

In the Matter of PENNSYLVANIA COAL AND COKE CORPORATION, EMPLOYER, and LOCAL UNIONS No. 85 AND No. 280, UNITED CLERICAL, TECHNICAL AND SUPERVISORY EMPLOYEES OF THE MINING INDUSTRY, DIVISION OF DISTRICT 50, U. M. W. A., PETITIONER

Case No. 6-R-1211.—Decided September 5, 1946

Mr. Frank G. Smith, of Clearfield, Pa., for the Employer.

Messrs. Samuel Krimsly and Charles Ferguson, of Pittsburgh, Pa., for the Petitioner.

Mr. Nathan Saks, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Johnstown, Pennsylvania, on July 11, 1946, before Henry Shore, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

At the outset of the hearing, the Employer stated that it was appearing specially for the limited purpose of setting forth its position with respect to the present proceeding. It asserted, in effect, that because of the seizure and operation of its mines by the government,¹ it was not then the employer of the employees involved and requested that the hearing be postponed until the mines have been restored to its possession. The contention that the private owner of the mines is not the employer of the mine employees during the present period of governmental operation was considered and rejected in the *Ford Collieries* case.² Accordingly, the Trial Examiner properly denied the request for a postponement of the hearing.

¹ Executive Order No. 9728, dated May 21, 1946, authorized the Secretary of the Interior to take possession of and to operate certain coal mines whose operations were interrupted or threatened by interruption as a result of existing or threatened strikes and other labor disturbances. Pursuant to the authority thus vested in him, the Secretary of the Interior, by order dated May 22, 1946, delegated to the Coal Mines Administrator the authority to supervise and direct the operation of the mines affected.

² *Matter of Ford Collieries Company*, 70 N. L. R. B. 842; see also *N. L. R. B. v. West Kentucky Coal Company*, 152 F. (2d) 198 (C. C. A. 6), cert. denied June 10, 1946.

The attorney for the Employer announced at the beginning of the hearing that the Employer would not participate. He also stated, however, that the Federal Operating Manager had received instructions from the Coal Mines Administrator to supply the Board with all needful information in connection with this proceeding and that the Federal Operating Manager would comply with these instructions. Thereafter, the general manager of the mines was sworn as a witness and gave testimony as to mine operations.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Pennsylvania Coal and Coke Corporation, a Pennsylvania corporation having its principal office in Cresson, Pennsylvania, is engaged in mining coal at six mines in the Commonwealth of Pennsylvania. During the year 1945, the Employer mined 1,721,633 tons of coal, approximately 95 percent of which was shipped to points outside the Commonwealth of Pennsylvania. During the same period, it purchased, for use in its mines, supplies and equipment valued at approximately \$755,000, approximately 20 percent of which was shipped to the mines from points outside the Commonwealth.

We find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of the supervisory employees of the Employer.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner seeks a unit consisting of all assistant mine foremen, fire bosses, outside foremen, repair foremen, carpenter foremen or house bosses, shop foremen, motor barn foremen, transportation engineer or motor boss, weigh bosses, safety inspectors, and coal inspectors at the Employer's Ehrenfeld No. 3 Mine, Ehrenfeld No. 8 Mine, and Marsteller No. 22 Mine; excluding mine foremen, superintendents, general superintendents, chief engineer, general manager, chief coal inspector, supervisor of face preparation, superintendent of tippie maintenance, chief and assistant chief electrician at the Cresson office, chief clerk and assistant controller, head clerk, coal shipper, all clerical and technical supervisors, and all other employees.³ The Employer takes no position with respect to the unit.

³ The Employer has a contract with the United Mine Workers of America covering all non-supervisory production and maintenance employees at its mines. All of the categories in the Petitioner's proposed unit are excluded from the coverage of that contract.

