In the Matter of INDUSTRIAL COLLIERIES CORPORATION *and* LOCAL UNION #324, UNITED CLERICAL, TECHNICAL AND SUPERVISORY EMPLOYEES OF MINING INDUSTRY, DIVISION OF DISTRICT 50, U. M. W. A.

Case No. 6–R–1074.—Decided January 31, 1946

Cravath, Swaine & Moore, by *Mr. C. A. McLain*, of New York City, for the Company.

Messrs. Samuel Krimsly, *John McAlpine*, and *Robert J. Condra*, of Pittsburgh, Pa., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local Union #324, United Clerical, Technical and Supervisory Employees of Mining Industry, Division of District 50, U. M. W. A., herein called the Union,[1] alleging that a question affecting commerce had arisen concerning the representation of employees of Industrial Collieries Corporation, Johnstown, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. The hearing was held at Johnstown, Pennsylvania, on May 11, 1945. The Company and the Union appeared and participated.[2] All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing the Company moved to dismiss the petition on the following grounds: (a) that the clerks whom the Union seeks to represent as the collective bargaining agent are not "employees" within the meaning of the Act; (b) that the unit sought by the Union is inappropriate; and (c) that the Union is not qualified under the Act to represent the employees in the alleged appropriate unit. For reasons stated hereinafter, the

[1] Local Union #324 is sometimes referred to hereinafter as Local 324 and United Clerical, Technical and Supervisory Employees of Mining Industry, Division of District 50, U. M. W. A., is referred to hereinafter as United.

[2] The Company appeared specially to contest the jurisdiction of the Board. However, it participated fully in the hearing.

motion to dismiss the petition is hereby denied. The Trial Examiner's rulings made at the hearing, including the rulings sustaining objections to questions by company counsel designed to elicit the number of locals of United which admit supervisory employees and the total number of supervisory employees who are members of United or its locals, are free from prejudicial error and are hereby affirmed. 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

Industrial Collieries Corporation is a Delaware corporation engaged as an independent contractor in managing a number of bituminous coal mines in the Commonwealth of Pennsylvania and the State of West Virginia. During the year ending October 31, 1944, the mines managed by the Company produced approximately 8,200,000 net tons of bituminous coal, of which more than 50 percent was shipped out of the State where the coal was mined.

The Company admits, for the purpose of this proceeding only, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Local Union #324, United Clerical, Technical and Supervisory Employees of Mining Industry, Division of District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.[3]

[3] The Company contends that neither United nor its Local 324 is a labor organization within the meaning of the Act. In support of its position, the Company relies on the following arguments: that United has no charter, constitution or bylaws of its own but operates under those of its parent organization, United Mine Workers of America; that United has no membership on the International Executive Board of United Mine Workers of America; that the affairs of United and of its locals are dominated by two appointive officials; and that the incompetency of United as a labor organization necessarily applies to its subdivision Local 324, although the latter has a charter from United, a separate set of bylaws, and an elected slate of local officials The objections made by the Company are clearly directed to internal union matters and not to the status of United and its local as labor organizations within the meaning of the Act. It is clear that the Act prescribes no form of internal organization as a prerequisite for recognition as a labor organization Section 2 (5) thereof defines a "labor organization" in the broadest terms, declaring that "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Both United and its Local 324 meet the tests of a "labor organization" prescribed in the statute. Accordingly, we find them to be labor organizations within the meaning of the Act. See *Matter of The Regina Corporation*, 57 N L. R. B 4, and cases cited therein.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused the demand of the Union for recognition as the collective bargaining representative of the clerical employees in the accounting division of the Company's general office.

United presently organizes both supervisory and non-supervisory employees into separate locals. The Union is one of United's locals which admits only non-supervisory employees into membership. The Company contends, relying on the *Rochester and Pittsburgh Coal Company* case,[4] that the Union is not qualified to represent non-supervisory employees because United is dominated by supervisors. Such domination, it argues, stems from the fact that locals of supervisors constitute a majority of all locals of United and supervisory employees outnumber non-supervisory employees in United's membership. In the *Rochester and Pittsburgh Coal Company* case, United petitioned for a unit of non-supervisory clerical and technical employees. The Board dismissed the petition principally because the evidence showed that the supervisors of the company involved were also members of United, brought pressure repeatedly upon the Company's non-supervisory employees to join United and dominated that organization, controlling its policies and practices. The decisive facts in the cited case which impelled the Board to dismiss United's petition were that the employer's supervisory personnel had taken an active role in the organization of the non-supervisory employees and were in control of the affairs of the union which sought to represent such non-supervisory employees.[5] The facts in the present proceeding are clearly distinguishable from those in the *Rochester and Pittsburgh Coal Company* case. Here, the record establishes that the Union was formed on the initiative of non-supervisory employees without aid, solicitation, or pressure from the Company's supervisory employees; it is barren of any evidence that the Company's supervisors are in any way in control of the Union's affairs, and the Company made no offer to prove such control.

