

In the Matter of BASIL MORRIS, ARTHUR MORRIS, AND C. A. MORRIS,
D/B/A MORRIS BROTHERS and UNITED MINE WORKERS OF AMERICA,
DISTRICT 23

Case No. 14-R 830.—Decided June 14, 1944

Mr. Arthur Morris, of Daniel Boone, Ky., for the Company.
Fox & Gordon, by *Mr. B. M. Gordon*, of Madisonville, Ky., and
Messrs. Jess Lovelace and *Earl Suver*, of Madisonville, Ky., for the
United.

Mr. C. C. Dreman, of Belleville, Ill., *Mr. Earl Evans*, of Madisonville, Ky., and *Mr. John Marchiando*, of Springfield, Ill., for the Progressive.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition and amended petition duly filed by United Mine Workers of America, District 23, herein called the United, alleging that a question affecting commerce had arisen concerning the representation of employees of Basil Morris, Arthur Morris, and C. A. Morris, partners d/b/a Morris Brothers, Daniel Boone, Kentucky, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Ryburn L. Hackler, Trial Examiner. Said hearing was held at Madisonville, Kentucky, on May 11, 1944. At the commencement of the hearing the Trial Examiner granted a motion of progressive Mine Workers of America, District 5, herein called the Progressive, to intervene. The Company, the United, and the Progressive appeared at and participated in the hearing and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the Progressive moved to dismiss the petition. The Trial Examiner reserved ruling. The motion is hereby denied. 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

Basil Morris, Arthur Morris, and C. A. Morris constitute a partnership operating a single coal mine known as Morris No. 2, located near Daniel Boone, Kentucky. The Company produces approximately 5,000 tons of coal monthly at Morris No. 2, 70 percent of which is lump and nut coal and 30 percent slack or screenings. About 27 percent of the lump and nut coal is loaded in trucks bearing State of Tennessee license plates. One of the partners in the Company testified, on the basis of his records, that all the lump and nut coal loaded in trucks bearing State of Tennessee license plates went into that State. The Company operated under Section 4 (a) of the Bituminous Coal Act and thus operated under the Bituminous Coal Code until the latter was abolished in August 1943. The Company uses about 1,800 pounds of powder per month, all of which is shipped to it from points outside the State of Kentucky. It also purchases repair parts valued at about \$50 monthly, all of which is shipped to it from points outside the State of Kentucky.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Mine Workers of America, District 23, is a labor organization admitting to membership employees of the Company.

Progressive Mine Workers of America, District 5, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the United as the exclusive collective bargaining representative of its employees until such time as the United is certified by the Board.

On July 1, 1942, the Company and the Progressive entered into an exclusive bargaining contract. The contract provides that it shall remain in effect until July 1, 1944, or terminate sooner if the Progressive ceases to be the representative of the employees and the employees have selected a new bargaining agent "in the manner provided for by law." Inasmuch as the contract is about to expire¹ and further

¹*Matter of Atlantic Footwear Co., Inc.*, 5 N. L. R. B. 252.

provides for termination upon a subsequent designation of another collective bargaining agent,² we find that it does not constitute a bar to a determination of representatives at this time.

A statement of the Trial Examiner, read into evidence at the hearing, indicates that the United represents a substantial number of employees in the unit hereinafter found to be appropriate.³

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 at the Morris No. 2 mine of the Company, excluding watchmen, clerks, members of the executive, supervisory, sales, and technical force, mine foremen, assistant mine foremen, firebosses, head electricians, head mechanics or bosses in charge of any class of labor, inspectors, weighbosses, and any 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.⁴

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.

The United and the Progressive request that they appear on the ballot as "U. M. W. of A., District 23" and "P. M. W. A., District 5," respectively. The requests are hereby granted.

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-

² *Matter of Farr-Alpaca Co., Inc.*, 9 N L R B 1208.

³ The Trial Examiner reported that the United presented 10 membership application cards bearing the names of persons who appear on the Company's pay roll for the period ending May 4, 1944. There are approximately 28 employees in the appropriate unit. The Progressive did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

⁴ This is the same unit that is provided for in the contract between the Progressive and the Company.

lations 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 Basil Morris, Arthur Morris, and C. A. Morris, partners d/b/a Morris Brothers, Daniel Boone, Kentucky, an election by secret ballot shall be conducted as soon 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 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 at the polls, but excluding any 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 U. M. W. of A., District 23, or by P. M. W. A., District 5, for the purposes of collective bargaining, or by neither.