

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.—Decided  
August 30, 1944

*Mr. William C. Treanor*, of New York City, for the Company.

*Mr. Yelverton Cowherd*, of Washington, D. C., for District 50.

*Mr. Harold C. Heiss*, of Cleveland, Ohio, for the B. R. T. and the  
Firemen.

*Mr. David V. Easton*, of counsel to the Board.

SUPPLEMENTAL AND AMENDED DECISION AND  
DIRECTION OF ELECTIONS

AND

ORDER

STATEMENT OF THE CASE

On July 21, 1944, the National Labor Relations Board issued a Decision, Direction of Election and Order in the above-entitled consolidated proceeding.<sup>1</sup> At that time the Board ordered that the petitions in Cases Nos. 3-R-818 and 3-R-820 filed by the B. R. T. and the Firemen, respectively, be dismissed. On July 31, 1944, these two labor organizations filed with the Board a joint motion for reconsideration of the foregoing Decision, oral argument before the Board, and a re-determination of the unit issue. Thereafter, by Order dated August 10, 1944, the Board, *inter alia*, granted the motion for oral argument. After due notice, a hearing was held at Washington, D. C., on August 17, 1944. The Company, the B. R. T., the Firemen, and District 50 appeared and participated.

After hearing oral argument and upon reconsideration of the record, the Board hereby vacates its Order dismissing the petitions in

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<sup>1</sup> 57 N. L. R. B. 518

57 N. L. R. B., No. 297.

Cases Nos. 3-R-818 and 3-R-820, reinstates these petitions, and makes the following supplemental findings of fact which supersede the findings in the prior Decision to the extent that they are inconsistent therewith.

#### SUPPLEMENTAL FINDINGS OF FACT

The B. R. T. seeks a unit composed of conductors, switchmen, and brakemen, and the Firemen seeks a unit consisting of railroad engineers, firemen, and hostlers. The employees sought by these two organizations are engaged on the railway owned and operated by the Company's Niagara Works. The Order dismissing the petitions of the B. R. T. and the Firemen was based largely upon the contentions of the Company, District 50, and the C. I. O. that only an industrial unit was appropriate; the type of unit which forms the basis for collective bargaining in other plants of the Company; and the apparent functional integration between the work performed by employees sought by the B. R. T. and the Firemen with that of other employees of the Company's Niagara Works Raw Materials and Traffic Department.

At the oral argument, however, the Company, modifying the position which it took at the hearing, signified its willingness to bargain collectively with its employees in any unit or units which the Board might find appropriate, and, more specifically, to bargain collectively with employees engaged in its railway operations in the units proposed by the B. R. T. and the Firemen. As indicated in the original Decision, the employees sought by the B. R. T. and the Firemen have occasion to leave the confines of the Niagara Works in the performance of their duties, and, under certain circumstances, perform some switching operations on the main line of one of the railroads servicing that plant. These facts differentiate this proceeding from another proceeding involving similarly classified employees engaged at the Company's Ashtabula plant.<sup>2</sup> Furthermore, the record discloses that, although many of the employees engaged in its Niagara Works railway operations are trained by the Company in the performance of their duties, a large number of them had formerly been employed by interstate railroads, and the experience thus acquired by these employees was an important factor in the Company's determination with respect to the positions to which they were assigned.

Under these circumstances, we are of the opinion that the employees sought by the B. R. T. and the Firemen constitute two identifiable groups, which may properly be represented either as separate units, or as part of a more comprehensive industrial unit. We shall, there-

<sup>2</sup> *Matter of Electro Metallurgical Company*, 54 N. L. R. B. 15.

fore, modify our original Decision by withholding our determination of the appropriate unit or units and by directing separate elections among the employees in the following groups who were employed during the pay-roll period immediately preceding the Supplemental Direction of Elections herein, subject to the limitations and additions set forth in said Supplemental Direction:

(1) All conductors, switchmen, and brakemen employed by the Company at its Niagara Works, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by the B. R. T., by District 50, by the C. I. O., or by none of these organizations; and

(2) All railroad engineers, firemen, and hostlers of the Company at its Niagara Works, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by the Firemen, by District 50, by the C. I. O., or by none of these organizations.

Upon the results of these elections will depend, in part, our ultimate finding with respect to the unit issue. If the employees in one or both of these groups select the same bargaining representative chosen by the remaining employees of the Company, the employees in such group or groups will have thereby indicated their desire to be included within the more comprehensive unit; on the other hand, if the employees in one or both these groups select a collective bargaining representative other than that chosen by the remaining employees of the Company, the employees in such group or groups will have indicated their desire to constitute a separate unit or units.

On August 16, 1944, subsequent to the joint motion filed by the B. R. T. and the Firemen, an election was conducted by an agent of the Board in the unit found appropriate in the original Decision and Direction of Election. However, pursuant to an Order of the Board dated August 10, 1944, the ballots of employees in the groups sought by the B. R. T. and the Firemen who participated in that election were impounded. In view of our present determination, we shall direct that the impounded ballots be destroyed.<sup>3</sup>

<sup>3</sup> The election held August 16 was not conclusive, and it will be necessary to conduct a run-off election after ruling has been made upon certain challenged ballots, now being investigated by the Regional Director, to ascertain the choices to appear on the run-off ballot. While we hereafter direct elections among the two groups set out above to be held within 30 days, it is our intent that the Regional Director conduct these elections and the run-off election at the same time.

## SUPPLEMENTAL DIRECTION OF ELECTIONS

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 Electro Metallurgical Company (Niagara Works), Niagara Falls, New York, separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Supplemental Direction of Elections, under the direction and supervision of the Regional Director for the Third 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 following groups of employees who were employed during the pay-roll period immediately preceding the date of this Supplemental 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 all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections:

(1) All conductors, switchmen, and brakemen, to determine whether they desire to be represented by Brotherhood of Railroad Trainmen; by District 50, United Mine Workers of America; by Local 250, United Gas, Coke and Chemical Workers, affiliated with the Congress of Industrial Organizations, or by none of these organizations; and

(2) All railroad engineers, firemen, and hostlers, to determine whether they desire to be represented by Brotherhood of Locomotive Firemen and Enginemen; by District 50, United Mine Workers of America; by Local 250, United Gas, Coke and Chemical Workers, affiliated with the Congress of Industrial Organizations; or by none of these organizations.

## ORDER

IT IS HEREBY ORDERED that the ballots impounded in the election held among employees of Electro Metallurgical Company (Niagara Works), Niagara Falls, New York, on August 16, 1944, be destroyed.

CHAIRMAN MILLIS took no part in the consideration of the above Supplemental and Amended Decision and Direction of Elections and Order.