

**Maule Industries, Inc. and Building and Construction Materials, Alcoholic and Carbonated Beverages, Processing and Distribution, Drivers & Employees Local No. 290, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Petitioner.** *Case No. 12-RC-9 (formerly 10-RC-3573). May 22, 1957*

### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, hearings were held before Allen Sinsheimer, Jr., and Philip B. Cordes, hearing officers. The hearing officers' rulings made at the hearings are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organization involved claims to represent certain 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 to represent a unit of truckdrivers employed at the 10 plants of the Employer located in the Miami, Florida, area. At the original hearing held on August 22, 1956, the Employer took the position that the unit was inappropriate and that only a unit of all production and maintenance employees at the 10 plants was appropriate. Sometime after the close of such hearing, the Employer moved to reopen the record, alleging, in substance, that since the date of the hearing, it had acquired, by purchase, 8 plants of the firm of Burnup & Sims, located in Palm Beach County, Florida. It contended that any unit found appropriate should include the employees of the newly acquired plants. Thereafter, pursuant to an order of the Board, dated November 16, 1956, the record herein was reopened and the case remanded to the Region for the purpose of taking additional testimony on the issue of the appropriateness of the unit. A supplemental hearing was held on December 11, 1956.<sup>1</sup> The Employer now takes the position that, because the newly acquired plants are an integral part of the Company, any unit which does not include the employees of the Palm Beach County plants is inappropriate. It also argues that, because of factors of integration, central control of operations, and com-

<sup>1</sup> The record shows that the Petitioner appeared at the supplemental hearing and asked for a postponement so as to permit it to file unfair labor practice charges against the Employer. The hearing officer denied the request and the Petitioner withdrew from the hearing.

mon interests, a unit limited to truckdrivers is inappropriate. There is no history of collective bargaining at any of the Employer's plants.<sup>2</sup>

The Employer is engaged in the manufacture and sale of building materials. Its manufacturing operations include the quarrying of stone, crushing stone into assorted aggregates, precasting various concrete forms, mixing and delivering ready-mix concrete, and fabricating steel. Prior to the acquisition on November 1, 1956, of the plants in the Palm Beach area from Burnup & Sims, the Employer's entire business consisted of its 10 plants in the Miami area.<sup>3</sup> Top supervision of the operations at the 10 plants is lodged in an executive vice president. Subject to his authority and directly responsible to him, are a vice president in charge of production and engineering, a vice president in charge of sales, a vice president and treasurer in charge of financial affairs, and a director of personnel. Apparently comprising a lower echelon of supervision, are a number of divisional vice presidents in more immediate control of operations at one or more of the Miami plants. Subordinate supervision is exercised by individual plant managers, plant superintendents, and foremen. The formulation and administration of personnel policies for the Miami area plants, subject to the authority of the executive vice president, is the exclusive province of the personnel director. As part of his duties and responsibilities, the personnel director establishes job classifications, interviews applicants for employment and, except for the Wilton Manor plant, hires all employees. Rates of pay established for specific job classifications are uniform for all Miami plants. All payrolls are prepared at the Employer's central accounting offices and payment of all wages is made from such offices. With some exceptions,<sup>4</sup> labor policies are uniform throughout the 10 plants and all employees share the same vacation and fringe benefits.

With the acquisition of the Palm Beach County plants, the Employer sought to effect a measure of integration between the Palm Beach and Miami plants, and to institute some central control. Certain accounting activities at Palm Beach were brought under central office supervision. Some safety engineering aid was also extended. Workmen's compensation, employee surety bonds, and motor vehicle insurance were brought under coverage of plans in effect in Miami. Inventory

<sup>2</sup> In an earlier proceeding, Case No. 10-RC-3039 (issued June 15, 1955, not reported in printed volumes of Board Decisions and Orders), the Board found a unit of truckdrivers at the 10 plants herein involved to be appropriate. In another proceeding, Case No. 10-RC-2561 (issued December 30, 1953, not reported in printed volumes of Board Decisions and Orders), the Board found a unit of all production and maintenance employees at the same 10 plants appropriate. It appears, however, that the Petitioner was not a party to the latter case and that a separate unit of truckdrivers was not sought.

<sup>3</sup> Of the 10 plants, the 1 apparently farthest north from the Miami area is the Wilton Manor plant near Fort Lauderdale some 20 miles from Miami, Florida.

<sup>4</sup> Truckdrivers, and a few other employees who drive trucks as an incidental part of other job functions, are eligible to, and do, receive safety bonuses. Employees who come in contact with the public are furnished company uniforms.

accounts were consolidated and some surplus items exchanged. Seniority for all employees was made companywide.

