3. By interfering with, giving support to, and dominating the administration of the affairs of the above-named Union, the aforesaid Association and all its members violated Section 8 (a) (2) and 8 (a) (1) of the Act.

4. By causing the said Association and its members to discriminate against employees and prospective employees in violation of Section 8 (a) (3) of the Act, the above-named Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) of the Act.

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

[Recommendations omitted from publication.]

APPENDIX A

Bancker-Tooker & Co., Inc., 67 Orchard Street, Manhasset, L. I. Buchanan & Eberhard, Inc., Shore Road, Glenwood Landing, L. I. William Casey & Sons, Inc., 2 Lakeview Avenue, Lynbrook, L. I. Craft & Brucia, Inc., 158 Irving Place, Woodmere, L. I. Davis Construction Corp., Charlotte Ave., Hicksville, L. I. Ted Fatscher, 17 Emerson Place, Valley Stream, L. I. Gifford Construction Co. Inc., 146 Nawhidae Bead, Hicksville, L. Gifford Construction Co., Inc., 146 Newbridge Road, Hicksville, L. I. Good Roads Engineering & Contracting Co., Inc., Burns Avenue, Wantagh, L. I. Grant Park Construction Co., Inc., 65 Prospect Avenue, Lynbrook, L. I. Grefe & Brennan, 71 S. Long Beach Road, Long Beach, L. I. Grete & Brennan, 71 S. Long Beach Road, Long Beach, L. I. William H. Greene, Grand Boulevard, Westbury, L. I. J. J. Hagerty, Inc., Westhampton Beach, New York The Hallen Co., Inc., 45—24 37th Street, Long Island City, New York Hendrickson Brothers, Inc., Valley Stream, Long Island, New York Hinkle & Finlayson, Inc., Sea Cliff Avenue, Glen Cove, L. I. Horn Construction Co., Inc., 2174 Hewlett Avenue, Merrick, L. I. Karlson & Reed, Inc., W. Barclay Street, Hicksville, L. I. Frank Marmorale, Oyster Bay Road, Locust Valley, I. I. Frank Marmorale, Oyster Bay Road, Locust Valley, L. I. Merrick Utility Associates, Inc., 26 Surrey Drive, Merrick, L. I. John C. Peterson Construction Co., 958 Church Street, Baldwin, L. I. Radory Construction Corp., 94 Cherry Valley Road, West Hempstead, L. I. Vincent Provenzano Construction Co., 1955 Franklin Place, Woodmere, L. I. W. E. Sexton, Inc., 193-195 Jericho Turnpike, Mineola, L. I. Slattery Contracting Co., Inc., 46-36 54th Road, Maspeth, L. I. R. Salerno & Sons, 116 Harbor Road, Port Washington, L. I. Standard Bitulithic Co., Woodside Avenue, Baldwin, L. I.
Switzer Contracting Co., Morris Avenue, Glen Cove, L. I.
Tuly & DiNapoli, Inc., 127—50 Northern Boulevard, Corona, New York

Orange Crush of P. R., Inc. and Unidad General de Trabajadores de P. R., Petitioner. Case No. 24-RC-954. June 18, 1957

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 George L. Weasler, 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
- 2. The labor organization involved claims to represent certain employees of the Employer.

¹ See Orange Crush of Puerto Rico, Inc., Case No. 24-RC-784, not reported in printed volumes of Board Decisions and Orders.

¹¹⁸ NLRB No. 25.

- 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 Employer is engaged in the bottling, sale, and distribution of soft drinks at Santurce, Puerto Rico, and two branch distribution offices at Caguas and Areibo, Puerto Rico. The Petitioner seeks a unit of driver-salesmen and helpers at the distribution warehouse at Caguas. The Employer opposes the unit, contending that the driver-salesmen are independent contractors or supervisors.

The Caguas distribution warehouse is under the supervision of a manager. Employed there are a cashier, a promotion manager, a special-service driver who works in the warehouse and delivers special orders, and laborers who clean the warehouse, repair beverage cases, and load and unload the delivery trucks. The cashier, special-service driver, and laborers are admittedly employees within the meaning of the Act. The Employer deducts social-security payments and income taxes from their wages; they are covered by workmen's compensation; and they share in the Employer's health program and vacation plan.

Also located at Caguas are six driver-salesmen and their helpers whom the Petitioner seeks to represent.