The Company advanced a further contention to the effect that the Union is not competent to act as bargaining agent of its non-supervisory employees because of its affiliation with and domination by United, an organization which the Company sought to prove to be composed predominatly of supervisory employees. Assuming *arguendo* the correctness of the Company's assertions with respect to the composition of United's membership, it is clear that both the Union (i. e., the local) and the United are subdivisions of the United Mine

[4] *Matter of Rochester and Pittsburgh Coal Company*, 56 N L R. B. 1760

[5] See *Matter of The Toledo Stamping and Manufacturing Company*, 55 N. L. R. B. 1760; cf. *Matter of Merrimac Mills Company*, 63 N. L. R. B. 781; *Matter of California Packing Company*, 59 N L. R. B. 941.

Workers of America, and that to whatever degree the Union's affairs are controlled from above, such control is ultimately vested in the United Mine workers of America, a labor organization in the membership of which supervisory employees compose only a tiny fraction. Under these circumstances, we find that the Union, an organization composed of non-supervisory employees, is competent to represent the employees hereinafter found to constitute an appropriate bargaining unit. Inasmuch as the Company's contention is predicated upon an assertion of facts found to be erroneous, we find it unnecessary to determine here the validity of the contention.

In its brief the Company has made the claim that the United, as an affiliate of the United Mine Workers of America, is precluded from seeking recognition as the bargaining representative of the Company's accounting division employees under the terms of the existing collective bargaining contracts between the United Mine Workers of America and the Company. The Company refers to no specific provision in these contracts by which the United Mine Workers of America has undertaken not to represent clerical and technical employees; in fact, there is none. Apparently, the Company relies on the definition of "mine worker" contained in the agreements which excludes clerical and technical employees, and on a clause in the contract which provides that the management of the mine shall be vested exclusively in the Company. Assuming, *arguendo*, that the United Mine Workers contracts with the Company are binding upon the Union, the provisions referred to do not, in our opinion, constitute an undertaking on the part of the United Mine Workers that it will not for the term of its contracts with the Company admit clerical employees into membership or otherwise seek to organize them.[6] We find that the United Mine Workers of America collective bargaining contracts with the Company are not a bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.[7]

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

In support of its motion to dismiss the petition, the Company asserts that the clerical employees involved herein are not "employees" within

[6] Cf. *Matter of Briggs Indiana Corporation*, 63 N. L R. B. 1270. The agreements here recite the scope of the units therein covered; they do not commit the union not to seek to admit or represent other employees in other units

[7] The Field Examiner, reported that the Union submitted 22 aplications for membership cards, of which 19 were dated in June 1944 and 3 were undated and that there were 30 employees in the appropriate unit.

the meaning of the Act because of the nature of their work and that, assuming that they are "employees" a unit comprising them is inappropriate because their duties and responsibilities identify them with management. The Company has agreed with the Union that, in the event its motion to dismiss the petition is denied, the following unit is appropriate: all clerical employees in the accounting division of the Company's general office at Johnstown, Pennsylvania, excluding the chief clerk, the assistant chief clerk, the chief of time, one confidential clerk, and any other supervisory personnel.

The clerical employees whom the parties have agreed to include comprise pay-roll clerks, assistant pay-roll clerks, general clerks engaged principally in bond deduction work, and an addressograph operator. Their salaries range from $85 to $215 per month. All of them participate, in one form or another, in the preparation of the pay rolls for miners employed in the various mines managed by the Company. The only labor relations data to which they have access or of which they have knowledge pertain to wage rates and wage totals. We find no merit in the Company's contentions that these clerks are not "employees" and cannot constitute an appropriate unit. The Board has repeatedly included pay-roll clerks having duties and responsibilities similar to those of the clerks involved herein in office and clerical units.[8] We find that the clerical employees in the Company's accounting division are "employees" within the meaning of the Act and may constitute an appropriate unit.

We find, in accord with the agreement of the parties, that all clerical employees in the accounting division of the Company's general office at Johnstown, Pennsylvania, excluding the chief clerk, the assistant chief clerk, the chief of time, one confidential clerk,[9] and any 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 among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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[8] *Matter of Aluminum Company of America*, 61 N. L R B 1066 *Matter of Columbia Steel & Shafting Company*, 60 N. L R B. 301; *Matter of Micamold Radio Corporation*, 58 N L. R B 888; *Matter of Utah Copper Company*, 57 N. L. R. B. 308.

[9] Harry Long.

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 Industrial Collieries Corporation, Johnstown, 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 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 any 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 Union #324, United Clerical, Technical and Supervisory Employees of Mining Industry, Division of District 50, U. M. W. A., for the purposes of collective bargaining.