

In the Matter of JACOB SCHMIDT BREWING COMPANY, THEO. HAMM BREWING CO., YOERG BREWING COMPANY, INC. and INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, AND SOFT DRINK WORKERS OF AMERICA, LOCAL UNIONS NOS. 97, 214, AND 343

Case No. 18-R-955.—Decided July 21, 1944

Mr. Stephen M. Reynolds, for the Board.

Mr. H. J. Charles, of St. Paul, Minn., for Hamm Brewing Co.

Mr. C. E. Newcome, of St. Paul, Minn., for Schmidt Brewing Co.

Mr. Louis E. Yoerg, of St. Paul, Minn., for Yoerg Brewing Co.

Mr. Martin F. O'Donoghue, of Washington, D. C., for the Brewer Workers.

Mr. I. E. Goldberg, of Milwaukee, Wis., and *Mr. Gordon R. Conklin*, of St. Paul, Minn., for the Teamsters.

Mr. William Whitsett and *Miss Frances Lopinsky*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, Local Unions Nos. 97, 214, and 343, herein called the Brewery Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Jacob Schmidt Brewing Company, herein called Schmidt, Theo. Hamm Brewing Co., herein called Hamm, and Yoerg Brewing Company, Inc., herein called Yoerg, all of St. Paul, Minnesota, herein collectively referred to as the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before R. N. Denham, Trial Examiner. Said hearing was held at Minneapolis, Minnesota, on March 24, 1944. At the commencement of the hearing, the motion of Drivers and Helpers Union, Local 993, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (A. F. of L.), herein called the Teamsters, to intervene was granted

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without objection. The Companies, the Brewery Workers, and the Teamsters 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. 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. Oral argument, in which the Brewery Workers and the Teamsters participated, was held before the Board in Washington, D. C., on June 8, 1944.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Jacob Schmidt Brewing Company, a Minnesota corporation with its principal office and place of business in St. Paul, Minnesota, is engaged in the brewing and distribution of beer. In 1943, it purchased raw materials valued at \$1,041,000, of which approximately 63 percent was shipped to it from points outside the State. During the same period, it sold 524,773 barrels of beer, of which 46 percent was shipped to points outside the State.

Theo. Hamm Brewing Co., a Minnesota corporation with its principal office and place of business in St. Paul, Minnesota, is engaged in the brewing and distribution of beer. In 1943, it purchased raw materials valued at \$987,300, which were shipped to it from points outside the State. During the same period, approximately 62 percent of its finished products was shipped to points outside the State.

Yoerg Brewing Company, Inc., a Minnesota corporation with its principal office and place of business in St. Paul, Minnesota, is engaged in the brewing and distribution of beer. During 1943, this Company purchased, from points outside the State, raw materials valued at approximately \$30,000. During the same period, it sold and shipped products valued at approximately \$31,000 to points outside the State.

The Companies admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, Local Unions Nos. 97, 214, and 343, are labor organizations admitting to membership employees of the Companies.

Brewery, Beverage Drivers and Helpers Union, Local No. 933, affiliated with the International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America, A. F. of L., is a labor organization admitting to membership employees of the Companies.

III. THE QUESTION CONCERNING REPRESENTATION

On February 21, 1944, the Teamsters, claiming to represent a majority of the delivery drivers and helpers employed by the Companies, requested recognition as their exclusive bargaining representative. The Companies refused recognition to the Teamsters on the ground that the drivers and helpers were covered by an existing contract between the Companies and the Brewery Workers. The Teamsters then applied to the State Labor Conciliator of Minnesota who took jurisdiction over their claim.¹ The Companies have refused to renew the Brewery Workers' contract until the dispute is resolved.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Brewery Workers relies on its contract with the Companies which expired April 1, 1944, as evidence of its interest in the proceeding, and that the Teamsters represents a substantial number of employees in the unit which it alleges is appropriate.²

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

IV. THE APPROPRIATE UNIT

Almost from the time of its organization in 1887, the Brewery Workers claimed and exercised jurisdiction over all persons employed in and by breweries. Its insistence upon the industrial type of unit in breweries led to a long dispute within the American Federation of Labor (herein called the A. F. of L.), between the Brewery Workers and other A. F. of L. affiliates. At the order of the parent organization the Brewery Workers gave up jurisdiction over the maintenance employees in breweries, but suffered expulsion from the A. F. of L.

