

In the Matter of JUNIOR MERCANTILE STORES DIVISION, WEST VIRGINIA
COAL & COKE CORPORATION and UNITED CONSTRUCTION WORKERS,
AFFILIATED WITH UNITED MINE WORKERS OF AMERICA

Case No. 9-R-1418.—Decided September 1, 1944

Mr. K. W. Starr, of Omar, W. Va., and *Mr. Charles L. Estep*, of Logan, W. Va., for the Company.

Messrs. Luke Brett and *George Gilbert*, of Beckley, W. Va., and *Mr. Charles Van Bibber*, of Logan, W. Va., for the U. C. W.

Mr. S. W. Woody and *Mrs. Winnie Holley*, of Logan, W. Va.; and *Mr. Carey A. Williams*, of Omar, W. Va., for the A. F. L.

Mr. William R. Cameron, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by United Construction Workers, affiliated with United Mine Workers of America, herein called the U. C. W., alleging that a question affecting commerce had arisen concerning the representation of employees of Junior Mercantile Stores Division, West Virginia Coal & Coke Corporation, Omar, West Virginia,¹ herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Melton Boyd, Trial Examiner. Said hearing was held at Logan, West Virginia, on July 12, 1944. The Company, the U. C. W., Local No. 869, Retail Clerks International Protective Association, herein called Local 869, Logan County Central Labor Council, and West Virginia State Federation of Labor, the latter three organizations being affiliated with the American Federation of Labor and jointly herein called the A. F. L., 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.

¹ The name of the Company thus appears as corrected by a stipulation entered into by the parties at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Junior Mercantile Stores Division is the trade name of a division of West Virginia Coal & Coke Corporation, a West Virginia corporation, which has its principal offices at Omar, West Virginia. In addition to its mines, in the vicinity of Omar and in the vicinity of Elkins, West Virginia, the Company operates a department store, service station, club house and hostelry, and restaurant, at Omar; a department store, restaurant, and service station, at Stirrat, West Virginia; a general merchandise store and a merchandise warehouse at Barnabus, West Virginia; and general merchandise stores at Earling, Micco, Chauncey, Pine Creek, and Rossmore, West Virginia. All the foregoing establishments are located in the vicinity of Omar, and are the only ones involved in this proceeding. The Company also operates a general merchandise store, service station, and restaurant at Norton, and a general merchandise store, and service station at Junior, West Virginia, all located in the vicinity of the Company's Elkins, West Virginia, operations, approximately 240 to 250 miles distant from Omar, West Virginia, and not here involved.

The Company is engaged principally in coal mining operations in the vicinity of Logan and in the vicinity of Elkins, West Virginia. The enterprises set forth above are incidental to its coal mining operations. Production, purchases and sales in the current calendar year are substantially proportionate to those in 1943, during which period the Company purchased merchandise and commodities for resale amounting in value to more than \$700,000, and materials for use in mining operations amounting in value to more than \$10,000, of which approximately 70 percent was shipped to the Company by common carrier from sources outside the State of West Virginia. During 1943, the Company's retail sales of merchandise and other commodities amounted in value to more than \$900,000, none of which was destined for delivery by common carriers to points outside the State of West Virginia, and the Company's sales of coal amounted in volume to more than 3,000,000 tons, all of which was destined for delivery by common carrier to points outside the State. In its mining operations, the Company is engaged in the production of coal used directly in the manufacture and transportation of essential military equipment. The Company employs approximately 2,800 employees in its mining operations and approximately 125 employees in the merchandising and service enterprises described above.

The Company concedes that insofar as the production, sale, and shipment of coal are concerned, it is engaged in interstate commerce, but denies that it is engaged in interstate commerce in the operation of its Junior Mercantile Stores Division. However, we find, upon the basis of the facts above set forth, that in the operation of its Junior Mercantile Stores Division the Company is also engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Construction Workers is a labor organization affiliated with the United Mine Workers of America, admitting to membership employees of the Company.

Local No. 869, Retail Clerks International Protective Association, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On or about March 24, 1944, the U. C. W. requested the Company to recognize it as collective bargaining representative of the employees in the stores division. The Company refused to grant such recognition because of its contract with Local 869.

In March of 1943, Local 869 entered into a written contract with the Company for a term beginning April 1, 1943, and extending until April 1, 1945. Local 869 contends that this contract is presently in effect and constitutes a bar to a determination of representatives. The U. C. W. contends that Local 869 is no longer a functioning labor organization, is not administering the contract, and that therefore the contract is not a bar to an election. The record, however, discloses that Local 869 is a duly chartered local of the international organization with which it is affiliated, and that since 1935 it has been in contractual relationship with the Company, each of its contracts being for a 2-year period, and of concurrent duration with the contract then in effect between the Company and the representatives of its mining employees. The present officers of Local 869 consist of a president, recording and financial secretary, and a treasurer, who together handle grievances with the Company on behalf of the employees. The local continues to hold meetings, and dues are checked off by the Company for approximately 35 percent of its regular store employees under authorizations made pursuant to a check-off provision in the contract. The evidence indicates that both parties continue to observe the terms of the contract. Viewing the record as a whole, we do not find any substantial evidence such as would warrant departure in the instant case from our estab-

lished principle that a contract of reasonable duration constitutes a bar to a determination of representatives during its term.² Inasmuch as approximately 7 months remain of the unexpired term of the contract between the Company and Local 869, we find that it constitutes a bar to a determination of representatives at this time. We find, accordingly, that no question has arisen concerning the representation of employees of the Company.

ORDER

Upon the basis of the above findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Junior Mercantile Stores Division, West Virginia Coal & Coke Corporation, Omar, West Virginia, filed by United Construction Workers, affiliated with United Mine Workers of America, be, and it hereby is, dismissed.

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

² See *Matter of Owens-Illinois Pacific Coast Co.*, 36 N. L. R. B. 990; *Matter of Great Lakes Carbon Corporation*, 44 N. L. R. B. 70.