

In the Matter of TENNESSEE COPPER COMPANY and A. F. OF L.
FEDERAL UNION No. 21164

Case No. R-574

Mining and Milling Industry—Prior Election; held null and void; interference and intimidation by supervisory employees; supervisory employees held not entitled to participate in election campaign although members of a participating labor organization; objections as to location of polling place dismissed; objections alleging discriminatory lay-offs affecting result of election held not sustained by proof, dismissed; action of supervisory employees held prejudicial to objecting labor organization—*New Election Ordered*

Mr. Maurice J. Nicoson, for the Board.

Franz, McConnell & Seymour, by *Mr. Robert M. McConnell*, of Knoxville, Tenn., for the Company.

Mr. Robert T. Brown, of Centreville, Tenn., and *Mr. Reid Robinson*, of Denver, Colo., for the International.

Mr. Paul J. Aymon and *Mr. James F. Barrett*, of Atlanta, Ga., and *Mr. John Deal* and *Mr. J. P. Chastain*, of Copperhill, Tenn., for the A. F. of L.

Mr. Richard A. Perkins, of counsel to the Board.

SECOND SUPPLEMENTAL DECISION

AND

SECOND DIRECTION OF ELECTION

July 23, 1938

On March 3, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election¹ in the above-entitled proceeding. On March 15, 1938, the Board issued a Supplemental Decision and Amendment to Direction of Election.² The Direction of Election, as amended, provided that an election by secret ballot be conducted within twenty (20) days from the date of the original Decision among all the employees of Tennessee Copper Company, Copperhill, Tennessee, herein called the Company, in the Ducktown, Tennessee, basin, who were on the pay roll of the Company on November 19, 1937, excluding clerical and supervisory employees, chemists, technical engineers, and those who had since quit or been discharged for cause, to determine whether they desired to

¹ 5 N. L. R. B. 768.

² 5 N. L. R. B. 775.

8 N. L. R. B., No. 59.

be represented by American Federation of Labor, herein called the A. F. of L., or International Union of Mine, Mill, and Smelter Workers, herein called the International, for the purposes of collective bargaining, or by neither.

Pursuant to the Direction, as amended, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Tenth Region (Atlanta, Georgia) on March 18, 1938. On March 21, 1938, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties his Intermediate Report on the ballot.

As to the balloting and its results the Regional Director reported as follows:

Total number eligible-----	1,122
Total ballots cast-----	1,047
Total number of ballots cast for American Federation of Labor--	543
Total number of ballots cast for International Union of Mine, Mill, and Smelter Workers-----	488
Total number of ballots cast for neither-----	12
Total number of challenged ballots-----	2
Total number of void ballots-----	2

On March 26, 1938, the International duly filed with the Regional Director its objections to the Intermediate Report. On May 13, 1938, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, having found that said objections raised a substantial and material issue with respect to the conduct of the ballot, issued a notice of hearing thereon, copies of which were duly served upon the Company, the A. F. of L., and the International.

Pursuant to the notice, a hearing on said objections was held on May 19, 20, 30, and 31, and June 1 and 2, 1938, at Chattanooga, Tennessee, before Albert L. Lohm, the Trial Examiner duly designated by the Board. The Board, the Company, and the International were represented by counsel and the A. F. of L. by union officials. All participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. On May 30, 1938, the Trial Examiner allowed a motion by the International for leave to file amended objections to the Intermediate Report on the ballot, and the amended objections were received. During the course of the hearing the Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

At the close of the hearing the Company and the A. F. of L. moved for dismissal of all the objections, and counsel for the Board moved

to dismiss the first original objection and the fourth amended objection. The Trial Examiner reserved ruling on the motions. The motions to dismiss are allowed as to the first and fourth original objections and the fourth and fifth amended objections, as hereinafter more fully appears. As to the other objections, the motions to dismiss are hereby denied.

The first original objection and the fourth amended objection relate to the polling place situated at Copperhill—one of the two locations chosen by the Board's agents in charge of the election. It is alleged that this polling place was situated on Company property close to the Company's offices, and that the International was prejudiced by the fact that Company officials could observe who voted. There is no claim that the secrecy of the balloting itself was violated. The objections relating to the polling place are obviously without merit, and are hereby dismissed.

The fourth original objection alleges by inference that the Company had advance notice of the filing of the original petition herein by the A. F. of L., and that the International was thereby prejudiced. This allegation is not borne out by the proof, and in any event the International could not have been prejudiced, since a sufficient time elapsed between the filing of the petition and the election for the International to make preparations therefor. This objection is hereby dismissed.

