

In the Matter of CLYDE J. MERRIS, EMPLOYER and W. S. MUNROE, PETITIONER and DISTRICT 50, LOCAL 13076, UNITED MINE WORKERS OF AMERICA, UNION¹

Case No. 30-RD-3.—Decided June 23, 1948

Mr. B. E. Madden, of Canon City, Colo., for the Employer.

Mr. W. S. Munroe, of Canon City, Colo., for the Petitioner.

Messrs. Fred K. Heffer, C. L. Hamblin, Curtis Hanawalt, and John Ehmke, all of Canon City, Colo., for the Union.

DECISION

AND

ORDER

Upon a petition for decertification duly filed, hearing in this case was held at Canon City, Colorado, on January 28, 1948, before Howard W. Kleeb, hearing officer. At the hearing the Union moved to dismiss the petition on the ground that it had been brought by a supervisor employed by the Employer. The hearing officer referred the motion to the Board. For reasons set forth below, the motion to dismiss is granted. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Clyde J. Merris is engaged in Canon City, Colorado, in the hauling of dolomite rocks from the quarry to the tipples of the Colorado Fuel and Iron Company.² The Colorado Fuel and Iron Company uses the dolomite rock as a flux in the production of iron and steel.

¹ The petition herein designated the Union as "District 50, Local 13076, United Mine Workers of America, AFL." As the Union severed its affiliation with the American Federation of Labor on December 12, 1947, we have amended the caption accordingly.

The Union is not in compliance with Section 9 (f), (g), and (h) of the Act, but was nevertheless permitted to intervene because of its recognition agreement with the Employer executed on June 26, 1947.

² See *Matter of Colorado Fuel and Iron Corp.*, 67 N. L. R. B. 100

77 N. L. R. B., No 212.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE PARTIES INVOLVED

The Petitioner, a supervisor in the employ of the Employer, asserts that the Union is no longer the representative of the Employer's employees as defined in Section 9 (a) of the Act.

The Union is a labor organization claiming to be the exclusive bargaining representative of the Employer's employees by virtue of its recognition agreement of June 26, 1947.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On June 26, 1947, the Employer executed a recognition agreement with the Union in settlement of unfair labor practice charges which had been filed by the Union. The Employer and the Union were unable to reach agreement on the substantive terms of a contract.³ On July 21, 1947, the Union called an economic strike, which was still in effect at the time of the hearing herein. The employees on whose behalf the decertification petition herein was allegedly brought are new employees hired as replacements for the strikers.

The individual who filed the petition had been an employee of the Employer at the time of the strike, but he had not joined the Union and had not participated in the strike. He was made a *foreman* when the Employer resumed operations with newly hired employees on about August 21, 1947. He has authority to hire and discharge employees during the frequent absences of the Employer, and at all times to make effective recommendations concerning these matters. He is ineligible for membership in the Union, and is excluded from the unit which was stipulated to be appropriate by the parties at the hearing. The petition herein was filed on September 29, 1947, more than a month after the Petitioner became a foreman. He admittedly obtained during working hours the employee signatures for the *prima facie* showing of interest to accompany the petition.

Section 9 (c) (1) (A) of the Act provides that a petition for certification or decertification of the bargaining representative of employees may be filed by an "employee or group of employees or any individual or labor organization acting in their behalf." Section 9 (c) (1) (B) provides that a petition to ascertain the bargaining representative of employees may be filed by an employer. Congress therefore apparently intended to preclude employers from filing decertifica-

³ The recognition agreement, lacking substantive terms regarding wages, hours, and conditions of employment, does not constitute a bar to this proceeding. *Matter of Castell Distributing Co.*, 76 N. L. R. B. 153, *Matter of Bell Cabinet Co.*, 73 N. L. R. B. 332.

tion petitions. Furthermore, whenever Congress intended any provisions of the Act to be applicable to employers, it specifically so provided. The Petitioner, therefore, could not file a decertification petition herein in his capacity as a management representative.

Nor can the Petitioner be deemed to fall within the designation in Section 9 (c) (1) (A) of "any individual" acting in behalf of employees. One purpose of the Act was to draw a clear line of demarcation between supervisory representatives of management on the one hand and employees on the other because of the possibility of conflicts in allegiance if supervisors were permitted to participate in union activities with employees.⁴ To permit supervisors to act as employee representatives would therefore defeat the purposes of the Act.

Accordingly we find that the petition herein is invalid, and therefore that no question affecting commerce now 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 National Labor Relations Act. We shall therefore dismiss the petition.

ORDER

Upon the basis of the foregoing findings of fact and the entire record in this proceeding, the National Labor Relations Board hereby orders that the petition filed by W. S. Munroe for the decertification of District 50, Local 13076, United Mine Workers of America, as the bargaining representative of the employees of Clyde J. Merris, Canon City, Colorado, be, and it hereby is, dismissed.

⁴ 93 Cong. Rec. 1888, 3952, 5146, A1099, A2377; Rept. of the House Committee on Education and Labor No. 245, 80th Cong., 1st Sess., pp 16-17