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United Scrap Metal PA, LLC and Laborers’ International Union of North America, Local 57. Case 04–CA–315904

March 23, 2026

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

On July 18, 2023, the National Labor Relations Board issued a decision in this case, finding that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by, among other things, failing and refusing to bargain with Laborers’ International Union of North America, Local 57 (the Union) and, accordingly, ordering the Respondent to bargain with the Union on request.¹ At that time, the Board severed and retained the issue of whether the Board should grant the General Counsel’s request for the Board to overrule *Ex-Cell-O Corp.*, 185 NLRB 107 (1970), and adopt a remedy that would require employers to compensate employees “for the lost opportunity to engage in collective bargaining at the time and in

the manner contemplated by the Act” in test-of-certification cases.

On February 26, 2026, the Board issued its decision in *Longmont United Hospital*, 374 NLRB No. 52, declining to depart from its longstanding remedial practices where an employer has defended its refusal to bargain on grounds that it is challenging the union’s certification. Consistent with that decision, we decline to order the additional remedy requested by the General Counsel.²

Dated, Washington, D.C. March 23, 2026

David M. Prouty, Member

James R. Murphy, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ *United Scrap Metal PA, LLC*, 372 NLRB No. 107 (2023), enfd. 116 F.4th 194 (3d Cir. 2024).

² For the reasons stated in his dissent in *Longmont United Hospital*, supra, and in order to effectuate Sec. 10(c) of the Act, Member Prouty would overrule *Ex-Cell-O Corp.* and impose the additional remedies

outlined in his dissent, including ordering the employer to make affected employees whole for any provable, reasonably quantifiable economic harm resulting from the employer’s unlawful refusal to bargain. See *Longmont*, supra, slip op. at 2–5 (Member Prouty, dissenting).