

Regency are simply waiting completion of the new plant and have a reasonable expectancy of employment there, we shall treat them as temporarily laid-off employees and permit them, together with the employees now employed at East Brunswick, to vote in an election to be held within 45 days of the original Decision and Direction of Election.

[Text of Direction of Election omitted from publication.]

MEMBERS LEEDOM and BROWN took no part in the consideration of the above Supplemental Decision and Direction of Election.

Chester County Beer Distributors Association, Petitioner and Local 830, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case No. 4-RM-379. October 5, 1961

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 Alan Zurlinick, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 Rodgers, Fanning, and Brown].

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 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 Employer, an association of 19 firms, including proprietorships, partnerships, and corporations engaged in the retail and wholesale distribution of beer and soft drinks in Chester County, Pennsylvania, seeks an election in an associationwide unit covering its members' employees. The Union contends that this unit is too narrow in scope, and that there is a bargaining history which establishes that the only appropriate unit is a unit of five associations located in Pennsylvania, including the Employer, the Philadelphia Beer Distributors Association, the Montgomery County Malt Beverage Distributors Association, the Delaware County Beer Distributors Association, and

the Bucks County Beer Distributors Association. The parties also disagree as to the composition of the unit, as described below.

The Employer negotiates labor contracts for its members through a negotiating committee composed of member employers appointed to meet with union representatives. The association negotiating committee submits to the association membership the negotiated contract proposals, together with recommendations, for approval. Although the Employer has no constitution or bylaws, it has monthly membership meetings, keeps minutes of the meetings, and charges dues.

Since the Employer's inception in 1950, its members have individually executed separate identical copies of two successive contracts with the Union, the first effective from October 1, 1955, to September 30, 1957, and the second effective from October 1, 1957, to September 30, 1960. In each instance the negotiating committee negotiated the contract for the Employer alone and submitted the contract to the association membership, which voted its approval.¹ The Union and the other associations also executed identical copies of the contract.

The preambles of the 1955 and 1957 contracts severally list the five associations.² The preamble of the 1955 contract read as follows:

This Agreement, made this day of -----, by and between ----- executors, administrators, heirs, successors and assigns, member of the PHILADELPHIA BEER DISTRIBUTORS ASSOCIATION, *or* MONTGOMERY COUNTY MALT BEVERAGE DISTRIBUTORS ASSOCIATION, *or* DELAWARE COUNTY BEER DISTRIBUTORS ASSOCIATION, *or* CHESTER COUNTY BEER DISTRIBUTORS ASSOCIATION, *or* BUCKS COUNTY BEER DISTRIBUTORS ASSOCIATION, *as the case may be* (hereinafter referred to as "EMPLOYER"), *or, if not represented by an association,* then by the undersigned Employer, executors, administrators, heirs, successors and assigns, party of the first part, and LOCAL UNION NO. 830, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the American Federation of Labor (herein referred to as "UNION"), party of the second part, as representative of the employees covered by this AGREEMENT. [Emphasis supplied.]

In the fall of 1960 and the spring of 1961, the Employer's negotiating committee met with union representatives on several occasions

¹ Representatives of the other associations attended only one of the several negotiating sessions held in connection with these contracts. At that particular meeting, the Employer's negotiating committee received the Union's demands and reported them back to its membership. Although other members of the Employer also attended the negotiating sessions, they did so only as observers.

² Testimony indicates that the Union's primary purpose in listing the several associations in the preambles was to save printing expense.

to negotiate a contract, but was unable to secure the Union's consent to depart from any of the provisions of the proposed contract submitted by the Union.³ The members of the other associations signed. On April 17, 1961, the Union filed an unfair labor practice charge against the Employer alone, alleging violations of Section 8(a) (1) and (5) of the Act, following the refusal of the Employer's members to sign the 1960 contracts.⁴ On June 1, 1961, the General Counsel sustained the Regional Director's dismissal of the 8(a) (5) charge for insufficient evidence.

An essential element for establishing a multiemployer unit is the participation by a group of employers, whether members or nonmembers of an association, either personally or through an authorized representative, in joint bargaining negotiations unequivocally manifesting the intent to be bound by a group, rather than by individual, action.⁵ In our opinion, the above facts clearly evince, not only the clear intent of the Employer's members to bargain with the Union on an associationwide basis only, at all times herein material, but also the Union's own understanding that its bargaining with Employer was on single-association basis during the same period of time.⁶ The fact that the other associations in the area signed contracts identical to those which the Union separately negotiated with the Employer is insufficient to establish a multiassociation bargaining unit as the only appropriate unit.⁷ Accordingly, and in view of the bargaining history on a single-association basis, we find that a unit of the employees of the members of the Chester County Beer Distributors Association is appropriate.⁸

³ The identity of the contracts stems from the Union's policy of insisting on uniform contract terms for all distributors in the five-county area in which the associations are located, whether members or nonmembers of associations. In each contract, the Union insisted on a "no deviation" clause, which reads as follows.

