

In the Matter of ROCHESTER AND PITTSBURGH COAL COMPANY and  
UNITED CLERICAL, TECHNICAL AND SUPERVISORY EMPLOYEES UNION OF  
THE MINING INDUSTRY, DIVISION OF DISTRICT 50, UNITED MINE WORK-  
ERS OF AMERICA

*Case No. 6-R-896.—Decided June 29, 1944*

*Mr. Harry A. Heilman*, of Kittanning, Pa., *Mr. Frank G. Smith*, of Clearfield, Pa., and *Mr. James W. Mack, Sr.*, of Indiana, Pa., for the Company.

*Messrs. Samuel Krimsly* and *John McAlpine*, of Pittsburgh, Pa., for the Union.

*Mrs. Augusta Spaulding*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by United Clerical, Technical and Supervisory Employees Union of The Mining Industry, Division of District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Rochester and Pittsburgh Coal Company, Indiana, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Indiana, Pennsylvania, on March 10 and 11, 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 an opportunity to file briefs with the Board. The request of the Company for oral argument is hereby denied.

Upon the entire record in the case, the Board makes the following:

56 N. L. R. B., No. 313.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Rochester and Pittsburgh Coal Company operates coal mines, coke ovens, and auxiliary facilities in Pennsylvania. The main office of the Company is at Indiana, Pennsylvania. For its operations during the years 1942 and 1943, the Company purchased equipment, materials, and machinery valued in excess of \$1,000,000, of which more than 40 percent by value was purchased and shipped to the Company's properties from points outside Pennsylvania. During the year 1943 the Company produced coal valued in excess of \$12,000,000, of which approximately 90 percent was sold and shipped to points outside Pennsylvania.

The Company admits that it is engaged in commerce, within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

United Clerical, Technical and Supervisory Employees Union of The Mining Industry, Division of District 50, is a labor organization affiliated with United Mine Workers of America, admitting to membership employees of the Company.

## III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

The Company operates eight coal mines and a string of beehive coke ovens in Pennsylvania. Its auxiliary properties include power plants, an extensive supply department, a machine repair department, and a laboratory. The Company's main office at Indiana, Pennsylvania, is centrally located with respect to its numerous work centers. At each mine and at each auxiliary plant except the power plants, the Company maintains an auxiliary or branch office.

Since 1939 the Company has recognized United Mine Workers of America, herein called the U. M. W. of A., as the sole bargaining representative of miners and other employees who work in and about its mines, auxiliary plants, and properties, and the Company, as a member of Central Pennsylvania Coal Producers' Association, bargains with the U. M. W. of A. on a multiple-employer basis with other employer members of that association on behalf of such employees. These contracts with the U. M. W. of A. cover approximately 4,500 of the Company's 5,000 employees. The contracts, however, expressly exclude from coverage supervisory, clerical, and technical employees on the Company's pay roll. Employees in these excluded categories at the time of the hearing numbered, respectively, 358, 124, and 36.

In 1941, Mine Officials' Union of America, an unaffiliated labor organization, organized the Company's technical and supervisory employees. The Company, although asked to do so, did not recognize that organization as bargaining representative for any group of its employees. On July 28, 1942, Mine Officials' Union of America filed at the Board's Regional Office a petition for investigation and certification in Case No. 6-R-543, alleging that supervisory employees of the Company constituted an appropriate bargaining unit. On November 30, 1942, before formal action was taken thereon, the petition was withdrawn without prejudice.

Previous to October 1942, the U. M. W. of A. did not accept into membership supervisory, technical, and office employees and, as noted above, its contracts covering manual workers in the employ of the Company and other coal employers specifically excluded employees in these categories from coverage. In its general convention in October 1942, however, the U. M. W. of A. adopted a resolution authorizing its executive committee to admit groups of these hitherto excluded employees into affiliation with the U. M. W. of A. as a parent body. On April 1, 1943, United Clerical, Technical, and Supervisory Employees' Union of The Mining Industry, Division of District 50, the petitioner in this proceeding, herein called the Union, was duly organized as an affiliate of the U. M. W. of A. and it succeeded Mine Officials' Union of America as an organization claiming to represent employees of the Company.

