

In the Matter of MILLER TODD COAL COMPANY and DISTRICT 31, UNITED
MINE WORKERS OF AMERICA

Case No. 6-R-790.—Decided October 15, 1943

Mr. Myron B. Hymes, of Buckhannon, W. Va., and Mr. James M. Guiher, of Clarksburg, W. Va., for the Company.

Mr. C. J. Urbaniok and Mr. John Baynard, of Fairmont, W. Va., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by District 31, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Miller Todd Coal Company, Adrian, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Buckhannon, West Virginia, on September 27, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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

Miller Todd Coal Company is engaged in the mining of bituminous coal at Adrian, West Virginia. During the 12-month period preceding September 27, 1943, the Company mined coal valued in excess of \$200,000, approximately 90 percent of which was shipped to points

outside the State of West Virginia. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

District 31, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of its employees.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

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

We find, in substantial agreement with a stipulation of the parties, that all production and maintenance employees of the Company, excluding technical and clerical employees, and all 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 means of 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 Re-

¹The Regional Director reported that the Union presented 73 membership application cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of August 15, 1943. There are approximately 97 employees in the appropriate unit.

lations 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 representatives for the purposes of collective bargaining with Miller Todd Coal Company, Adrian, West Virginia, 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 Sixth 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 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 District 31, United Mine Workers of America, for the purposes of collective bargaining.