

IN THE MATTER OF MINE B COAL COMPANY *and* PROGRESSIVE MINERS  
OF AMERICA, LOCAL NO. 54

*Case No. R-361—Decided December 2, 1937*

*Coal Mining Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; substantial doubt as to majority status; contract with rival organization recognizing it as exclusive representative no bar to investigation of representatives—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; eligibility for membership in both rival organizations; no controversy as to—*Election Ordered.*

*Mr. Jack G. Evans*, for the Board.

*Mr. T. J. Sullivan*, of Springfield, Ill., for the Company.

*Mr. George W. Dowell* and *Mr. N. Y. Dowell*, of DuQuoin, Ill., for the Progressive Miners of America.

*Mr. Thurlow G. Lewis* and *Mr. Louis F. Gillespie*, of Springfield, Ill., for the United Mine Workers of America.

*Mr. Henry H. Foster, Jr.*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 20, 1937, Progressive Miners of America, Local No. 54, herein called the Progressives, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question had arisen concerning the representation of bituminous coal miners employed by Mine B Coal Company, herein called Mine B, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On September 16, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of the National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On September 24, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon Mine B, upon the Progressives, and upon United Mine Workers of America, Local No. 7469, herein called the United, a labor organization claiming to repre-

sent employees directly affected by the investigation. Pursuant to the notice, a hearing was held at Springfield, Illinois, on October 25, 26, and 27, 1937, before Charles E. Persons, the Trial Examiner duly designated by the Board.

Counsel for Mine B and the two unions participated in the hearing and full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. The Board has reviewed the rulings of the Trial Examiner upon the various motions and objections made by counsel during the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Mine B Coal Company is an Illinois corporation engaged in the mining of coal, with its principal office in Springfield, Illinois. The pay roll for May 12, 1937, the last pay roll when the mine was in production, carried a total of 476 employees, of whom 11 were clerks and supervisors, 107 day men and 358 loaders.

During the year from July 1, 1936 to June 30, 1937, the sales made by the Company of coal produced at Mine B amounted to \$680,928.82. Of this amount, car sales to the Chicago and Alton Railway were \$187,522.58; car sales to customers located outside the State of Illinois were \$136,376.53; car sales to customers located in Illinois, some of whom in turn delivered the coal to interstate railroads, were \$212,548.28; retail sales to customers at the mine were \$140,266.43; and sales for boiler fuel were \$4,215.00.

Other evidence shows that from January 1 to May 31, 1937, the Wabash Railway received from Mine B for its own use 308 cars of coal destined for points in Illinois and 444 cars destined for states other than Illinois; and received as commercial coal 234 cars for points in Illinois and 284 cars for states other than Illinois.<sup>1</sup> During the same period the Chicago and Alton Railroad received from Mine B for its own use 457 cars of coal destined for points in Illinois and 172 cars destined for states other than Illinois; and received as commercial coal 307 cars for points in Illinois and 47 cars for states other than Illinois.<sup>2</sup>

The Coal Report of Illinois for 1936<sup>3</sup> shows that of 429,160 tons of coal produced at Mine B in 1936, the Company sold to local trade 47,535 tons, to railroads 245,696 tons, and loaded on cars for shipment about 132,849 tons.

<sup>1</sup> Board's Exhibit No. 3-A.

<sup>2</sup> Board's Exhibit No. 4-A.

<sup>3</sup> Board's Exhibit No. 5.

## II. THE ORGANIZATIONS INVOLVED

Progressive Miners of America is a labor organization formed in 1932 by a cleavage of certain members of the United Mine Workers of America. It is now an American Federation of Labor affiliate, having jurisdiction over a considerable number of hand-operated mines in Illinois. The Progressives have regularly made contracts with the Coal Producers Association of Illinois and with a number of Independent operators, of which Mine B is one. The jurisdiction of Local No. 54 is confined to employees of Mine B.

Local No. 7469 of the United Mine Workers of America is a labor organization formed about July 28, 1937 and admitting to membership employees of Mine B. It is affiliated with the United Mine Workers of America which in turn is affiliated with the Committee for Industrial Organization.

## III. THE QUESTION CONCERNING REPRESENTATION

The coal fields of Southern Illinois have long been the scene of bitter labor controversies. Since 1932, when the Progressive Miners of America was established as a rival organization to the United Mine Workers, the situation has been acute. The history of Mine B presents a story of conflict between the two rival unions and between the unions and the Company. Between 1925 and 1932 the United was recognized by the Company. In 1932, after the Progressives had been established, the Company, by virtue of its membership in the Coal Producers Association of Illinois, which had a contract with the Progressives, recognized the Progressives.

