

**York Coca-Cola Bottling Works, Incorporated<sup>1</sup> and International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, AFL-CIO, Petitioner. Case No. 4-RC-3410. October 25, 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 Bernard Samoff, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

Upon the entire record in this case, the Board<sup>3</sup> finds:

1. The Petitioner seeks to represent a unit of production, maintenance, and warehouse employees, driver-salesmen, and helpers at the soft drink bottling plant of York Coca-Cola Bottling Works, Incorporated,<sup>4</sup> in York, Pennsylvania. The Employer contends that its operations do not meet the Board's current jurisdictional standards and that the petition should, therefore, be dismissed. The Petitioner takes the position that York and 13 other corporations, which are engaged in identical operations, constitute a single employer for jurisdictional purposes, and that jurisdiction should be asserted herein on the basis of the total volume of interstate operations of the allegedly integrated enterprise.<sup>5</sup>

York is 1 of 14 separate corporations<sup>6</sup> which are managed by Coca-Cola Bottling Company General Office,<sup>7</sup> a partnership with its office in Richmond, Virginia. All the corporations were incorporated in the State of Virginia, except Lima Coca-Cola Bottling Works, Inc., which was incorporated under the laws of the State of Ohio. Each corporation holds a subfranchise from the Coca-Cola Bottling Company (Thomas), Inc., of Chattanooga, Tennessee.

<sup>1</sup> The Employer's name appears as corrected at the hearing.

<sup>2</sup> In view of the paramount authority of the National Labor Relations Board over State Board proceedings, the Employer's motion to continue this hearing indefinitely pending disposition of the Petitioner's petition filed with the Pennsylvania Labor Relations Board was properly denied by the hearing officer. *Guss v. Utah Labor Relations Board*, 353 U. S. 1.

<sup>3</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Jenkins].

<sup>4</sup> Herein referred to as the Employer or as York.

<sup>5</sup> In view of our conclusion herein, we make no determination as to the other contentions of the Petitioner concerning the computation of York's sales.

<sup>6</sup> The 13 other corporations are Chambersburg Coca-Cola Bottling Works, Inc., Chambersburg, Pa.; Charlottesville Coca-Cola Bottling Works, Inc., Charlottesville, Va.; Cumberland Coca-Cola Bottling Works, Inc., Cumberland, Md.; Fairmont Coca-Cola Bottling Works, Inc., Fairmont, W. Va.; Hagerstown Coca-Cola Bottling Works, Inc., Hagerstown, Md.; Harrisonburg Coca-Cola Bottling Works, Inc., Harrisonburg, Va.; Lewistown Coca-Cola Bottling Works, Inc., Lewistown, Pa.; Lima Coca-Cola Bottling Works, Inc., Lima, Ohio; Oakland Coca-Cola Bottling Works, Inc., Oakland, Md.; Romney Coca-Cola Bottling Works, Inc., Romney, W. Va.; Staunton Coca-Cola Bottling Works, Inc., Staunton, Va.; Williamsport Coca-Cola Bottling Works, Inc., Williamsport, Pa.; and Winchester Coca-Cola Bottling Works, Inc., Winchester, Va. Each of the 14 corporations operates a single plant.

<sup>7</sup> Hereinafter referred to as the partnership.

All the corporations have officers, directors, and shareholders in common. W. L. Sams and Wynwood Littlefield, Jr., are president and secretary-treasurer, respectively, of all 14 corporations and are the only officers of all except York where, within the past year or two, Sams' son-in-law was elected to the office of vice president. Sams and Littlefield, together with Sams' wife or daughter, are the directors of York and 9 others, and, in the remaining 4, Sams and his daughter and either his wife or son-in-law are the directors. Sams, himself, is a majority stockholder in 11 of the corporations, and in the remaining 3, including York, his holdings and those of his wife and/or his daughter represent the majority interest. It thus is clear that all these corporations are within the control of a single family.

It further appears that in practice Sams exercises substantial control over the operations of the 14 corporations. Sams and Littlefield comprise the managing partnership, whose purpose, according to Mr. Littlefield's testimony, is to handle the purchasing, managing, and bookkeeping for various Coca-Cola bottling plants. The partnership is appointed for this purpose annually by the shareholders' meeting of each of the 14 corporations. All its expenses, including the salaries of the partners, are prorated among the corporations on the basis of the number of cases of carbonated beverages sold by each plant. All books and financial records, including all tax and payroll records,<sup>9</sup> of each corporation are maintained by Littlefield at the partnership's office in Richmond, and it is from this office that Sams and Littlefield perform their other functions as officers of the various corporations, as described below.

Each plant is under the supervision of a local manager, who is hired and may be discharged by Sams. The managers are paid from the Richmond office on a monthly salary plus a percentage of the net annual profits of their respective plants. They apparently are directly responsible to Sams, and they send daily reports to the Richmond office. Managers are not usually transferred among the plants, but there have been changes from smaller to larger plants in the past. There are held annual meetings of managers which are said to be in the nature of an association meeting. Sams selects topics and requests that the managers choose from among those submitted to them and lead meetings on the topics selected. Merchandising was discussed at the last annual meeting, and the managers then adopted any of the suggested means of increasing sales that they wished, pursuant to authority to act in this manner given by Sams.