However, in other respects, the Palm Beach operation retained its separate identity. Thus, complete supervision of the operation, subject only to the authority of the executive vice president, continued in the hands of local management officials.<sup>5</sup> No apparent change has been made in local job classifications or in working conditions.<sup>6</sup> Hiring, apparently done locally, continues to be the responsibility of local management officials. In addition, no interchange of employees has taken place.

In view of the foregoing circumstances, particularly the substantial measure of autonomy exercised by the Palm Beach County plants, the different conditions of work prevailing there, the lack of employee interchange, the substantial distance separating the Palm Beach operation from the Miami operation,<sup>7</sup> the absence of any bargaining history, and the fact that no labor organization is seeking a broader unit, we find that a unit confined in scope to the employees of the Miami area plants is appropriate.<sup>8</sup>

Alternatively, the Employer contends that, because of integration, centralized control, and common interests, a unit limited to the truckdrivers is inappropriate, and that only a unit of all production and maintenance employees at the 10 plants is appropriate. The Employer employs 700 production and maintenance employees at its Miami plants. Of these employees, 252 are classified as truckdrivers. They are engaged essentially in hauling materials and supplies either within or between the Employer's plants and in making deliveries to the Employer's customers. They drive different types of vehicles depending on the nature of the operations of the plant to which they are assigned. Between deliveries or at the completion of their daily driving assignments or on Saturdays, when deliveries are not usually scheduled, truckdrivers may perform a variety of other tasks, such as warehousing work, operating fork lifts, cleaning and caring for their trucks and equipment, painting, or production work. Most truckdrivers are hired as experienced drivers. Promotions to more

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<sup>5</sup> Seven of the eight plants acquired, which were originally known as the CBS Division of Burnup & Sims, and later designated as the CBS Division of Maule Industries, Inc., were placed under the supervision of the former Burnup & Sims' vice president in charge of sales. The eighth plant originally known as Burnup & Sims of Del Ray, Inc., and later designated as the Del Ray Plant of Maule Industries, Inc., was placed in charge of the Burnup & Sims' former president and general manager.

<sup>6</sup> For example, whereas all drivers in the Miami area are eligible to, and do receive, safety bonuses, such bonuses at the Palm Beach plants are limited to the drivers in the concrete department and to 1 of 3 drivers in the steel department. Furthermore, the concrete drivers at the Palm Beach plant receive a yardage bonus, a type of bonus unknown at Miami plants.

<sup>7</sup> Although the record fails to specify the distance separating the Miami area plants from the Palm Beach area plants, we take judicial notice of the fact that the distance separating the Palm Beach area from the nearest plant of the Miami group, the Wilton Manor plant at Fort Lauderdale, is approximately 42 miles.

<sup>8</sup> *Wells Cargo, Inc.*, 116 NLRB 1248. *Schwein Engineering Co.*, 114 NLRB 173

skilled production jobs are available to them. Truckdrivers, together with other employees, have companywide seniority and share the same benefits and general conditions of employment. However, as previously indicated, truckdrivers are eligible to receive safety bonuses and comprise the principal group of employees who are furnished free uniforms.

Although the time spent in driving and in other activities may vary from operation to operation and from employee to employee, it appears that truckdrivers on the average spend approximately 70 to 75 percent of an average 9- to 11-hour working day in actual driving and in loading and unloading their vehicles.<sup>9</sup> Such testimony as was presented by the Employer showed, for example, that some dump truckdrivers hauling aggregates spend from 45 to 50 percent of their time in actual driving, whereas other dump truckdrivers may spend as much as 70 to 80 percent of their time behind the wheels of their trucks and perform few, if any, nondriving chores. Loading of dump trucks may require 20 to 30 percent of a driver's time depending on whether loading is by hand, by crane, or by conveyer belt.<sup>10</sup> Additional time is also spent by drivers in waiting at the office for their delivery tickets, and in waiting at job sites to deliver their material. In precast operations, where flatbed trucks are principally used, truckdrivers are said to spend approximately 25 to 30 percent of their working time in actual driving, an additional 15 percent in obtaining their delivery tickets, and about 60 percent of their time in loading and unloading their trucks. Loading of such trucks was estimated to require an average of 45 minutes to an hour, and unloading some 30 to 35 minutes, particularly where the trucks are equipped with automatic unloading machinery. As to concrete mixer drivers, the testimony showed that such drivers spend about one-third of their time in actual driving and the remaining two-thirds at the plant or at the job site. The loading of such vehicles customarily takes no more than 15 minutes but the delivery of their contents may take anywhere from 25 minutes to 4 hours depending on the nature of the concrete pour at the job site. Concrete mixer drivers also spend a few minutes each day in washing down their trucks.

