

In the Matter of DEBARDELEBEN COAL CORPORATION *and* DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

Case No. 10-R-1019.—Decided December 28, 1943

Mr. Frank L. Parsons, of Birmingham, Ala., for District 50.

Mr. Samuel E. Roper, of Birmingham, Ala., for the A. F. L.

Mr. R. E. Farr, of Birmingham, Ala., for the C. I. O.

Mr. Joseph W. Kulkis, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of DeBardeleben Coal Corporation, Holt, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles W. Schneider, Trial Examiner. The hearing was held at Birmingham, Alabama, on November 19, 1943. The Company, although served with notice of hearing, did not appear at the hearing. District 50 and the American Federation of Labor, Federal Local No. 22841, herein called the A. F. of L., and the United Steelworkers of America, CIO, herein called the C. I. O.,¹ appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

DeBardeleben Coal Corporation, a Delaware corporation, has its office and place of business in Holt, Alabama, where it is engaged in

¹The C. I. O. withdrew from the proceedings at the commencement of the hearing.

the manufacture of coke and coal byproducts such as gas, tar, light oil, and ammonium sulphate. During a 12-month period the Company purchased for use at its Holt, Alabama, plant, raw materials consisting of 3,500 tons of sulphuric acid of a value in excess of \$35,000, of which 51 percent was obtained from States other than the State of Alabama. During the same period, the Company produced at its Alabama plant, 190,000 tons of coke, of which 21,000 tons were shipped to points outside the State of Alabama. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, and the American Federation of Labor, Federal Local No. 22841, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On December 1, 1942, the Company and the A. F. L., by addendum to an original contract executed December 1, 1941, entered into an exclusive closed-shop contract effective to December 1, 1943, and subject to a 60-day automatic renewal clause. On or about September 21, 1943, more than 60 days prior to the expiration date of the aforesaid contract, District 50 advised the Company by letter that it represented a majority of the Company's production employees at Holt, Alabama, and requested recognition as their exclusive bargaining agent. The Company has at no time acknowledged District 50's request for recognition as exclusive bargaining agent.

A statement of the Field Examiner of the Board, introduced into evidence at the hearing, indicates that District 50 represents a substantial number of employees in the unit hereinafter found appropriate.²

We find that a question affecting commerce had 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

District 50 and A. F. L. seek a unit comprised of all employees of the Company, excluding patrolmen, clerical employees, supervisors, and foremen having the right to hire and discharge. The Company has taken no position with respect thereto.

²The report of the Field Examiner shows that District 50 submitted 172 membership cards bearing apparently genuine signatures of 162 persons; 94 of which appear on the September 21, 1943, pay roll of the Company, which contains the names of 142 persons within the alleged appropriate unit.

We find that all employees of the Company, excluding patrolmen, clerical employees, supervisors, foremen having the right to hire and discharge, 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.³

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 our Direction of Election herein,⁴ subject to the limitations and additions set forth in the Direction.⁵

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with DeBardleben Coal Corporation, Holt, Alabama, 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 Tenth 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 employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by District 50, United Mine Workers of America, by American Federation of Labor, for the purposes of collective bargaining, or by neither.

³ This unit is substantially the same as covered by the contract between the Company and the A. F. L.

⁴ District 50 and A. F. L. requested the pay-roll date of November 15, 1943. Inasmuch as no valid reason was presented warranting a departure from our usual practice, the request is hereby denied.

⁵ The A. F. L. requested that it be designated on the ballot as "American Federation of Labor." This request is hereby granted.