

In the Matter of UTAH COPPER COMPANY, A CORPORATION, AND KENNECOTT COPPER CORPORATION, A CORPORATION *and* INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL No. 392

Cases Nos. C-399 and R-273

SUPPLEMENTAL DECISION

AND

AMENDED DIRECTION OF ELECTION

August 22, 1938

On June 16, 1938, the National Labor Relations Board, herein called the Board, issued its Decision, Order, and Direction of Election¹ in the above-entitled proceedings. The Direction of Election provided that an election be conducted, at such time as the Board would thereafter direct, among all production workers employed by Utah Copper Company and Kennecott Copper Corporation, herein called the respondents, at their Arthur and Magna mills, Salt Lake County, Utah, within a period to be determined by the Board in the future, excluding clerical employees and employees of the rank of foreman and above, to determine whether or not they desired to be represented by International Union of Mine, Mill, and Smelter Workers, Local No. 392, herein called the Union, affiliated with the Committee for Industrial Organization, for the purpose of collective bargaining.

On August 19, 1938, the respondents, the Union, and Independent Association of Mill Workers, herein called the Association, a labor organization claiming to represent employees directly affected by the investigation of representatives, executed and filed in the above-entitled proceedings a stipulation providing for the participation of the Association in the election by inclusion of its name on the ballot. By the terms of the stipulation the Association consented to the bargaining unit of employees found appropriate by the Board in its Decision of June 16, 1938, and waived all its rights to object to the prior proceedings herein. The parties to the stipulation further agreed that the election be held on August 24, 1938, and that the present pay roll be used in determining eligibility.

The Board sees no reason to deviate from the expressed desires of the parties. Accordingly, the Board hereby amends its Direction of Election of June 16, 1938, to read as follows:

¹ 7 N. L. R. B. 928.

8 N. L. R. B., No. 118.

AMENDED 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, 49 Stat. 449, 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 directed by the Board to ascertain representatives for the purposes of collective bargaining with Utah Copper Company and Kennecott Copper Corporation, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Amended Direction, under the direction and supervision of the Regional Director for the Twenty-second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all production workers employed by Utah Copper Company and Kennecott Copper Corporation at their Arthur and Magna mills, Salt Lake County, Utah, during the pay-roll period including August 19, 1938, excluding clerical employees and employees of the rank of foreman and above, and excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented, for the purposes of collective bargaining, by International Union of Mine, Mill, and Smelter Workers, Local No. 392, affiliated with the Committee for Industrial Organization, or by Independent Association of Mill Workers, or by neither.

MR. EDWIN S. SMITH took no part in the consideration of the above Supplemental Decision and Amended Direction of Election.

[SAME TITLE]

SECOND SUPPLEMENTAL DECISION

AND

SECOND DIRECTION OF ELECTION

September 12, 1938

On June 16, 1938, the National Labor Relations Board, herein called the Board, issued a Decision, Order, and Direction of Election in the above-entitled proceedings. On August 22, 1938, the Board issued a Supplemental Decision and Amended Direction of Election. The Amended Direction of Election provided that an election be conducted among all production workers employed by Utah Copper Company and Kennecott Copper Corporation, herein called the respond-

ents, at their Arthur and Magna mills, Salt Lake County, Utah, during the pay-roll period including August 19, 1938, excluding clerical employees and employees of the rank of foreman and above, and excluding those who had since quit or been discharged for cause, to determine whether they desired to be represented, for the purposes of collective bargaining, by International Union of Mine, Mill, and Smelter Workers, Local No. 392, herein called the Union, affiliated with the Committee for Industrial Organization, or by Independent Association of Mill Workers, herein called the Association, or by neither.

Pursuant to the Amended Direction, an election by secret ballot was conducted on August 24, 1938, at Magna, Utah, under the direction and supervision of the Regional Director for the Twenty-second Region (Denver, Colorado). Full opportunity was accorded to all parties to this investigation to participate in the conduct of the ballot and to make challenges. Thereafter, 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 secret ballot, dated August 25, 1938, and his Amended Intermediate Report on the secret ballot, dated August 27, 1938.

