

IN THE MATTER OF GENERAL BEVERAGES COMPANY,¹ EMPLOYER *and* INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS, LOCAL UNION 196, CIO, PETITIONER

Case No. 32-RC-93.—Decided February 15, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

Upon the entire record in this case, the Board finds:

1. The Employer is a Tennessee corporation having its principal office and place of business in Memphis, Tennessee. It holds franchises for bottling Canada Dry, Nu-Grape and Suncrest Orange beverages. During the fiscal year ending June 30, 1948, it purchased \$110,800 worth of raw materials, of which 74 percent originated in States other than Tennessee. The syrups which the Employer purchases from its licensors are shipped directly to the Employer from outside the State of Tennessee. We find, contrary to the contention of the Employer, that it is engaged in commerce within the meaning of the National Labor Relations Act.³

2. The labor organization named below claims to represent employees of the Employer.

¹ The name of the Employer appears as amended at the hearing.

² The hearing officer's denial of the Employer's motion to dismiss the petition because the Petitioner did not show that it had complied with Section 9 (f), (g), and (h) of the Act is hereby affirmed; such showing is purely an administrative matter for the Board to determine and not litigable at a hearing. *Matter of General Plywood Corporation*, 79 N. L. R. B. 1458; *Matter of Lion Oil Company*, 76 N. L. R. B. 565.

*Chairman Herzog and Members Reynolds and Gray.

³ *Matter of Dr. Pepper Co. d/b/a Dr Pepper Bottling Co.*, 78 N. L. R. B. 1261; *Matter of Coca-Cola Bottling Company*, 74 N. L. R. B. 1098.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's Memphis, Tennessee, plant, excluding driver-salesmen,⁴ office and clerical employees, and all supervisors as defined in the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local Union 196, CIO.

⁴ The Employer's representatives testified without contradiction that the driver-salesmen have authority to hire and discharge their helpers, and that they have exercised such authority. We find that the driver-salesmen are supervisors within the meaning of the Act, and we shall therefore exclude them.