

In the Matter of THE LENNOX FURNACE COMPANY and UNITED FARM
EQUIPMENT & METAL WORKERS OF AMERICA, C. I. O.

Case No. 18-R-1176

SUPPLEMENTAL DECISION
AND
CERTIFICATION OF REPRESENTATIVES

October 31, 1945

On March 19, 1945, the Board issued its Decision and Direction of Election,¹ in the above-entitled proceeding, directing that an election by secret ballot be conducted among the employees of the Company in the unit therein found appropriate, to determine whether they wished to be represented by United Farm Equipment & Metal Workers of America, C. I. O., herein called the C. I. O., by International Association of Machinists, A. F. L., herein called the A. F. L., or by United Furnace Workers of Marshalltown, Iowa, unaffiliated, herein called the Independent, or by none of these unions. Pursuant to the Decision and Direction of Election, an election was conducted on April 11, 1945, under the direction and supervision of the Regional Director for the Eighteenth Region (Minneapolis, Minnesota). Upon the conclusion of the election, Tallies of Ballots were furnished the parties in accordance with the Rules and Regulations of the Board.² No objections to the conduct of the election were filed by any of the parties within the time provided therefor.

Inasmuch as the results of the election were inconclusive, a run-off election in which only the C. I. O. and the Independent appeared on the ballot was conducted on April 25, 1945, pursuant to Article III of the Board's Rules and Regulations. The Tally of Ballots, copies of which were furnished to the parties upon the conclusion of the election, showed that of the 317 employees eligible to vote in the run-

¹ 60 N. L. R. B. 1329.

² The tally showed that the votes cast were distributed as follows:

Approximate number of eligible voters.....	317
Total number of valid votes counted.....	284
Void ballots.....	1
Votes cast for the A. F. L.....	23
Votes cast for the Independent.....	129
Votes cast for the C. I. O.....	129
Votes cast against participating organizations.....	3

64 N. L. R. B., No. 115.

off election, 272 cast votes, of which 142 were for the Independent, 126 for the C. I. O., and 4 were challenged.

Thereafter, on May 2, 1945, the C. I. O. filed Objections to the Conduct of Election, alleging five separate objections to the conduct of the run-off election and requesting that the run-off election be set aside and a new election directed. On May 11, 1945, the Company filed its Answer to the Objections. On May 16, 1945, the Regional Director issued his Report on Objections, finding that there was no substantiating evidence to support three of the objections but recommending a hearing on the other two objections which he found raised material issues and were supported by evidence. None of the parties filed exceptions to this Report. On May 28, 1945, the Board, having duly considered the matter, issued an order directing that a hearing be held on the objections which the Regional Director found to raise material issues. On July 24, 1945, a hearing in which the C. I. O., the A. F. L., and the Independent³ appeared and participated was conducted at Marshalltown, Iowa, before a Trial Examiner. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Subsequently, the Company, the A. F. L., and the Independent filed briefs with the Board.

The Board has reviewed the Trial Examiner's rulings on motions and on objections to the admission of evidence and finds that no prejudicial error was committed. The rulings are hereby affirmed. At the hearing, the A. F. L. moved that the original election, as well as the run-off election, be set aside and that its name appear on the ballot in the event a new election is directed. The Trial Examiner referred that motion to the Board. For reasons hereinafter set forth, that motion is hereby denied.

The Board has considered the objections of the C. I. O., the respective briefs of the Company, the A. F. L., and the Independent, and the entire record in the case, and hereby makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In its objections, the C. I. O. alleged, in substance, that the Company, in order to defeat the C. I. O., "laid off" a number of employees and advised them that they were not eligible to vote, "thus causing such confusion amongst such employees that they believed they lost the right to vote and did not vote when they otherwise would have, and their votes would undoubtedly have been cast in large part for the C. I. O."

³ Prior to the hearing, the Independent filed a petition to intervene in which it requested that the objections be overruled.