Union will not enter into any agreement, or have any understanding, with, any other Beer Distributor, which gives such Beer Distributor any better or more favorable terms as to wages, hours, or working conditions, than those set forth in this agreement.

The Employer asserts that this clause prevented it from securing different contract terms for its members.

⁴ Case No 4-CA-2327

⁵ *Morgan Linen Service, Inc*, 131 NLRB 420

⁶ The Union relies on the fact that the Employer and the other associations, at the time of the negotiations on the 1955 and 1957 contracts, retained an attorney described by the Union as the "central controlling figure in these negotiations for the beer distributors." In earlier years, before the Employer commenced bargaining with the Union, this attorney had negotiated, in behalf of other associations, a contract form which was used in the subsequent contracts without substantial change, the names of the new associations, such as the Employer, being added to the preambles of the contracts as these associations came into existence. As the attorney, himself, appears to have taken little or no active part in negotiating the terms of the later contracts in behalf of the associations, and as the Employer has executed no power of attorney for him or any other outside agent to negotiate for it, we accord little or no weight to his professional relationship with the associations in making our determination as to the scope of the unit.

⁷ *Texas Cartage Company*, 122 NLRB 999

⁸ *Texas Cartage Company*, *supra*; compare *Morgan Linen Service, Inc*, *supra*

Turning to the composition of the unit, the parties agree as to the appropriateness of a unit of drivers, warehousemen, and helpers. They disagree as to salesmen, whom the Employer would include and the Union would exclude. As the salesmen spend all or most of their time in selling and do no truckdriving, we exclude them, in view of their diverse interests.⁹ We include driver-salesmen, as to whom there is no dispute, as their duties appear to be substantially the same as those of drivers, who engage in driving and delivery operations only. We exclude John Adams, C. W. Clemens, Robert Howard, and Joe Halis, as they engage in bottling operations. In agreement with the Union, and in the absence of any proposal by the Employer for their inclusion on any other basis,¹⁰ we include all regular part-time employees who work at least 8 hours a week.¹¹ We exclude Roy Fannelli, who works irregularly only 1 or 2 days a month. We include Philip P. Montoro, Ralph Deloisir, Joseph Donato, Umberto Donato, and Gabriel Donato who, although brothers of member-owners, have no financial interest in their employers and enjoy no special status by virtue of their relationship.¹² The parties agree to the exclusion of Phillip Donato and the sons of Robert C. Spaziano and Thomas A. Mirabile, as employees of their parents, in accord with the requirements of Section 2(3) of the Act. We also exclude Thomas Lamb, an incorporator, vice president, and member of the board of directors of the Association, as he is in a position to determine management policies.¹³

We find that all drivers, helpers and warehousemen employed by all members of Chester County Beer Distributors Association, in Chester County, Pennsylvania,¹⁴ including driver-salesmen and regular part-time employees, but excluding office employees, salesmen, employees engaged in bottling operations, casual employees, and supervisors 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.]

⁹ *Select Foods, Inc.*, 130 NLRB 1286. In accord with the stipulation of the parties, we exclude Jack McGinley, who performs office and sales work only.

¹⁰ *The Great Atlantic & Pacific Tea Company*, 121 NLRB 1193, at 1195.

¹¹ Included is G Friel Brittingham, who regularly works 9 hours a week.

¹² *Adam D. Goettl et al, d/b/a International Metal Products Company*, 107 NLRB 65. Member Brown would exclude the brothers of member-owners because of their family relationship. *Giordano Lumber Company, Inc.*, 133 NLRB 205, footnote 7; *P. A. Mueller & Sons*, 105 NLRB 552.

¹³ *Pioneer Holding Company, d/b/a Blue and White Cab Co.*, 126 NLRB 956.

¹⁴ The members include W. S. Fisher-White, Nehi Bottling Company, Harry P. Montoro, Victor Abdala, Launi Beverage Company, Spaz Beverage Company, Terrizzi Beverage Company, Lou Beverage Company, Downingtown Beverage Company, Oxford Beverage Company, Parkesburg Beverage Company, Ludwick Beverage Company, Frank J. Deloisir, Superior Beverage Company, Strafford Beverage Company, Twin City Beverage Company, Paoli Beverage Company, Chester County Beverage Company, and West Chester Beverage Company.