

Metro Distributors, Inc., d/b/a Kansas City Coors and Local 838, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 17-RC-9600

31 August 1984

DECISION ON REVIEW AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 7 May 1984 the Regional Director for Region 7 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit of all employees at the Employer's Southside Distributors, Inc. facilities located in Kansas City and North Kansas City, Missouri, rejecting the Employer's contention that the smallest appropriate unit must also include its employees working at the Employer's J. P. Ward and Son, Inc. franchise, located in Kansas City, Kansas.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision on the ground that, in finding the petitioned-for unit appropriate, his decision represents a departure from officially reported Board precedent and is clearly erroneous on the record. By mailgram order dated 5 June 1984, the National Labor Relations Board granted the Employer's request for review and stayed the election, pending the Board's Decision on Review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case and makes the following findings:

The Employer is a Missouri corporation, authorized to do business in Kansas, and is owned by two sole shareholders, Richard Lee Shaw, who acts as executive officer, and John Meier, the secretary. The Employer owns, as the sole shareholder, and operates two alcoholic beverage distribution franchises in the Greater Kansas City area: Southside Distributors, Inc., located in Missouri and consisting of a primary facility and an auxiliary warehouse rented to handle the summer overflow, and J.P. Ward and Son Distributors, Inc., located in Kansas. Southside is located approximately 25-30 miles from the Ward facility. The distance from

¹ Both parties agreed that regardless of the scope of the unit it would consist of the following job classifications: all full-time and part-time drivers, line cleaners, merchandisers, dispatchers, pre-salesmen, warehousemen, mechanics and recycling employees, excluding office clericals, guards, and supervisors.

Southside's primary location to its rented auxiliary facility is 20-25 miles. There are presently approximately 85 employees employed by the Employer: 25 at Ward, 50 at Southside, and 10 at the auxiliary facility.

The Ward distributorship is licensed to sell and distribute alcoholic beverages only in Kansas. Under Kansas law, in order to obtain a liquor license one must be a Kansas resident. Hence, directors and officers of a corporation engaged in the beer distribution business must be Kansas residents. Kansas does, however, allow nonresidents to be beer salesmen. The Southside distributorship is licensed to sell and distribute alcoholic beverages only in Missouri. Both Kansas and Missouri have strict rules concerning the segregation of alcoholic products to be sold in their respective States. For example, alcoholic beverages destined for either Missouri or Kansas cannot be mixed together in the same coolers, trucks, or storage areas. Given these segregation requirements, the Employer (although it has held itself out as Kansas City Coors on both sides of the line since March 1983) retained Ward and Southside as separate corporate entities and liquor licensees.

Beginning in the fall of 1982, the Employer began consideration of a project to consolidate its distribution operations in one large facility which would straddle the state line. The Employer's intention is to close both the Southside and Ward facilities and conduct all of its operations from one large centrally located facility. State officials for both Kansas and Missouri advised the Employer that they would have no objection to a facility straddling the state line provided that all licensing regulations were complied with. A site was obtained at 141st Street and State Line, and as of the date of the hearing (10 April 1984) in excess of \$500,000 had been invested in the new facility. Construction of the new facility, access roads, and a railway spur have begun. Anticipated completion of the project is November or early December 1984.

Once the facility has been constructed, measures will be taken to ensure the integrity of the product. There will be separate loading areas, separate coolers, and beer will not be mixed on the trucks or in the warehouse. In addition, all records and files will be kept separate. Although there will be no wall separating the Missouri products and the Kansas products, they will be kept in different areas of the facility, each on the proper side of the state line. In addition to the physical separateness required by state law, separate financing and separate contracts were entered into with the general contractor for the construction of the facility.

After construction Southside, in effect, will own the Missouri side of the facility, and Ward, the Kansas side.

Despite the technical segregation outlined above, as necessitated by state liquor regulations, the Employer is in the process of centralizing its operations. As part of the anticipated consolidation, in December 1983 the officers and shareholders of the Employer developed and instituted a program that would aid in centralizing its organization prior to actual physical consolidation. Effective 1 April 1984 all employees of Southside and Ward became employees of the Employer, who now supplies employees to each subsidiary. All employees are paid by the Employer. In March 1984, an employee handbook was distributed to all employees (regardless of location) covering all terms and conditions of employment. Rules concerning probationary period, evaluations, salary, jury duty, funeral leave, leaves of absence, holidays, vacation, insurance, sick leave, discipline, job security, layoff, recall, benefits, and methods of operation are identical for all employees. All job classifications and descriptions are the same at both Southside and Ward. Upon consolidation no new job classifications will be added; the handbook will remain unchanged. All employees in the same classifications have and will continue to have the same job description, wage,² payday, pay period, uniform, hospitalization, dental insurance, retirement benefits, and bonuses. There is a universal promotion and transfer policy. Open positions are posted in both facilities and the best qualified individuals are selected regardless of which side of the state line they work on. Transfers also occur between facilities, at the request of both management and employees. In fact in the past 18 months there have been nine permanent over-the-line transfers or promotions. There have been three temporary transfers. Additionally there are two employees who regularly work on both sides of the state line: Kraft, a mechanic; and McGrath, a runner and messenger who also assists in servicing vehicles. Trucks and equipment are exchanged on an as-needed basis. All trucks are licensed to work on both sides of the state line. The recycle trailers are also circulated between facilities. Almost all truckdrivers are licensed to work on both sides of the line. There is also an integrated computer system and phone system connecting all employer subsidiaries. In the past 18 months there have been four employerwide social activities, attended by both Ward and Southside workers.

