

In the Matter of COLEMAN & BISHOP, PRINCESS, KENTUCKY (FORMERLY
BIG RUN COAL & CLAY Co.) and UNITED STEELWORKERS OF AMERICA,
CIO

Case No. 9-R-1533.—Decided October 21, 1944

Caldwell and Gray, by *Mr. Robert T. Caldwell*, of Ashland, Ky.,
for the Company.

Messrs. W. V. Vanover and Arthur G. Warren, of Ashland, Ky.,
for the Union.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Steelworkers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Coleman & Bishop, Princess, Kentucky, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin R. Cook, Trial Examiner. Said hearing was held at Ashland, Kentucky, on September 1, 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

C. A. Coleman and O. B. Bishop, a partnership doing business under the firm name of Coleman & Bishop, lessees of the properties of the Big Run Coal & Clay Company, at Princess, Kentucky, is engaged in the manufacture and sale of tile and building brick. Principal

raw materials used consist of clay and coal mined at the premises. During the past year, 50 percent of the Company's supplies was obtained from sources outside the State of Kentucky. During the same period gross sales of tile, brick, and coal by the Company amounted to \$100,000, of which a substantial portion was shipped to customers in other States. About 75 percent of the gross sales was made to general contractors and material dealers engaged in constructing Government Emergency Hospitals.

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

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about July 15, 1944, the Union addressed a letter to the Company requesting therein recognition as the bargaining representative of the production and maintenance employees of the Company. The Company refused recognition, contending that a consent election amongst its employees, held in March 1944, at the instance of the United Brick & Clay Workers of America, and which did not result in the selection of a bargaining representative, precluded the holding of another election for at least 1 year. However, inasmuch as the Union did not participate in the above-mentioned consent election and has submitted recent designations indicating that it represents a substantial number of the employees within the unit,¹ we find that the prior election is no bar to a present determination of representatives.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.

IV. THE APPROPRIATE UNIT

We find, in substantial accordance with an agreement of the parties, that all production and maintenance employees of the Company at

¹ A report of a Field Examiner, introduced into evidence at the hearing, indicates that the Union submitted 37 application cards, all of which bore apparently genuine original signatures, and that there were 42 employees in the alleged appropriate unit. The cards were not checked against the Company's pay roll. At the hearing, the Company maintained that there are 65 employees in the alleged appropriate unit.

The United Brick & Clay Workers of America, AFL, whose contract with the Company expired on October 14, 1943, submitted no evidence of membership and, although served with a Notice of Hearing, failed to appear.

² *Matter of Continental Shipbuilding Corporation*, 57 N. L. R. B. 1121.

Princess, Kentucky, including kiln and mine workers, but excluding all office and clerical employees, and supervisory employees having 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 Coleman & Bishop, Princess, 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 Ninth 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 United Steelworkers of America, CIO, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.