In December 1935 Mine B withdrew from the Association and on January 18, 1936, as an independent operator, signed an agreement again recognizing the Progressives and incorporating by reference that union's contract with the Coal Producers Association entered into in 1935. By this agreement, as under the previous agreement, the Progressives were given the closed shop and check-off. The expiration date of this agreement was March 31, 1937. On April 2, 1937, Mine B and the Progressives signed another agreement extending the contract of 1935 pending negotiations between the Progressives and the Coal Producers Association. This agreement also provided that it was to terminate automatically upon the ratification of a state-wide contract by the Progressives and the Association.

On July 30 or 31 the conference between the Progressives and the Association adjourned without agreement. Mine B contends that the agreement of April 2 terminated at this time. Subsequently negotiations were resumed and a new contract drafted. State-wide ratification of this contract took place on September 10. The Progressives contend that the Company was obligated under the terms of the April 2 contract until this later date.

Meanwhile, on May 12, 1937, the Progressives called a strike at Mine B. In the morning of that day officials of the Progressives requested the mine superintendent to discharge five employees expelled from the Progressives for joining the United. There is testimony also that members of the Progressives told these men that if they went down into the mine that day they would not come out alive. About 2 o'clock the representatives of the Progressives returned to the mine to find what the Company was going to do about the five men. They were told that the Company declined to discuss the question until such time as the mine was put in normal operation, that during the day cars were hoisted from the mine that were only partly loaded, and that grievances would not be considered unless the mine was in full production. Shortly thereafter the Progressives declared that "a legal strike was on". All operations stopped at that time, men were hoisted from the workings and mass picketing was begun. Picketing continued until about June 1, when "the mules were put out to pasture".

Between May 26 and the first part of July, a petition entitled "Designation of Representatives for Collective Bargaining under the National Labor Relations Act" was circulated by the Progressives. Signatures were procured on the picket line, at union headquarters, and at workers' homes by a group of recognized leaders of the Progressives. The United contends that signatures were obtained in large part by coercion. This petition, containing 412 signatures, was presented to the Company on July 12.

The United likewise circulated a petition among the employees some time in July. This petition is said to have contained "well over 300 names", but was not presented in evidence. The Company, accepting the statement of a United representative that such a petition had been circulated, signed an agreement on August 18, when the mine was still closed, recognizing the United as the successor of the Progressives as the representative of its employees. On September 20, another agreement was signed recognizing the contract existing between the United and the Illinois Coal Operators Association as being applicable to Mine B. By these agreements the United obtained a closed shop and check-off.

Another petition dated September 10, 1937, and containing the same title as the first, was circulated by the Progressives at the time of the state-wide ratification of the agreement between the Progressives and the Coal Producers Association; 429 signatures appear upon this petition. There was evidence as to the second petition also that some of the signatures were secured through coercion by members of Local No. 54.

On Monday, September 27, after the signing of the new contract with the United, an attempt was made to reopen the mine. The Com-

pany called upon the United to furnish 50 men. The Progressives, hearing of this, went to the mine superintendent and told him that they had heard that the mine was to be reopened and that they would be glad to furnish the men immediately. About 14 men went down as United members and were engaged that day in cleaning up the mine. When they appeared for work Tuesday morning, they found about 100 Progressives massed at the shaft. The situation was so threatening that a deputy sheriff, who was present to maintain order, directed the would-be workers to go to the office and remain there all day. Since that date the mine has remained closed.

The Progressives produced evidence showing that a representative of the Company had urged some of their members to attend United meetings and to join up with the United. The United in turn presented evidence to show that their efforts to obtain members had been interfered with by the Progressives with measures of intimidation and coercion. As above stated, the United also contends that the signatures on the two petitions presented to the Company by the Progressives were secured through intimidation and coercion.

Under the circumstances, none of the petitions are fully convincing. The atmosphere of tensity, and the circumstances existing at the time when the petitions were circulated, created a condition where it may well be that a clear expression of choice was impossible. At the hearing no opposition was voiced by either union as to the holding of an election by the Board to determine representatives for collective bargaining. We feel that a complete disposition of this dispute can best be achieved by the holding of such an election.

