

In the Matter of TOLEDO BOTTLERS' ASSOCIATION and MILK & ICE CREAM DRIVERS' LOCAL NO. 361, TEAMSTERS' UNION, AFFILIATED WITH THE AFL.

*Case No. 8-R-1454.—Decided May 25, 1944*

*Mr. William D. Snow and Mr. Leo E. Miller, of Toledo, Ohio, for the Association.*

*Mr. Franz J. Berlacher, and Mr. Don F. Pfeiffer, of Toledo, Ohio, for Local 361.*

*Mr. Karl E. Feller, of Cincinnati, Ohio, and Mr. Emil Huff and Mr. Peter A. Basso, of Toledo, Ohio, for Local 372.*

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

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a petition duly filed by Milk & Ice Cream Drivers' Local No. 361, Teamsters' Union, affiliated with the American Federation of Labor, herein called Local 361, alleging that a question affecting commerce had arisen concerning the representation of employees of Toledo Bottlers' Association, Toledo, Ohio, herein called the Association, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Toledo, Ohio, on April 26, 1944. The Association, Local 361, and International Union, United Brewery, Flour, Cereal and Soft Drink and Mineral Water Workers of America, Local 372, herein called Local 372, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's 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 ASSOCIATION

The Toledo Bottlers' Association, is an association of 11 companies, operating in Toledo, Ohio, and was formed in 1937 to act as an agent

for collective bargaining with representatives of the employees of the companies. The members of the Association are Coca Cola Bottling Company of Toledo, Dossin Food Products, Greene's Beverages, High Life Beverage Company, Lever Beverage Co., Mohr Bros. Bottling Company, Seven-Up Distributing Company of Toledo, Toledo Parfay Distributing Company, Treu-House of Munch, Inc., Variety Club Beverage Co., and James Vernor Company.

During 1943, the Coca Cola Bottling Company of Toledo, an Ohio corporation, purchased all of its raw materials outside the State of Ohio, and sold all of its products in that State.

During 1943, Dossin Food Products, a Michigan corporation, purchased all of its raw materials outside the State of Ohio, and sold all of its products in that State.

During 1943, Jacob Green, d/b/a Green's Beverages, purchased more than 50 percent of his raw material outside the State of Ohio, and sold all of his products in that State.

During 1943, High Life Beverage Company, an Ohio corporation, purchased more than 60 percent of its raw materials outside the State of Ohio and sold about 10 percent of its products outside that State.

During 1943, Maurice Lever, d/b/a Lever Beverage Co., purchased more than 95 percent of his raw materials outside the State of Ohio, and sold about 3 percent of his products outside that State.

During 1943, Mohr Bros. Bottling Company, an Ohio corporation, purchased over 80 percent of its raw materials outside the State of Ohio and sold about 3 percent of its products outside that State.

During 1943, R. W. Rosine, d/b/a Seven-Up Distributing Company of Toledo, obtained and distributed all of his product, the Seven-Up soft drink, within the State of Ohio. Seven-Up is a nationally advertised and distributed article, and is produced from raw materials purchased in interstate commerce.

During 1943, Toledo Parfay Distributing Company, an Ohio corporation, obtained about 50 percent of its raw materials outside the State of Ohio, and sold about 5 percent of its products outside that State.

During 1943, Treu-House of Munch, Inc., an Ohio corporation, obtained about 90 percent of its raw materials from outside the State of Ohio, and sold none of its products outside that State.

During 1943, Variety Club Beverage Co., obtained about 90 percent of its raw materials from outside the State of Ohio, and sold about 15 percent of its products outside that State.

During 1943, James Vernor Company, Toledo branch, obtained about 70 percent of its raw materials outside the State of Ohio, and sold none of its products outside that State.

We find that the Association and each of its members is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

Milk and Ice Cream Drivers' Local No. 361, Teamsters Union, affiliated with the American Federation of Labor, and International Union of United Brewery, Flour, Cereal and Soft Drink and Mineral Water Workers of America, Local 372, are labor organizations admitting to membership employees of the members of the Association.

## III. THE QUESTION CONCERNING REPRESENTATION

The Association has refused to grant recognition to Local 361 as the exclusive bargaining representative of certain employees of its members until Local 361 has been certified by the Board in an appropriate unit.

Local 372 moves for dismissal of the petition on the ground that it is the certified representative of the employees in the appropriate unit, that it is a party to a contract with the Association, and for the further reason that many of Local 372's members are in the armed forces and are, consequently, unable to vote in any election in connection with this investigation, and a selection by the present employees of a bargaining agent other than Local 372 would imperil the seniority and other rights of those in the armed forces.

There is nothing in the record to support the contention of Local 372 that it is the present certified representative of the employees in the appropriate unit. The contract between Local 372 and the Association, executed on May 1, 1943, provides that it is to remain in effect until May 1, 1944, and thereafter continue in effect from year to year until notice is served by either party 30 days prior to the annual expiration date of desired changes. Since Local 361 notified each of the companies comprising the Association of Local 361's representation claims on February 17, 1944, and the petition herein was filed on March 4, 1944, the Association received due and timely notice, and the contract does not constitute a bar to this proceeding. The selection of a collective bargaining agent at present does not abrogate any of the contractual or legal rights of the employees in the armed forces. Moreover, upon the return of the servicemen to their jobs in numbers sufficient to comprise a substantial percentage of the employees in the appropriate unit, an opportunity will be afforded them to change or affirm the bargaining agent selected in their absence.<sup>1</sup>

We find that none of the contentions of Local 372 presents a bar to a present investigation and certification of representatives.

<sup>1</sup> See *Matter of Mine Safety Appliances Co., etc.*, 55 N. L. R. B. 1190.

A statement of a Board agent, introduced into evidence at the hearing, indicates that Local 361 represents a substantial number 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 members of the Association, 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 companies comprising the Association engaged in bottling, handling and distributing soft drinks, but excluding clerical employees, garage mechanics, beer drivers, 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>

#### 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 the 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 members of the Toledo Bottlers' Association, Toledo, Ohio, 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 Eighth 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

<sup>2</sup> The Field Examiner reported that Local 361 submitted 105 application-for-membership cards, 94 of which bore the names of persons appearing on the Companies pay rolls of March 18, 1944, which contained the names of 186 employees in the appropriate unit; Local 372 offered no evidence of its present designation except the expired closed-shop contract with the Association

<sup>3</sup> The parties are agreed that temporary employees should not participate in the election, but that regularly employed, part-time employees should be eligible to vote. We agree.

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 the 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 Milk & Ice Cream Drivers' Local No. 361, Teamsters' Union, or by International Union of United Brewery, Flour, Cereal and Soft Drink and Mineral Water Workers of America, Local 372, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.