

In the Matter of NATIONAL DISTILLERS PRODUCTS CO. and UNITED DISTILLERY WORKERS OF N. A., LOCAL NO. 484, AFFILIATED WITH COMMITTEE FOR INDUSTRIAL ORGANIZATION

Case No. R-573.—Decided March 7, 1938

Liquor Distillery—Investigation of Representatives: controversy concerning representation of employees: rival organizations, refusal by employer to recognize petitioning union as exclusive representative; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* production employees; no controversy as to—*Election Ordered*

Mr. Oscar Grossman, for the Board.

Mr. Ralph A. Lind, of New York City, for the Company.

Mr. Philip B. Bizzell and *Mr. Peter Campbell*, for the United.

Mr. John E. Dwyer, of Washington, D. C., for the Distillery Workers.

Mr. Spurgeon Avakian, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 23, 1937, United Distillery Workers of North America, Local No. 484, affiliated with Committee for Industrial Organization, herein called the United, filed with the Regional Director for the Ninth Region (Cincinnati, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of National Distillers Products Co., Louisville, Kentucky, 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 December 11, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On January 8, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the

United, and upon Distillery Workers Local No. 20560, affiliated with American Federation of Labor, herein called the Distillery Workers, a labor organization claiming to represent employees directly affected by the investigation. On January 14, 1938, a notice of postponement of hearing was served upon the parties named above. Pursuant to these notices, a hearing was held on January 24, 1938, at Louisville, Kentucky, before Charles E. Persons, the Trial Examiner duly designated by the Board. The Board, the Company, the United, and the Distillery Workers were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The 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

The National Distillers Products Co., a Virginia corporation, has its principal office and place of business in New York City, and owns and operates plants in Kentucky, Ohio, Maryland, and Pennsylvania. It is engaged in the manufacture, sale, and distribution of distilled spirits. Corn, rye, barley and rye malts, and wheat are the principal raw materials used in the manufacture of the Company's products, and the greater portion of such raw materials are purchased in the States of Illinois, Iowa, Indiana, and Ohio. Approximately 96 per cent of the Company's finished products are shipped outside the State of Kentucky to destinations in various States of the United States and in Europe. During 1937 the Company purchased in excess of \$1,000,000 worth of raw materials, and its sales exceeded \$2,000,000.¹

The only plant of the Company involved here is the K. D. & W. plant in Louisville, Kentucky. The operations at this plant consist of receiving barrelled whiskey manufactured at other plants, regauging, dumping, reducing, filtering, bottling, and casing it, affixing the stamps representing taxes, and shipping the cases to various parts of the United States and to foreign countries.

II. THE ORGANIZATIONS INVOLVED

United Distillery Workers of North America, Local No. 484, is a labor organization affiliated with the Committee for Industrial Or-

¹ The above facts concerning the business of the Company are contained in a stipulation entered into between the Company and the Board, and introduced as Board's Exhibit No. 2.

ganization, admitting to its membership all production, maintenance, and clerical workers employed by the Company at its K. D. & W. plant, excluding only persons having the right to hire and fire.

Distillery Workers Local No. 20560 is a labor organization affiliated with the American Federation of Labor. It admits to membership all production employees of the Company at its K. D. & W. plant, excluding guards, watchmen, clerical workers, and all persons acting in a supervisory capacity.

III. THE QUESTION CONCERNING REPRESENTATION

The organizing efforts of the United commenced in June 1937. Those of the Distillery Workers commenced in September 1936, but were disrupted for a time by flood conditions in January 1937.

In September 1937 the United claimed to represent a majority of the Company's employees, and in the same month both organizations entered into negotiations with the Company. The Company expressed its willingness to recognize and bargain with any union certified by the Board as the representative of its employees, but refused to bargain with either union before such certification.

We find that a question has arisen concerning representation of employees of the Company at its K. D. & W. plant.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

At the hearing it was agreed by representatives of the Company, the United, and the Distillery Workers that the production employees of the Company at its K. D. & W. plant, excluding superintendents, office workers, foremen and assistant foremen, foreladies and assistant foreladies, line supervisors, stamp control operators, storekeepers and assistant storekeepers, guards, and mechanics, constitute an appropriate unit for the purposes of collective bargaining.

The evidence at the hearing disclosed that there is little variation in the wages, hours, and other conditions of employment of the employees in the suggested unit, that none of the operations require great skill, and that the various operations are to a great degree

dependent on each other. A cessation of work in one department would curtail activities in the others.

We find that the production employees of the Company at its K. D. & W. plant, excluding superintendents, office workers, foremen and assistant foremen, foreladies and assistant foreladies, line supervisors, stamp control operators, storekeepers and assistant storekeepers, guards, and mechanics, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the employees of the Company at its K. D. & W. plant the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The operations at the K. D. & W. plant are highly seasonal. During the peak months of October, November, and December as many as 1,000 persons are employed. The rest of the year, with the exception of March, is known as the slump season, and employment during that period drops to as low as 300 persons. Copies of the Company's pay roll introduced at the hearing show that the weekly employment during October, November, and December, 1937, fluctuated from a low of 363 to a high of 965.

Most of the seasonal employees are women who do not often find other employment during the year. The Company gives preference to them when additional employees are needed. Approximately 80 per cent of the seasonal employees of one year are employed during the peak period of the succeeding year. It is evident that seasonal employees who have worked for any substantial length of time during a peak season are likely to be reemployed at some future date, and accordingly have an interest in conditions of employment which might be agreed upon during the year even though not employed at the particular time the agreements are made. That interest entitles them to participate in the selection of representatives.

We hold that all employees in the appropriate unit whose names appear on the pay-roll records of the Company during any four weeks in the months of October, November and December, 1937, are entitled to participate in the selection of representatives.

At the hearing the United placed in exhibit a list of 538 names, purporting to be the names of regular and seasonal employees at the Company's K. D. & W. plant. The Distillery Workers placed in exhibit a similar list containing 187 names. No attempt was made to classify these names on the basis of length of employment. Furthermore, it was admitted that there was some duplication of names. We hold that an election by secret ballot is necessary to resolve the question concerning representation.

On the basis of the above findings of fact and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of National Distillers Products Co., Louisville, Kentucky, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company at its K. D. & W. plant, Louisville, Kentucky, excluding superintendents, office workers, foremen and assistant foremen, foreladies and assistant foreladies, line supervisors, stamp control operators, storekeepers and assistant storekeepers, guards and mechanics, constitute an appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as a part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with National Distillers Products Co., Louisville, Kentucky, an election by secret ballot be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article II, Section 9, of said Rules and Regulations, among the production employees of the Company at its K. D. & W. plant, Louisville, Kentucky, whose names appear on the pay-roll records of the Company during any four weeks in the months of October, November, and December, 1937, excluding superintendents, office workers, foremen and assistant foremen, foreladies and assistant foreladies, line supervisors, stamp control operators, storekeepers and assistant storekeepers, guards, and mechanics, and excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented by United Distillery Workers of North America, Local No. 484, affiliated with Committee for Industrial Organization, or Distillery Workers Local No. 20560, affiliated with the American Federation of Labor, or by neither.