

In the Matter of WEST KENTUCKY COAL COMPANY, NORTH DIAMOND MINE No. 2 and UNITED MINE WORKERS OF AMERICA, DISTRICT No. 23

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In the Matter of WEST KENTUCKY COAL COMPANY, HECLA MINE and UNITED MINE WORKERS OF AMERICA, DISTRICT No. 23

In the Matter of WEST KENTUCKY COAL COMPANY, NORTH DIAMOND MINE No. 3 and UNITED MINE WORKERS OF AMERICA, DISTRICT No. 23

*Cases Nos. 14-R-740 to 14-R-742, inclusive, and 14-R-811.—Decided January 6, 1944*

*Mr. Ryburn L. Hackler, for the Board.*

*Mr. M. K. Gordon, of Gordon, Gordon and Moore, of Madisonville, Ky., and Mr. James G. Wheeler, of Wheeler and Shelbourne, of Paducah, Ky., for the Company.*

*Messrs. L. R. Fox and B. N. Gordon, of Fox and Gordon, of Madisonville, Ky., for the UMWA.*

*Mr. Wallace E. Royster, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon separate petitions duly filed by United Mine Workers of America, District No. 23, herein called the UMWA, alleging that questions affecting commerce had arisen concerning the representation of employees of West Kentucky Coal Company, Earlington, Kentucky, herein called the Company, the National Labor Relations Board consolidated the petitions herein and provided for an appropriate hearing upon due notice<sup>1</sup> before Samuel F. Jaffee, Trial Ex-

<sup>1</sup>The Company objected that it was not allowed sufficient time to prepare for the hearing. Since the hearing involved only a formal presentation of contentions of the UMWA and these contentions had been the subject of correspondence with the Company for several months, we shall overrule the Company's objection.

aminer. Said hearing was held at Madisonville, Kentucky, on November 5, 1943. The Board and the UMWA 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 Company appeared specially at the opening of the hearing and filed a motion requesting the dismissal of the petitions or a continuance of the hearing herein until the release of the mine properties of the Company from the possession and control of the United States Government. The Trial Examiner reserved for ruling by the Board the motion to dismiss, and denied the continuance. For reasons set forth hereinafter the motion to dismiss is denied. Following the ruling of the Trial Examiner, the Company left the hearing although advised by the Trial Examiner that it could participate without prejudice to its position. In view of this circumstance, we find that the Company was afforded full opportunity to participate in the hearing. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Company and the UMWA have filed 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

West Kentucky Coal Company is engaged in the mining and marketing of coal and operates six coal mines in western Kentucky which produce approximately 12,200 tons of coal daily. The production of the Company comprises approximately 25 percent of the coal mined in the western Kentucky field. In a prior decision involving the same parties,<sup>2</sup> we found that the Company causes a substantial percentage of the coal produced by its mines to be shipped to points outside Kentucky. The Company does not contest the jurisdiction of the Board on commerce grounds and we find that the operations of the Company affect commerce within the meaning of the National Labor Relations Act.

##### II. THE ORGANIZATION INVOLVED

United Mine Workers of America, District No. 23, is a labor organization admitting to membership employees of the Company.

##### III. THE QUESTION CONCERNING REPRESENTATION

On July 27, 1943, the UMWA notified the Company that it represented a majority of the Company's employees at Hecla Mine, Mine

<sup>2</sup> *Matter of West Kentucky Coal Company*, 10 N. L. R. B. 88.

No. 2, and North Diamond Mine No. 2.<sup>3</sup> On October 26, 1943, similar notice was given with respect to North Diamond Mine No. 3. The Company refused to accord recognition to the UMWA as bargaining representative of the employees at any of the mines.

At the hearing, as stated above, the Company by formal motion filed herein, urged the dismissal of the petitions or in the alternative, a continuance of the hearing on the ground that possession and control of the mines had been taken by the Secretary of the Interior. The Company argued in effect that the workers affected by the petitions had become employees of the Federal Government and as such were beyond the jurisdiction of the Board. This question became moot upon the return of the mines in question by the Secretary of the Interior on November 17, 1943. In any event we do not agree with the position of the Company. Executive Order 9393, under which possession and control of the mines was lodged by the Federal Government in the Secretary of the Interior, clearly directs that the Secretary recognize the "right of the workers . . . to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." Regulations for the Operation of Coal Mines Under Government Control<sup>4</sup> issued by the Secretary of the Interior, specifically provide that workers in seized mines are not employees of the Federal Government. We conclude, as in the *Pschirrer* case,<sup>5</sup> that the personnel in the Company's mines have remained employees of the Company and subject to the jurisdiction of the Board.

A statement of the Regional Director introduced into evidence at the hearing indicates that the UMWA represents a substantial number of employees in the units hereinafter found appropriate.<sup>6</sup>

We find that questions affecting commerce have 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.

<sup>3</sup> The notice to the Company and the petition in Case No. 14-R-740 describes North Diamond Mine No. 2 as Mine 11. The Company correctly understood the reference to be to seam 11 of North Diamond Mine No. 2. At the hearing an appropriate motion to correct this error was granted.

<sup>4</sup> 8 Federal Register 6655, 10712, 11344.

<sup>5</sup> *Matter of Pschirrer & Sons Coal Company*, 50 N. L. R. B. 530.