The fifth amended objection avers that the Company transferred employees from its operations at Ducktown and Isabella, where the International claimed its principal support, to Copperhill, where the A. F. of L. predominated, and then laid off such employees. The evidence indicates that transfers and lay-offs were effected pursuant to the Company's regular seniority policy. This objection is dismissed.

The remaining objections are substantial. In effect, they allege that the Company by its supervisory employees intimidated and coerced its employees to vote for the A. F. of L. rather than the International.

The testimony shows that Arthur Dalton, truck foreman, and Ed Donaldson, a labor foreman, electioneered for the A. F. of L. and transported voters to the polls by automobile. The two men involved were members of the A. F. of L. Federal Union No. 21164 at Copperhill. Dalton, in fact, had been president of the local union at Copperhill from 1934 through 1937. He had previously been a foreman until 1932, when he was reduced to a non-supervisory status. He again became a foreman in March 1937. During most of the period of Dalton's tenure in office—until February 1937—the Copperhill local was affiliated with the International. At the hearing on the

objections evidence was adduced to the effect that the Isabella and Ducktown locals of the International admitted foremen to membership provided they had not the right to hire and discharge. Dalton and Donaldson were of this category.

Union membership requirements may be considered in the determination of a unit appropriate for the purposes of collective bargaining. Membership qualifications, as such, however, are not within the control of the Board but rather are to be governed by labor organizations themselves. The boundaries of eligibility for membership in a labor organization need not coincide with the unit for which the organization bargains. But whether or not supervisory employees are members of a labor organization, they will, in the interest of a free choice of representatives, be required to abstain from active participation in a contest between labor organizations:³

In addition to Dalton and Donaldson, whom we have discussed specially, several other foremen engaged in activity which tended to coerce employees in their choice of representatives. On election day, Young Querry, assistant general foreman at the Isabella plant, told Walter Loudermilk that if the C. I. O. (International) won, John L. Lewis would call the employees out on sympathetic strikes. Some time between March 1 and March 15, O. K. Lyle, a foreman, told Noah Parris that the C. I. O. was un-American and that "if the C. I. O. won the employees would have no jobs." On March 15, Marion Hamby, general rigger foreman, said to H. Wright, "I understand you lined up with them Ducktown boys. You better lay off that bunch there. The C. I. O. isn't anything to have here." On March 16, D. B. Epperson, general foreman of the Isabella plant, told A. Elrod and C. Maney that he would know what was what before long, and that it was not long until the election. He said he belonged to neither union, but that his advice would be to join the A. F. of L., adding that Lewis was a dictator, and that if they voted for the C. I. O. they voted their jobs away. Two or three days after the election Arthur Bellew, copper sulphate foreman, told David Queen that he was satisfied with the result of the election and that he had done all he could to influence employees to vote for the A. F. of L. without actually telling them to do so.

The incidents recounted above were denied by none of the foremen involved. In addition, witnesses related similar occurrences involving Wes Helton, Isaac A. Turner, Carl Panter, Gus Nelson, and A. J. Harper, also foremen. We need not discuss the latter statements, about which the evidence is conflicting, for the reason that the un-

³ *Matter of Carrolton Metal Products Company and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1571, 6 N. L. R. B. 569.*

controverted evidence previously described establishes such employer interference as to require a new election. Such statements on the part of supervisory employees cannot be realistically considered other than as interferences and as threats of reprisals. We therefore declare the election of March 18, 1938, to be null and void and shall direct that a new election be held.

SECOND 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, 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 ordered by the Board to ascertain representatives for the purposes of collective bargaining with Tennessee Copper Company, Copperhill, Tennessee, a new election by secret ballot be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Tenth Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all the employees of the Company in the Ducktown basin who were on the pay roll on November 19, 1937, excluding clerical and supervisory employees, chemists, technical engineers, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by American Federation of Labor or International Union of Mine, Mill, and Smelter Workers for the purposes of collective bargaining, or by neither.

[SAME TITLE]

AMENDMENT TO SECOND DIRECTION OF ELECTION

August 6, 1938

On July 23, 1938, the National Labor Relations Board, herein called the Board, issued a Second Supplemental Decision and Second Direction of Election in the above-entitled proceeding, the election to be held within twenty (20) days therefrom, under the direction and supervision of the Regional Director for the Tenth Region (Atlanta, Georgia).

On August 2, 1938, American Federation of Labor Federal Labor Union No. 21164 filed certain "Objections, Exceptions, and Motions" relating to said Second Supplemental Decision and Second Direction

of Election. In order to consider the issues raised therein we shall postpone the election for the present.

The Board hereby amends its Second Direction of Election by striking therefrom the words "within twenty (20) days from the date of this Direction" and substituting therefor the words "at such time as the Board will in the future direct."

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Second Direction of Election.

8 N. L. R. B., 59a.