

In the Matter of HACKATHORN & MYERS, EMPLOYER and GAY W. SMYTH, PETITIONER and LOCAL UNION No. 8458, INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, UNION

Case No. 8-RD-36.—Decided July 7, 1950

DECISION AND ORDER

Upon a petition for decertification duly filed, a hearing was held before Carroll L. Martin, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to the undersigned Board members [Members Houston, Murdock, and Styles].

Upon the entire record in the case, the Board finds:

1. The business of the Employer:

The Employer, Glenn Hackathorn and L. J. Myers, a partnership, operates the Balsler Mine, located near Bergholz, Ohio.

During 1949, the Employer mined from the Balsler Mine 38,974 tons of coal, valued at \$175,693, all of which was sold to purchasers located within Ohio. Of the amount so produced and sold, coal valued at approximately \$45,153 was sold to nonindustrial users; coal valued at approximately \$120,447 was sold to dealers for resale to a public utility and four industrial users engaged in interstate commerce.¹

Also during 1949, the Employer purchased supplies, consisting of tools, machinery, fuel oil, and greases, valued at approximately \$14,882, of which all was procured from suppliers located within Ohio.

¹The Ohio Edison Company, a public utility with gross operating revenue during 1949 of \$2,487,000 derived from outside Ohio, received coal from the Employer's Balsler Mine valued at approximately \$27,225; the McLain Fire Brick Company, with plants in Ohio and Pennsylvania, received coal from the Employer's Balsler Mine valued at approximately \$73,658; the American Vitriified Products Company, with out-of-Ohio sales for 1949 exceeding \$90,000, received coal from the Employer's Balsler Mine valued at approximately \$18,655; and the Homer Laughlin China Co. of Newell, West Virginia, with out-of-West Virginia sales for 1949 exceeding \$10,000,000, received coal from the Employer's Balsler Mine valued at approximately \$909.

We find, contrary to the Employer's contention, that the Employer is engaged in commerce within the meaning of the National Labor Relations Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case.²

2. The Petitioner asserts that the Union no longer represents employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

On December 23, 1948, the Employer recognized the Union as the bargaining agent of its production and maintenance employees, the employees in the unit herein involved. On that date, the Employer and the Union's international, International Union, United Mine Workers of America, executed a bargaining contract covering such employees; that contract terminated on June 30, 1949. No new contract was thereafter executed, and there is no evidence in the record of dealings between the Employer and the Union after June 30, 1949. Accordingly, there is no basis in this record for finding that the Union is "currently recognized" by the Employer.

As the Union has never been certified by the Board as the bargaining representative of employees of the Employer, and as it is not "currently recognized," neither of the requisites prescribed by Section 9 (c) (1) (A) (ii) of the Act has been satisfied in this case.³ Accordingly, the Board lacks the power to entertain the decertification petition, and we shall therefore dismiss it.⁴

ORDER

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

MEMBER MURDOCK, dissenting:

For the reasons stated in my dissenting opinion in *Tunnel Mill Mining Company*, 90 NLRB 787, decided this day, I would not assert jurisdiction in this case, and for that reason would dismiss the petition.

² *Tunnel Mill Mining Company*, 90 NLRB 787, issued this day.

³ Section 9 (c) (1) (A) (ii) of the Act empowers the Board to investigate a petition for decertification of a "labor organization which has been certified or is being currently recognized" by the employer.

⁴ *Davisville Hosiery Mill, Inc.*, 88 NLRB 738.