In the Matter of CHAS. W. BAUERMEISTER CO., INC. *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 144 *and* INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL & SOFT DRINK WORKERS OF AMERICA, LOCAL NO. 85

Case No. 11–RE–4.[1]*—Decided December 18, 1944*

Mr. Hugh D. McNew, for the Board.
Mr. Floyd E. Dix, of Terre Haute, Ind., for the Company.
Mr. John H. Reynolds, of Terre Haute, Ind., for the Teamsters.
Mr. George Hage, of Terre Haute, Ind., for the Brewery Workers.
Mr. Thomas A. Ricci, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Chas. W. Bauermeister Co., Inc., Terre Haute, Indiana, herein called the Company,[2] alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Keith W. Blinn, Trial Examiner. Said hearing was held at Terre Haute, Indiana, on October 24, 1944. The Company, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 144, herein called the Teamsters,[3] and International Union of United Brewery, Flour, Cereal & Soft Drink Workers of America, Local No. 85, herein called the Brewery Workers, appeared and participated. All parties were afforded an 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. The Brewery Workers' request for oral argument is denied.

[1] The original case number of this proceeding was 14–RE–8. By order of the Board dated December 2, 1944, its case number was changed to read as set forth above.
[2] At the hearing, the Company's name was amended to read as set forth above.
[3] At the hearing, the Teamsters' name was amended to read as set forth above.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Chas. W. Bauermeister Co., Inc., an Indiana corporation, has its principal place of business at Terre Haute, Indiana, where it is engaged in the distribution of wholesale groceries. During the first 6 months of the calendar year 1944, the Company purchased grocery products valued in excess of $250,000, of which approximately 90 percent was shipped to the Company from points outside the State of Indiana. During the same period, the Company sold and distributed groceries valued in excess of $250,000, of which approximately 5 percent was shipped to points outside that State.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 144, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

International Union of United Brewery, Flour, Cereal & Soft Drink Workers of America, Local No. 85, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

For many years the Company and the Teamsters have had a collective bargaining agreement covering all the Company's truck drivers. The contract provides for automatic annual renewal unless 30 days' written notice is given by either party prior to its March anniversary date, and it is in effect at the present time. Contractual relations between these parties date back to 1917.

Sometime prior to March 1938, the Company and the Teamsters executed a collective bargaining agreement covering the Company's beer truck drivers. The contract contains a closed-shop provision and states that it is "to remain in force and effect to March 10, 1938, and will continue thereafter unless written notice is given by either party 45 days prior to March 10, 1938, or 45 days prior to March 10 of any year thereafter." No notice was ever given by either party to terminate this agreement.

Since 1935 the Company has also had contractual relations with the Brewery Workers covering its beer truck drivers. On July 1, 1943, the

Brewery Workers and Chas. W. Bauermeister Co., Inc., and Paul E. Pfeifer, Inc., as employers, made a closed-shop contract, construed by the parties to cover only beer truck drivers. This agreement provided that it was to remain in effect until July 1, 1944, and from year to year thereafter, unless either party gave written notice of intention to terminate 30 days prior to any anniversary date. Both the Company and the Brewery Workers gave notice to terminate this contract before June 1, 1944.

The Brewery Workers contends that its contract of July 1, 1944, is a bar to the instant proceeding. In addition, in its brief, filed after the hearing, the Brewery Workers contends that the Company's contract with the Teamsters, covering all the Company's drivers, also constitutes a bar to a present determination of representatives. Neither the Company nor the Teamsters urges any of the contracts as a bar and both desire an election.

In view of the notices to terminate the July 1, 1943 contract given by both the Company and the Brewery Workers prior to June 1, 1944, that contract clearly does not preclude a present determination of representatives. The Brewery Workers' contention that the over-all contract of the Company and the Teamsters is a bar, is equally without merit, inasmuch as the Brewery Workers is not a party to that contract and neither of the parties thereto raises it as a bar.

In view of the conflicting claims to representation made by the Teamsters and the Brewery Workers with respect to its beer truck drivers, the Company filed the instant petition on August 31, 1944.

A statement of a Board agent, introduced into evidence at the hearing, indicates that both the Teamsters and the Brewery Workers represent a substantial number of employees in the unit which each of them alleges to be appropriate.[4]

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 contends, and the Company apparently agrees, that all the Company's truck drivers constitute an appropriate unit. The Brewery Workers contends that the truck drivers who deliver beer within the city of Terre Haute and the adjoining town of West Terre Haute, an area hereinafter called the city limits, constitute an appro-

[4] The Field Examiner reported that the Teamsters submitted a membership roll with seven names, all of which appeared on the Company's July 29, 1944, pay roll, which contained the names of nine truck drivers. The Brewery Workers submitted two membership books, each of which bore the name of a beer truck driver on the said pay roll. None of the names submitted by the Teamsters is that of a beer truck driver.

priate unit apart from the remaining drivers. In its brief, the Brewery Workers makes the alternative contention that all beer truck drivers of the Company and of Paul E. Pfeifer, Inc., another Terre Haute company, comprise a single appropriate unit.