The Employer operates six mines known respectively as Ehrenfeld No. 3, Ehrenfeld No. 8, Marsteller No. 22, Cresson No. 9, Gallitzin No. 10, and Windburn No. 46. All the mines are located within a radius of 48 miles from the Employer's general offices at Cresson, Pennsylvania. The mines are under the general supervision of officials who operate out of the Cresson office. These officials formulate general policies, including personnel policies, for all the mines. However, the individual mine is treated for some purposes as a separate and distinct unit. Thus, each mine is headed by a separate superintendent, ships its own coal, and does its own hiring.⁴ Further, the general office maintains separate pay-roll and cost accounting records for each of the mines. There is no interchange of employees among the various mines except on a permanent basis.

The Petitioner has limited its organizational activities to the Ehrenfeld No. 8 Mine, Ehrenfeld No. 22 Mine, and Marsteller No. 22 Mine. Under all the circumstances, we are of the opinion that at the present time a unit limited to supervisory employees in these three mines is appropriate.⁵

The Company has raised no question of improper grouping. The evidence reveals, however, that *weigh bosses*, *coal inspectors*, and *safety inspectors*, whom the Petitioner would include in the unit, are not supervisors within the Board's definition, because they have no subordinates. Accordingly, we shall exclude them from the unit. We shall also exclude *outside foremen*, who have authority and responsibility equivalent to that of mine foremen, whom the Petitioner would exclude.⁶ We shall include *assistant mine foremen*, *fire bosses*, *repair foremen*,⁷ *carpenter foremen*,⁸ and the *transportation engineer*,⁹ as we have in previous similar cases.¹⁰ We shall also include *shop foremen*, who are in charge of the machine shops outside the mines, and the *motor barn foreman*, who is in charge of the maintenance and repair of mine locomotives, since they occupy a supervisory status substantially equivalent to that of the other supervisors included in the unit.

⁴ The two Ehrenfeld Mines are only 500 feet apart at their portals, and are treated for many purposes as a single operation. They are supervised by the same superintendent and use the same tippie and cleaning plant.

⁵ Cf. *N. L. R. B v West Kentucky Coal Company*, 152 F (2d) 198 (C. C. A 6), enforcing as modified 57 N. L. R. B. 89; *Matter of West Kentucky Coal Company*, 58 N. L. R. B. 607, and 54 N. L. R. B. 358.

⁶ See *Matter of Ford Collieries Company*, *supra*, where outside foremen were excluded from a similar unit.

⁷ The repair foremen are like the master mechanics whom we included in a similar unit in *Matter of Ford Collieries Company*, *supra*.

⁸ The carpenter foremen are like the house bosses whom we included in *Matter of Ford Collieries Company*, *supra*.

⁹ The transportation engineer is like the motor bosses whom we included in *Matter of Ford Collieries Company*, *supra*.

¹⁰ See *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannonin Coal Division*, 66 N. L. R. B. 386, *Matter of Ford Collieries Company*, *supra*.

We find that all assistant mine foremen,¹¹ fire bosses, repair foremen,¹² carpenter foremen, shop foremen, transportation engineer, and motor barn foremen at the Employer's Ehrenfeld No. 3 Mine, Ehrenfeld No. 8 Mine, and Marsteller No. 22 Mine, excluding weigh bosses, coal inspectors, safety inspectors, outside foremen, mine foremen, mine superintendents, general superintendent, general manager, chief engineer, chief clerk and assistant controller, head clerk, purchasing agent, coal shipper, superintendent of tipple maintenance, supervisor of face preparation, chief coal inspector, chief and assistant chief electrician at the Cresson office, clerical and technical supervisors, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.¹³

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Pennsylvania Coal and Coke Corporation, Cresson, Pennsylvania, 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 Sixth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, as amended, 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 Local Unions No. 85 and No. 280, United Clerical, Technical and Supervisory Employees of the Mining Industry, Division of District 50, U. M. W. A., for the purposes of collective bargaining.

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision and Direction of Election.

¹¹ This includes face bosses who are in charge of mechanical loading crews.

¹² This includes the chief mine electrician at the Marsteller No. 22 Mine.

¹³ The non-supervisory production and maintenance employees of the Employer are included within the coverage of an Association-wide unit represented by the United Mine Workers. No contention was made in the present proceeding that the proper unit for the supervisors should similarly be Association-wide. Accordingly, we need not pass on this question.