On November 12, 1943 the Union asked the Company for formal recognition as bargaining representatives of supervisory, technical, and clerical employees working at the Company's mines and other properties. Upon the Company's failure to accord such recognition, the Union filed the original petition in this proceeding, alleging that clerical and technical employees of the Company, excluding supervisory employees, constituted an appropriate bargaining unit.<sup>1</sup>

It is clear that the Union has abandoned its original desire to group technical, clerical, and supervisory employees of the Company in a single bargaining unit and that, in this proceeding, it presently desires certification as bargaining representatives of technical and clerical employees in a unit from which supervisory employees are expressly excluded. While the parties disagree with respect to certain categories of clerical and technical employees who should be included in a

<sup>1</sup> On January 13, 1944, the Union filed an amended petition, excluding from its proposed unit clerical employees in the Company's general or main office at Indiana. At the hearing the Union further amended the unit which it contends is appropriate for bargaining, by including and excluding, respectively, employees in certain defined job classifications. In view of our dismissal of the petition as amended on grounds other than that of the appropriateness of the proposed unit, we find it unnecessary at this time to resolve the issues as to these employees or to make any finding with respect to a bargaining unit appropriate for the Company's employees.

single bargaining unit, the primary issue between them is not the scope of the appropriate unit, but the competence of the petitioning labor organization to represent such employees.

Members of the petitioner who occupy supervisory positions with the company outnumber members who occupy non-supervisory clerical and technical positions. Such supervisory employees serve on the Union's executive committee and take a prominent part in union affairs. By their numbers they necessarily control the Union's policies and practices. The petitioner contends that the single issue in this proceeding is the appropriate unit for the Company's clerical and technical employees and that substantial control of the Union by supervisory employees is not material thereto, since supervisory employees are specifically excluded from the bargaining unit proposed as appropriate. The Company takes exception to this position and contends, *inter alia*, that the control of the Union by supervisory employees renders that labor organization incapable of representing in good faith non-supervisory employees with their employer.<sup>2</sup>

In an early representation case,<sup>3</sup> in which a labor organization of the type popularly known as an employees' representation plan claimed to represent certain employees, we found that the employer's control of the organization prevented it from being considered as the representative of employees for the purposes of collective bargaining, enunciating the principle that an organization which is subject to an employer's control cannot be certified as a bargaining representative, since it is patently incapable of bargaining at arm's length with the employer. In a subsequent case,<sup>4</sup> where a participating organization was admittedly conceived and organized by a supervisory employee, we applied this principle, finding that the organization could not be considered a bona fide representative of employees for the purpose of collective bargaining and, accordingly, denied it a place upon the ballot. More recently, in *Matter of The Toledo Stamping and Manufacturing Company*,<sup>5</sup> we declined to direct an election on the petition of a labor organization whose claim to represent the employees affected by the petition was shown by application cards secured with the assistance of a supervisor. Thus, although in proceedings under Section 9 (c) of the Act we do not ordinarily consider issues as to the character and activities of the labor organizations seeking certification as the collective bargaining representative of employees affected

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<sup>2</sup> In view of the position of the Union expressed at the hearing and the admissions of its representatives, it is unnecessary for us to rule upon the offer of proof made by the Company and to review the ruling of the Trial Examiner with respect to the exclusion of certain exhibits offered by the Company concerning the activity of supervisory employees.

<sup>3</sup> *Matter of Phelps-Dodge Corporation, United Verde Branch*, 6 N. L. R. B. 624.

<sup>4</sup> *Matter of Douglas Aircraft Company, Inc.*, 53 N. L. R. B. 486.

<sup>5</sup> 55 N. L. R. B. 865.

by the proceedings,<sup>6</sup> we will not, where the facts are admitted and their import is unmistakable, knowingly accord a place on the ballot in any election conducted by the Board to a labor organization which is not capable of dealing on behalf of ordinary employees<sup>7</sup> at arm's length with their employer.

