

Joseph Cory Warehouse, Inc., Employer-Petitioner and Furniture, Flour, Grocery, Teamsters & Chauffeurs, Local Union No. 138, New York, New York, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America<sup>1</sup> and Van Drivers, Packers & Furniture Handlers, Warehousemen and Appliance Home Delivery Union, Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.<sup>2</sup> Case 22-UC-22

July 27, 1970

## DECISION AND ORDER CLARIFYING UNIT

BY MEMBERS FANNING, MCCULLOCH, AND JENKINS

Upon a petition for clarification duly filed under Section 9(b) of the National Labor Relations Act, as amended, the Regional Director for Region 22 caused an investigation to be made and thereafter issued his Decision and Order dismissing the Employer's petition. Thereafter, the National Labor Relations Board granted the Employer's Request for Review and ordered that the case be remanded for a hearing before a Hearing Officer of the Board.

A hearing was held before Hearing Officer Robert A. Goodman on April 28 and May 5 and 13, 1970. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 22 issued an order transferring the case to the Board for decision. Thereafter, the Employer and Local 814 timely filed briefs, which have been considered.

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.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings 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, and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The labor organization involved claims to represent certain employees of the Employer.
3. The Employer is engaged in the warehousing and delivery of furniture in the Metropolitan New York area. It currently operates warehouses in Jer-

sey City and Elizabeth, New Jersey, with the latter only being involved herein. Local 138 represents 40 drivers and helpers and 60 inside warehouse employees at the Elizabeth location and all the Jersey City employees. Local 814 represents nine drivers and helpers at Elizabeth, all of whom only deliver furniture made by the Detroit Furniture Company, one of the Employer's major customers. Neither local has received a Board certification, but the Employer has had collective-bargaining agreements with both for more than a decade.<sup>3</sup>

The Employer's petition requests that the unit be clarified so that all the chauffeurs, helpers, inside men, warehousemen, and extra help employed at its Elizabeth warehouse be represented solely by Local 138. Local 138 supports the Employer's position, but Local 814 opposes, contending that it has historically represented the employees who service the Detroit Furniture account, that their best interests would be served by such continued representation, and that Teamsters Joint Council 16 has ruled that it should continue to represent the nine employees at issue herein. We grant the Employer's request for the following reasons.

In 1959, after several corporate mergers, the Employer consolidated its operations in Brooklyn, New York. The same parties involved in the instant proceeding then submitted a dispute among them to the Teamsters Joint Council, which ruled that Local 138 would represent all inside employees (warehousemen) and Local 814 all outside employees (drivers and helpers). The Employer also opened its Jersey City warehouse at that time and staffed it with Local 138 members, as no deliveries were then being made from Jersey City. However, when the Employer began to make deliveries directly from the Jersey City warehouse, the drivers and helpers became members of Local 138.

In 1964, the Employer closed its Brooklyn operation and all employees who relocated to Jersey City joined Local 138; 10 Local 814 members remained in a Brooklyn garage to continue servicing the Detroit Furniture account. In 1967, the Elizabeth warehouse involved herein was opened and all employees there became members of Local 138. Finally, in March 1969, the Employer lost the Detroit Furniture account, and the 10 Local 814 members transferred to Elizabeth, apparently with the understanding that they too would join Local 138. For a number of reasons, particularly the lower Local 138 wage scale and the fear of losing seniority and pension benefits, the 10 Local 814 members refused to join Local 138 despite as-

<sup>1</sup> Herein called Local 138

<sup>2</sup> Herein called Local 814

<sup>3</sup> Whether a unit has been formally certified by the Board or exists solely

by virtue of contract negotiations, it is subject to a motion for clarification See *Brotherhood of Locomotive Firemen*, 145 NLRB 1521

surances by the Employer that their rights would be protected.

Several attempts to resolve the dispute amicably among the parties proved fruitless, and they agreed to submit it to Teamsters Joint Council 16. The Employer, believing that the Joint Council would rule in its favor, signed a new collective-bargaining contract with Local 138 for the period ending June 30, 1972.

In July 1969 the Employer regained the Detroit Furniture account. The Joint Council on September 11, 1969, ruled that Local 814's members would continue to service that account exclusively.

The Joint Council ruling placed the Employer in a difficult position. While all the Elizabeth warehouse employees work side by side and do the identical type of work (loading furniture onto trucks and delivering it to customers of the various manufacturers whom the Employer services), the Employer cannot integrate its operations because the Local 814 drivers and helpers will only handle Detroit Furniture Company goods. This has meant that on a few occasions a fully loaded Local 138 manned truck containing non-Detroit furniture has made a delivery only to be followed by a Local 814 manned truck containing separate Detroit furniture for the same customer. In such circumstances, the Employer contends, it cannot operate efficiently unless it can place all the furniture, regardless of manufacturer, on one truck. Local 814 apparently will not permit this and has threatened to strike if the Employer integrates the Elizabeth operations.

In *Humble Oil & Refining Company*, 153 NLRB 1361, the Board dealt with a situation not unlike that present in the instant proceeding. There Humble's New York State employees, including its truckdrivers and mechanics, were represented by one union. When Humble purchased the assets of a fuel oil company whose truckdrivers and mechanics were represented by a different union, it integrated the two company's operations so that the truckdrivers and mechanics of the purchased firm worked alongside Humble's employees. The integrated operation's employees worked from the same locations, serviced the same accounts, had the same supervision, were subject to the same labor relations policies, and had the same interests in wages and working conditions. We held that the

purchased company's employees who were merged into Humble's operations could not be considered a separate appropriate unit, and we included them in the larger unit of Humble's New York employees.

Here, the record clearly indicates that the Local 814 members do the same work as the Local 138 members (who comprise the vast bulk of the Elizabeth work force), work out of the same location, often deliver furniture manufactured by Detroit Furniture Company to customers on the same day that Local 138 members deliver other accounts furniture to the same customers, are paid from the same office and, but for their currently different working hours, would have the same supervision. As noted above, only the threat of a strike by Local 814 has prevented the Employer from intergrating its operations in the same fashion as did Humble.

In short, except for the fact that Local 814 members have historically handled Detroit Furniture goods, there is no rational basis for maintaining such a separate unit. Accordingly, we find that a separate unit of Local 814 members to service only the Detroit Furniture account cannot now be considered appropriate, and we will clarify the unit so that all chauffeurs, helpers, inside men, warehousemen, and extra help employed at the Employer's Elisabeth, New Jersey, warehouse, shall be represented solely by Local 138.

#### ORDER

It is hereby ordered that the unit of chauffeurs, helpers, insidemen, warehousemen, and extra help employed at Joseph Cory Warehouse, Inc.'s Elisabeth, New Jersey, warehouse currently represented by Furniture, Flour, Grocery, Teamsters & Chauffeurs, Local Union No. 138, New York, New York, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, be clarified to include those chauffeurs and helpers represented by Van Drivers, Packers & Furniture Handlers, Warehousemen and Appliance Home Delivery Union, Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, who presently only deliver furniture made by Detroit Furniture Company.