

In the Matter of BUR-BEE COMPANY-PASCO, INC., AND BUR-BEE BEE COMPANY-PASCO, INC.,¹ EMPLOYER AND PETITIONER *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 556, AFL, UNION

In the Matter of BUR-BEE COMPANY-PASCO, INC., AND BUR-BEE COMPANY-WALLA WALLA, INC., EMPLOYER *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 556, AFL, PETITIONER

*Cases Nos. 19-RM-42, 19-RM-43, and 19-RC-411.—Decided
March 30, 1950*

DECISION
DIRECTION OF ELECTION ·
AND
ORDER

Upon separate petitions duly filed, a consolidated hearing was held before Melton Boyd, hearing officer. 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 these cases to a three-member panel [Chairman Herzog and Members Reynolds and Styles].

Upon the entire record in these cases,³ the Board finds:

1. The business of the Employers:

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

² At the hearing, Bur-Bee Company-Pasco, Inc., herein called the Pasco Co., moved to dismiss the petition in Case No. 19-RC-411 insofar as it relates to its employees on the ground that the Pasco Co. has been liquidated and its employees are now employed by Bur-Bee Company-Yakima, Inc., herein called the Yakima Co., which is not a party to this proceeding. The hearing officer reserved ruling on the motion for the Board. For the reasons stated hereinafter, the motion is hereby denied.

The hearing officer likewise referred to the Board the Pasco Co.'s motion to withdraw its petition in Case No. 19-RM-43 concerning the Pasco Co.'s former employees on the same ground as that stated above. As the issue concerning the Pasco Co.'s employees is hereinafter disposed of upon consideration of the petition filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Local 556, herein called Local 556, in Case No. 19-RC-411, this motion is granted. See *Archer-Daniels-Midland Co.*, 66 NLRB 246.

³ After the hearing, the Employer moved to correct certain errors in the transcript. No objections having been filed thereto, it is ordered that the transcript be, and it hereby is, corrected in accordance with the motion.

Bur-Bee Company-Walla Walla, Inc., herein called the Walla Walla Co., and the Pasco Co., Washington corporations, are engaged in selling confections, fountain supplies, tobacco, cigarettes, and related merchandise at wholesale in the States of Washington and Oregon. The majority stock of these two corporations, together with that of the Yakima Co., another Washington corporation engaged in a similar enterprise, is owned and controlled by A. F. Paetel. This proceeding is concerned only with the operations of the Walla Walla Co. and the Pasco Co.

The Walla Walla Co. has its principal place of business in Walla Walla, Washington, and conducts its business both there and in Umatilla County, Oregon. During 1949, it sold approximately \$714,000 worth of merchandise, about 40 percent of which represented sales to customers in the State of Oregon. During the same year, it purchased approximately \$268,000 worth of merchandise for use in its operations, of which approximately 95 percent came from sources outside the State of Washington.

The Pasco Co. before its liquidation began on December 24, 1949, conducted its operations in Pasco, Washington. During the period of approximately 6 months following June 1, 1949, when it commenced operations, the Pasco Co. sold approximately \$239,000 worth of merchandise, practically all of which, with the exception of a few sales made in Oregon, was sold within the State. During the same period, it purchased approximately \$210,000 worth of merchandise for use in its operations, of which approximately 95 percent came from sources outside the State.

We find that the Walla Walla Co. is engaged in commerce within the meaning of the National Labor Relations Act and that it will effectuate the policies of the Act to assert jurisdiction over its operations.⁴ In view of our disposition of the issue concerning the representation of the employees of the Pasco Co. in paragraph numbered 4, *infra*, we shall make no determination as to whether the Pasco Co. is engaged in commerce within the meaning of the Act or whether it would effectuate the policies of the Act to assert jurisdiction over its operations.

2. The labor organization involved claims to represent certain employees of the Employers.

3. A question affecting commerce exists concerning the representation of employees of the Walla Walla Co. within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.⁵

⁴ See *Dixie Wholesale Company, Inc.*, 73 NLRB 1203; and *Waples-Platter Company*, 65 NLRB 1074. Cf. *Peter Muscarella, et al., d/b/a Mascarella Company*, 87 NLRB 120.

