

**Crest Wine and Spirits, LTD. Employer-Petitioner
and Distillery Rectifying Wine and Allied Work-
ers International Union, Local 19, AFL-CIO.**
Case 4-RM-631

December 7, 1967

DECISION AND DIRECTION

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

Pursuant to a Stipulation for Certification upon Consent Election approved August 8, 1967, an election by secret ballot was conducted on August 24, 1967, under the direction and supervision of the Regional Director for Region 4 among the employees in the stipulated unit. At the close of the election, the parties were furnished with a tally of ballots showing that of approximately 12 eligible voters, 12 cast ballots, of which 5 were for, 4 were against, the Union, and 3 were challenged. The challenged ballots were sufficient in number to affect the results of the election. No objections to the election were filed.

In accordance with National Labor Relations Board Rules and Regulations, the Regional Director conducted an investigation and, on October 4, 1967, issued and duly served upon the parties his Report and Recommendations on Challenged Ballots, in which he recommended that the challenge to one ballot be sustained and that two ballots be opened and counted. Thereafter, the Union filed exceptions to the Regional Director's report and the Employer filed a brief in opposition to the exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) of the Act.
4. The parties stipulated, and we find, that the following employees constitute a unit appropriate

for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All office clerical employees of Crest Wine and Spirits, Ltd., 711 Pine Street, Camden, New Jersey, but excluding all other employees including salesmen, drivers, warehousemen, guards, and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the Union's exceptions thereto,¹ and the Employer's brief, and hereby adopts the Regional Director's findings and recommendations to the extent consistent herewith.

The Regional Director recommended overruling the challenge to the ballot of Betty Ann Hampton on the grounds that, aside from working during summers and holiday periods, she had a pattern of recurring, regular part-time employment during the nonsummer months, which pattern made her a regular part-time employee eligible to vote in the election.

We do not agree with the Regional Director that Betty Ann Hampton was a regular part-time employee. The record shows that in addition to her working summers in 1965, 1966, and 1967, and Christmas vacations in 1964, 1965, and 1966, Betty Ann worked about 3 months from January to March 1965, for between 6-27 hours per week, and 3 months from October to December 1966, averaging 3-1/2 to 6 hours per week. Other than the foregoing, there is no evidence that she worked during periods coinciding with the school term.

Although the Board generally excludes summer employees from the appropriate unit, such employees will be deemed eligible if, upon returning to school, their employment evidences regular part-time status.² In this connection, we find that Betty Ann Hampton's employment history of two periods of part-time employment during the school term within a 3-year period is insufficient to establish a pattern of recurring, regular employment during the school year. Her employment, in this regard, on each occasion occurred during different seasons of the year, did not exceed 3 months, and consisted of varying hours. In our opinion, such a pattern of intermittent, sporadic employment is insufficient to establish that Betty Ann enjoys regular part-time status.³ Nor is a contrary result required by the evidence that Betty Ann intended, in the future, to work during the school year, as permitted by her schedule, since this declaration, considered against her employment history, merely establishes no more than that she may continue to work during the school term as a casual, irregular part-time worker. Accordingly, we disagree with the Regional

¹ The Union's exception to the Regional Director's recommendation that the ballot of Gertrude Hampton be overruled, in our opinion, raises no issue of fact or law which would warrant reversal of the Regional Director's findings and recommendations.

² *Sandy's Stores, Inc.*, 163 NLRB 728; *Giordano Lumber Co., Inc.*, 133 NLRB 205, 207

³ *Brown-Forman Distillers Corporation*, 118 NLRB 454, 455.

Director and shall sustain the challenge to the ballot of Betty Ann Hampton.

However, as we agree with and adopt the Regional Director's recommendation that the challenge to Gertrude Hampton be overruled, and since that ballot is sufficient to affect the results of the election, we shall order that the ballot of Gertrude Hampton be opened and counted, and that a revised tally be prepared and served upon the parties.

DIRECTION

IT IS HEREBY DIRECTED that the Regional Director for Region 4 shall, pursuant to the Rules and Regulations of the Board, within 10 days from the date of this Direction, open and count the ballot of Gertrude Hampton and prepare and cause to be served upon the parties a revised tally of ballots and an appropriate certification.