

tion with an additional provision of this recent amendment to the Act requiring compliance by unions entering into union-security agreements,⁷ we note from our records that the International was in compliance at the time the renewed contract became effective on April 1, 1951, and that the Local and the New England Joint Board had been in compliance within the preceding 12 months, and were at the time in the process of perfecting renewal of their compliance.

We find that the existing contract between the Employer and the Intervenor is a bar to the petition herein. Accordingly, we shall dismiss the petition.

Order

IT IS **HEREBY** ordered that the petition for decertification herein filed by Harry Leonard, be, and it hereby is, dismissed.

⁷ Sec. (b) of Public Law 189 amends Sec. 8 (a) (3) of the existing Act to provide that certain union-security agreements may be entered into if the labor organization concerned "has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with Sections 9 (f), (g), (h). . . ."

MIKE AND JOE CALDARERA, PARTNERS, D/B/A FALSTAFF DISTRIBUTING Co.¹ and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 878, AFL, PETITIONER. *Case No. 32-RC-386. January 8, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, 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 is engaged in the wholesale distribution of beer in Pulaski County, Arkansas. During a 12-month period ending August 1951, the Employer purchased beer to a net value of about \$320,000, all from the St. Louis, Missouri, brewery of Falstaff Brewery Corporation. In that same period, the Employer's total sales amounted to less than \$500,000, all made to retail outlets in Pulaski County. Also during that period, the Employer returned empty beer containers, referred to by the parties as *cooperage*, to Falstaff Brewery Corporation in Missouri in an amount valued at about

¹ As amended at the hearing.

\$68,000. The value of the coeprage is based on the amount per case required of the Employer as a deposit when it purchases the beer.

Contrary to the implications which may arise because of the similarity of names, the Employer and Falstaff Brewery Corporation are two distinct and separate companies. Neither has any financial interest in, nor control over, the other, nor are they bound by a written franchise or contract. However, they do function in relation to each other on the basis of an oral arrangement, apparently terminable at will. By this understanding, the Employer sells only Falstaff beer and has the exclusive right to sell such beer in Pulaski County. The Employer has exercised this exclusive right for the past 18 years. The Employer receives from Falstaff Brewery Corporation advertising signs to be inserted in the places of business of the retail outlets served by the Employer. The Employer also shares in the cost of advertising Falstaff beer over local radio stations.

Upon these facts, particularly the shipment by the Employer of coeprage across State lines in excess of \$25,000 in value annually, and also because the Employer operates exclusively as an essential link in a multistate system of distribution, we find that the Employer is engaged in commerce within the meaning of the Act 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. 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 Petitioner seeks a unit of beer driver-salesmen. The Employer would include a part-time warehouse employee and a relief driver, both recently hired. The Petitioner takes no position as to the inclusion of the relief driver but objects to the inclusion of the warehouseman. It apparently bases its objection not on an aversion to having warehouse employees included with driver-salesmen, but only on the irregular nature of the warehouseman's employment.

The warehouse employee in question is the only such employee in the employ of the Employer. He works 2 hours a day when he shows up. Apparently, there is no assurance that he will report on any particular days, or, for that matter, that he will report at all. When working, he assists in loading and unloading the trucks. We shall include the warehouseman in the unit. The question of his right to vote in the selection of a bargaining representative will be dealt with below.

² *Stanslaus Implement and Hardware Co., Ltd.*, 91 NLRB 618; *The Borden Company, Southern Division*, 91 NLRB 628; *William A. Mosow*, 92 NLRB 1727 and 86 NLRB 680; *Squirt Distributing Company*, 92 NLRB 1667.

The relief driver works regularly, filling in for other drivers if any are absent, or otherwise assists on the trucks. At the time of the hearing, it was testified that he was on a 2-week trial, that if he worked out, he would be kept on regularly. We shall include the relief driver in the unit.

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

All beer driver-salesmen, including the relief driver, and the warehousemen, but excluding office and clerical employees, and supervisors³ as defined in the Act.

As the warehouseman's tenure of employment is irregular and uncertain, we find that he does not have sufficient interest in the terms and conditions of employment in the unit to entitle him to vote in the election hereinafter directed. The relief driver, however, is entitled to vote, as he performs work similar in nature to that of the regular employees and has a reasonable expectation of continued employment.⁴

[Text of Direction of Election omitted from publication in this volume.]

³ The parties agree on the exclusion of an employee who is a nephew of one of the partners who compose the Employer. There is some discussion in the record as to the supervisory status of this employee. We will exclude him from the unit on the basis of his close relationship to management, without deciding whether or not he is a supervisor. *Rosedale Passenger Lines, Inc.*, 85 NLRB 527

⁴ *Gerber Products Company*, 93 NLRB 1668.

R. B. MYERS *and* WALLACE FIDDLER, D/B/A M & F DISTRIBUTING COMPANY¹ *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 878, AFL, PETITIONER. *Case No. 23.-RC-389. January 8, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, 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, a partnership, is a wholesale beer distributor located and doing business in Pulaski County, Arkansas. Under oral agreements terminable at will by the breweries, the Employer

¹ The Employer's name appears as amended at the hearing
97 NLRB No. 149.