The Board has recently reaffirmed its position that truckdrivers who spend a major part of their time in "actual driving," constitute a functionally distinct group entitled to separate representation.<sup>11</sup> In so doing, the Board made it clear that it considered as part of "actual

<sup>9</sup> The Employer's representative stated at the hearing that the Employer was not in a position to estimate percentages of time spent by the drivers in various activities with any degree of accuracy as no detailed records of such time were kept.

<sup>10</sup> Sometimes, in the absence of the conveyer belt operator, a driver operates the conveyer system.

<sup>11</sup> *Painesville Works, General Chemical Division, Allied Chemical and Dye Corporation*, 116 NLRB 1784; *Interchemical Corporation*, 116 NLRB 1443.

driving," the time spent by a driver in loading and unloading his truck, an activity which is a normal incident of his duties as a driver. As the record in this case clearly establishes that the truckdrivers sought by the Petitioner spend a major portion of their time in the performance of their primary function as drivers, we find, apart from any question of the extent of organization, that the truckdrivers constitute a functionally distinct group and are entitled to separate representation.

The Employer also contends that the requested unit is inappropriate because it does not include all employees who drive trucks. While it is true that some production employees may on occasion drive trucks in order to fulfill certain delivery requirements, the record nevertheless establishes that the occasions are relatively few in number and are limited to situations more or less of an emergency nature. Moreover, there is no established practice to interchange production employees with truckdrivers. As it is clear that such employees do not spend a major portion of their time driving trucks, and as their interests are more closely allied with production and maintenance employees, their exclusion from a unit of truckdrivers is proper.

The Employer similarly contends that the unit is inappropriate because of the exclusion of certain tire men whose duties may require them to drive trucks.<sup>12</sup> The evidence shows that such employees are not primarily engaged in driving trucks for the purpose of hauling the Employer's product but merely as an incidental means of enabling them to perform their own duties as truck servicing employees. Although as drivers of trucks they are eligible to receive safety bonuses as an incentive to safe driving, we find that their interests are primarily those of production and maintenance employees rather than those of truckdrivers. In these circumstances, we find that their exclusion from a unit of truckdrivers is proper.

There remains a question as to the inclusion of certain general labor helpers in the unit of truckdrivers. Among its common laborers, the Employer has a number of employees who at times accompany truckdrivers when making deliveries. They help load and unload the trucks. There is also evidence that among them are some 37 employees, distributed among 7 of the 10 plants, who spend at least 50 percent of their time in "driving, delivering, or truck unloading duties." In addition to such truck duties, these employees also perform general labor work about the plants and warehouses. As it appears that the 37 employees spend a major portion of their time in regular assignments as helpers on trucks, we shall include them in the unit.

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<sup>12</sup> Similar contentions are made with respect to other maintenance employees who drive trucks as an incident of their regular jobs, which we also find to be without merit.

Accordingly, we find that all truckdrivers and their regularly assigned helpers at the Employer's 10 plants in the Miami, Florida, area, excluding all other employees, office 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.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Election.

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**Ingersoll-Humphryes Division, Borg-Warner Corporation and International Brotherhood of Operative Potters, AFL-CIO, Petitioner.** *Case No. 8-RC-2818. May 22, 1957*

### DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Edward A. Grupp, 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 this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent employees of the Employer.<sup>1</sup>

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 production and maintenance employees in the Employer's vitreous china sanitary ware division in Mansfield, Ohio. The Employer and the Intervenor contend that their contract is a bar to the petition.

Following certification of the Intervenor in November 1954,<sup>2</sup> the Employer's predecessor, The Humphryes Manufacturing Company, entered into a collective-bargaining agreement with the Intervenor on March 21, 1955, which covered the production and maintenance employees of the predecessor company's enamelled cast iron division. This agreement was to run until September 21, 1956, and be automatically renewable for yearly periods thereafter unless notice was given

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<sup>1</sup> International Union of Electrical, Radio and Machine Workers, Local 719, AFL-CIO, herein called the Intervenor, intervened on the basis of its contract with the Employer covering, *inter alios*, the employees involved herein.

<sup>2</sup> Case No. 8-RC-2344 (not reported in printed volumes of Board Decisions and Orders).