

IN THE MATTER OF JOHN A. DENIE'S SONS CO., EMPLOYER *and* TRUCK DRIVERS, SALESMEN, WAREHOUSEMEN AND HELPERS, LOCAL 667, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.

Case No. 32-RC-152.—Decided October 21, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Andrew P. Carter, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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-member panel [Chairman Herzog and Members Houston and Murdock].

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

1. The Employer is a Tennessee corporation with its principal office and places of business at Memphis and Raleigh, Tennessee. It is engaged in the manufacture and sale of ready-mixed concrete, concrete blocks, and bricks; it also deals in other building materials such as gravel, wallboard, roofing materials, and steel.

In connection with these operations, the Employer purchases annually \$150,000 worth of cement outside the State. It also purchases from local agents or suppliers unspecified amounts of roofing material, wallboard, and steel, for shipment from points outside the State. The Employer's sales, in 1948, totaled \$3,000,000, of which \$60,000 represented shipments outside the State.

Under these circumstances, we find that the operations of the Employer affect commerce within the meaning of the Act.¹

2. The labor organizations involved claim to represent certain employees of the Employer.

¹*Matter of Alabama Brick & Tile Company, Inc.*, 80 N. L. R. B. 1365; see also *Matter of Spickelmier Company and/or Builders Sand & Gravel Company*, 83 N. L. R. B. 452. Compare *Makins Sand & Gravel Co., Inc.*, 85 N. L. R. B., No. 37. The instant case is distinguishable from the *Makins* case in that the Employer here is engaged in the sale of products other than concrete, sand, and gravel, and in that there is a substantial amount of outflow to other States.

86 N. L. R. B., No. 98.

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

4. The appropriate unit:

The Petitioner seeks to sever a unit of the Employer's truck drivers from the production and maintenance unit which the Intervenor, Local 128, United Stove and Allied Product Workers of America, CIO,² has heretofore represented, and which the Intervenor contends is the only appropriate unit. The Employer takes a neutral position.

The Intervenor urges the past bargaining history on a more inclusive basis to support its position. We find no merit in this contention. We have often held that truck drivers comprise a skilled group which may be established as a separate unit notwithstanding a bargaining history, as here, on a more inclusive basis.³

Accordingly, we find that the following employees may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All truck drivers of the Employer at its Ready-Mix Plant No. 1 and No. 2 and its warehouse, brickyard and concrete block plant, excluding all production and maintenance employees, office and clerical employees, guards, professional employees, and supervisors.

However, we shall make no final unit determination at this time, but shall be guided in part by the desires of these employees as expressed in the election hereinafter directed. If a majority vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit.

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 of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation

²The name of the Intervenor appears as corrected pursuant to the Board's Order to Show Cause why the Intervenor's motion to correct the record should not be granted.

³*Matter of New England Dressed Meat and Wool Company*, 81 N. L. R. B. 1197; *Matter of National Automotive Fibres, Inc., Findlay Division*, 81 N. L. R. B. 1232.

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 they desire to be represented, for purposes of collective bargaining, by Truck Drivers, Salesmen, Warehousemen and Helpers Local 667, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., or by Local 128, United Stone and Lumber Workers of America, CIO.