¹ On March 11, 1944, the Conciliator's elections were held among the drivers and helpers with the following results:

	<i>For Teamsters</i>	<i>For Brewery Workers</i>
At Jacob Schmidt Brewing Company-----	22	16
At Hamm Brewing Co-----	51	8
At Yoerg Brewing Company, Inc.-----	0	6

The Brewery Workers refused to participate in the election, and upon its completion, it instituted injunction proceedings to restrain the Conciliator from certifying the Teamsters. By agreement the petition is not being pressed, pending the outcome of the present proceeding before the Board.

² The Regional Director reported that the Teamsters submitted 44 cards, all of which bore apparently genuine original signatures, that the names of 44 persons appearing on the cards were listed as drivers and helpers on the Companies' pay roll of March 6, 1944, which contained the names of 129 drivers and helpers, and that the cards were all dated from February to March 1, 1944.

rather than cede its claimed jurisdiction over drivers and helpers connected with the brewing industry.³

According to custom and tradition, the work of brewery employees falls roughly into four categories: (1) malsters and brewers, (2) bottling employees, (3) yard employees, including yard drivers, delivery drivers, and helpers, and (4) maintenance employees. In the St. Paul area, the Brewery Workers has for over 35 years represented all the employees of the Companies except the skilled maintenance employees.⁴ Originally the employees so represented were members of Local 97. In 1934, the membership having expanded considerably, Local 343 was chartered to accommodate the bottlers. Malsters, brewers, drivers, and yard employees continued their membership in Local 97. In 1943, the delivery drivers and helpers employed by brewers and soft drink establishments in St. Paul were given a charter as Local 214. Yard employees, including yard drivers, retained membership in Local 97. The three locals bargain with the Companies through a joint local executive board. The form of contract negotiated by the joint board has been a single contract divided into sections, each of which is devoted to the problems of an occupational category.

The Brewery Workers seeks to be certified by the Board as the Bargaining representative of the employees of the Schmidt, Hamm, and Yoerg Brewing Companies in the multiple-employer, consolidated unit which their contracts have covered. The Teamsters seeks a unit composed solely of delivery drivers and helpers employed by the three Companies.⁵ The Companies take no position as to the unit. The parties stipulated, among other things, (1) that whatever unit or units are found to be appropriate shall encompass all employees within the job classifications involved, on a St. Paul industry-wide basis; (2) that the three Companies constitute the brewing industry in the St. Paul area; and (3) that until the questions herein involved are disposed of by the Board, the provisions of the present Brewery Workers' contract with the Companies shall remain in full force and effect.

Schmidt's employs 55 delivery drivers and helpers and 8 yard drivers. Hamm's employs 60 delivery drivers and helpers and 13 yard drivers. Yoerg's employs 7 delivery drivers and helpers and

³ See *Green v Obergfell*, 121 F (2d) 46

⁴ Firemen, engineers, machinists, electricians, millwrights, painters, carpenters, garage mechanics, and steamfitters and plumbers have, for at least 25 years, been represented by craft unions affiliated with the A. F. of L.

⁵ The Teamsters claims that the unit contended for the Brewery Workers is inappropriate, and that the employees of the three breweries should be divided into three separate units: (a) the drivers and helpers on delivery trucks; (b) the production and inside workers; and (c) yard and maintenance employees, which would include all truck drivers engaged in ordinary hauling other than the actual delivery of beverages to distributors or consumers, the yardmen who assist in loading and unloading trucks and freight cars, and all who generally perform maintenance or clean-up work in the yard. The Teamsters claims no interest in any of the employees other than those under (a) above.

no yard drivers. Delivery drivers and helpers take bottled and keg beer from the breweries, deliver it to the taverns and other outlets within the city of St. Paul, and return empty crates, kegs, and bottles to the breweries.⁶ Yard drivers haul beer from the breweries to beer cars for transportation outside the city. They also haul freight to and within the yards of the breweries and bring all supplies into the breweries. At Schmidt's and at Hamm's delivery drivers and helpers spend all of their time working as such except during slack seasons when surplus drivers and helpers are employed within the plants or yards. At Yoerg's, however, delivery drivers and helpers work inside the plant or in the yard in all seasons.

