

In the Matter of W. B. CONWAY, D/B/A COCA-COLA BOTTLING COMPANY and BREWERY & SOFT DRINK WORKERS UNION, LOCAL #133, AFFILIATED WITH INTERNATIONAL UNION OF UNITED BREWERY FLOUR, CEREAL & SOFT DRINK WORKERS OF AMERICA and GENERAL DRIVERS LOCAL UNION No. 288 AND No. 346 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

*Case No. 18-RE-11.—Decided February 21, 1944*

*Messrs. W. B. Conway, W. A. Metzger, and Thomas M. McCabe, all of Superior, Wis., for the Company.*

*Mr. Dan E. McIver, of Superior, Wis., for Local 133.*

*Mr. Al Bernacki, of Superior, Wis., and Mr. Edwin A. Marien, of Duluth, Minn., for the Brotherhood.*

*Mr. William Strong, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a petition duly filed by W. B. Conway, doing business as Coca-Cola Bottling Company, Superior, Wisconsin, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Superior, Wisconsin, on January 6, 1944. The Company, Brewery & Soft Drink Workers Union, Local #133, affiliated with International Union of United Brewery, Flour, Cereal & Soft Drink Workers of America, herein called Local 133, and General Drivers Local Union No. 288 and No. 346 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, herein collectively called the Brotherhood and individually called Local 288 and Local 346, appeared and participated. All parties were afforded an opportunity to be heard, to examine and cross-examine witnesses, and to introduce evi-

dence bearing on the issues. The Trial Examiners rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

W. B. Conway, doing business as Coca-Cola Bottling Company, is engaged at Superior, Wisconsin, in bottling and distributing soft drinks. Substantially all of the materials used by the Company during 1943, valued in excess of \$146,000, were brought into Wisconsin from points outside that State. All of the Company's sales during 1943 were made within the State of Wisconsin.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Brewery & Soft Drink Workers Union, Local #133, affiliated with International Union of United Brewery, Flour, Cereal & Soft Drink Workers of America, and General Drivers Local Union No. 288 and No. 346 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, are labor organizations, the first two admitting to membership employees of the Company.<sup>1</sup>

#### III. THE QUESTION CONCERNING REPRESENTATION

Since June 1942 Local 288 has on frequent occasions requested the Company to recognize it as the exclusive bargaining agent of its employees, Local 133 has likewise claimed to represent the Company's employees, and urges that a contract between it and the Company is a bar to this proceeding. A collective agreement between the Company and Local 133, signed on February 26, 1941, and containing an annual self-renewal provision conditioned upon the failure of either party to serve notice of desired change 45 days before the annual expiration date of the contract, was extended by the parties on June 10, 1942, "until a proper legal determination has been made, as to the bargaining agent for the employees referred to herein." There is no other contract in existence between Local 133 and the Company. We find that the February 26, 1941, contract and its extensions as presently

<sup>1</sup>Local 346 has indicated that it has no interest in representation of the Company's employees.

effective constitute no bar to our determination of representatives at the present time.

A statement of a Board agent, introduced into evidence at the hearing, indicates that Local 288 and Local 133 both represent substantial numbers of employees in the unit hereinafter found appropriate.<sup>2</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all employees of the Company, excluding clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.<sup>3</sup>

The parties are in disagreement as to the eligibility to vote of employee N. Moriarity, a part-time worker. Moriarity is a high school student spending 12 to 16 hours a week, 6 days a week, performing the same functions as do other employees included in the unit. The sole distinction between Moriarity and the others is in the number of hours spent at work. Moriarity has a substantial interest in the wages, hours, and working conditions at the Company. He is to be included among the employees in the appropriate unit eligible to participate in the election.

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<sup>2</sup> The Regional Director reported that Local 133 submitted 17 authorization cards all of which bore apparently genuine original signatures; that the names of 7 persons appearing on the cards were listed on the Company's pay roll of December 10, 1943, which contained the names of 17 employees in the alleged appropriate unit; that Local 288 submitted 17 membership application cards all of which bore apparently genuine original signatures; that the names of 10 persons appearing on the cards were contained in the aforesaid pay roll.

<sup>3</sup> Local 133 asks that the date of the hearing be used to determine eligibility for voting in the election. We have considered Local 133's request and conclude that no cogent reason is shown requiring deviation from our normal policy with respect to the eligibility date.

## DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with W. B. Conway, d/b/a Coca-Cola Bottling Company, Superior, Wisconsin, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Brewery & Soft Drink Workers Union, Local #133, affiliated with International Union of United Brewery, Flour, Cereal & Soft Drink Workers of America, or by General Drivers Local Union No. 288 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.