

In the Matter of TUNNEL MILL MINING COMPANY, EMPLOYER and SAM
McCONNEL, INDIVIDUAL and UNITED MINE WORKERS OF AMERICA,
LOCAL 8548, UNION

Case No. 8-RD-37.—Decided July 7, 1950

DECISION AND DIRECTION OF ELECTION

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 Act, the Board has delegated its powers in connection with this case to the undersigned Board members [Members Houston, Murdock, and Styles].

1. The Employer, John Ridzon, an individual, is the owner and operator of the Tunnel Mill Mining Company, under which name Ridzon does business. The mine is located near Bergholz, Ohio, and produces approximately 23,365 tons of coal annually, valued at approximately \$92,000, all of which is sold at the mine and trucked away by purchasers. Currently, the mine's production is about 110 tons per day.

Prior to June 30, 1949, the Employer sold more than 50 percent of its output to industrial users such as the McLain Fire Brick Company at Wellsville, Ohio.¹ For the 10-month period beginning June 30, 1949, no coal had been sold to McLain Fire Brick, but approximately 10 percent² of the Employer's output had been sold to one Ferguson of Liverpool, Ohio, presumably a dealer, who in turn sold it to the Homer Laughlin China Co., of Newell, West Virginia.³ Currently 21 percent⁴ of the Employer's output was being sold to the

¹ The record in *Hackathorn & Myers*, 90 NLRB No. 785, issued this day, which involves another small coal mining operation in this same area, discloses that the McLain Fire Brick Company is engaged in interstate commerce.

² The parties stipulated that this was a 2,000 ton total for the 10-month period. We estimate this to be 10 percent, based on an annual production of 24,000 tons.

³ The record in *Hackathorn & Myers*, above, shows that this company, too, produces a large volume of goods sold in interstate commerce.

⁴ The parties stipulated that this consumer was taking 24 tons a day, which we estimate as roughly 21 percent of the current 110 ton a day production.

Kaul Clay Co., of Toronto, Ohio, presumably for industrial purposes. The parties stipulated that a substantial part of current production goes to domestic users in nearby communities.

The Employer annually purchases equipment and supplies valued at \$18,000, of which machine parts purchased outside the State of Ohio would not exceed \$3,600 annually.

The United Mine Workers of America and its Local No. 8548 represented the Employer's production and maintenance employees under a contract which expired June 30, 1949.⁵ This Union contends that the Employer is not engaged in commerce within the meaning of the Act; the Petitioner takes no position in this regard; the Employer neither denies nor admits that it is engaged in commerce.

Considering the substantial amount of this Employer's output of coal which is used for industrial purposes,⁶ we find 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. The labor organization named below claims to represent employees of the Employer.

3. A 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.

4. We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees of the Employer at its mine located near Bergholz, Ohio, excluding guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of this Direction of Election, including employees who did not

⁵ This contract was a counterpart of the National Bituminous Coal Wage Agreement effective July 1, 1948, executed by the Employer on December 24, 1948.

⁶ We consider analagous the Board's assumption of jurisdiction over local bus companies engaged in transporting workers in "national enterprises." *El Paso-Ysleta Bus Company, Inc.*, 79 NLRB 1068, and cases there cited.

work during said payroll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by United Mine Workers of America, Local 8548.

MEMBER MURDOCK, dissenting:

I would dismiss the petition in this case because I am of the opinion that this Employer's mining operation, the product of which is largely devoted to domestic use, is predominantly local in character.

The Board seems committed to the proposition that the *jobbing* of coal for domestic use is "essentially local";⁷ and it has also declined to assert jurisdiction over a small coal mine whose output was consumed locally by both domestic and industrial users.⁸

In this case the apparent basis for the majority's decision is that some of the ultimate consumers of this Employer's coal are industrial concerns which, presumably, use the coal in the production of goods for commerce. But the resulting effect of the operation of the Employer's mine upon interstate commerce seems to me neither direct enough nor substantial enough to warrant our asserting jurisdiction as a matter of policy.

⁷ *Penn Coal Company, Inc.*, 80 NLRB 251; *Backart Coal Co.*, 86 NLRB 537.

⁸ *Mason & Son Coal Co.*, 72 NLRB 195. In that case the employing company mined approximately \$44,000 worth of coal per annum, all of which was sold to individual contractors who, in turn, sold it locally "for use in private homes, apartment dwellings, *breweries*, 'and the like.'" [Emphasis supplied.]