<sup>6</sup> The Regional Director stated that the UMWA submitted 252 designations of which 251 bore apparently genuine, original signatures. Two hundred and four designations, dated variously from January to September 1943, bore the names of persons working at North Diamond Mine No. 2, North Diamond Mine No. 3, and Hecla Mine, whose names appear on the Company's pay roll of August 27, 1943. There are approximately 474 employees in the appropriate unit at North Diamond Mine No. 2, North Diamond Mine No. 3, and Hecla Mine.

The Regional Director further stated that the UMWA submitted 146 designations, all bearing apparently genuine original signatures. One hundred and one designations, dated variously from January to October 1943, bore the names of persons working at Mine No. 2 whose names appear on the Company's pay roll of August 27, 1943. There are approximately 189 employees in the appropriate unit at Mine No. 2.

## IV. THE APPROPRIATE UNITS

In its petitions as amended at the hearing, the UMWA requests units at each of the four mines named above as follows:

all production and maintenance employees employed in or about the Company's mine herein, excluding all clerical, watchmen, management, and supervisory employees, carpenters, and members of the sales or technical force; among the said supervisory force are mine foremen, assistant mine foremen, fire bosses, head electrician, head mechanics, bosses in charge of any classes of labor, inspectors and weigh bosses.

The employee categories included are substantially the same as those in the unit approved by the Board in an earlier proceeding involving the parties herein.<sup>7</sup> The Company has taken no position with respect to the inclusion or exclusion of any employee categories. The Company operates six mines in western Kentucky. Three of these, North Diamond Mine No. 2, North Diamond Mine No. 3, and Hecla Mine, herein called Group A, are located in Hopkins County, near Earlington, and are under the supervision of a single mine superintendent. The Company provides housing for the employees in these mines and the workers live in a single community. About 45 miles distant are Mine No. 2 and Poplar Ridge, near Sturgis in Union County, and Mine No. 10, near Wheatcroft in Webster County. We shall refer to the last three as Group B. Each mine in Group B has its own superintendent; at Mine 2, alone, the Company maintains a camp at the mine mouth; and only Mine 2 is a hand loading mine. In its motion, the Company alleges that any unit not including the employees in both groups is inappropriate and asserts that evidence in support of this position can be adduced to prove that the operation of the six mines is unified; that the billing offices at Earlington and Sturgis are in continuous communication by teletype; and that each of the six mines is connected by telephone with the office at Earlington and Sturgis. It can also be shown, the Company avers, that there is functional coherence among the employees at all the mines; that a community of interest exists among such employees; that it follows a policy of interchanging personnel among its mines; and that all its properties are under a unified management which has adopted a uniform labor policy for all employees. As stated before, the Company did not participate generally in the hearing and thus presented no evidence to support its averments.

The UMWA requests the establishment of separate bargaining units at each of the three mines in Group A and a fourth bargaining unit at Mine No. 2, in Group B, but does not object to grouping all

<sup>7</sup> *Matter of West Kentucky Coal Company, supra.*

employees in the mines in Group A in one unit. Since the employees working in the three mines in Group A live in the same community, work in closely contiguous mines, have the same mine superintendent, and apparently work under comparable conditions, we find no compelling reason to place them in separate units. Accordingly, we find that all production and maintenance employees of West Kentucky Coal Company working in North Diamond Mine No. 2, North Diamond Mine No. 3, and Hecla Mine, near Earlington, Kentucky, excluding clerical employees, watchmen, carpenters, members of the sales or technical forces, mine foremen, assistant mine foremen, fire bosses, head electricians, head mechanics, inspectors, weigh bosses, and 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.

The geographical separation of Mine No. 2 from those in Group A militates against its inclusion in the same bargaining unit with that group. Logically, then, the employees at Mine No. 2, Poplar Ridge Mine, and Mine No. 10 could constitute a single bargaining unit in conformity to our finding above. However, in Group B the organizational efforts of the UMWA have been effective at Mine No. 2 alone. It is our practice to approve a bargaining unit less extensive than that which might appear most appropriate when the smaller unit is distinguishable, comprises a functional unit, and is coterminous with the extent of effective union organizational efforts. Actually the operation of Mine No. 2 is separate and independent of the other two mines in Group B. While it can be conceded that all mines in this group could appropriately together constitute a single bargaining unit, we find no reason to deny the opportunity to choose representatives to the employees at Mine No. 2 until the employees in the other mines in the group are organized. Accordingly, we find that all production and maintenance employees of West Kentucky Coal Company working in Mine No. 2 near Sturgis, Kentucky, excluding clerical employees, watchmen, carpenters, members of the sales or technical forces, mine foremen, assistant mine foremen, fire bosses, head electricians, head mechanics, inspectors, weigh bosses, and 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 questions concerning representation which have arisen be resolved by means of elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period or periods immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

## DIRECTION OF ELECTIONS

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 West Kentucky Coal Company, Earlington, Kentucky, elections 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 Fourteenth 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 units found appropriate in Section IV, above, who were employed during the pay-roll period or periods immediately preceding the date of this Direction, including employees who did not work during said pay-roll period or periods 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 and have not been rehired or reinstated prior to the date of the elections, to determine whether or not they desire to be represented by United Mine Workers of America, District 23, for the purposes of collective bargaining.

**MR. GERARD D. REILLY** took no part in the consideration of the above Decision and Direction of Elections.