

Allegheny Pepsi-Cola Bottling Company and Amalgamated Meat Cutters & Butcher Workmen of North America, Local 117, AFL-CIO, Petitioner. Case 5-RC-9486

March 8, 1976

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Roger D. Meade of the National Labor Relations Board. Following the close of the hearing the Regional Director for Region 5 transferred this case to the Board for decision. Thereafter, the Employer and Petitioner filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding 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. They are hereby affirmed.

Upon the entire record in this proceeding, 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, insofar as relevant here, is engaged in the sale and distribution of Pepsi-Cola and other soft drinks. It operates through four divisions. Its Harrisburg division, which is involved in this proceeding, has its headquarters at Harrisburg, Pennsylvania, and includes at present seven branch plants, one of which is located at Williamsport, Maryland. The Petitioner seeks a unit of all sales employees, which include, among others, route salesmen, vending machine mechanics, and warehousemen at the Williamsport branch. The Employer contends, among other things, that the petition should be dismissed because the petition is untimely filed under Section 9(c)(3) of the Act, which precludes the Board's holding more than one valid election in any appropriate unit or subdivision thereof during any 12-month period.

Prior to May 1974, the Harrisburg division was composed of eight branches, including one at Hagerstown, Maryland, and one in Martinsburg, West Virginia. There was no branch then at Williamsport.

At that time, certain locals of the Teamsters Union jointly filed a petition seeking an election among the sales and distribution employees throughout the Harrisburg division, while the Petitioner herein filed a petition seeking a separate election limited to such employees at the Martinsburg, West Virginia, branch. The cases were consolidated and the Board on February 14, 1975, issued a decision in that proceeding¹ in which it found that both a divisionwide unit and a unit limited to the Martinsburg branch could be appropriate, and in consequence directed that separate elections be held among the Martinsburg branch employees and among the employees in the remainder of the Harrisburg division. Such elections were held on March 13, 1975. The Petitioner here received a majority of the votes cast at Martinsburg and was thereafter certified as the bargaining representative of the employees at that branch. The Teamster locals did not prevail in the larger unit. In May 1975 the Employer discontinued its branch operations at Hagerstown and Martinsburg and contemporaneously set up its branch at Williamsport.

The Employer now contends that the Williamsport branch is in fact nothing more than the relocated Hagerstown branch and is thus a subdivision of the divisionwide unit, excluding Martinsburg, in which the election was held on March 13, 1975. Therefore, it maintains, as indicated above, that under Section 9(c)(3) of the Act an election cannot be held at the Williamsport branch at this time. We find no merit in this argument for, as the record makes clear, the Williamsport branch is clearly a consolidation of the two discontinued branches into a new operation. Thus, Williamsport has taken on most of the employees formerly working at or out of both of the discontinued branches and has succeeded to the operations that were handled from those two branches. At the time of the hearing, of the 33 Williamsport employees, 18 were from Hagerstown, 13 from Martinsburg, and 2 were new hires. Also, of the 18 routes run now out of Williamsport, half are the exact routes, with the same drivers, formerly handled out of Martinsburg, with the other half being old Hagerstown routes similarly manned.² Further, equipment such as trucks and office furniture used at Williamsport came largely from the discontinued branches. Consequently, it seems clear to us, and we so find, that the Williamsport branch is not simply a relocation of the Hagerstown branch with some Martinsburg operations merged into it,³ but instead is a combined oper-

¹ *Allegheny Pepsi-Cola Bottling Company*, 216 NLRB No. 119.

² There had been 10 routes at the Hagerstown branch but at the time of the move to Williamsport 2 were merged into 1.

³ The Employer in support of its position points to the fact that much of the Williamsport equipment and a majority of its employees came from the

ation at a new location bringing together personnel, equipment, and services formerly divided between the discontinued branches. Consequently, we further find that Williamsport is, as stated above, a new branch operation which was not set up until May 1975 and thus was not a subdivision of either the Harrisburg division or Martinsburg branch at the time of the March 1975 elections. Therefore, we find that an election at this time in a unit limited to Williamsport employees is not barred by Section 9(c)(3) of the Act, and that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The appropriate unit: The Petitioner seeks, as stated, a unit of employees at the Williamsport branch. The Employer contends, as it did in the earlier case affecting its Harrisburg division, that a divisionwide unit is alone appropriate. In that previous case the Board, as indicated above, found that a single-branch unit at Martinsburg could be appropriate, concluding that though the division manager "has overall operational authority for the division . . . the branch manager is responsible for the day-to-day operations of the branch on a local basis and exercises considerable responsibility with respect to employment matters."⁴ In the present case Harrisburg Divi-

sion Manager Lebo testified that all of the branches in his division are engaged in the sale and distribution of soft drinks and are "run almost identically the same way." The evidence further shows that the Williamsport branch is engaged in the same operations as the other older branches and is organized in substantially the same manner. In fact, Lebo in his testimony agreed that "the duties, responsibilities and activities of the Branch Manager at Williamsport" are the same as those of "the Branch Manager at Hagerstown and at Martinsburg in 1974." Consequently, it is apparent that we have before us now precisely the same unit situation as confronted us in the earlier case (except that no other union, as there, seeks a broader unit). Further, the Employer has adduced no facts or arguments, new or old,⁵ showing that our previous result was erroneous. Therefore, we find for the reasons set forth in the previous decision with respect to the Martinsburg branch that the requested unit of the following employees⁶ at the Employer's Williamsport, Maryland, branch is by itself appropriate for purposes of collective bargaining within the meaning of Section 9(c) of the Act:

All sales employees including all route salesmen, route managers, special men, vending machine mechanics, warehousemen, sales clericals and merchandizers, but excluding all office clerical employees, professional employees, guards, transport drivers and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]

⁵ The Employer concedes that aside from the consolidation of the Hagerstown and Martinsburg branches the only change in the facts since the hearing in the earlier case is the elimination of the position of area manager over those two branches. In its brief the Employer claims that this change "eliminated any vestige of individual branch or dual branch autonomy within the Division." However, there is no evidence—and the Employer cites none—that that change had any impact at all upon branch operations or upon the authority and responsibilities of the Williamsport branch manager.

⁶ The Petitioner and Employer agree on the composition of the unit

Hagerstown branch. This seems to have resulted from Hagerstown having been a somewhat larger branch operation than Martinsburg and from Williamsport being considerably closer to Hagerstown than Martinsburg. But whatever the reason for the predominance, which is marginal at best, we fail to see its significance where we have, as here, a true merger of two branches into what is clearly a single overall operation. Neither do we find it significant that the Employer in its formal organizational structure apparently has substituted Williamsport for the discontinued Hagerstown branch.

⁴ In reaching its result the Board relied, among other things, on the following: that branch managers "exercise a substantial degree of autonomy over the daily operations of the branch," effectively recommend employees for discharge, engage in direct supervision of employees on a day-to-day basis, handle all run-of-the-mill grievances, and are responsible for business matters on the branch level. (216 NLRB No. 119)