

In the Matter of PIKES PEAK FUEL DIVISION OF THE GOLDEN CYCLE CORPORATION and UNITED MINE WORKERS OF AMERICA, DISTRICT 15, LOCAL UNION No. 1662

*Case No. 17-R-666.—Decided October 6, 1943*

*Messrs. David P. Strickler and Thomas M. Burgess, of Colorado Springs, Colo., for the Company.*

*Mr. Frank N. Price, of Denver, Colo., Mr. John Green, of Lafayette, Colo., Messrs. Ora Huffman and John Madonna, of Colorado Springs, Colo., and Mr. A. F. Williams, of Monument, Colo., for the U. M. W.*

*Mr. William R. Cameron, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon petition duly filed by United Mine Workers of America, District 15, Local Union No. 1662, herein called the U. M. W., alleging that a question affecting commerce had arisen concerning the representation of employees of Pikes Peak Fuel Division of The Golden Cycle Corporation, Colorado Springs, Colorado, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer L. Hunt, Trial Examiner. Said hearing was held at Colorado Springs, Colorado, on September 9, 1943. The Company and the U. M. W. appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the hearing the Company made a motion to dismiss the petition of the U. M. W. herein, and contends that the Board is without jurisdiction in this proceeding. In support of its contention the Company alleges, among other grounds, that previous representation petitions have been withdrawn, or dismissed by the Board; that a strike notice relating to the employees of this Company had been filed, and later withdrawn; and that the Company, in operating the mine, is acting

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as an agency of the United States Government.<sup>1</sup> Ruling thereon was reserved to the Board. We find said motion to be without merit. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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 COMPANY

The Golden Cycle Corporation is a West Virginia corporation having its principal place of business at Colorado Springs in the State of Colorado, where it is engaged at the present time in the mining and milling of ore from which is extracted gold, silver, lead, and zinc. In connection with the business in which it is engaged the Company owns and operates a power plant, and a mill, known as the Golden Cycle Mill, wherein gold and lead-zinc ores are reduced to concentrates. The Company also owns the majority of stock in The Midland Terminal Railway Company and the Cripple Creek Stage Company, and operates the railroad and the bus line as a part of its enterprise, at this location. We are here concerned with the Company's Pikes Peak Fuel Division, which operates what is known as the Pikeview Mine, at which the Company is engaged in the mining of coal. During the first 8 months of 1943, approximately 117,399 tons of coal were produced at the Company's mine, of which 11.8 percent was consumed at the Company's mill in the treatment of gold ores, 17 percent at the Company's power plant, .1 percent for heating the station buildings of the railway company, and 71.1 percent was sold to other customers. Of the coal sold to customers, 2.8 percent of all coal produced was sold to E. I. Dupont de Nemours, Inc., and .1 percent to the Hungarian Flour Mills, customers which are engaged in interstate commerce.<sup>2</sup>

<sup>1</sup> As to the latter ground of contention, the record discloses that the Company has entered into a contract for the purchase of zinc-lead concentrates from Metals Reserve Company, a corporation created pursuant to the Reconstruction Finance Corporation Act; and further that the Company has accepted designation by the Metals Reserve Company as an agent for the disbursement of certain premiums to producers of copper, lead, and zinc, with whom the company has contracts.

<sup>2</sup> The record further discloses that during the first 8 months of 1943 the Company sold a total of approximately 15,395 tons of coal to Army camps located near Colorado Springs. This coal was mined at the Pikeview mine, and delivered direct from the mine to the Army camps. The coal furnished to the Dupont Company was by virtue of a written contract, which expired on August 31, 1943.

The Company's power plant at present furnishes to the Company's mill 83.75 percent of the total electrical energy produced. Approximately 750 tons of lead, zinc, and gold ore, purchased from mines located in the State of Colorado, are milled daily by the Company in this mill. Of the ores so milled, approximately 400 tons, or 53 percent, are lead-zinc ores, which are reduced, by the milling, to approximately 50 tons of lead-zinc concentrates. The Company ships these zinc-lead concentrates to the smelter of the American Zinc, Lead and Smelting Company, located at Dumas, Texas. The Company's railway, above mentioned, consists of a standard gauge line extending from Colorado Springs to Cripple Creek, Colorado, and its principal business consists of the hauling of gold ore from points of production in the Cripple Creek mining district, and of zinc-lead ore from the terminal of the Denver and Rio Grande Railway Company, to the Company's mill near Colorado Springs, together with some transportation of freight from Colorado Springs to the city of Cripple Creek. The Company's bus line is engaged in carrying passengers, and some shipments of express, between Colorado Springs, Cripple Creek, and intermediate points. During the year 1942 the Company purchased supplies and machinery amounting in value to \$372,608, of which approximately 25 percent was purchased and shipped from points outside the State of Colorado. We find, contrary to the Company's contention, that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

United Mine Workers of America, District 15, Local Union No. 1662, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On June 29, 1943, a committee of the U. M. W. met with certain officials of the Company and requested recognition of the U. M. W. as collective bargaining representative of the Company's employees at the Pikeview mine. The Company denied that the U. M. W. represented a majority of such employees, and refused to recognize the U. M. W. as such representative.

A statement of the Regional Director introduced in evidence, and a statement of the Trial Examiner read into the record at the hearing, indicate that the U. M. W. represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>3</sup>

<sup>3</sup> The Regional Director reported that the U. M. W. had submitted 103 membership application cards, dated from May 23 to July 2, 1943, of which 96 bear the apparently genuine original signatures of persons whose names are on the Company's pay roll of July 15, 1943.

The Trial Examiner stated at the hearing that the U. M. W. had submitted 18 additional

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

Substantially in accordance with the agreement and stipulation of the parties we find that all production and maintenance employees of the Company at its Pikeview mine, excluding superintendents, mine bosses, assistant mine bosses, face foremen, outside foremen, weigh bosses, tippie bosses, coal inspectors, washery bosses, boss drivers, night bosses, head carpenters, head mechanics, barn bosses, clerks, office employees, truck drivers, and all other 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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 National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representative for the purposes of collective bargaining with Pikes Peak Fuel Division of The Golden Cycle Corporation, Colorado Springs, Colorado, 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 Seventeenth 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 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

membership application cards, dated from July 20 to August 27, 1943, all of which bear the apparently genuine original signatures of persons whose names are on the Company's pay roll for the period from July 1 to September 1, 1943. The record indicates that there are approximately 139 employees in the unit claimed by the U. M. W. to be appropriate.

employees who did not work during 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 any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by United Mine Workers of America, District 15, Local Union No. 1662, for the purposes of collective bargaining.