

In the Matter of ELECTRO METALLURGICAL COMPANY (NIAGARA WORKS)
and DISTRICT 50, UNITED MINE WORKERS OF AMERICA

In the Matter of ELECTRO METALLURGICAL COMPANY and BROTHERHOOD
OF RAILROAD TRAINMEN.

In the Matter of ELECTRO METALLURGICAL COMPANY and BROTHERHOOD
OF LOCOMOTIVE FIREMEN & ENGINEMEN

Cases Nos. 3-R-773, 3-R-818 and 3-R-820 respectively

SECOND SUPPLEMENTAL DECISION

AND

DIRECTION

September 14, 1944

On August 15 and 16, 1944, pursuant to a Decision and Direction of Election issued by the Board on July 31, 1944,¹ an election was conducted among certain employees of Electro Metallurgical Company (Niagara Works), Niagara, New York, under the direction and supervision of the Regional Director for the Third Region (Buffalo, New York). Upon the conclusion of the election, a Tally of Ballots was made by an agent of the Regional Director.

The Tally indicated that, of the approximately 2068 eligibles in the voting group, 1689 cast valid votes, of which 448 were cast for District 50, United Mine Workers of America, and 604 were cast for Local 250, United Gas, Coke and Chemical Workers, C. I. O. In addition, 639 ballots were cast for neither labor organization, 10 ballots were void, 41 ballots were challenged, and 8 ballots were specially challenged.²

Inasmuch as the election was inconclusive and the number of challenged ballots was sufficient to affect the result in terms of the choices to be presented to the voters in a run-off election, the Regional Director pursuant to Article III, Section 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended, investigated the

¹ 57 N. L. R. B. 518

² On August 10, 1944, the Board ordered that the Regional Director challenge, segregate, and impound the ballots of (a) conductors, switchmen, and brakemen, and (b) railroad engineers, firemen, and hostlers. On August 30, 1944, the Board issued a Supplemental and Amended Decision and Direction of Elections (57 N. L. R. B., No. 297) providing, *inter alia*, for separate elections among these employees and directing that ballots cast by them in the comprehensive election be destroyed.

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issues raised by certain of the challenged ballots and on September 1, 1944, issued and duly served upon all parties to this proceeding copies of his Report on Challenged Ballots.³ No exceptions to the Report have been filed by any of the parties.

With respect to the challenged ballots the Regional Director reported as follows:

David Davidson and *E. W. Hillman* were challenged by the C. I. O. and District 50, respectively, on the ground that they are supervisory employees. The Regional Director's report indicates that these employees have authority to make effective recommendations affecting the status of subordinates. Under these circumstances, we find that they are supervisors, and we shall sustain the challenges to their ballots.

H. A. Wilson and *Douglas Demmon* were challenged by District 50 and the C. I. O., respectively, on the ground that they are assistants to the shift foreman and, consequently, supervisory employees. The Regional Director reported that neither of these employees is engaged in manual production work, both transmit the orders of their respective foremen to other employees in their departments, and both are responsible for the progress of work in their departments. Furthermore, the Report indicates that these employees are regarded by other employees in their departments as supervisors. In view of these circumstances, we agree with the Regional Director that Wilson and Demmon are supervisors, and shall sustain the challenges to their ballots.

Charles C. Soudder, *Theodore Blachinski*, *D. F. Nazum*, *Claude A. Blake*, and *C. M. Donachy* were challenged either by the C. I. O. or by District 50 on the ground that they are supervisory straw bosses. While the majority of straw bosses perform manual labor alongside the employees for whom they are responsible, these five employees perform no manual production work, as such; are regularly engaged in directing the work of groups ranging from 6 to 20 employees; and possess the authority, subject to confirmation by their respective foremen, to transfer their subordinates from one job to another within their respective departments. Since their time is spent primarily in directing and expediting the work of their subordinates, they are, in our opinion, on a level higher than that of the ordinary straw boss. In view of these circumstances we agree with the Regional Director and are of the opinion that the combination of duties which these employees perform stamps them as supervisors. We shall, therefore, sustain the challenges to their ballots.

³ In his Report, the Regional Director stated, *inter alia*, that, in accordance with the Supplemental and Amended Decision, the eight specially challenged ballots were destroyed.

J. J. Hartman was challenged by the C. I. O. on the ground that he is a clerical employee, a classification not included within the appropriate unit as delineated in the Board's Decision and Direction of Election. The Company classifies *Hartman* as a storekeeper. His duties consist of checking and receiving raw materials for the store-room, and making out the necessary receiving and distributing reports. He is directly responsible to the office manager, and not to a production or maintenance supervisor. Under these circumstances we are in accord with the Regional Director, and find that *Hartman* is a clerical employee. We shall, accordingly sustain the challenge to his ballot.

In accordance with the foregoing, we hereby declare invalid the ballots of David Davidson, E. W. Hillman, H. A. Wilson, Douglas Demmon, Charles C. Scudder, Theodore Blachinski, D. F. Nazum, Claude A. Blake, C. M. Donachy, and *J. J. Hartman*. Since the remaining number of challenged ballots are insufficient to affect the choices which are to be presented to voters at a run-off election, it is unnecessary to pass upon them.

DIRECTION

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 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 Electro Metallurgical Company (Niagara Works), Niagara, New York, the Regional Director for the Third Region shall proceed pursuant to the provisions of Article III, Section 11, of said Rules and Regulations.

CHAIRMAN MILLIS took no part in the consideration of the above Second Supplemental Decision and Direction.