Each corporation is a separate legal entity and operates independently of the others. Separate books and financial records are maintained, all taxes are paid separately, and each owns its own plant,

<sup>9</sup> Although the local payrolls are prepared and paid locally, except managers, the records are sent to and maintained in Richmond.

equipment, and inventories. An account is maintained in a local bank in the name of the corporation in which the manager makes deposits. However, withdrawals from those accounts can be made only upon signature of Sams and Littlefield or, in the case of York, of the vice president.

The local manager determines what supplies and equipment are needed, sends orders for such material to the Richmond office,<sup>9</sup> and Sams places the orders with suppliers in the name of the individual corporation. The materials are shipped and billed to the corporation, which verifies the invoices and forwards them to Richmond for payment. This same procedure is also generally applicable to advertising. Although it appears that a manager may have authority to indicate the supplier from which a purchase is to be made, Littlefield testified that Sams secures all quotations of prices for the various items used as such information becomes necessary. Sams also secures all quotations for and places all insurance carried by each corporation, including a single group-insurance plan which covers all employees of the 14 corporations. All group-insurance records are maintained in the Richmond office, and those records comprise the only personnel records maintained by any of the corporations.

Although Littlefield testified that the local managers have full authority, within reasonable overall limits, in the operation of their plants, including authority to hire, discharge, promote, and transfer employees, to determine vacation and other benefits,<sup>10</sup> and to expend funds, he further testified that Sams exercises a "sort of veto control" and stated that this veto power would extend to the employment of a number of persons which to Sams appeared to be excessive. Littlefield also stated that the number of employees necessary for the operation of each plant is decided by the board of directors or by the officers based on the plant's volume of business. Since, as noted above, all 14 corporations are controlled by Sams and a member of his immediate family or Littlefield as directors, and since Sams and Littlefield comprise the sole officers of all except York, it appears that for all practical purposes it is Sams, himself, who determines the size of the employee complement at each plant. The manager has authority to grant small wage increases to individual hourly paid employees, but such decisions would for the most part be discussed with Sams first. A manager could not grant a wage increase sufficient to increase the

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<sup>9</sup> This procedure does not apply to Coca-Cola sirup, which is ordered directly by the manager from the direct franchise holder, which in the case of York is Coca-Cola Bottling Company (Thomas), Inc. The franchise holder places the order with the Coca-Cola sirup plant for shipment to the corporation. Payment is by sight draft on the local bank.

<sup>10</sup> Although job descriptions and vacations are determined locally, they are substantially the same at all plants. The fact that there is no employee interchange among the plants, that there is no common seniority policy, that an employee discharged by one corporation may be employed and retained by another, and that wages vary according to the location are outweighed by other factors indicating common control of the operations of the various corporations.

ratio of direct labor costs, even if he felt this were warranted, without discussing it with Sams and justifying his position in order to secure Sams' approval.<sup>11</sup>

It is clear from the foregoing that Sams owns or controls a substantial interest in each of the 14 corporations; that all activities, including the handling of labor relations,<sup>12</sup> are under his active administration and control; and that in practice all the corporations are operated as part of a single integrated enterprise. Accordingly, we find, contrary to the Employer's contention, that the 14 corporations constitute a single employer for the purpose of determining jurisdiction.<sup>13</sup>

Since the total interstate purchases of all plants during the year 1956 exceeded \$500,000, and the total sales in States other than those in which the respective plants are located exceeded \$50,000, the Board's jurisdictional standards have been met.<sup>14</sup> We find, therefore, that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction.

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. In agreement with the stipulation of the parties, we find that all production, maintenance, and warehouse employees, driver-salesmen, and helpers employed by York Coca-Cola Bottling Works, Incorporated, at York, Pennsylvania, excluding executive, administrative, and office clerical employees, guards, college students employed temporarily during school vacations, and all supervisors<sup>15</sup> as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

<sup>11</sup> Sams' close personal supervision of the plants is also indicated by the fact that, in addition to the daily report of the managers, Sams personally visits each of the 14 corporations at least 4 times each year. These visits are often unannounced. York's manager testified that Sams has been at the plant in the morning before the manager had arrived, in order to check on what the manager was doing and what time he reported to work.

<sup>12</sup> With respect to labor relations, testimony indicates that overall policy is established by Sams and that while local labor relations and personnel matters are within the domain of the local manager, they are subject to such overall policies.

<sup>13</sup> *Orkin Exterminating Company, Inc. (of Kentucky)*, 115 NLRB 622. See also *Roanoke Railway and Electric Company et al.*, 117 NLRB 1775. The case of *American Furniture Company, Inc. of El Paso*, 116 NLRB 1496, relied upon by the Employer in its brief, is distinguishable on the facts.

<sup>14</sup> *The T. H. Rogers Lumber Company*, 117 NLRB 1732.

<sup>15</sup> The Petitioner contends that three "route supervisors," who are also referred to as route foremen, should be excluded as supervisors. The Employer takes the position that they are not supervisors as defined in the Act. From the portion of the transcript of the hearing before the Pennsylvania Labor Relations Board which was included in the record herein by stipulation of the parties, it appears that the disputed employees have reprimanded employees and effectively recommend hiring and firing. We therefore find that the "route supervisors" are supervisors within the meaning of the Act and exclude them from the unit.