

IN the Matter of CANADA DRY GINGER ALE, INCORPORATED, EMPLOYER-PETITIONER and BOTTLERS LOCAL UNION No. 293, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, AND SOFT DRINK WORKERS OF AMERICA, CIO and JOINT LOCAL EXECUTIVE BOARD OF CALIFORNIA, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

Case No. 20-RE-52.—Decided April 22, 1947

Mr. H. M. Cubberley, of Los Angeles, Calif., *Mr. Arthur C. Johnson*, of Berkeley, Calif., and *Mr. William J. Williams*, of New York City, for the Employer.

Gladstein, Anderson, Resner, Sawyer & Edises, by *Messrs. Herbert Resner* and *Harold H. Bondy*, of San Francisco, Calif., for the Brewery Workers.

Messrs. P. H. McCarthy, F. Nason O'Hara, and *William H. Ahern*, of San Francisco, Calif., for the Teamsters.

Mr. Henry W. de Kozmian, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at San Francisco, California, on September 24 and 25, and October 1, 1946, before John Paul Jennings, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Canada Dry Ginger Ale, Incorporated, is a Delaware corporation engaged in the manufacture and distribution of carbonated beverages. The Employer's plants in Berkeley and San Francisco, California, are solely involved in this proceeding. The Employer annually purchases

raw materials of substantial value, approximately 30 percent of which is shipped to the Employer from points outside the State of California. The Employer annually sells finished products from its Berkeley, California, plant, valued in excess of \$500,000, approximately 30 percent of which is shipped to points outside the State of California.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Bottlers Local Union No. 293, International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, herein called the Brewery Workers, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.¹

Joint Local Executive Board of California, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Brewery Workers has represented employees of the Employer since 1940. On August 15, 1945, the Employer executed a contract with the Brewery Workers covering the employees in the unit herein involved, which provided that it should remain in effect until August 15, 1946, and from year to year thereafter in the absence of notice to modify or change given by either party 30 days prior to August 15, 1946, or any subsequent anniversary date. On July 14, 1946, William Ahern, at that time secretary of the Brewery Workers and an international representative of its International, wrote to the Employer stating that he desired to reopen the 1945 contract, and enclosing a copy of a proposed agreement.² Thereafter, the Employer received conflicting claims, from the Brewery Workers on July 26, 1946, and from the Teamsters on July 29, 1946, each asserting that it was the representative of employees of the Employer. On August 5, 1946, the Employer filed the petition in this proceeding.

¹ We find no merit in the Teamsters' contention that the Brewery Workers is not a labor organization within the meaning of the Act because of its suspension from the American Federation of Labor in 1941. The Brewery Workers has represented employees of the Employer for the purposes of collective bargaining since 1940 and seeks to continue to do so. Thus, it is clearly a labor organization within the meaning of the Act.

² We find no merit in the Brewery Workers' contention that the contract was reopened for limited purposes only and therefore constitutes a bar to an election at this time. Ahern's letter reopening the contract requested changes in wages and working conditions, and contained no language indicating an intent to limit the reopening of the 1945 agreement. Furthermore, we note that the 1945 agreement does not provide for reopening for limited purposes in addition to the general reopening provisions.

Since Ahern's notice to reopen the 1945 contract was given prior to that agreement's automatic renewal date,³ we find that the 1945 agreement did not renew itself.⁴ There is therefore no bar to a current determination of representatives.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The parties stipulated that, if the Board were to find a unit limited in scope to employees of the Employer, the appropriate unit should include all employees of the Employer at its Berkeley and San Francisco plants, excluding drivers and helpers, car washers, office and clerical employees, salesmen, and all supervisory employees.⁵

The Teamsters contends, however, that the appropriate unit should be a multiple-employer unit. The Brewery Workers urges that a single-employer unit is appropriate. The Employer took no position at the hearing concerning the scope of the appropriate unit.

The Teamster's contention is predicated upon a prior history of collective bargaining between the Brewery Workers and a committee of the so-called Bottlers Association representing bottling plants in the San Francisco area. Although there is some evidence of a prior history of collective bargaining on a multiple-employer basis between the Bottlers Association, in which the Employer participated, and the Brewery Workers, we believe that a unit limited to employees of the Employer is appropriate, since the Employer, whatever its prior policy on collective bargaining may have been, has now indicated that it intends to pursue an independent course with respect to its labor relations.⁶

This conclusion is based upon the following facts. Between the time the Employer received Ahern's letter of July 14, 1946, and the receipt of conflicting claims by the Employer from the Brewery Workers on July 26, 1946, and from the Teamsters on July 29, 1946, the Employer negotiated with Ahern directly without reference to the Bottlers Association. Furthermore, after the receipt of those claims the Employer promptly filed the petition in this proceeding on August 5,

³ See *Matter of Craddock-Terry Shoe Corp.*, 55 N. L. R. B. 1406.

⁴ Nor do we find merit in the Brewery Workers' argument that it should not be held responsible for Ahern's letter inasmuch as Ahern was at that time acting in the interest of the Teamsters. Whatever Ahern's motive may have been, he was an officer of the Brewery Workers at the time he reopened its contract and had at least apparent authority to do so. We will look no further than that. See *Matter of Adirondack Transit Lines*, 54 N. L. R. B. 994.

⁵ The parties stipulated that the warehouse and assistant warehouse superintendents at the Berkeley plant and the assistant warehouse superintendent at the San Francisco plant were supervisory employees within the meaning of our customary definition.

⁶ *Matter of Hummel Furniture Manufacturing Company*, 72 N. L. R. B. 301.

1946, thereby adopting an individual course of conduct. This course of conduct was different from that followed by the Bottlers Association, which on September 17, 1946, executed a recognition agreement with the Teamsters. The conclusion is inescapable that the Employer is no longer accepting the actions of the Bottlers Association and that a unit limited to employees of the Employer is appropriate.

Accordingly, we find that all employees of the Employer's Berkeley and San Francisco, California, plants, excluding drivers and helpers, car washers, office and clerical employees, salesmen, the warehouse and assistant warehouse superintendents at the Berkeley plant, the assistant warehouse superintendent at the San Francisco plant, and all other 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.

V. THE DETERMINATION OF REPRESENTATIVES

We reject the Teamsters' contention that it should be certified on the record. We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION ⁷

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Canada Dry Ginger Ale, Incorporated, Berkeley, California, 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 Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, 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 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 Bottlers Local Union No.

⁷ Any participant in the election herein may, upon its prompt request to and approval thereof by the Regional Director, have its name withdrawn from the ballot.

293, International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, CIO, or by Joint Local Executive Board of California, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.