

In the Matter of ALABAMA FUEL AND IRON COMPANY *and* ASSOCIATED
MINE WORKERS

Case No. 10-R-750.—Decided October 15, 1945

Mr. Borden Burr, of Birmingham, Ala., for the Company.
Mr. Harris Burns, of Birmingham, Ala., for the Association.
Mr. William F. Spencer, of Birmingham, Ala., and *Mr. Yelverton
Cowhead*, of Washington, D. C., for the U. M. W.
Miss Helen Hart, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Association Mine Workers, herein called the Association, alleging that a question affecting commerce had arisen concerning the representation of employees of Alabama Fuel and Iron Company, Birmingham, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Dan M. Byrd, Jr., Trial Examiner. The hearing was held at Birmingham, Alabama, on January 26 and February 3, 1944. At the commencement of the hearing, the Trial Examiner granted a motion to intervene made by District 20, United Mine Workers of America, herein called the U. M. W. The Company, the Association, and the U. M. W. appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹

At the hearing, the U. M. W. moved to dismiss the petition, alleging, in substance, that a free election could not be conducted because the Company failed to comply with the Board's Order in Case No. 10-C-1102² and was engaging in continued unfair labor practices.

¹ On January 26, the U. M. W. entered a general appearance at the hearing. On February 3, the U. M. W. withdrew its general appearance and appeared specially for the purposes of moving to dismiss the petition. We note that the U. M. W. participated in connection with all phases of the proceeding.

² See 43 N. L. R. B. 166.

64 N. L. R. B., No. 39.

Contrary to the U. M. W.'s assertions, however, it does not appear that the Company did not comply with the requirements of the Order in Case No. 10-C-1102. Moreover, although the U. M. W. filed an unfair labor practice charge against the Company in Case No. 10-C-1246, subsequent to the issuance of the Board's Order in Case No. 10-C-1102, the Regional Director declined to issue a complaint premised upon that charge, and the Board later sustained his action on appeal. While it is true that, following the affirmance of the Regional Director's ruling in Case No. 10-C-1246 and subsequent to the hearing in the instant proceeding, the Board issued a complaint against the Company predicated upon a charge filed by the U. M. W. in Case No. 10-C-1558, found that the Company had engaged in unfair labor practices, and issued an appropriate Order against the Company,³ the Regional Director has reported that the Company has taken the affirmative action required by that Order and is not now in violation of its negative provisions. Thus, there is no reason to dismiss the petition and the U. M. W.'s motion is 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. The request for oral argument filed by the U. M. W. is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Alabama Fuel and Iron Company, an Alabama Corporation, is engaged in mining and distributing coal. The main office of the Company is in Birmingham, Alabama. The Company operates mines and a coal-washing plant at Acmar, Alabama, and has mines only at Margaret, Alabama; it is these operations which are involved in the instant proceeding. The Company mines approximately 80,000 tons of coal per month, of which about 90 percent is sold and delivered to customers outside the State of Alabama.

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

II. THE ORGANIZATIONS INVOLVED

Associated Mine Workers, unaffiliated, is a labor organization admitting to membership employees of the Company.

District 20, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

³ See 62 N. L. R. B. 762.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Association as the exclusive bargaining representative of certain of its employees until the Association has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Association represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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

It appears that all parties are in general agreement with respect to the composition of the appropriate unit.

In substantial accordance with their agreement, we find that all production and maintenance employees of the Company's Acmar and Margaret operations, excluding guards, fire bosses, safety men, clericals and technical employees, mine contractors, foremen, superintendents, officials of the Company, 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.

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 payroll 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 the National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

⁴ The Field Examiner reported that the Association submitted 1205 applications for membership all of which bore apparently genuine original signatures, that the names of 691 persons appearing on the cards were listed on the Company's pay roll of November 16, 1943, that the U M W submitted 611 membership cards, all of which bore apparently genuine original signatures, that the names of 262 persons appearing on the cards were contained in the aforesaid pay roll; and that there are 1218 employees in the alleged appropriate unit.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Alabama Fuel and Iron Company, Birmingham, 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 they desire to be represented by Associated Mine Workers, unaffiliated, or by District 20, United Mine Workers of America, for the purposes of collective bargaining, or by neither.