

**Amax Coal Company and Northeast Wyoming Affiliated Coal Mine Employees-Independent, Petitioner. Case 27-RC-5342**

July 20, 1979

**DECISION AND DIRECTION OF ELECTIONS**

BY MEMBERS JENKINS, PENELLO, AND TRUESDALE

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer William J. Daly of the National Labor Relations Board. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 27 transferred this case to the Board for decision. Thereafter, all the parties filed briefs in support of their respective positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The Employer, a division of Amax Inc., a New York corporation, is engaged in the mining and production of coal in the States of Indiana, Illinois, Kentucky, and Wyoming. The parties have stipulated, and we find, that during the past year the Employer, from its operations in Wyoming, shipped goods valued in excess of \$50,000 to points located outside the State. The parties have stipulated, and we find, that the Employer is engaged in commerce within the meaning of the Act, and we further find that it will affectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.<sup>1</sup> The Operating Engineers and the UMWA contend, however, that the Petitioner is not a labor organization within the meaning of the Act. The record reveals that the Petitioner is a nonprofit corporation, which, at the time of the hearing, had approximately 80 dues-paying members. According to its constitution and by-laws, it exists, in part, "to deal with employers con-

<sup>1</sup> The International Union of Operating Engineers, Local 400 (hereinafter referred to as the Operating Engineers) was permitted to intervene on the basis of a showing of interest. The United Mine Workers of America, Local 1854 (hereinafter referred to as the UMWA) was permitted to intervene on the basis of an expired contract it had with the Employer covering the employees at the Belle Ayr Mine.

cerning grievances, labor disputes, wages, rates of pay, hours of work, and all other terms and conditions of work." Based on the foregoing, and the record as a whole, we find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.<sup>2</sup>

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 8(c)(1) and Section 2(6), and (7) of the Act.<sup>3</sup>

4. The Petitioner seeks to represent the production and maintenance employees at the Employer's Belle Ayr and Eagle Butte mines in Campbell County, Wyoming, in a single overall unit.<sup>4</sup> The Operating Engineers also contends that the petitioned for unit is appropriate. The UMWA asserts that only separate units for each mine are appropriate.<sup>5</sup> In agreement with the Petitioner and the Operating Engineers, the Employer maintains that an overall unit including the employees of both mines is appropriate.

The record reveals that in March 1972 the UMWA and the Employer entered into an agreement covering the employees at the Belle Ayr mine, which was to expire by its terms on November 12, 1974. It was not until July 1973, however, that the Employer actually began its coal mining operations at the mine. In September 1974, prior to the expiration date of that agreement, the International Union of Progressive Mine Workers filed a petition seeking to represent the employees at the Belle Ayr mine. The UMWA intervened in that proceeding and won the election conducted on November 22, 1974. Thereafter, on December 9, 1974, the UMWA was certified as the exclusive bargaining representative for the production and maintenance employees at the Belle Ayr mine. Meanwhile, during the latter part of 1974, the UMWA extended the then existing agreement for two 30-day periods. However, on January 12, 1975, that agreement finally expired and the UMWA began a strike against the Employer. The Employer reopened the mine in March 1975, and although negotiations continued up until February of 1976, the UMWA and the Employer did not reach agreement on another contract covering the employees at the Belle Ayr mine.

<sup>2</sup> *N.L.R.B. v. Cabot Carbon Company and Cabot Shops Inc.*, 360 U.S. 203 (1959); *S. H. Kress & Company*, 212 NLRB 132 (1974); *Lane Aviation Corporation*, 211 NLRB 824 (1974).

<sup>3</sup> The issuance of our decision in *United Mine Workers of America (Amax Coal Co., A Division of Amax, Inc.)*, 238 NLRB 1583 (1977), renders moot the UMWA's contention that a question concerning representation could not be raised while the charges in that case were pending before the Board.

<sup>4</sup> The Petitioner indicated that it would participate in a self-determination election, if, under the circumstances of this case, the Board finds that such an election is warranted.

<sup>5</sup> In the alternative, the UMWA indicated that it would participate in an election in the unit petitioned for, in the event the Board finds such a unit to be appropriate.

