

In the Matter of GENERAL BEVERAGES COMPANY, EMPLOYER *and*  
INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL,  
SOFT DRINK AND DISTILLERY WORKERS, LOCAL UNION 196, CIO,  
PETITIONER

*Case No. 32-RC-93*

SUPPLEMENTAL DECISION  
AMENDED DESCRIPTION OF UNIT  
AND  
SECOND DIRECTION OF ELECTION

*August 15, 1949*

On February 15, 1949, the National Labor Relations Board issued its Decision and Direction of Election in this case.<sup>1</sup> On February 28, 1949, the Petitioner filed a motion to reopen the record to adduce further evidence as to the status of the Employer's driver-salesmen. Thereafter, the Employer filed an answer to the Petitioner's motion. On March 11, 1949, the Board issued an order granting the motion, reopening the record, and remanding the case to the Regional Director for further hearing.

On March 25 and 26, and April 26, 1949, a further hearing in this proceeding was held at Memphis, Tennessee, before Richard C. Keenan, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

The Petitioner seeks to include the Employer's driver-salesmen and their helpers in a unit of production and maintenance employees at the Employer's Memphis, Tennessee, bottling plant. The Employer contends that the driver-salesmen should be excluded as supervisors. On the record made at the first hearing, the Board found, on certain uncontradicted testimony offered by the Employer, that the driver-salesmen were supervisors, and excluded them from the

<sup>1</sup> 81 N. L. R. B. 647.

<sup>2</sup> The hearing officer referred to the Board the Employer's motion to strike from the record all the proceedings pursuant to the Board's order reopening the record on the grounds, (1) that the reasons asserted by the Petitioner in support of its motion to reopen the record were not true, and (2) that nothing new had been added by this portion of the record. This motion is hereby denied.

85 N. L. R. B., No. 126.

unit found appropriate. Both the Petitioner and the Employer introduced additional evidence at the reopened hearing in support of their respective contentions.

Upon the entire record in the case the Board makes the following supplemental findings of fact:

The Employer operates a comparatively small beverage bottling business,<sup>3</sup> conducted under management of the Employer's president, who is assisted by an office manager, a sales supervisor, and a bottling foreman. The sales supervisor is in charge of the driver-salesmen, and coordinates their work so that none of them encroaches upon the route or territory assigned to any other salesman. He also goes out on the route with new men to train and instruct them. During the slow seasons he drives a truck on one of the Employer's routes. Each of the Employer's driver-salesmen usually is assisted by one helper,<sup>4</sup> who helps him load the truck at the plant and carry the bottles to the premises of the various retailers to whom the Employer's beverages are sold. Both the driver-salesman and his helper report to the plant after their work on the route is completed, where they unload the empties and sometimes reload their truck, to be ready for the next day's trip.

Usually, the driver-salesmen and their helpers go to the plant in the morning a little before the other employees arrive, and reload their trucks. Frequently, if a driver-salesman is without a helper on a particular morning, he inquires of his supervisor, the bottling foreman, or the president himself, and if any of these men know of a helper who is available they refer him to the driver. If there is none to spare, they usually select one from among the groups of men who often come to the plant in the morning inquiring for work. If there are none available from this source, helpers are often obtained by the Employer from the local employment office.

It appears, however, that on some occasions, when a driver-salesman has been in need of a helper and could not be supplied with one from the plant, either the president or the supervisor has told the driver-salesmen to go out and pick one up for himself. On a number of occasions the president or the supervisor has discharged undesirable helpers. However, on infrequent occasions when a driver-salesman worked with a helper who was utterly undesirable, the driver-salesman has dispensed with such helper in the middle of the trip. Sometimes when a helper has quit in the middle of his day's work, a driver-salesman has himself procured another helper while out on his route.

<sup>3</sup> At the time of the second hearing there were employed at the Employer's plant 8 driver-salesmen in addition to the sales supervisor, 9 helpers, and about 9 or 10 other employees.

<sup>4</sup> The record discloses only one instance in which a driver-salesman has had more than a single helper.

The driver-salesmen report the time worked by their helpers, and receive from the Employer the helpers' pay, which they transmit to the helpers.

Careful examination of the entire record does not support the contention of the Employer that its driver-salesmen have been generally instructed or authorized to hire and discharge their helpers, or that they have in fact hired and discharged helpers as a general practice.<sup>5</sup> The Board has recently held in a case similar to this, wherein the driver-salesmen's direction of the simple activities of their individual helpers was routine in character, that the authority of these driver-salesmen was like that of a skilled craftsman with respect to a single helper working under his direction.<sup>6</sup> On the record now before us, we conclude, as we held in that case, that the Employer's driver-salesmen are not supervisors within the meaning or intent of the Act.<sup>7</sup> We shall include the driver-salesmen and their helpers in the unit.

#### AMENDED DESCRIPTION OF UNIT

It is hereby directed that the unit description shall be amended in accordance with this Supplemental Decision, and that the unit found appropriate herein shall be described as follows:

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

#### SECOND 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, 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

<sup>5</sup> The Employer offered the testimony of several members of a local bottlers exchange to the effect that it has been customary in the Memphis, Tennessee, bottling industry for driver-salesmen to hire and discharge their helpers. This evidence, however, is not conclusive as to the status of this Employer's driver-salesmen. Moreover, it is significant in the evaluation of this testimony that in June 1948, one of these very members of the bottlers' exchange entered into a consent election agreement with the Petitioner providing for inclusion of driver-salesmen in a unit of bottling plant employees.

<sup>6</sup> *Matter of Atlanta Coca-Cola Bottling Company*, 83 N. L. R. B., 187.

<sup>7</sup> *Matter of Dr. Pepper Bottling Company*, 78 N. L. R. B. 1261.

of this Second 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.

MEMBERS HOUSTON and MURDOCK took no part in the consideration of the above Supplemental Decision, Amended Description of Unit, and Second Direction of Election.