Consequently, the present case is distinguishable from certain cases relied upon by the petitioner, in which the Board has certified a labor organization as bargaining representative of a group of employees who had previously been excluded from a bargaining unit of other employees of the same employer. These cases<sup>8</sup> merely stand for the proposition that there is no policy in the Act which prevents a labor organization from representing a number of different groups of employees of the same employer in separate bargaining units keyed to and based upon their different employment interests. Those decisions, however, have no bearing upon a case in which the petitioner makes no denial of the union activity of the supervisory employees, nor of their domination and control of the organization. The record here shows that supervisors who belong to the union have repeatedly brought pressure upon subordinate employees to join. *The Maryland Drydock*<sup>9</sup> and *Soss*<sup>10</sup> cases, taken together, clearly condemn the representation of ordinary employees and supervisory employees by the same labor organization, both because of the inherent threat to the freedom of choice by ordinary employees and because of the irreconcilable and conflicting positions in which such affiliations would place supervisors. The requirement that a labor organization be free of managerial control and fully competent to represent all employees in the proposed bargaining unit is a fundamental one, and to the extent in which the *Revere Copper* case<sup>11</sup> seemed to depart from this principle, it must be deemed overruled.

For the foregoing reasons, we are constrained to dismiss the petition.

### ORDER

Upon the basis of the above findings of fact and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Rochester and Pittsburgh Coal Company, Indiana, Penn-

<sup>6</sup> Cf. *Matter of J & A. Young, Inc.*, 9 N. L. R. B. 1164; *Matter of Tabardrey Manufacturing Company*, 51 N. L. R. B. 246; *Matter of R. G. LeTourneau, Inc.*, 36 N. L. R. B. 744; and *Matter of J. Greendbaum Tanning Company*, 49 N. L. R. B. 787.

<sup>7</sup> In the term "ordinary employees," we include employees, skilled or unskilled, who occupy non-supervisory positions of employment.

<sup>8</sup> See *Matter of Pacific Gas and Electric Company*, 52 N. L. R. B. 1204; *Matter of The Chrysler Corporation*, 44 N. L. R. B. 881.

<sup>9</sup> *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733.

<sup>10</sup> *Matter of Soss Manufacturing Company*, 56 N. L. R. B. 348.

<sup>11</sup> *Matter of Revere Copper and Brass, Inc.*, 51 N. L. R. B. 350.

sylvania, filed by United Clerical, Technical and Supervisory Employees Union of The Mining Industry, Division of District 50, affiliated with United Mine Workers of America, be and it hereby is, dismissed.

Separate opinion of Chairman HARRY A. MILLIS:

While I am not wholly satisfied that the rationale of my colleagues warrants the dismissal of the petition in this case, I am constrained to concur in the result reached by them. In my dissenting opinion in *The Maryland Drydock*<sup>12</sup> case I stated that I believed that, "in the interest of effectuating its determination as to the boundaries of the appropriate unit, the Board may in its discretion require that supervisory and subordinate groups shall be independent of one another in union meetings, in the formulation of demands upon management, and in the approval or disapproval of tentative agreements." Had such provision for segregation appeared here, I should have entertained this petition, and assuming the otherwise appropriateness of the unit requested, directed an election. The record in this case, however, is bare of any such undertaking on the part of the petitioner. Its contention that the exclusion of supervisory employees from the requested unit cures this defect does not meet the issue. For, even though it be granted that the subordinate employees themselves constitute an appropriate unit, the impact upon prospective collective bargaining in which subordinate interests are largely represented by supervisory employees is not dissipated by a *pro forma* exclusion of the latter from the purview of a petition under Section 9 (c) of the Act. That the interests of supervisory groups in collective bargaining are distinguishable from those of rank and file employees is patent. And while both interests are properly deserving of encouragement by this Board, in my opinion, *optimum* results toward this end may more satisfactorily be achieved by the realistic recognition that such interests are furthered when appropriate demarcation lines are observed.

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<sup>12</sup> 49 N L R. B. 733, at page 744