From these facts, two conclusions are necessarily drawn: (1) The Teamsters, by excluding yard drivers from their requested unit, have limited the unit to contain only a part of a group of employees working under similar conditions, and performing similar work; (2) the Teamsters, by asking for a three-plant unit, have included in the requested unit employees who regularly perform duties of, are subject to the same working conditions as, and come into constant contact with the employees whom the Teamsters would not represent. Moreover, in the Companies' plants, yard drivers and yardmen work in such close conjunction that a unit including one group without the other would not be feasible. However, a unit composed of yard and delivery drivers, and yardmen would be no more feasible than the unit requested by the Teamsters because bottlers at the plants perform some of the same functions as yardmen. At Hamm's the bottlers load trucks and freight cars; at Schmidt's they load trucks and unload freight cars. The integration of the work of the inside workers, the yard workers, and the drivers employed by the Companies and the constant contact these employees have one with another impels the finding that the employees of the Companies can best be represented in an industrial unit for the purposes of bargaining.⁷ This conclusion is fortified by the long history of bargaining on an industrial unit basis in the three-plant unit, and the action of the Teamsters who have, in the organization of the employees of other breweries and soft drink establishments, recognized the appropriateness of the over-all unit in the industry and requested certification by this Board in such a unit.⁸

⁶ Deliveries of beer by truck to points outside the St. Paul area are not made by drivers employed by the Companies.

⁷ The close integration of the work of the drivers with that of other employees of the breweries makes *Matter of Sutherland Paper Company*, 55 N. L. R. B. 38 urged by the Teamsters, as a precedent to be followed in the instant case, inapplicable hereto. In that case, we found that the drivers involved had interests identified with transportation rather than with the particular industry which they served, and that their functions were not integrated with those of production employees.

⁸ See *Matter of Brewery's Limited U. S. A.*, 44 N. L. R. B. 1119; *Matter of Coca Cola Bottling Company of Jamestown*, 46 N. L. R. B. 799; *Matter of Pepsi-Cola Bottling Company of Kansas City*, 55 N. L. R. B. 1183. Counsel for the Teamsters admitted at the hearing that in the States of Washington and Oregon the Teamsters have organized breweries on a plant-wide basis.

We find that all production, maintenance and distribution employees of the Companies, excluding firemen, engineers, machinists, electricians, millwrights, painters, carpenters, garage mechanics, steam fitters and plumbers, clerical 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.

IV. 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.

Since the Teamsters professed no interest in any unit except the one which it requested, we shall not place the name of the Teamsters on the ballot. However, should the Teamsters desire to participate in the election as herein directed, and notify the Regional Director within ten (10) days after the date of the issuance of this Decision and Direction of Election of its desire to participate, we shall entertain a motion to that effect.

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 Jacob Schmidt Brewing Company, Theo. Hamm Brewing Company, and Yoerg Brewing Company, Inc., all of St. Paul, Minnesota, 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 Eighteenth 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 those employees 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 International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, Local Unions Nos. 97, 214, and 343, for the purposes of collective bargaining.

MR. GERARD D. REILLY, concurring specially:

In my opinion, the only sound method of disposing of the historic controversy between the Brewery Workers and the Teamsters is to give the drivers in each case an opportunity to vote. This Board has recognized drivers as a separate craft on innumerable occasions and has even deemed them a separate bargaining unit in cases where they had previously been included in a collective bargaining agreement with production and maintenance employees.¹ Consequently, I should be inclined in the instant case to conduct a separate election in the truck drivers' group, were it not for the fact that the proposed unit sought by the Teamsters fails to embrace all these drivers, since it excludes yard drivers who do the trucking from the breweries to the rail-heads. The case, therefore, falls within the doctrine of *Triangle Publication, Inc.*² in which the Board dismissed the petition of a union which sought to represent only a portion of the craft.

¹ *Sutherland Paper Company*, 55 N. L. R. B., 38.

² 40 N. L. R. B. 1330.