In support of its contention that the driver-salesmen are independent contractors, the Employer stresses the contract which driversalesmen enter into upon beginning work. Under the contract, which is of indefinite duration and may be canceled on 10 days' written notice, the driver-salesman accepts appointment as a "representative" in a designated territory to render service to the buyers of the Employer's products pursuant to the rules established by the Employer and to promote sales of the products. The contract provides, further, that the representative shall hire adequate personnel for the proper handling and delivery of the products and that the Employer will lease adequate delivery vehicles to the representative. The contract also sets out the price per case which the representative shall pay the Employer for its products which he is to sell and deliver. The final paragraph of the contract states that the contract shall not be construed as creating any agency or employee relationship and that the representative shall always act as an independent contractor.

In addition to this contract, driver-salesmen also enter into a "Lease Contract for Motor Vehicles." This lease specifies a truck number, make, model, and license number of a vehicle which the Employer furnishes the driver-salesman and for which the driver-salesman agrees to pay a certain sum per case of drinks sold per day. Under the agreement all operating expenses and repairs as well as truck insurance are to be paid by the Employer, but the driver-salesman agrees to secure insurance covering personal loss to himself and personnel. The lease is of indefinite duration and subject to cancellation

on 48 hours' notice. It recites that the lessee shall act as an independent contractor and shall not be considered in any case as an agent of the Employer. If a driver-salesman furnishes his own truck, as one does, the lease contract is not made with him.

As the contract and the lease indicate, the function of the driver-salesmen is to deliver the Employer's product to the Employer's customers on designated routes in vehicles furnished by the Employer. Usually they wear uniforms supplied by the Employer. The driver-salesmen use a customers' book or route book which is prepared by the Employer and left with the Employer, who keeps a record of customers and how much they are buying. Driver-salesmen may also sell to other than those customers in the route book. They may not sell competing products.

The driver-salesmen arrive at the warehouse in the morning where they find their trucks loaded with beverages. They check the inventory of the truck, and then go out to service their routes. They make no payment when they take the truck out. They return late in the afternoon. At that time the cashier checks the truck, counting the number of full cases the driver-salesman is bringing back and the number of empty cases he has sold. The cashier then computes the amount of money the driver-salesman must pay for the cases he has sold, based upon the price per case set out in the contract, and the amount he must pay for the vehicle, also based upon the number of cases he has sold. The driver-salesman pays that amount and keeps the remainder of what he has charged the customers. Thus there is a daily cash settlement between the Employer and the driver-salesmen. A driver-salesman is given a case of beverages for the breakages which he may have during the week. In case of sales to certain large customers, such as Army and Navy installations and other institutions, to which the Employer extends credit, the driver-salesman returns an invoice signed by the customer and is paid immediately on the basis of the invoice, which the Employer later collects. Sales to other customers are cash transactions unless the driver-salesman extends credit at his own-risk.

The Employer makes no tax deductions for driver-salesmen, and they do not participate in the Employer's health or vacation plans.

Upon these facts we conclude, notwithstanding the language of the contract between the Employer and the driver-salesmen, that the Employer's driver-salesmen fulfill the customary, routine functions of route deliverymen and have the status of employees rather than that of independent contractors with the attendant independence of action and pecuniary responsibility.² Accordingly, we find the driver-salesmen are employees within the meaning of Section 2 (3) of the Act.

² See Burton Beverage Company, 116 NLRB 634; Royal Crown Bottling Company of Puerto Rico, 102 NLRB 309; Rockford Coca-Cola Bottling Company, 81 NLRB 579.

There remains for consideration the Employer's contention that driver-salesmen are supervisors of their helpers. It appears that each driver-salesman has a helper. The record is conflicting as to just how the helpers are selected and disciplined. It is clear, however, that the relationship between the driver-salesman and his helper is akin to that of a craftsman and his helper. We therefore conclude that the driver-salesmen are not, by reason of their relationship with their helpers, supervisors as defined in the Act.³

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

All driver-salesmen and helpers at the Employer's warehouse at Caguas, Puerto Rico, excluding all other employees, guards, and supervisors as defined in 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.

United Mine Workers of America, District 50, and United Mine Workers of America, Local Union No. 12915 and West Virginia Pulp & Paper Co. Case No. 2-CB-1788. June 19, 1957

DECISION AND ORDER

On November 29, 1956, Trial Examiner A. Norman Somers issued his Intermediate Report in the above-entitled proceeding finding that the Respondents had engaged in and were engaging in certain unfair labor practices in violation of Section 8 (b) (3) of the Act, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report together with supporting argument, and the Charging Party filed a brief in support of the Intermediate Report. 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 Murdock, Rodgers, and Bean].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in

118 NLRB No. 28.

³ See Wells Dairies Cooperative, 109 NLRB 1450; General Beverages Company, 85 NLRB 696; Atlanta Coca-Cola Bottling Company, 83 NLRB 187.