

IN the Matter of MCKELL COAL & COKE COMPANY and UNITED MINE
WORKERS OF AMERICA, DISTRICT 17

Case No. R-356.—Decided December 15, 1937

Coal Mining Industry—Investigation of Representatives: controversy concerning representation of employees: majority status disputed by employer—*Unit Appropriate for Collective Bargaining:* all employees working in and around the mines, excluding company store employees, and excepting mine foremen, assistant mine foremen, fire bosses, bosses in charge of any classes of labor inside or outside the mine, coal inspectors, weigh bosses, watchmen, clerks, and members of the executive, supervisory, or technical forces; history of past attempts at negotiation for collective bargaining between company and union; existing collective bargaining contracts between union and other operators in region—*Representatives:* proof of choice: signed authorizations; comparison of with pay rolls—*Certification of Representatives:* upon proof of majority representation.

Mr. Albert Ornstein, for the Board.

Mr. W. K. Lee, of Fayetteville, W. Va., for the Company.

Mr. T. C. Townsend and *Mr. Hillis Townsend*, of Charleston, W. Va., for the Union.

Mr. Bernard W. Freund, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On June 8, 1937, United Mine Workers of America, District 17, herein called the Union, filed with the Regional Director for the Ninth Region (Cincinnati, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of McKell Coal & Coke Company, Glen Jean, West Virginia, herein called the Company, 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 October 5, 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 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 October 15, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union. Pursuant to the notice, a hearing was held on November 1, 1937, at Beckley, West Virginia, before Robert M. Gates, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. The Board has reviewed the rulings of the Trial Examiner on objections to the admission of evidence made during the course of 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

McKell Coal & Coke Company, a West Virginia corporation, with its principal office at Glen Jean, in Fayette County, West Virginia, employs about 650 men in its business of mining and selling bituminous coal and slack. Its three mines, at Siltix, Oswald, and Tamroy,¹ are located at approximate distances of three, six and eight miles, respectively, from Glen Jean.

At the mines, in a more or less continuous progression of operations, coal and slack is blown loose from the walls, sorted, loaded into mine cars, hauled to the surface, weighed, screened, graded, dumped into waiting railroad cars, and taken away by railroad for delivery to purchasers. About three-fourths of the railroad cars loaded each day are billed out and in transit to consignees by nightfall.

Approximately 95 to 98 per cent of all coal and slack shipped by the Company, which in the year ending October 1, 1937, amounted to 475,000 tons, is consigned to points outside West Virginia. In September 1937, a normal month, all, or virtually all, of the shipments made by the Company went to destinations in Virginia, Ohio, Indiana, Illinois, Michigan, Iowa, Minnesota, South Dakota, Wisconsin, and Massachusetts.

Besides its mining activities, and incidental thereto, the Company owns and operates three general merchandise stores: one at Tamroy, another at Oswald, and a third at Kilsyth. During the year ending October 1, 1937, the Company made purchases for them aggregating \$228,492.73; of these, over \$9,000.00 was for explosives, detonating caps, shovels, picks, and other tools and equipment used in the mines which, by custom in the industry, the miners buy for themselves. In

¹ Until it was abandoned in August 1937, a fourth mine was operated at Kilsyth.

addition, and separate from store purchases, the Company spent \$84,158 20 for railroad ties, machine replacements, coils, wire, spikes, staples, sand, and other materials necessary for its coal mining operations. Of its total store and mine purchases during the described period, amounting to \$312,650.93, 28.8 per cent were shipped to the Company from points outside West Virginia.

II. THE ORGANIZATION INVOLVED

United Mine Workers of America, District 17, is a labor organization admitting to its membership employees working in and around coal mines.

III. THE QUESTION CONCERNING REPRESENTATION

The Union first extensively organized the region in which the Company is located in 1933. It now claims to represent practically all the Company's employees. No other labor organization claims to represent any of them. In 1933, again in 1935, and, most recently, in April 1937, the Company refused to comply with requests of the Union to bargain collectively in respect to conditions of employment.

