

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

Case No. 9-R-1758.—Decided November 9, 1945

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

Mr. George Gilbert, of Beckley, W. Va., and *Mr. Charles Skeens*, of Princeton, W. Va., for the U. C. W.

Mrs. Winnie Holley, of Logan, W. Va., *Mr. Carey Williams*, of Omar, W. Va., and *Mr. Volney Andrews*, of Charleston, W. Va., for the A. F. L.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

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 West Virginia Coal & Coke Corporation, Omar, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. The hearing was held at Logan, West Virginia, on September 11, 1945. The Company, the U. C. W., and Retail Clerks International Protective Association, Local No. 869, a labor organization affiliated with the American Federation of Labor, 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. 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

In addition to, and incidental to, the operation of mines in the vicinity of Omar and in the vicinity of Elkins, West Virginia, West Virginia Coal & Coke Corporation operates, under the trade name of Junior Mercantile Stores Division, a department store, service station, clubhouse and hostelry and restaurant at Omar, a department store, restaurant and service station at Stirrat, a general merchandise store and a merchandise warehouse at Barnabus, and general merchandise stores at Earling, Micco, Chauncey, Pine Creek, and Rossmore, all located in West Virginia and in the vicinity of Omar. Under the same trade name, the Company also operates a general merchandise store, service station, and restaurant at Norton, and a general merchandise store and service station at Junior, all in West Virginia, and in the vicinity of Elkins, and 240 miles distant from Omar. Employees in the Company's Junior Mercantile Stores Division are the only employees of the Company directly involved in this proceeding.

During 1944, the Company purchased materials for use in its mining operations, amounting in value to more than \$100,000, of which approximately 70 percent was shipped to the Company from sources outside West Virginia, and merchandise and commodities for resale, amounting in value to more than \$700,000. During the same period, the Company's sales of coal amounted in value to more than 3 million tons, all of which was destined for delivery to points outside the State, and 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 to points outside West Virginia.

The Company admits, and we find, that in the operation of its Junior Mercantile Stores Division, the Company is engaged in commerce within the meaning of the National Labor Relations Act.¹

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.

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

¹ See *Matter of Junior Mercantile Stores Division, West Virginia Coal & Coke Corporation*, 58 N. L. R. B. 1.

III. THE QUESTION CONCERNING REPRESENTATION

Since April 1, 1938, the Company and the A. F. L.^o have entered into collective bargaining contracts for successive 2-year periods, the one prior to the current contract, expiring April 1, 1945. These contracts covered employees in the Junior Mercantile Stores Division.

On February 16, 1945, the A. F. L. asked the Company to enter into negotiations for a new contract. On February 17, the U. C. W. wrote the Company a letter, which the Company received February 19, alleging that it represented the same employees and requesting bargaining negotiations. The Company did not reply, and on March 5, 1945, entered into a new agreement with the A. F. L., effective April 1, 1945, for a term of 2 years.

The Company contends that this new agreement is a bar to a determination of representatives at this time. Since the Company had notice of the claim of the U. C. W. at the time of negotiating the new contract, we find that the contract is clearly not a bar to a present determination of representatives.²

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the U. C. W. represents a substantial number of employees in the unit hereinafter found appropriate.³

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 parties are in agreement that the unit hereinafter found appropriate is such, except that the U. C. W. desires to include, and the Company and the A. F. L. to exclude, full-time watchmen.⁴ The Company presently employs in its Junior Mercantile Stores Division two full-time watchmen, both of whom work at the Stirrat properties. These watchmen are neither uniformed nor deputized, nor do they carry arms. Their duties are the usual duties of night watchmen. They work at night, patrolling outside the Company's properties at Stirrat, which include a store, restaurant, dormitory, and offices. Watchmen are hired either by a property manager, who is not a Junior

² See *Matter of Lone Star Cement Corporation*, 60 N. L. R. B. 1135.

³ The Field Examiner reported that the U. C. W. submitted 118 authorization cards, of which 3 were dated 1943 and the remainder between February and August 1944. He also reported that a "check" of these cards against a current pay roll of the Company revealed the names of 37 persons among 67 employees in the alleged appropriate unit. The A. F. L. relies upon its contract with the Company, effective April 1, 1945, for the establishment of its interest in this proceeding.

⁴ The parties agree to include watchmen-janitors, as janitors

Mercantile Stores Division employee, or by the managers of either the restaurant or the store, who are Junior Mercantile Stores Division employees. Watchmen normally report to the former with respect to their clock readings and to the latter with respect to other matters. Watchmen have never been included in any of the bargaining contracts between the Company and the A. F. L. For this reason and because the parties disagree as to their inclusion in the unit, we shall exclude full-time watchmen from the unit.⁵ This exclusion, however, is without prejudice to a later determination of the appropriate unit for these employees upon a petition subsequently filed.⁶

We find that all employees of the Company in the Junior Mercantile Stores Division, including janitors, truck drivers, and department heads, but excluding all full-time office employees, full-time watchmen, managers, assistant managers, 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.

The Company from time to time requires the services of part-time employees. For this purpose, it maintains a pool of about 20 people, consisting primarily of high school students and married women, upon whom it calls for extra work. The employment of these people is most irregular. They are not required to take a physical examination as are regular employees, their pay rate is generally lower, and they are not covered by the group insurance plan. A part-time employee may be called upon to work about 6 days per month; some work slightly more and others less. Actually, the average time worked by those in the "pool" appears to be considerably less. The A. F. L. has never bargained for part-time employees. The turnover among them is so great that not more than 6 or 8 of the 20 will remain at the end of 6 months. The U. C. W. desires that all employees vote who have worked on the average of 5 days per month for a reasonable period before the election. Since it appears that part-time employees are irregular employees, we find that they are not eligible to vote in the election herein-after directed.

Those eligible to vote in the election shall be all employees in the appropriate unit who were employed during the pay-roll period immediately preceding the election, excluding part-time employees, and

⁵ See *Matter of Conant Fall Company*, 57 N. L. R. B. 1262.

⁶ *Matter of Peterson & Lytle*, 60 N. L. R. B. 1070.

further 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 Virginia Coal & Coke Corporation, Omar, West Virginia, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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 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 part-time employees and any 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 United Construction Workers, affiliated with the United Mine Workers of America, or Retail Clerks International Protective Association, Local No. 869, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

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