

In the Matter of HOFFMAN BEVERAGE COMPANY and JOINT LOCAL EXECUTIVE BOARD OF INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, AND SOFT DRINK WORKERS OF AMERICA

Case No. R-214.—Decided September 9, 1937

Brewing Industry—Soft Drink Industry—Investigation of Representatives: controversy concerning representation of employees; rival organizations; refusal by employer to recognize union as exclusive representative—*Strike:* caused by employer's refusal to recognize and bargain with union as exclusive representative—*Unit Appropriate for Collective Bargaining:* occupational and geographical differences; divergence of interests; eligibility for membership in petitioning union—*Representatives:* proof of choice; signed applications for membership in union—*Certification of Representatives:* upon proof of majority representation.

Mr. Martin H. Selman for the Board.

Gilhooly & Yauch, by *Mr. Edward J. Gilhooly*, of Newark, N. J., for the Company.

Mr. William F. Nies, of Newark, N. J., for the Joint Local.

Mr. William W. Prager, of New York City, for the Association.

Mr. Abraham L. Kaminstein, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On June 7, 1937, the Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, herein called the Joint Local, filed with the Regional Director for the Second Region (New York, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of employees in the Newark plant of the Hoffman Beverage Company, Newark, New Jersey, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 21, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to a notice of hearing duly issued and served by the Regional Director, a hearing was held in Newark, New Jersey, commencing on July 26, 1937, before Henry J. Kent, the Trial Examiner duly designated by the Board. At the outset of the hearing, the United Employees Association of the Hoffman Beverage Company, herein called the Association, filed a petition for intervention which the Trial Examiner granted. At the hearing the Board, the Company, the Joint Local, and the Association were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties.

At the hearing counsel for the Company moved to dismiss the proceedings on the grounds that the petition of the Joint Local did not conform to Article III, Sections 1 and 2, of National Labor Relations Board Rules and Regulations—Series 1, as amended, and that it did not specify the number and classification of the employees represented by the petitioner. The Trial Examiner reserved his rulings on these motions. We have fully considered these motions and find them without merit and they are hereby denied.

Pursuant to notice, a hearing was held before the Board on August 19, 1937, in Washington, D. C., for the purpose of oral argument. The Company, the Joint Local, and the Association were represented by counsel.

During the course of the hearing, the Trial Examiner made numerous rulings on motions and objections to the admission or exclusion of evidence. The Board has reviewed the conduct of the hearing, has examined all of the Trial Examiner's rulings, and finds that no prejudicial errors were committed. His rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Hoffman Beverage Company, a New Jersey corporation, is engaged in the soft drink and brewery business. The Company makes a wide variety of beverages which it distributes under the registered trade mark "Hoffman". It ranks among the largest companies in the non-alcoholic beverage industry. Since repeal of the 18th Amendment, the Company has also been brewing and distributing beer and ale, this constituting 30 per cent of its total business.

The raw materials used by the Company include fresh fruits, root extracts, ginger root, barks, herbs, sugar, carbonic gas, malts, and hops. More than 50 per cent of the total raw materials come from outside the State of New Jersey. The Company distributes its products to a wide area, 71 per cent of its sales being made outside of New

Jersey. It advertises regularly in New York daily newspapers, and uses the facilities of radio broadcasting stations located in New York. The Company admits, for the purposes of these proceedings, that it is engaged in interstate commerce.

The general offices and the manufacturing plant of the Company are located in Newark, New Jersey. Distributing plants or branches are located in Belmar and Camden, New Jersey; New York City, Newburg, Long Island City and Jamaica, Long Island, New York; and Bridgeport, Connecticut. All manufacturing and bottling is done at the Newark plant; the products are then delivered by means of motor trucks and trailers, owned and operated by the Company, to the various distributing branches. All branches and the Newark plant distribute directly to retailers in their particular areas.

On its pay roll of June 13, 1937, the Company listed 591 employees at its Newark plant, of whom 74 were classified as temporary loaders and laborers; and 421 employees at all its distributing branches. Though some of its business is seasonal, the Company attempts to keep its regular employees working throughout the year.

II. THE ORGANIZATIONS INVOLVED

A. *The Joint Local*

The Joint Local is a labor organization representing three locals of the International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, an affiliate of the American Federation of Labor. These Locals are No. 2, Brewers, No. 268, Bottlers, and No. 148, Drivers. Joint Local Executive Boards are formed wherever there is more than one local of the International Union in a district, and this particular Joint Local's jurisdiction extends through Essex, Union, and Middlesex counties in New Jersey. The Joint Local admits to membership all of the employees of the Company working in the Newark plant who are engaged in production, maintenance, and delivery, except supervisors and foremen who have the authority to hire and discharge. Office workers, salesmen, those working inside in the sales department, building maintenance workers, and window dressers are not eligible to membership in the Joint Local.

B. *The Association*

A week after the filing of the petition in this case, on June 14, 1937, there was formed the United Employees Association of the Hoffman Beverage Company. The organization of the Association had not yet been completed at the time of the hearing, and no permanent officers had been elected. The Association is unaffiliated with any other labor organization. It admits to its membership all employees of the Company wherever located, exclusive of supervisors.