² Any current discrepancy in wages is because on previous acquisition of other distributorships the Employer agreed not to penalize the employees acquired through merger.

The Employer's facilities, however, have separate frontline supervision. Each subsidiary has a sales and warehouse division. Each warehouse supervisor oversees the day-to-day activities of the loaders, warehouse employees, and mechanics. Sales coordinators supervise dispatchers, drivers, salesmen, line cleaners, and helpers. Each supervisor is authorized to hire, take disciplinary action, make recommendations as to discipline, and schedule employees. All promotions, however, must be effected via the employerwide posting procedures and must be approved by Chief Finance Officer Reed and Warehouse Supervisor Bloch. After consolidation, frontline supervision will remain the same. Thus, Kansas employees will report to Kansas supervisors, Missouri employees to Missouri supervisors. Currently drivers and salesmen operate primarily on one side of the line, although after consolidation the Employer anticipates an increase in interstate work among these employees. Nevertheless, regardless of the separate supervision and departmentalization, it is clear that on consolidation all employees will be working under the same roof, doing the same work, for the same Employer, and under identical terms and conditions of employment.

Based on the above the Regional Director found a single unit consisting of the two Southside facilities, as requested by the Petitioner, to be the appropriate unit. The Employer, however, argues that the smallest appropriate unit must include employees of both of the Employer's subsidiary corporations, Southside and Ward. Relying on the rapidly approaching and imminent consolidation of the Employer's facilities; administrative centralization of labor relations and operations; and the similarity of job functions and conditions among unit employees in Kansas and Missouri, we find the broader unit, consisting of all employees working at Southside and Ward, to be the appropriate unit.

The foregoing record evidence shows that the Employer's three distribution facilities are currently located in relatively close proximity. The primary Southside and the Ward facility are only 25-30 miles apart. The auxiliary Southside warehouse is only 12-15 miles from the Ward facility, leased for 6 months in order to accommodate the summer inventory expansion. Both Southside and Ward are engaged in the same function and have identical organizational structures. All labor relations policies and methods of operation are employerwide and controlled by employer policy. All employees are employed by the Employer; they perform the same work, in the same job classifications, and under the same terms and conditions of employment. There is one employee handbook and wages, hours, benefits,

vacations, uniforms, and other circumstances of employment are identical. There is some employee interchange and interaction of equipment. In addition, most drivers, salesmen, and vehicles can work out of either location. Significantly, in a few months, all operations of both subsidiaries will be consolidated in one facility. Although Kansas and Missouri law mandate physical separation of the product, this will have little effect on the community of interest shared by the employees. All employees will be working side by side, under one roof, performing the same tasks, under identical terms and conditions of employment.

Based on the above factors, we find the Southside unit sought by the Petitioner to be inappropriate. Instead, we find that an employerwide unit consisting of both the Southside and Ward facilities constitutes the smallest appropriate unit for the purposes of collective bargaining. We find, therefore, the following unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:³

All full-time and part-time drivers, line cleaners, merchandisers, dispatchers, pre-salesmen, warehousemen, mechanics, and recycling employees employed by the Employer at its

³ As the unit we find appropriate is larger than that requested, the Petitioner is accorded a period of 10 days in which to submit the requisite showing of interest to support an election. In the event the Petitioner does not wish to proceed to an election, it may withdraw its petition without prejudice by notice of the Regional Director within 7 days from the date of this Decision on Review and Order.

Southside Distributors, Inc., facilities located at 5712 E. 150 Highway, Kansas City, Missouri and 1941 Warren Street, North Kansas City, Missouri and at its J.P. Ward and Son Distributors, Inc. facility located at 3018 South 24th Street, Kansas City, Kansas, but excluding all office clerical employees, guards, and supervisors as defined by the Act.

Accordingly, as the Petitioner indicated a willingness to proceed to an election in any unit found appropriate, the case is remanded to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of Election, as modified herein, except that the payroll period for determining eligibility shall be that immediately preceding the issuance date of this Decision on Review and Order.⁴

ORDER

It is ordered that this case is remanded to the Regional Director.

⁴ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision on Review and Order. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.