Although there were only 50 to 60 employees working at the Belle Ayr mine in December 1974, the record indicates that there were 185 employees working there at the time of the hearing (November 1976) and that the Employer's projections revealed that the figure would reach 236 by the beginning of 1978. With respect to the Eagle Butte mine, the record discloses that the Employer began initial operations there on June 1, 1976. According to projections, however, the actual production of coal was not scheduled to begin there until 1978, and thus, at the time of the hearing, all of the employees at Eagle Butte were involved in preparatory tasks such as the removal of topsoil and the construction of equipment. In November 1976 there were 13 employees working at the Eagle Butte mine, all of whom had permanently transferred from Belle Ayr. The Employer projected that there would be 17 employees employed at Eagle Butte by the end of 1977 and that this figure would increase to 30 by the third quarter of 1978.

The record reveals that the Employer's division office is located in Gillette, Wyoming. The Eagle Butte mine is situated approximately 8 miles north of that office, while the Belle Ayr mine is located about 18 miles south of it. At the division office the Employer's general manager presides over an administrative staff composed of several department chiefs, who are responsible for various facets of the operations at both mines. The members of the staff include the assistant general superintendent, the employee relations supervisor, the division comptroller, and several individuals responsible for engineering and environmental tasks at both mines. Various members of this staff are responsible for the centralized administration of production scheduling, coal quality control, purchasing, inventory, personnel records, accounting, banking, budgeting, finance, engineering, sales, and security.

Specifically with regard to labor relations matters, although both mines have superintendents who are responsible for daily operations, these individuals are directly responsible to and have frequent contact with the assistant general superintendent. In fact, the assistant general superintendent maintains daily telephone contact with each mine superintendent and visits both mines frequently. As a result, the two mine superintendents possess only limited authority to resolve grievances or impose discipline. For example, they must have all disciplinary actions above the oral warning and written reprimand stage approved by either the supervisor of employee relations or the assistant general superintendent, both of whom possess the authority to overrule the superintendent's decision. According to David Schwendinger, the supervisor of employee relations, he has in fact reversed or amended a superintendent's actions in such matters. He further testified that all matters involving hiring,

discharges, layoffs, recalls, and training are administered through his office. The department relations also determines the wages, hours, and working conditions of the employees at both mines. Thus, the record reveals that the employees at both mines receive the same wages and that the same policies regarding cost-of-living increases, shift differentials, overtime, health insurance, pensions, and other fringe benefits are applied to both mines. Finally, Schwendinger testified that he spends approximately half of his time at the mines where he attempts to answer questions and resolve problems that arise concerning these issues.

The record reflects substantial similarity in job functions and skills between the employees of both mines.<sup>6</sup> In this regard, heavy equipment operators, electricians, mechanics, and welders are employed at both mines and perform essentially the same tasks. The employees also utilize similar equipment such as trucks, bulldozers, front-end loaders, power shovels, and lighting plants. In this connection, some of the equipment used at Eagle Butte was actually assembled at Belle Ayr, and it is common for employees to go from one mine to another in order to pick up or exchange parts and materials.

As indicated above, all of the employees presently employed at the Eagle Butte mine have transferred there from the Belle Ayr mine, and the Employer indicated it would continue to transfer employees in such a manner for the foreseeable future. In this regard, the record discloses that the Employer utilizes the same job-bidding procedure for both mines. The record also discloses, however, that, in practice, when a new job classification occurs at Eagle Butte, the job will be posted first at that mine, and only if it is not filled by one of the employees already there will it be posted at Belle Ayr. Assuming that the new job is filled by an employee already assigned to Eagle Butte, however, the employees at Belle Ayr are given the opportunity to bid into the recently vacated job. Regardless of which mine he is employed at, an employee retains the same employee number.

On the basis of the foregoing, we find that the production and maintenance employees of both mines may constitute an appropriate unit. In arriving at this finding, we rely specifically on the Employer's highly centralized control with respect to personnel matters; the fact that the employees of both mines share identical terms and conditions of employment; the simi-

<sup>6</sup> Since the Eagle Butte mine is still in the preparatory stage, some of the employee classifications that are present at Belle Ayr are not yet present at Eagle Butte, although the Employer's projections indicate that eventually both mines will have the same number of employees in the same type and number of job classifications.

larity of job skills and functions; and the relatively high degree of employee interchange.