⁵ The Employers assert that Local 556's petition should be dismissed because the Pasco Co. has been liquidated and its employees are presently employed by the Yakima Co. We find no merit in this contention. The petition embraced not only the former Pasco Co.

4. The appropriate unit:

Local 556 seeks to represent a unit composed of all driver salesmen and warehousemen employed by the Pasco Co. and the Walla Walla Co. excluding all office and clerical employees, guards, professional employees, and supervisors as defined in the Act. The Employers do not disagree with the specific composition of the proposed unit. However, they contend that the employees at Pasco are appropriately part of a unit composed of the Yakima Co. employees, presently represented by an affiliate of Local 556.⁶ There is no history of collective bargaining concerning either the employees of the Pasco Co. or those of the Walla Walla Co.

The Walla Walla Co. employs 11 employees, of whom 8 are stationed at Walla Walla, Washington, 2 at Pendleton, Oregon, and 1 at La Grande, Oregon. Before its liquidation began, the Pasco Co. employed 3 employees, all of whom were stationed at Pasco, which is located about 46 miles northwest of Walla Walla and about 85 miles southeast of Yakima, in the State of Washington. As mentioned above, both of these companies, together with the Yakima Co. are controlled by A. F. Paetel who directly supervises the operations of the Walla Walla Co. and, before its liquidation commenced, supervised those of the Pasco Co. The operations of the Yakima Co. are directly supervised by H. F. Paetel, brother of A. F. Paetel. Notwithstanding their common control, all 3 corporations have been operated independently of each other. During the period of the Pasco Co.'s operations, there were no contacts between its employees and those of the Walla Walla Co., and no appreciable interchange of personnel between these 2 concerns. Moreover, their respective employees were paid on the basis of different salary scales, although their sales commission rates were uniform.

Commencing about December 15, 1949, and continuing through January 13, 1950, the date of the hearing, the Pasco Co.'s merchandise was in the process of liquidation. On the former date, the Yakima Co. assumed the Pasco Co.'s payroll as part of a transaction by which it acquired a portion of the assets of the Pasco Co. Although the Pasco Co. still exists as a corporation, its shareholders have sold its entire stock to the shareholders of the Yakima Co. The record shows

employees but those of the Walla Walla Co. Consequently, a question has been raised concerning the representation of the latter employees, irrespective of the present "employee" status of the Pasco Co. employees.

⁶ Local 524, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called Local 524, has represented the employees of the Yakima Company for a considerable period of time. Before the hearing in this proceeding began, the Board was administratively advised that Local 524 had no interest in either the Pasco Co. or the Walla Walla Co. employees and that both groups were within the jurisdiction of Local 556.

that the Pasco Co. is being liquidated primarily because of the Employer's inability to operate this enterprise at a profit during the 6-month period of its existence as a corporation. Upon completion of the liquidation process, the Employer intends to close the warehouse that formerly served as a base of operations for the Pasco Co. Thereafter, the Pasco area will be serviced with merchandise coming from the Yakima Co. In addition, the Employer intends to replace the 3 former Pasco Co. employees who are presently on the Yakima Co.'s payroll. Some of these replacements will be stationed at Pasco and the others at Yakima. All will be part of the Yakima Co.'s working force and will be supervised directly by that company's manager.

In view of all the foregoing, we are persuaded that a unit confined to the employees of the Walla Walla Co. is appropriate. A unit composed of the employees of the latter company and the former employees of the Pasco Co. would have no justification based upon the Employer's present administrative organization, particularly because of the recent liquidation of the Pasco Co. and the transfer of its employees to the Yakima Co. Such a unit, in fact, would constitute an arbitrary grouping of employees.⁷

Accordingly, we find that all driver salesmen and warehousemen employed by the Bur-Bee Company-Walla Walla, Inc., at Walla Walla, Washington, and Pendleton and La Grande, Oregon, excluding all office and clerical employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of 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, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll 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

⁷ See *Georgia Fertilizer Company*, 83 NLRB 180, and cases cited therein. See also *Socony-Vacuum Oil Company, Inc.*, 72 NLRB 1086. Cf. *The Acme, Inc.*, 47 NLRB 448.

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 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 556, AFL.

ORDER

It IS HEREBY ORDERED that the Pasco Co.'s motion to withdraw its petition in Case No. 19-RM-43 be, and it hereby is, granted.