

In the Matter of AMERICAN BAKERIES COMPANY, EMPLOYER *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 258, A. F. OF L., PETITIONER

Case No. 10-R-2494.—Decided June 27, 1947

Messrs. William K. Meadow and G. Grant, both of Atlanta, Ga., for the Employer.

Mr. Phil B. Wells, of Orlando, Fla., for the Petitioner.

Mr. Jerome A. Reiner, of counsel to the Board.

DECISION
AND
DIRECTION

Upon a petition duly filed, the National Labor Relations Board on March 19, 1947, conducted a prehearing election among employees of the Employer in the alleged appropriate unit, to determine whether or not they desired to be represented by the Petitioner for the purposes of collective bargaining.

At the close of the election the parties were furnished a Tally of Ballots. The Tally shows that of the approximately 27 eligible voters, 11 cast valid ballots, of which 8 were for and 3 against the Petitioner. There were 12 challenged ballots and 1 void ballot.

Thereafter, a hearing was held at Orlando, Florida, on April 28, 1947, before Oscar Geltman, 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

American Bakeries Company is a Florida corporation with 19 bakeries located in the States of Florida, Georgia, North Carolina, South Carolina, Virginia, Tennessee, Louisiana, and Alabama, where

it is engaged in the baking, sale, and distribution of baked goods at wholesale. The principal office of the Employer is located in Atlanta, Georgia. During the year 1946 it purchased raw products valued in excess of \$100,000 for use in its Orlando, Florida, plant, of which 75 percent was obtained from points outside the State of Florida. During the same period it sold finished products from this plant valued in excess of \$500,000, all of which were shipped to points within the State of Florida.

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

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

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 Petitioner seeks a unit of 11 city driver salesmen and 1 relief driver who are employed in the Employer's Orlando, Florida, plant. The Employer contends that the appropriate unit should also include 15 driver-salesmen who operate outside the city of Orlando.

All the city and outside drivers sell and deliver the baked goods to grocery stores and restaurants located on their routes, and make collections therefor. The city drivers work within the city of Orlando; the so-called outside drivers cover an area 80 miles north of Orlando, 75 miles south of Orlando, and 70 miles to the east and 60 miles to the west of Orlando. The city drivers load their trucks at the Orlando plant, while the outside drivers obtain their products at warehouses maintained and stocked by the Employer in their respective territories; in all other respects the duties and working conditions of all drivers are similar. Each driver is assigned a route and is required to complete deliveries and collections on that route. They do not have definite working hours and are not required to punch a clock. They all receive the same salary and same rate of commission. All receive their salary on Saturday, the city drivers being paid by the

company cashier at the Orlando plant, while the outside drivers deduct their salaries from the Saturday receipts. The commissions of the outside drivers are paid on Monday when they receive salary receipts from the Employer authorizing them to deduct the amounts due them from that day's receipts. All the drivers turn in daily reports; the city drivers turn in their reports in person at the Orlando plant while the outside drivers mail them in or send them in by company truck. The employment qualifications of all driver salesmen are the same. The relief driver whom the Petitioner seeks to include in the unit relieves both city drivers and outside drivers.

All driver salesmen are under the ultimate supervision of the plant manager in Orlando who has the authority to hire and discharge them. Under the plant manager are 3 sales supervisors,¹ who individually supervise both city drivers and outside drivers. When necessary, a sales supervisor will substitute for a driver by making the actual deliveries and collections on any route, whether or not the particular route is under his individual supervision. Three or four times a year a meeting of all drivers of the Employer is held in Orlando where they confer with the plant manager and sales supervisors and discuss common problems and methods of promoting business. The trucks used by the drivers belong to and are maintained by the Employer. Repairs on trucks driven by city drivers are made at the Employer's garage in Orlando. Minor repairs on trucks of outside drivers are made by mechanics in the local areas of the outside drivers and the Employer pays the bills therefor. All major repairs on trucks of outside drivers are made at Orlando. The Employer's labor and industrial relations policies are formulated and controlled by its main office in Atlanta, Georgia, and are applied indiscriminately to city and outside drivers throughout the entire 19 plants that make up its organization.

In view of the foregoing we are of the opinion that the interests of the city drivers and the outside drivers are closely allied.² The similar supervision, duties, and wages, hours, and working conditions of all the driver salesmen of the Employer clearly indicate that they comprise a functionally coherent, homogeneous group having common interests for collective bargaining purposes. Under these circumstances, we find that there is no reasonable basis for confining a unit

¹ The parties stipulated, and we find, that the sales supervisors are supervisory employees within the Board's customary definition of the term.

² The record indicates that the Board has certified units of driver salesmen at the Employer's plants at Atlanta, Georgia, and Gadsden, Alabama, and that the Employer has entered into collective bargaining contracts with the bargaining agents of these employees. In both instances these certifications followed elections held pursuant to consent election agreements in which both city drivers and outside drivers were included in the respective units.

to the city drivers.³ Accordingly, we shall include all city drivers and outside drivers of the Employer's Orlando plant in one unit.⁴

We find that all driver salesmen of the Employer, including city drivers, outside drivers, and the relief driver, but excluding the sales supervisors 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

The 12 ballots cast by the outside drivers were challenged by the Petitioner and were therefore not counted. In accordance with our unit determination above, we shall overrule the challenges to their ballots.

DIRECTION

IT IS HEREBY DIRECTED that the Regional Director for the Tenth Region open and count the ballots of the outside drivers, and thereafter prepare and serve on the parties in this proceeding a Supplemental Tally of Ballots together with a report embodying therein his findings and recommendations.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction.

³ See *Matter of Nash Motors Division of Nash Kelvinator Sales Corporation (Philadelphia Zone)*, 68 N. L. R. B. 651, 653

The Petitioner, in support of its contention for a smaller unit, asserted that it has no jurisdiction over the outside drivers. While such circumstance is one of the factors considered by the Board in making a unit determination, it is nevertheless not a conclusive one where, as here, there are more cogent countervailing circumstances.

⁴ Cf. *Matter of Wilson and Company, Inc.*, 64 N. L. R. B. 1124, 1126-1129.