III. QUESTION CONCERNING REPRESENTATION

In March 1937, employees at the Newark plant of the Company, dissatisfied with their pay and working conditions, began to organize themselves for the purposes of collective bargaining. Several public meetings were held, at which the men appointed a committee of seven to consult with officers of the Joint Local and to deal with the Company. On May 5, 1937, a conference was held between this committee and officials of the Company, in which the officers of the Joint Local stated that a majority of the employees had designated it as their representative and submitted the draft of a proposed contract to the Company. The Company officials replied that they doubted that the Joint Local had the support of 51 per cent of the employees and asked that the membership application cards be left with the Company. This the Joint Local refused to do. Thereafter several requests for further conferences were made, but the Company indicated that there were to be no further meetings. On May 11, 1937, the adherents of the Joint Local went out on strike, and at the time of the hearing, were still on strike. In view of these proceedings, the Company is now also refusing to enter into any negotiations with the Association.

IV. THE APPROPRIATE UNIT

The pay roll of the Company on June 13, 1937, contained the names of 591 employees at the Newark plant and 421 other workers at the branches. The Company and the Association contend that all of the employees of the Company, wherever situated, constitute an appropriate unit. The Joint Local maintains that the Newark plant should be considered as a separate entity for the purposes of collective bargaining.

No production work is done at any of the branches, and the Newark plant contains the only group of workers actually engaged in manufacture and bottling. The distance from the Newark plant to the branches varies from 18 to 86 miles. Because of these geographical differences, and the distinction in function, the labor problems of employees at the Newark plant differ from those of workers employed by the Company elsewhere.

It would be difficult for employees of the Company, living and working at widely separated points in three different states, to gather together, or to arrange for a frequent exchange of opinions on their difficulties and grievances. The employees of the Newark plant have also manifested their desire to be represented separately by joining a union which has only local jurisdiction.

In view of these considerations, the representation of employees at the Newark plant must be considered apart from that at other branches.

In addition to the manual workers in the production, maintenance, and delivery departments of the Newark plant, the Company employs a group of clerical, professional, and semi-professional workers. These include chemists, laboratory workers, and sales promotion men. The tasks of these workers sharply distinguish them from the groups first mentioned. Similarly, the salesmen and window dressers employed by the Company are to be regarded as apart from the production workers.

The Newark plant uses modern mechanized machinery. The fresh fruits are reamed, collected in tanks, led through a filling department, where a mechanical device places the juice in bottles, then conveyed to the carbonated water section, where the filling machine gives the water its charge of carbonated water, to the crowning machine, where the bottles are corked, and then on mechanical conveyors to the labeling machine, mechanical foiling machine, and finally, to the packing table. From there, the collected bottles are placed on conveyors and sent to be stacked. The bottling operations for beer and malts are similar. Loaders in the storeroom aid in placing the boxes in the delivery trucks. Delivery men include the drivers, driver helpers, and helpers.¹ During slack seasons some of the helpers, driver helpers, and production employees may be put to work in the various maintenance departments, to be shifted back to their old posts when business picks up.

Workers in any branch of production, maintenance, and delivery, with some few exceptions, are eligible for membership in the Joint Local. Members of the Joint Local in all these departments have participated in the strike.

In order to insure to the Company's employees the full benefit of their right to self-organization and collective bargaining and otherwise to effectuate the policies of the Act, we find that the production, maintenance, and delivery employees of the Newark plant of the Company, exclusive of clerical and supervisory employees, window dressers, salesmen, and laboratory workers, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

The strike now in progress has been accompanied by picketing and has hampered production and delivery.

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company

¹ The driver helpers are men with more experience than the helpers, and are eligible for the position of driver.

described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE EXCLUSIVE BARGAINING AGENCY

The bargaining unit stated above included, according to the June 13 pay roll, 462 employees.

At the hearing, counsel for the Company, the Joint Local, and the Association stipulated that 375 men in the Newark plant had signed applications for membership in the Joint Local, and that the Association had 663 membership applications in all the branches of the Company. No attempt was made by the Association to obtain membership among the striking members of the Joint Local, and it was not claimed by the Association that there was any duplication of membership in the two unions. The record is clear that all the members of the Joint Local were employees of the Newark plant. There was some discussion in the record as to whether some members of the Joint Local were still employees, but there was no conflict as to the approximate number of men represented by the Joint Local.

Since it is perfectly clear that the Joint Local has been designated as the collective bargaining agency by a large majority of the employees in the appropriate unit, no election is necessary, and we will certify the Joint Local as the exclusive representative of all the employees in the appropriate unit.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceedings, the Board makes the following conclusions of law:

1. All production, maintenance, and delivery employees of the Newark plant of the Hoffman Beverage Company, excluding clerical and supervisory employees, window dressers, salesmen, and laboratory workers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of the employees in the aforesaid unit, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

3. Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, having been selected for the purposes of collective bargaining by the majority of the employees in the aforesaid unit, is, by virtue of Section 9 (a)

of the National Labor Relations Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

CERTIFICATION OF REPRESENTATIVES

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 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, has been designated and selected by a majority of the production, maintenance, and delivery employees, employed by Hoffman Beverage Company in its Newark plant, excluding clerical and supervisory employees, window dressers, salesmen, and laboratory workers, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.