

CHAIRMAN HERZOG, dissenting:

I join Mr. Reynolds in believing that an election should be directed here, limiting my reasons to those recited in the last paragraph of his opinion. His final sentence seems to me compelling.

MUSWICK BEVERAGE AND CIGAR CO., INC.¹ and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 878, AFL, PETITIONER. *Case No. 32-RC-388. December 12, 1951*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John C. Truesdale, 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

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

1. The Employer, an Arkansas company, with its sole office and place of business at Little Rock, Arkansas, is engaged in the wholesale distribution of beer, tobacco products, and sundry merchandise, and is the exclusive distributor of Pabst Blue Ribbon Beer for Pulaski County, Arkansas. During the year 1950 the Employer's purchases totaled \$676,868, of which more than 90 percent was shipped directly from points outside the State of Arkansas. During the same year, the Employer's sales amounted to \$772,964, all of which was sold within the State of Arkansas.

As the direct inflow is in excess of \$500,000 in value annually, we find, contrary to the Employer's contention, that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction in this case.²

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

3. No 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, for the following reasons:

The Petitioner seeks a unit of all beer driver salesmen, excluding merchandise or foot salesmen,³ merchandise driver salesmen, mer-

¹ The Employer's name appears as amended at the hearing.

² *Federal Dairy Co., Inc.*, 91 NLRB 638.

³ The parties stipulated to the exclusion of this category.

chandise deliverymen, warehousemen, office and clerical employees, and all supervisors as defined in the Act. The Employer contends that the union should also include merchandise driver salesmen, merchandise deliverymen, and warehousemen. The record contains no evidence of a history of collective bargaining affecting the employees involved herein.

The four beer driver salesmen sell beer from trucks and are paid 75 cents an hour for a 48-hour week, plus commission. Operating out of the same warehouse of the Employer are the three merchandise salesmen drivers who sell merchandise from trucks and receive \$180 a month or the commission on their sales, whichever is higher.⁴ The three merchandise deliverymen have a 45-hour week and are paid 75 cents an hour and time and a half for overtime. They divide their time between delivering merchandise sold by the merchandise or foot salesmen and working in the warehouse along with the two warehousemen. The latter are hourly paid employees who, in addition to their other duties, help the beer and merchandise driver salesmen in loading and unloading their trucks. Three of the beer driver salesmen were formerly warehousemen or merchandise deliverymen. Although the two groups of driver salesmen and the warehousemen each have separate supervisors, they are under the over-all supervision of the Employer's president and his wife, who immediately direct the activities of the merchandise deliverymen.⁵

It appears from the foregoing that there is a substantial community of interests between the beer driver salesmen and other employees of the Employer. We therefore find that a unit confined to the beer driver salesmen is too limited in scope to constitute a separate unit.⁶ The only basis for its establishment is the extent of the Petitioner's organization among the Employer's employees. However, the Act as amended precludes a finding on that basis alone.⁷ Accordingly, we shall dismiss the petition herein.⁸

Order

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

⁴ Merchandise driver salesmen spent 1 night a week on the road; the beer driver salesmen report in each day.

⁵ However, the beer supervisor also directs some of the work done by these employees when they are in the warehouse.

⁶ *Edward Hines, Inc.*, 90 NLRB 1140.

Differences in mode of payment are not conclusive or controlling in unit determinations. *Wm. P. McDonald Corporation*, 83 NLRB 427.

⁷ *Riegel Paper Corporation*, 96 NLRB 779.

⁸ Although the Petitioner is willing to participate in an election for a larger unit, we are dismissing the petition because the Petitioner has failed to make an adequate showing of interest among the employees in the over-all unit.