

In the Matter of BECKLEY MACHINE AND ELECTRIC Co. and UNITED
CONSTRUCTION WORKERS, UNITED MINE WORKERS OF AMERICA

Case No. 9-R-1281.—Decided January 10, 1944

Mr. C. I. Bepler, of Beckley, W. Va., for the Company.

Messrs. James Leeber, Jr. and George Gilbert, of Beckley, 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 United Construction Workers, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Beckley Machine and Electric Co., Beckley, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William I. Shooer, Trial Examiner. Said hearing was held at Beckley, West Virginia, on November 30, 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

Beckley Machine and Electric Co., is a West Virginia corporation, engaged in the business of repairing electrical and mechanical equipment for mining machinery, and in the manufacture of repair parts for mining machinery at Beckley, West Virginia. Sixty-five percent of all raw materials used by the Company is shipped to it from points outside the State of West Virginia, and over 10 percent of the Company's finished products is 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

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

III. THE QUESTION CONCERNING REPRESENTATION

During October 1943 the Union requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request.

A statement of the Trial Examiner, 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

The Union urges that all hourly rated employees of the Company, including watchmen, but excluding foremen, office and clerical employees, and supervisory employees, constitute an appropriate unit. The only controversy with respect to the unit concerns truck driver solicitors, the janitor, and labor gang employees. The Union would include all such employees in the unit, while the Company would exclude them.

The Company employs five truck drivers, three of whom also solicit business. All truck drivers are paid the same rate of pay and perform similar duties. Accordingly, we shall include all truck drivers in the unit.

The Company employs one janitor who it contends should be excluded from the unit because he has access to confidential material. The record discloses that the janitor, while cleaning the offices, works in a room containing confidential material. The duties of the janitor in no way entail working with the confidential documents. We shall include the janitor in the unit.

The Company employs about 10 unskilled employees who work together as a labor gang. The labor gang employees perform outside construction work and are employed for several months at a time. Many of the men from the labor gang are transferred to positions

¹The Trial Examiner reported that the Union presented 123 authorization cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll for the period ending November 1, 1943. There are approximately 176 employees in the appropriate unit.

in the plant. Under the circumstances, we shall include the labor gang employees in the unit.

We find that all hourly rated employees of the Company, including watchmen,² truck driver solicitors, the janitor, and labor gang employees, but excluding foremen, office and clerical employees, and all supervisory employees with the 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 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 Beckley Machine and Electric Co., Beckley, West Virginia, an election by secret ballot shall be conducted as early as possible, but not later than (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth 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 and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Construction Workers, United Mine Workers of America, for the purposes of collective bargaining.

² The watchmen are not militarized.