

in many cases and has insistently found that compliance with this section is a matter of administrative determination and is not litigable by the parties.<sup>4</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with operations of the Company described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that Respondent cease and desist therefrom and take the following affirmative action designed to effectuate the policies of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent Cooper's Inc., (of Georgia) is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. United Textile Workers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By interfering with, interrogating, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. All production and maintenance employees of Respondent's Millen, Georgia, plant, but excluding all office and clerical employees, professional employees, guards, 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.

5. By refusing to recognize and bargain with the United Textile Workers of America, AFL, as the collective-bargaining agent of employees in the above appropriate unit, the Respondent engaged in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

6. The aforesaid labor practices of the Respondent are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

<sup>4</sup>Sunbeam Corporation, 89 NLRB 469; Wiltse d/b/a Ann Arbor Press, 85 NLRB 58, 188 F. 2d 917 (C. A. 6), cert. denied 342 U.S. 859, Law & Son, 192 F. 2d 236 (C. A. 9); Greensboro Coco Cola Bottling Co., 180 F. 2d (C. A. 4), Vulcan Forging Co., 168 F. 2d 926 (C. A. 6), I. F. Sales Co., 188 F. 2d 931 (C. A. 6), Boston and Lockport Block Co., 98 NLRB 686; Joseph J. Michalik, 201 F. 2d 48 (C. A. 6). Chicago Rawhide Mfg. Co., 105 NLRB 727

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**PEPSI-COLA BUFFALO BOTTLING CORPORATION, Petitioner. and BEVERAGE WORKERS LOCAL 1195 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A.F.L. and BEVERAGE WORKERS LOCAL 195 OF INTERNATIONAL UNION OF BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, CIO and INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, CIO**

COCA COLA BOTTLING COMPANY OF NEW YORK, INC. *and*  
LOCAL 1195, BEVERAGE WORKERS, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMERICA, AFL, Petitioner.  
Cases Nos. 3-RM-87 and 3-RC-1297. January 28, 1954

## DECISION AND ORDER

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, separate hearings were held before Murray S. Freeman and Hymen Dishner, hearing officers. The hearing officers' rulings made at the hearings are free from prejudicial error and are hereby affirmed. Local 1195, Beverage Workers, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the AFL, and Beverage Workers Local 195 of International Union of Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, CIO, herein called the CIO, the only labor organizations involved in the two cases, moved to consolidate them for decisional purposes. Pepsi-Cola Buffalo Bottling Corporation, herein called Pepsi-Cola, and Coca Cola Bottling Company of New York, Inc., herein called Coca Cola, both jointly called the Employers, do not object to such consolidation for purposes of resolving the schism issue raised in each case. We hereby grant the motion to consolidate these cases for decisional purposes.

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

1. The labor organizations involved claim to represent employees of the Employers.

2. No question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

On June 1, 1953, the CIO executed separate collective-bargaining agreements with each Employer, to run until May 31, 1955, as to Coca Cola, and to April 30, 1955, as to Pepsi-Cola. The petitions herein were filed on October 2 and 9, 1953. The CIO urges its June 1953 contracts as bars to an election at this time. The AFL contends that neither contract is a bar because of a schism in the rank of the CIO. The Employers take no position in this respect.

Alleged schism: The labor organizations involved are both amalgamated locals, representing or claiming to represent employees at numerous companies in the Buffalo area. Thus, the facts herein are applicable to both Coca Cola and Pepsi-Cola with respect to the existence of a question concerning representation.

On July 22, 1953, a meeting of the CIO's local executive board, attended by all local officers, was held. This executive board voted unanimously to disaffiliate from the CIO and affiliate with

with the AFL, and within the next few days applied to the Teamsters for a charter. The charter was received early in August.

About the end of July and the beginning of August, petitions were circulated in the companies in the Buffalo area, some by officers,<sup>1</sup> and some by stewards, which stated that the signatories "affirm and ratify the action of the Executive Board of Local Union No. 195 in disaffiliating from the . . . CIO and in affiliating with the . . . AFL, as Local Union 1195." Although the separate petitions were not all sufficiently identified so as to be considered competent evidence, the record does establish that a clear majority of the employees among the various plants, including a large majority of the employees at Coca Cola and Pepsi-Cola, signed these documents.

On August 5, 1953, the AFL wrote to Coca Cola and Pepsi-Cola, stating that Local 195 was affiliated with the Teamsters as Local 1195, and advising the Employers that it was the bargaining agent of their employees.

Then, on August 11, 1953, a meeting was called by Michael Achatz, at this time secretary-treasurer of the AFL (formerly secretary-treasurer of the CIO). The notice of the meeting did not state its purpose. At this meeting a vote of confidence in the action of the former executive board of the CIO was passed by a vote of 60 to 1. There are over 200 members of the amalgamated local.

Upon the basis of the foregoing, and on the entire record in these cases, we are convinced that the application of the schism doctrine is not warranted. The employees did not vote at a meeting of the contracting union to disaffiliate from that union. The only membership meeting at which disaffiliation was voted upon was called by officers of the AFL, and after a charter had been received from the AFL. The approximately 60 employees at the meeting out of the total membership of more than 200 in the CIO then merely took a "vote of confidence" in the action of their former officers. Thus, it cannot be said that a schism has occurred in the sense in which the Board has used that term.<sup>2</sup>

We find, accordingly, that the current contracts between the CIO and the Employers bar new determinations of representatives at this time, and we shall dismiss the petitions.

[The Board dismissed the petitions.]

Member Rodgers took no part in the consideration of the above Decision and Order.

<sup>1</sup> Although the record is not entirely clear, it appears that the officers of the CIO were, by the time these petitions circulated, already officers of the AFL.

<sup>2</sup> Rex Curtain Corporation, 97 NLRB 899; Boyle-Midway, Inc. 97 NLRB 895.