As to the balloting and its results, the Regional Director, in his Amended Intermediate Report, reported as follows:

Total of employees eligible to vote.....	1,005
Total number of ballots cast.....	970
Ballots cast for International Union of Mine, Mill and Smelter Workers, Local 392.....	481
Ballots cast for the Independent Association of Mill Workers.....	454
Ballots cast for neither union.....	29
Challenged ballots.....	0
Blank Ballots.....	1
Void ballots.....	5

On September 2, 1938, the Association filed with the Regional Director objections to the ballot and to the Amended Intermediate Report on the grounds, inter alia, (1) that the five ballots reported as void by the Regional Director should have been counted for the Association, (2) that no provision should have been made for the casting of ballots for neither union, and (3) that the voting was unlawfully influenced and dominated by reason of certain statements appearing in handbills circulated by the Union on the day and night before the election among the employees at the Arthur and Magna mills.

The Board has considered the objections of the Association and finds them to be without merit. With respect to the first ground

mentioned above, the Board notes that, even if all five ballots reported as void by the Regional Director were counted for the Association, the ultimate results of the election would not be affected. Regarding the second ground, an express provision that the employees should be permitted to vote for the Association, the Union, or neither, was included in the stipulation, to which the Association was a party, which preceded the Board's issuance of its Amended Direction of August 22, 1938; moreover, no objections to the provisions in the Board's Direction of June 16, 1938, and its Amended Direction of August 22, 1938, for the casting of ballots for neither union were filed with the Board by the Association until after the election had been held; and, furthermore, the provision by the Board for the casting of ballots for neither union was in accordance with the Board's established practice.³ As for the third ground, the Board is of the opinion that the allegations of the Association concerning the circulation of handbills by the Union are insufficient to raise any material or substantial issues with respect to the ballot.

Neither of the rival unions received a majority of the ballots cast, although the combined vote for the Union and the Association indicates that an overwhelming majority of the employees in the appropriate unit desire to bargain collectively with the respondents. On August 29, 1938, the Union, which received a plurality of the votes, requested, by letter addressed to the Regional Director, that a run-off election be held. On September 6, 1938, the Association filed with the Board a petition requesting that it be considered in the holding of another election, and that its name be placed upon the ballot with that of the Union. For reasons appearing below, the petition of the Association is hereby denied.

It has been the practice of the Board, in cases where neither of two labor organizations participating in an election receives a majority of the votes cast, but their combined vote does constitute a majority, to provide for the conduct of a second election among the employees in the appropriate unit, to determine whether or not they desire to be represented by the organization which received the greater number of votes in the first election, provided that the organization indicates its willingness to participate in such an election.⁴ The Board sees no reason to depart from that practice in this case. Accordingly, the Board finds that the question concerning representation can best be resolved by a second election to determine whether or not the employees in the appropriate unit desire to be represented by the Union, and will so direct.

³ *Matter of Interlake Iron Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 4 N. L. R. B. 55, 58.

⁴ *Matter of Interlake Iron Corporation, supra*; *Matter of Fedders Manufacturing Co. and Lodge No. 1753, Amalgamated Association of Iron, Steel, and Tin Workers of North America, through the Steel Workers Organizing Committee*, 4 N. L. R. B. 770, 7 N. L. R. B. 817.

The Board will direct that the second election be conducted among the employees in the appropriate unit who were employed during the pay-roll period including August 19, 1938, including those who have since been laid off, but excluding those who have since quit or been discharged for cause.

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, 49 Stat. 449, 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 authorized by the Board to ascertain representatives for the purposes of collective bargaining with Utah Copper Company and Kennecott Copper Corporation, an election by secret ballot shall be conducted within twenty (20) days from the date of this Second Direction, under the direction and supervision of the Regional Director for the Twenty-second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all production workers employed by Utah Copper Company and Kennecott Copper Corporation at their Arthur and Magna mills, Salt Lake County, Utah, during the pay-roll period including August 19, 1938, including those who have since been laid off, but excluding clerical employees and employees of the rank of foreman and above, and excluding those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by International Union of Mine, Mill, and Smelter Workers, Local No. 392, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining.

MR. EDWIN S. SMITH took no part in the consideration of the above Second Supplemental Decision and Second Direction of Election.