

In the Matter of PIKES PEAK FUEL DIVISION OF THE GOLDEN CYCLE CORPORATION *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION No. 943

*Case No. 17-R-771.—Decided March 6, 1944*

*Mr. David P. Strickler*, of Colorado Springs, Colo., for the Company.  
*Mr. James H. Stidham*, of Colorado Springs, Colo., for the Union.  
*Mr. Wallace E. Royster*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 943, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of certain 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 John A. Weiss, Trial Examiner. Said hearing was held at Colorado Springs, Colorado, on January 18, 1944. 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

The Golden Cycle Corporation stipulated at the hearing that it is a West Virginia corporation with its principal office and place of business

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ness in Colorado Springs, Colorado, where it is engaged in the mining and milling of gold and silver, in the milling of lead-zinc ores, and the mining of coal. In connection with its operations it owns and operates a power plant and a mill, known as the Golden Cycle Mill where gold is reduced to bullion and lead-zinc ores are reduced to concentrates. The Company owns a majority of the stock in the Midland Railway Company and Cripple Creek Stage Company and operates both of these enterprises. The Pikes Peak Fuel Division of the Company is an integral part of the Company's business and operates a coal mine known as the Pikeview Mine. During the first 8 months of 1943, approximately 117,399 tons of coal were produced at this mine, of which 17 percent was used by the Company's power plant; one-tenth of 1 percent was used for the heating of railroad station buildings of the Company; 10 percent was trucked to the mill for use in roasting gold ores; and about 72.9 percent was sold to local customers. About 83 percent of the total electrical energy produced at the Company's power plant is used by the mill. The mill reduces about 400 tons of lead-zinc ores daily to 50 tons of concentrates, which are transported to Dumas, Texas, for smelting. During the year 1942, the Company purchased supplies for use in its operations, having the approximate value of \$372,608, of which about 25 percent was shipped to the Company from points outside Colorado.

During the first 8 months of 1943, the Company sold to the United States Army Camp at Camp Carson, Colorado, approximately 14,668 tons of coal and to the United States Army Base at La Junta, Colorado, 443 tons of coal.

In a prior decision the Board asserted jurisdiction over the employees in the Company's coal mine.<sup>1</sup> This proceeding concerns the employees of the Company who are engaged in trucking coal from the mine to the mill for use in roasting gold ores and in delivering coal to consumers in Colorado Springs. The Company asserts that its truck drivers are in no manner engaged in an operation affecting commerce and are thus without the purview of the National Labor Relations Act. As stated above, approximately 17 percent of the coal produced at the mine is converted into electrical energy at the power plant and the energy is used largely in the operation of the mill. Thus, cessation of mine production would directly affect the operation of the mill and, therefore, the shipment of lead-zinc concentrates in commerce. While coal is not trucked to the power plant, transport of coal from the mine mouth to consumers is incident to and an integral part of the mine operations. We take official notice of the fact that the movement of coal in the channels of interstate

<sup>1</sup> *Matter of Pikes Peak Fuel Division of the Golden Cycle Corporation*, 52 N. L. R. B. 1228.

commerce is large and important and has been the subject of Federal regulation. We find that the production of coal by the Company affects commerce within the meaning of the Act and that the functions of the truck drivers engaged in the delivery of coal are so integral a part of the Company's operations as to be within the jurisdiction of the Board.<sup>2</sup>

#### II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 943, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

It was stipulated at the hearing that about September 15, 1943, the Union notified the Company that it represented a majority of all the Company's trucking employees employed at the Pikeview Mine and requested recognition as the exclusive bargaining representative of those employees. The Company refused such recognition.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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

Except for its contentions concerning the jurisdiction of the Board in the premises, the Company does not oppose the unit sought by the Union. Accordingly, we find that all truck drivers employed at the Pikeview Mine of the Company, excluding 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

<sup>2</sup> See *Virginia Electric and Power Company v. N. L. R. B.* 319 U. S. 533, affirming 132 F. (2d) 390 (C. C. A. 4), enforcing 44 N. L. R. B. 404.

<sup>3</sup> The Field Examiner stated that the Union submitted 35 authorization cards all bearing apparently genuine original signatures. Seventeen of the cards bore names of persons whose names appear on the Company's pay roll of December 11, 1943. There are 27 employees in the appropriate unit.

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 the 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 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 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 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 943, for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.