

In the Matter of WEST KENTUCKY COAL COMPANY and UNITED MINE
WORKERS OF AMERICA, DISTRICT NO. 23

Case No. 14-R-988.—Decided September 28, 1944

Gordon, Gordon & Moore, by Mr. M. K. Gordon, of Madisonville, Ky., and *Wheeler & Shelbourne*, by Mr. James G. Wheeler, of Paducah, Ky., for the Company.

Fox & Gordon, by Messrs. B. N. Gordon and L. R. Fox, of Madisonville, Ky., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Mine Workers of America, District No. 23, herein called the Union, alleging that a question concerning representation had arisen concerning the employees of West Kentucky Coal Company, Earlington, Kentucky, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Keith W. Blunn, Trial Examiner. Said hearing was held at Madisonville, Kentucky, on August 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. At the hearing the Company moved to dismiss the petition on the ground that the unit sought is inappropriate, or, in the alternative, that the findings in a previous case between the same parties with respect to the unit question¹ be set aside and that the petitions in the previous case be consolidated with that in the instant case and the issue heard *de novo*. For reasons hereinafter stated the said motions are hereby denied. 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.

¹ *Matter of West Kentucky Coal Company*, 54 N. L. R. B. 358
58 N. L. R. B., No. 120.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

West Kentucky Coal Company, a New Jersey corporation, is engaged in the mining and marketing of coal in western Kentucky. It operates four mines known as North Diamond Mine No. 2, North Diamond Mine No. 3., Hecla Mine, and Poplar Ridge Mine. This proceeding is concerned with the Poplar Ridge Mine. During the calendar year 1943, the Company purchased supplies and materials for use in its mining operations valued at approximately \$3,000,000, of which about 63 percent was shipped to the mines from points outside the State of Kentucky. During the same period, the Company mined and sold approximately 3,200,000 tons of coal, the greater part of which was delivered to customers outside the State of Kentucky.

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

II. THE ORGANIZATION INVOLVED

United Mine Workers of America, District No. 23, unaffiliated, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the Union as the bargaining representative of its employees in the Poplar Ridge Mine on the ground that the unit sought is inappropriate.

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.²

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.

² The Field Examiner reported that the Union submitted 153 membership cards dated between January 1943 and December 1943. Since the Company refused to furnish a current pay-roll list it was not possible to compare the names on the membership cards with those on the company pay roll. At the hearing the Company introduced evidence indicating that there are 203 employees in the Poplar Ridge Mine.

The Company contends that because most of the designations submitted by the Union are dated more than a year ago, they are inadequate to prove a present majority among the employees in the Poplar Ridge Mine. We have repeatedly pointed out that designations are not submitted as a basis for certification by the Board but as *prima facie* evidence that the petitioning union has sufficient interest to justify the Board in proceeding with an investigation of representatives. The Board, therefore, does not permit opposing parties to question the apparent authenticity of such representation showing *Matter of The Regina Corporation*, 57 N L R B 4 and cases cited therein. Although the Board's customary practice is to check the names on designations against a current pay-roll list, that procedure was rendered impossible in the instant case by the Company's refusal to submit a pay roll for inspection by a Board agent.

IV. THE APPROPRIATE UNIT

The Union seeks a unit comprising all production and maintenance employees in the Poplar Ridge Mine excluding clerical employees, watchmen, carpenters, members of the sales or technical forces, mine foremen, assistant mine foremen, fire bosses, head electricians, head mechanics, inspectors, weigh bosses, and other supervisory personnel. The Company contends that a unit confined to employees in its Poplar Ridge Mine is inappropriate; that the only appropriate unit is one which includes the production and maintenance employees in all four of its mines.

In *Matter of West Kentucky Coal Company*,³ a proceeding involving the same parties, the Board found appropriate one unit comprised of employees in North Diamond Mine No. 2, North Diamond Mine No. 3, and Hecla Mine, all situated near Earlington, Kentucky, and a second unit confined to employees of Mine No. 2 situated near Sturgis, Kentucky, about 40 miles from Earlington. In addition to the four mines named above, the Company at that time owned two other mines near Sturgis, Kentucky, known respectively as Mine No. 10 and Poplar Ridge Mine. In holding three of the Company's mines appropriate as a single bargaining unit, the Board pointed out that the remaining mines might either singly or together constitute an appropriate unit. However, since the date of the previous decision the Company has closed down Mine No. 2 and Mine No. 10. At the present time, the Company is operating only the Poplar Ridge Mine in addition to the three mines named above.⁴

Accordingly, we find that all production and maintenance employees of the Company's Poplar Ridge Mine, located in Union

³ 54 N. L. R. B. 358. As the result of an election the Union was certified as the bargaining representative for production and maintenance employees in North Diamond Mine No. 2, North Diamond Mine No. 3, and Hecla Mine. The Company, contending as it does here, that the proceeding was void because it had not been afforded a hearing on the unit question, refused to bargain with the Union in accordance with the certification of the Board. However, in *Matter of West Kentucky Coal Company*, 57 N. L. R. B. 89, a complaint proceeding, the Board considered the Company's contentions with respect to the invalidity of the previous representation proceeding and held them to be without merit. The Board there stated, "In the interest of orderly procedure, it follows that the respondent cannot now be given a second opportunity to prove what it refused to prove at its earlier opportunity." Accordingly, it reiterated the previous finding as to the appropriate unit and ordered the Company to bargain with the Union with respect to employees in the unit previously found appropriate. In its supplemental brief in the instant case the Company contends for the third time that the United States Government was the employer of the workers in its mines during the time that the Secretary of the Interior was in possession of the mines. This construction of Executive Order 9393 was considered and held to be untenable in both of the previous decisions. See also *Glen Alden Coal Company v N. L. R. B.*, 141 F. (2d) 47 (C. C. A. 3).

⁴ Poplar Ridge Mine is situated 40 miles from Earlington, around which the other mines of the Company are clustered. It has its own superintendent and tipples. Coal is shipped directly from the Poplar Ridge Mine to customers of the Company without commingling with coal from the other mines. While there has been considerable shifting of employees recently, the changes have been on a permanent basis and as the result of the closing of two of the Company's mines. There is little interchange of employees among the Company's mines on a temporary basis.

County, Kentucky, excluding clerical employees, watchmen, carpenters, members of the sales or technical forces, mine foremen, assistant mine foremen, fire bosses, head electricians, head mechanics, inspectors, weigh bosses, and all 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.⁵

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 West Kentucky Coal Company, Earlington, 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 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 United Mine Workers of America, District No. 23, for the purpose of collective bargaining.

⁵ This is substantially the same unit of employee categories previously found appropriate in *Matter of West Kentucky Coal Company* 54 N. L. R. B. 358