The record shows that on April 20 and 21, 1945, approximately a week before the run-off election, the respondent reduced its force by 31 employees. The Regional Director in his Report on Objections found that this reduction in force was attributable to a contract cancellation and was motivated entirely by economic considerations. At the hearing, the C. I. O. did not question the non-discriminatory character of this reduction in force, but contended, merely, that the affected employees had been laid off and not discharged, as the Company contended, and that they had been misled by the Company into believing that they did not have the right to vote in the run-off election. The record reveals that these employees had been summoned in small groups before Personnel Director Wade Crone who informed them of the action being taken with reference to their employment. According to employee Morden, who was among a group of five employees called before Crone, Crone told her that "due to the cancellation of the contract he would have to lay us off, and he said he wouldn't promise us when we would get back; it would be maybe 30 to 60 days. . . . He said he wouldn't make us any promises when we would get back to work again." Other employees testified to substantially similar conversations with Crone. Crone, according to their testimony, volunteered no information as to their right to vote in the run-off election, but, in response to questions of 2 of the employees as to whether they would be eligible to vote, replied, "No." However, each of the 4 witnesses called by the Board admitted that, notwithstanding Crone's comments, they voted in the run-off election. None was challenged by the Company. The evidence does not indicate that any of the employees who were discharged or laid off⁴ refrained from voting because of Crone's statements.

Moreover, the record reveals that of the 31 employees involved in the reduction in force, only 22 were eligible to vote, the others having been hired after the eligibility date fixed in the Direction of Election. Of these 22 eligible voters, 9 voted in the run-off election, and only 13 did not vote. Of the 9, 6 voted without being challenged, 1 was challenged by the C. I. O., 1 by the Independent, and 1 by both the C. I. O. and the Independent. Inasmuch as the C. I. O. polled 126 votes to 142 for the Independent it is highly improbable that the C. I. O. was prejudiced by the alleged confusion. The C. I. O. required 17 more votes to win the election. Even if it be assumed that all 13 of the 22 eligible voters who did not vote would have voted but for misinformation received from the Company, and that all 13 would have voted for the C. I. O., we should have to make the further assump-

⁴ In view of our decision, it is unnecessary to decide whether the employees involved in the reduction in force were laid off, as the C. I. O. contended, or discharged, as the Company contended.

tion, in order to conclude that this episode affected the outcome of the election, that all 4 of the challenged ballots, including the 2 challenged by the C. I. O., were cast for the C. I. O. Upon all the evidence, the possibility that the Company's alleged conduct affected the results of the election is too remote to warrant consideration. Accordingly, we shall overrule the objection.

2. The C. I. O. also alleged, in substance, that the Company assembled the employees during working hours and on company property and that certain company officials then delivered speeches to the assembled employees in which they "attacked the C. I. O. for purposes of discouraging voting for the C. I. O." It is admitted that the speeches were made. However, all the speeches were delivered prior to the election conducted on April 11, 1945, the original election. Neither the C. I. O. nor the A. F. L. filed objections to that election within the time provided therefor. It was not until after the run-off election, held on April 24, 1945, that the C. I. O. first contended that the Company had been guilty of conduct which would interfere with an election and it was still later that the A. F. L. requested that the original election be set aside. There can be no question that the objection of the A. F. L. has not been timely made. Nor do we believe that the C. I. O. should now be permitted to urge that the run-off election be set aside because of the speeches made by the Company's officials. Those speeches preceded the original election, and if they were of any effect at all, affected the original election. Article III, Section 11, of the Board's Rules and Regulations provides for a run-off election "when no Objections are filed." Had the C. I. O. filed objections, based on the speeches, after the original election, the run-off election would not have been conducted, unless the objections were overruled. The C. I. O., however, chose to proceed with a run-off election. We therefore find that the objection based upon the speeches was not timely made, and, accordingly, we shall dismiss that objection.⁵

Inasmuch as the objections have been overruled, and since it appears from the Tally of Ballots of the run-off election that the employees have selected the Independent as their bargaining representative, we shall certify the Independent.

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, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended.

⁵ In so doing, we note that had the record revealed objectionable conduct on the part of the Company after the original election, a consideration of the Company's entire course of conduct, both before and after the original election, would have been proper.

IT IS HEREBY CERTIFIED that United Furnace Workers of Marshalltown, Iowa, has been designated and selected by a majority of the Company's production and maintenance employees, including pattern makers, laboratory workers, and the factory clerical employees, but excluding office clerical employees, the foundry employees, time-study employees, foremen, and all or any other supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive bargaining representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. GERARD D. REILLY took no part in the consideration of the above Supplemental Decision and Certification of Representatives.