargaining units, have consented, expressly or otherwise, to be represented in common with the employees of other employers, by a single bargaining agent.¹⁰ Normally, a history of collective bargaining between an employer association and the purported representative of the employees of all member or participating employers leads us to infer that the multiple-employer form of unit reflects the choice of the subsidiary groups of employees involved, as well as that the association-wide unit is otherwise appropriate for bargaining purposes.¹¹ In the instant case, however, the record refutes the inference that the employees of the Company have chosen to be assimilated into the 11-company unit which the Brewery Workers claims to represent. It is clear that the Company's employees were never afforded an opportunity to choose or reject the Brewery Workers as their representative, in any form of bargaining unit. Nor can we conclude that they have acquiesced in such representation under the contracts negotiated by the Brewery Workers.¹² On the contrary, the record compels us to doubt whether the Company's employees were ever made aware that they were ostensibly represented by that organization. Their testimony indicates that prior to the Teamsters' arrival on the scene, although the Company deducted working permit fees from their wages, they were neither solicited nor required to join the Brewery Workers; they were afforded no opportunity to present grievances through the offices of the Brewery Workers; they were not invited to attend meetings; ¹³ nor were they visited by a representative of the Brewery Work-

⁹ Section 9 (b) of the Act provides :

The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

¹⁰ See *Matter of Demuth Glass Works*, 53 N L R B 451, *Matter of Thermal Coal Co*, 51 N L R B 434, *Matter of Shipowners Association of the Pacific*, 32 N L R B 668; See also *Matter of West Virginia Pulp & Paper Co*, 53 N L R B 814, *Matter of Chrysler Corporation*, 42 N L R B 1145 and other *Chrysler* cases cited therein, *Matter of Aluminum Co of America*, 42 N L R B 772, *Matter of Bendix Products Division of Bendix Aviation Corporation*, 39 N L R B 81.

¹¹ See *Matter of Rayonier Incorporated, Grays' Harbor Division*, 52 N L R B 1269; *Matter of George F. Carleton & Company, Inc, et al*, 54 N L R B 222, and cases cited in footnote 7, *supra*. Cf *Matter of Chapman Dehydrator Company*, 51 N L R B 112, and *Matter of Logan & Paxton, et al*, 55 N L R B 310, in which we found no history of bargaining on a multiple-employer basis.

¹² In this respect the instant case is clearly distinguishable from the numerous cases in which the Board has refused to disturb multiple-employer collective bargaining units established by collective bargaining practice. See, especially, *Matter of Rayonier Incorporated, supra*, *Matter of George F. Carleton & Company, Inc, et al, supra*.

¹³ Permit holders were not generally admitted to Brewery Workers meetings, and, as stated above, no effort was made to change the status of the Company's employees from permit holders to members.

ers local.¹⁴ Under these circumstances, we do not regard the "history of collective bargaining" as determinative of the form of unit appropriate for bargaining on behalf of the employees in question. We conclude that at this time the Company's employees are not a part of the multiple-employer unit advocated by the Brewery Workers and the Company, and that they are entitled to select a bargaining representative in an election confined to their own group. Since we are not satisfied on the basis of the present record that the multiple-employer unit contended for by the Brewery Workers is presently an appropriate unit within the meaning of Section 9 (b) of the Act, there is no occasion to provide herein that the Company's employees shall be included in any such unit in the event that they select the Brewery Workers as their representative in the election hereinafter directed.

We find that all inside production employees of the Company excluding engineers, office and clerical help, salesmen, painters, sign writers, displaymen, watchmen, porters, executives, officers, superintendents, non-working foremen, sales or route supervisors,¹⁵ and all or any other 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 payroll 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 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 Pepsi-Cola Bottling Company of Kansas City, North Kansas City, Missouri, an election by secret ballot shall be conducted as early as possible, but not

¹⁴ One employee testified to this effect. Seven others were present in the hearing room, who, it was stipulated by all parties, would have verified the statements made by the employee who testified. The Brewery Workers' one member in the Company's employ, a deaf mute, was not included in the stipulation although apparently he was willing to be so included.

¹⁵ The exclusions are in accordance with a stipulation of the parties.

later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventeenth 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 they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local #953, affiliated with the American Federation of Labor, or by Brewery & Soft Drink Workers Local No. 46, Branch No. 2, affiliated with International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.