The Company has been engaged in the wholesale grocery business since 1908. Before 1933 it distributed non-alcoholic beer, and in 1933 added draft beer to its line of merchandise. Draft and bottled beer constitute 15 percent of the Company's business. It employs approximately nine truck drivers.

Prior to the spring of 1944, the Company's drivers, regardless of their union affiliation, delivered draft and bottled beer in the city limits as well as beyond, in addition to other items, as business requirements dictated. There was a "gentlemen's agreement" between the Company and the Brewery Workers that at least one of the Company's drivers would always be a member of the Brewery Workers, and apparently the Teamsters did not object.

Since April 12, 1944, all beer within the city limits has been delivered by two drivers [5] who are members of the Brewery Workers. The Brewery Workers first asserted its allegedly exclusive jurisdiction over the delivery of beer, when, in November 1943, the Company did not employ a single driver belonging to the Brewery Workers. On April 12, 1944, the Company, on the basis of the Brewery Workers' closed-shop contract, consented to a State Court decree enjoining it from employing any person not a member of the Brewery Workers to handle beer within the city limits, while the Teamsters orally promised not to assert jurisdiction over beer truck drivers during the life of the injunction which, by its terms, expired on July 1, 1944, simultaneously with the Brewery Workers' contract.

All the Company's drivers work under a single supervisor and are primarily engaged in transporting merchandise. They all work a 40-hour week, the two beer truck drivers being paid $35 and the other seven drivers $34 weekly.[6] All of them collect cash payments for deliveries, issue company receipts, are covered by one blanket surety bond, and attend the same safety meetings. All drivers, except the two beer truck drivers, work out of the Company's warehouse. Because of wartime shortages, the two beer truck drivers haul from transports directly to consumers. In normal times the Company stores beer in its warehouse where cold storage facilities are available. All truck drivers have State chauffeurs' licenses and require no others.

[5] These two drivers deliver both draft and bottled beer but handle no other type of merchandise. They never work beyond the city limits The remaining drivers, who deliver the Company's general merchandise, also deliver bottled beer, but only beyond the city limits No draft beer is delivered beyond the city limits.

[6] This difference in wages is due to the separate contracts in effect prior to July 1, 1944.

In support of its contention for a multiple-employer unit, the Brewery Workers points to its recent 1943 contract with the Company, signed by both the Company and Paul E. Pfeifer, Inc., as employers. Apart from this fact, however, the record is barren of any evidence revealing a history of collective bargaining on the basis of a multiple-employer unit, we note, moreover, that the Company, while not specifically opposing a multiple-employer unit since it was never suggested at the hearing, apparently agrees with the Teamsters that all its truck drivers comprise an appropriate unit and consequently does not affirmatively manifest a desire to act concertedly with others regarding its labor relations.[7] Therefore, we find no basis on which to establish a multiple-employer unit.

We turn now to the question of whether all the Company's truck drivers should be included in a single unit or whether the beer drivers on the one hand, and the remaining drivers on the other, may appropriately constitute two separate units. The similar supervision, duties, skill, and working conditions of all the Company's truck drivers clearly indicate that they comprise a functionally coherent, homogeneous group having common interests with respect to collective bargaining. The Board has consistently refused to set apart as an appropriate unit any subdivision or group of employees, the nature of whose work is indistinguishable from that of other employees, or whose work is not in itself functionally coherent and distinct.

The Brewery Workers argues that its contracts with the Company covering beer truck drivers during the past 9 years and the Company's uninterrupted employment of at least one truck driver in good standing with the Brewery Workers, constitute a pattern of collective bargaining which compels the establishment of a unit limited to the Company's beer truck drivers. We cannot agree with this contention. The multiplicity of contracts affecting the same employees of the Company and the disregard of the closed-shop features of the contracts specifically treating with beer truck drivers, render this purported history of collective bargaining meaningless with respect to the determination of an appropriate unit in this proceeding.

Consequently, in view of the homogeneity, functional coherence, and common interests of all the Company's truck drivers, and the absence of a compelling history of collective bargaining, we find that all the Company's truck drivers, excluding 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.

[7] See *Matter of George F. Carleton & Company*, 54 N. L. R. B 22.

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 limitation and additions set forth in the Direction.[8]

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Chas. W. Bauermeister Co., Inc., Terre Haute, Indiana, 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 Eleventh 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 the 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 they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 144, A. F. L., or by International Union of United Brewery, Flour, Cereal & Soft Drink Workers of America, Local No. 85, for the purposes of collective bargaining, or by neither.

[8] The Brewery Workers may withdraw from the election by serving written notice of such intention upon the Regional Director for the Eleventh Region within 5 days after the date of the Direction of Election herein.