

In the Matter of L. E. RUBY, LUCIEN RUBY, CLYDE RUBY, J. EDWIN RUBY AND JOHN CASSNER D/B/A RUBY BROTHERS<sup>1</sup> and UNITED MINE WORKERS OF AMERICA, DISTRICT 23

*Case No. 14-R-923.—Decided June 15, 1944*

*Gordon, Gordon & Moore, by Mr. Neville Moore, of Madisonville, Ky., for the Company.*

*Mr. B. N. Gordon (Fox & Gordon), Mr. Earl Suver, and Mr. Jess Lovelace, of Madisonville, Ky., for the Union.*

*Mr. William Strong, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Mine Workers of America, District 23, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of L. E. Ruby, Lucien Ruby, Clyde Ruby, J. Edwin Ruby and John Cassner, d/b/a Ruby Brothers, Madisonville, 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. The Company and the Union appeared and participated. All parties 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 an 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 Company is engaged in strip coal mining on the coal properties of the West Kentucky Coal Company, Earlington, Kentucky. From

<sup>1</sup>The Company's name is shown as amended at the hearing.

August 1943 to the date of the hearing herein, the company purchased materials and supplies for use in its stripping operations valued in excess of \$36,000, 50 percent of which was shipped to it from points outside the State of Kentucky. During the same period, the Company produced more than 75,000 tons of bituminous coal valued in excess of \$75,000. All of this coal was delivered to the West Kentucky Coal Company, which processed and mingled it with its general coal stocks.

A major portion of the coal production of the West Kentucky Coal Company, totally valued in 1943 at more than \$3,000,000, is shipped to points outside the State of Kentucky. The West Kentucky Coal Company is clearly engaged in commerce within the meaning of the Act.<sup>2</sup>

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

## II. THE ORGANIZATION INVOLVED

United Mine Workers of America, District 25, is a labor organization admitting to membership employees of the Company:

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees.

A statement of a Board agent, 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

The Union seeks a unit of all production and maintenance employees of the Company at its Ruby No. 1 strip mine, excluding clerical employees, and all supervisory employees. The Company declines to take any position as to an appropriate unit.

The employees whom the Union would include in the unit are en-

<sup>2</sup> See, e g, *Matter of West Kentucky Coal Company*, 54 N. L. R. B. 358, and *Matter of West Kentucky Coal Company*, 10 N. L. R. B. 88.

<sup>3</sup> The Field Examiner reported that the Union submitted 10 membership application cards, that the names of all persons appearing on the cards were listed on the Company's pay roll of March 11, 1944, which contained the names of 17 employees in the appropriate unit.

gaged in the normal production and maintenance operations at the Ruby No. 1 strip mine. The employees involved are operating engineers and helpers, common laborers, maintenance employees, and truck drivers. They work together in the same area under the same conditions and supervision, and are all part of an integrated mining process.

We find that all production and maintenance employees of the Company at its Ruby No. 1 strip mine, including operating engineers and helpers, common laborers, maintenance employees, and truck drivers, but excluding the superintendent, assistant superintendent, 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.

#### 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 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 L. E. Ruby, Lucien Ruby, Clyde Ruby, J. Edwin Ruby, and John Cassner d/b/a. Ruby Brothers, Madisonville, Kentucky, 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 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 the 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 those 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 or not they desire to be represented by U. M. W. of A., District 23,<sup>4</sup> for the purposes of collective bargaining.

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<sup>4</sup>The Union asks to be designated on the ballot as shown in the text. The request is granted.