At the last meeting between the Company and the Union, according to the testimony of a Union official who was present, the reason advanced by Company officials for refusing to discuss a bargaining contract was that they doubted whether the Union represented the men. In letters sent to the Regional Director shortly after the petition herein was filed, the Company stated that it had not questioned the authority of the Union to represent its employees, and did not expect to do so; it further stated that it was not in a position to enter into an agreement that the Union be recognized as sole bargaining agency.

Under the provisions of Section 8 (5) of the Act, it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. The Company has refused to bargain collectively with the Union. Upon the record in this proceeding, we interpret the Company's words and conduct as reflecting uncertainty regarding the status of the Union as a representative of its employees, rather than as evincing an intention willfully to violate the provisions of the Act.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has thus arisen, occurring in connection with the operations of the Com-

pany 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 to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

It is the custom in the New River bituminous coal region, in which the Company's mines are located, to consider employees working in and around all mines of each coal company as one unit for the purposes of collective bargaining. This custom has been followed in past attempts at negotiation for collective bargaining between the Union and the Company, it having been understood that store employees were not included in the unit. The Company has raised no objection to the Union's request that the practice be continued.

Existing collective bargaining agreements to which the Union and substantially all the coal operators in the New River region, other than the Company, are parties contain an express provision excepting from their operation all mine foremen, assistant mine foremen, fire bosses, and bosses in charge of any classes of labor inside or outside of the mine; and coal inspectors, weigh bosses, watchmen, clerks, and members of the executive, supervisory, or technical forces. The unit contended for by the Union excepts the same classifications. The Company made no objection to the proposal. Our determination of the appropriate unit will follow these lines.

We find that all employees of the Company working in and around its mines, exclusive of store employees, and excepting mine foremen, assistant mine foremen, fire bosses, bosses in charge of any classes of labor inside or outside of the mine, coal inspectors, weigh bosses, watchmen, clerks, and members of the executive, supervisory, or technical forces of the Company, 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.

VI. THE DETERMINATION OF REPRESENTATIVES

Pay roll lists were supplied by the Company, giving the names and labor classifications of all employees as of June 4, 1937, and as of October 28, 1937; and cards signed by persons representing themselves to be employees of the Company, authorizing the Union to act as their sole bargaining agency, were introduced into evidence without objection. Most of these cards appear to have been signed between October 20, 1937 and November 1, 1937. Neither the Company nor the Union having expressed any preference, the Board has

used the Company's list of October 28, 1937, in checking the authorization cards against pay roll. On that day there were 659 employees on the Company's pay roll; of these, 44 fell into excluded or excepted classifications, leaving 615 employees in the appropriate unit.

Of the 413 authorization cards introduced by the Union to prove its majority, only 11 were signed by persons whose names do not appear in the pay roll list of October 28, 1937; two were duplicates of other cards; and three bore illegible signatures. At the hearing, competent witnesses identified 380 of the remaining 397 cards as having been signed in their presence by employees of the Company.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all employees in such unit for the purposes of collective bargaining, and we will so certify.

Upon 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 McKell Coal & Coke Company, Glen Jean, West Virginia, within the meaning of Section 9 (c), and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company working in and around its mines, exclusive of store employees, and excepting mine foremen, assistant mine foremen, fire bosses, bosses in charge of any classes of labor inside or outside of the mine, coal inspectors, weigh bosses, watchmen, clerks, and members of the executive, supervisory, or technical forces of the Company, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. United Mine Workers of America, District 17, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Mine Workers of America, District 17, has been designated and selected by a majority of all

employees of McKell Coal & Coke Company, Glen Jean, West Virginia, working in and around its mines, exclusive of store employees, and excepting mine foremen, assistant mine foremen, fire bosses, bosses in charge of any classes of labor inside or outside of the mine, coal inspectors, weigh bosses, watchmen, clerks, and members of the executive, supervisory, or technical forces of the Company, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, United Mine Workers of America, District 17, 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.