

In the Matter of RAILWAY FUEL COMPANY and DISTRICT 50, UNITED
MINE WORKERS OF AMERICA

Case No. 10-R-1243.—Decided August 9, 1944.

Mr. D. K. McKamy, of Birmingham, Ala., for the Company.
Mr. Howard Nail, of Birmingham, Ala., for the Union.
Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by 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 Railway Fuel Company, Parrish, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry, Whittaker, Trial Examiner. Said hearing was held at Birmingham, Alabama, on July 13, 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Railway Fuel Company, a wholly-owned subsidiary of Southern Railway Company, is an Alabama corporation with its office and principal place of business located at Parrish, Alabama. It is engaged in the mining and distribution of coal. During the last 12-month period preceding the date of the hearing the Company purchased products and materials for use in its operations valued in

excess of \$160,000, of which about \$60,000 represents the value of products and materials originating outside the State of Alabama. The Company produced during the same period 650,000 tons of coal, of which more than 610,000 tons were sold and delivered to the Southern Railway Company.

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

II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the collective bargaining representative of certain of its employees until the fact that the Union represents a majority of the employees in its proposed unit has been established "in the proper manner."

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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 seeks a unit consisting of all clerical employees of the Company at its Parrish, Alabama, office, including timekeepers, assistant timekeepers, stenographer-clerks, stenographer, supply clerks, assistant supply clerks, and rodman, but excluding all supervisors. The Company does not dispute the propriety of this proposed unit, but contends that the stenographer and the rodman should be excluded therefrom.

The stenographer is assigned to the superintendent of the mines. She takes his dictation, keeps his files, and answers his telephone in his absence. The work of the superintendent includes the handling of grievances. His stenographer receives dictation on such matters, and has access to his confidential files. Under these circumstances we are of the opinion that the stenographer is a confidential employee and not properly part of a collective bargaining unit.

¹ The Field Examiner reported that the Union submitted 7 designation cards, of which 6 bore the signatures of persons appearing on the Company's pay roll of June 13, 1944. He further reported that said pay roll contained the names of 8 employees in the unit proposed by the Union.

The rodman works under the chief engineer and the civil engineer. This employee accompanies the engineers on their surveys of the mine, and records the data supplied by them. His salary is less than that of a timekeeper, but more than that of an assistant timekeeper. Since his duties appear, for the most part, to be routine and clerical in nature, we are of the opinion that he may properly be represented for the purposes of collective bargaining in the clerical unit.

In accordance with the foregoing we find that all clerical employees of the Company, at its Parrish, Alabama, office, including timekeepers, assistant timekeepers, stenographer-clerks, supply clerks, assistant supply clerks, and rodman, but excluding the stenographer to the superintendent and 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 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Railway Fuel Company, Parrish, Alabama, 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 Tenth 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 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 District 50, United Mine Workers of America, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.