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, in connection with the operations of the Company described in Section I above, has a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and tends to lead, and has led to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE APPROPRIATE UNIT

The president of Local 54 of the Progressive Miners of America testified at the hearing that Local 54 had jurisdiction over "all employees except the supervisory force, which meant the clerical force and the bosses at the mine." The United Mine Workers admit to membership employees in the same classification. No further question was raised at the hearing as to the appropriate unit. We find that the production and maintenance employees of the Company, ex-

cluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act. The check weighman employed and paid by the union should likewise be excluded for the reason that he is not an employee of the Company.

#### VI. THE DETERMINATION OF REPRESENTATIVES

We find that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and thus resolve the question concerning representation. Those eligible to vote shall be the production employees of Mine B as of May 12, 1937, excluding the clerical force and supervisory employees.

On the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Mine B Coal Company of Springfield, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of the Mine B Coal Company of Springfield, Illinois, excluding the clerical force and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

#### 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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

**DIRECTED** that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Mine B Coal Company, Springfield, Illinois, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees, employed by the Company on May 12, 1937, excluding cler-

ical help and supervisory employees, to determine whether they desire to be represented by the Progressive Miners of America, Local 54, or by United Mine Workers of America, Local No. 7469, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

## CERTIFICATION OF REPRESENTATIVES

*January 3, 1938*

On August 20, 1937, Progressive Miners of America, Local No. 54, herein called the Progressives, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question had arisen concerning the representation of bituminous coal miners employed by Mine B Coal Company, herein called Mine B, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On September 16, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of the National Labor Relations Board Rules and Regulations, Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

Pursuant to notice duly served upon Mine B, upon the Progressives, and upon the United Mine Workers of America, Local No. 7469, herein called the United, a hearing was held at Springfield, Illinois, on October 25, 26, and 27, 1937, before Charles E. Persons, the Trial Examiner duly designated by the Board.

On December 2, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provides that an election by secret ballot shall be held among the production and maintenance employees employed by Mine B on May 12, 1937, excluding clerical help and supervisory employees, to determine whether they desired to be represented by the Progressives, or by the United, or by neither.

Pursuant to the Direction, balloting was conducted on December 15, 1937, under the supervision of the Regional Director. Prior to the balloting, on the evening of December 13, 1937, the United sent a telegram to the Board requesting postponement of the election and stating that "United Mine Workers do not wish to participate in an election to be held under the existing circumstances at this time". On December 15, 1937, the United again telegraphed the Board definitely objecting to being placed on the ballot. The same day, immediately prior to the opening of the polls, the United notified the agent of the Board conducting the election that the

United did not wish to participate in the election. The election proceeded according to schedule and with the name of the United appearing on the ballot, but the United did not furnish tellers or otherwise participate in the conduct of the election.

On December 17, 1937, the Regional Director, acting pursuant to Article III, Section 9, of the National Labor Relations Board Rules and Regulations, issued and duly served upon the parties to the proceedings his Intermediate Report on the secret ballot. This report recites the conduct of the election and states:

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted, and that the ballots cast were duly and fairly counted under his supervision, and that statements to that effect from those tellers present have been filed with the undersigned.

As to the results of the balloting the Regional Director found in his Intermediate Report as follows:

Total number eligible.....	465
Total number of ballots cast.....	431
Ballots cast for Progressive Miners of America, Local No. 54...	404
Ballots cast for United Mine Workers of America, Local 7469...	25
Ballots cast by employees who did not desire either of the above organizations.....	2
Challenged ballots.....	0
Blank ballots cast.....	0
Ballots spoiled or void.....	0
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Total ballots cast.....	431

On December 22, 1937, the United filed with the Regional Director, and mailed to the Board in Washington, its objections to the Intermediate Report. The Board has considered these objections, together with the report of the Regional Director thereon containing the statement of the Board's agent who conducted the election. We find that nothing in the conduct of the election prejudiced the United and that the results of the balloting fairly represent the desires of the employees. Consequently we will certify the Progressives as the duly designated representative of the production and maintenance employees.

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations, Series 1, as amended,

IT IS HEREBY CERTIFIED that Progressive Miners of America, Local No. 54, has been designated and selected by a majority of the production and maintenance employees of the Mine B Coal Company,

Springfield, Illinois, excluding clerical help and supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, Progressive Miners of America, Local No. 54, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Certification of Representatives.