Nonetheless, the foregoing facts also indicate that the separate units requested by the UMWA may also be appropriate. In this regard we note particularly the fact that there has been a history of collective bargaining in a unit comprised of the employees at the Belle Ayr mine and, as noted above, the Board has previously issued a certification finding that unit to be appropriate. Under these circumstances, we are reluctant to combine the employees in the existing unit with the previously unrepresented employees at Eagle Butte without granting both groups an opportunity to express their choice with respect to this matter. As further support for our finding that separate units may also be appropriate, we note that Eagle Butte does not, at the present time, have the same member of employee classifications as does Belle Ayr and that preference is accorded employees already at Eagle Butte when new job classifications arise. Moreover, the mines are 26 miles apart and, while the superintendents at each mine are admittedly not entirely autonomous in labor relations matters, they responsibly direct employees and apply established labor relations policy. Accordingly, we find that separate units at each mine may also be appropriate.

We therefore do not render a final determination as to the appropriate unit at this time; rather we shall submit the issue to the employees by directing separate elections at each mine. By doing so, the employees at each mine will be able to select separate representation if they so desire.

5. Accordingly, separate elections shall be directed among the following employees of the Employer:

*Voting group A:* All production and maintenance employees employed by the Employer at its Belle Ayr Mine near Gillette, Wyoming; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

*Voting group B:* All production and maintenance employees employed by the Employer at its Eagle Butte Mine near Gillette, Wyoming; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

The employees in voting group A shall vote as to whether or not they wish to be represented for the purposes of collective bargaining by Northeast Wyoming Affiliated Coal Mine Employees (New Acme); by the International Union of Operating Engineering, Local 400 (Operating Engineers); by the United Mine Workers of America, Local 1854 (UMWA); or by none of the above-named labor organizations.

The employees in voting group B shall also vote as to whether they wish to be represented for the purposes of collective bargaining by New Acme; the Operating Engineers; the UMWA; or by none of the above-named labor organizations.<sup>7</sup>

In the event that a majority of the employees in voting group A or voting group B select the UMWA, the employees in that group will be deemed to have indicated their desire to constitute a separate bargaining unit, and the Regional Director shall issue a certification of representative for such group. In these circumstances, the Regional Director shall also issue an appropriate certification in the other group.

However, if a majority of the employees in both groups do not vote for separate representation, then we shall include the employees in the two voting groups in a single overall unit and we shall pool their votes.<sup>8</sup> The Regional Director shall then issue an appropriate certification in the overall unit, depending upon the results of the election.

Our ultimate determination in this case is based in part on the results of the election. However, we make the following findings with regard to an appropriate unit.

1. If a majority of the employees in either voting group vote for separate representation, we find the following two units to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

*Unit A:* All production and maintenance employees employed by the Employer at its Belle Ayr Mine near Gillette, Wyoming; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

*Unit B:* All production and maintenance employees employed by the Employer at its Eagle Butte Mine near Gillette, Wyoming; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. If a majority of the employees in both groups do not vote for separate representation, we find that the following employees will constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

<sup>7</sup> Although the record is unclear as to whether the Operating Engineers would participate in an election of this type, we have included it on both ballots in view of its interest in representing the production and maintenance employees of both mines in a single unit. It may withdraw, however, from both ballots, within 7 days of the date of this Decision and Direction of Elections in the event that it is not interested in participating in this election.

<sup>8</sup> If the voters are pooled they are to be tallied in the following manner: The votes for the labor organization seeking separate units shall be counted as valid votes but neither for nor against the labor organizations seeking to represent the employees involved herein in a single unit. All other votes are to be accorded their face value.

All production and maintenance employees employed by the Employer at its Belle Ayr and Eagle Butte mines near Gillette, Wyoming; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Accordingly, this case is hereby remanded to the Regional Director for Region 27 for the purpose of conducting elections in the voting groups described above.

[Direction of Elections and *Excelsior* footnote omitted from publication.]