

In the Matter of THE YODER COMPANY and INDEPENDENT WELFARE
ASSOCIATION, INC.

Case No. 8-R-1076 (R-5282)

SECOND SUPPLEMENTAL DECISION
AND
SECOND DIRECTION

October 30, 1943

On June 2, 1943, the National Labor Relations Board, herein called the Board, issued a Decision and Direction in the above-entitled proceeding,¹ and on June 25, 1943, issued a Supplemental Decision and Second Direction of Election. Pursuant to the Second Direction of Election a Run-Off Election by secret ballot was conducted on July 19, 1943, by the Acting Regional Director for the Eighth Region (Cleveland, Ohio). On August 5, 1943, the Regional Director acting pursuant to Article III, Section 10, of National Labor Relations Board Rules and Regulations—Series 2, as amended, issued a Report on the Run-Off Election, and on August 8, 1943, duly served copies of the Report upon the parties.

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

Approximate number of eligible voters.....	485
Total ballots cast.....	352
Total ballots challenged.....	6
Total blank ballots.....	2
Total void ballots.....	0
Total valid ballots counted.....	344
Votes cast for United Electrical, Radio & Machine Workers of America, Local 735 (CIO).....	173
Votes cast for Independent Welfare Association, Inc.....	171

In the Election Report the Regional Director considered the challenges and recommended that they be sustained as to two employees, and that four of the challenged ballots be opened.

On August 10, 1943, the Company filed Objections to the Election Report alleging, in substance, that the challenged ballot of Frank

¹ 50 N. L. R. B. 36.

53 N. L. R. B., No. 116.

Veverka should be counted and that the challenge against Carol Toth should be sustained. On August 11, 1943, the U. E. also filed Exceptions to the Election Report alleging, in substance, that the recommendations of the Regional Director with regard to the disposition of the challenged ballots of William Bell, Virgil Garwood, Louis Lewis, and Joseph Hargreave, were incorrect, and that the challenges concerning Bell, Garwood, and Lewis should be sustained, and that the ballot of Hargreave should be counted.

On August 16, 1943, the Acting Regional Director, after consideration of the objections of both the Company and the U. E., issued and duly served upon the parties a Report on Objections, in which he concluded that the recommendation made in the Election Report as to William Bell and Frank Veverka should not be altered, and recommended that the Board direct a hearing upon the objections concerning the challenges of Carol Toth, Virgil Garwood, Louis Lewis, and Joseph Hargreave.

On August 19 and September 1, 1943, respectively, the Board issued its Order and Amended Order directing a hearing with respect to the challenged ballots. Pursuant to the said orders and to notice duly served upon the parties, a hearing was held at Cleveland, Ohio, on September 21-22, 1943, before James C. Batten, Trial Examiner. The Board, the Company, the U. E., and the Association appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the record so made, the Election Report, the Objections of the Company, the Exceptions of the U. E., the Report on Objections, and the record previously made, the Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

1. *Joseph Hargreave* was challenged by the Company on the ground that he is no longer employed by it. Hargreave was eligible to vote under the terms of the "STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION" in the original election held on April 16, 1943. On May 29, he was laid off by the Company due to lack of work, and a few days later obtained employment at the Fisher Bomber Plant, and is presently employed at that plant. He is no longer listed on the Company's pay roll. Although Hargreave testified that he is anxious to return to the Company, he can no longer exercise a freedom of choice in the matter, even though the Company may now desire to reemploy him. Under the regulations of the War Manpower Commission, Hargreave must procure a Certificate of Availability from his present employer before he would be per-

mitted to be reemployed by the Company. Thus, the employee status of Hargreave is no longer merely a matter between the Company and this employee. Hargreave, under the regulations of the War Manpower Commission, is an employee of the Fisher Bomber Plant. In view of the foregoing, we find that Hargreave is no longer an employee of the Company and, therefore, has no such substantial interest in the outcome of the election as would entitle him to vote. We shall therefore declare his ballot invalid.

2. *William Bell* was challenged by the U. E. on the ground that he is a supervisory clerical employee. However, he voted in the original election without challenge. The record reveals that he is a receiving clerk who is paid on an hourly basis, and receives his instructions from production supervisors. He has no authority to hire or discharge, or to recommend such action. Inasmuch as the Stipulation provided that supervisors of the rank of foremen or above were to be excluded, and since this employee is definitely ranked below the foreman and exercises no supervisory functions, we shall order that Bell's vote be declared valid.²

3. *Frank Veverka* was challenged by the Board agent for the reason that his name did not appear upon the eligibility list used in the election of April 16, 1943. At that time Veverka was in charge of the cafeteria, a classification ineligible to vote in the election. Subsequently, Veverka was transferred to a position as shop clerk which he had held prior to the time he was placed in charge of the cafeteria, and was thus employed in an eligible category at the time of the run-off election. The Supplemental Decision and Second Direction of Election, however, directed that the run-off election should be conducted among the employees who were eligible to vote in the original election conducted pursuant to the Stipulation. Veverka was, therefore, correctly challenged by the Board's agent as ineligible, and we shall declare his ballot invalid.

4. *Virgil Garwood* was challenged by the U. E. on the ground that since April 16, 1943, the date of the original election, he was promoted to the position of "set-up man" and instructor in the drill press section of the machine shop. In this position Garwood, although exercising minor supervisory duties, ranks below the grade of foreman. Inasmuch as the Stipulation excluded only supervisors of the grade of foreman and above, we shall declare his ballot valid.

5. *Louis Lewis* was challenged by the U. E. on the ground that he was not employed in an eligible classification. This employee works in the tool crib, where he is engaged in the handing out of blueprints. His duties are not concerned with the drawing of blueprints, but

² See the original decision in this proceeding (footnote 1, *supra*) wherein the Board dismissed the challenges to Joseph Kovach and A. Bishop

merely with their distribution and safekeeping. As such, he is similar to the other tool crib attendant, who receives and passes out tools and whose eligibility is not questioned. We shall declare his vote valid.

6. *Carol Toth* was challenged by the Board's agent on the ground that she was not on the eligibility list used at the original election. Toth voluntarily left her employment with the Company on or about April 10 and returned on or about April 20. She did not ask for a leave of absence, nor did she know or give any indication when she would be able to return. Under these circumstances the Company treated Mrs. Toth as an employee who voluntarily quit her employment, and when she returned to work she was treated in all significant respects as a new employee. We are of the opinion, and find, that Toth voluntarily quit her employment, and was therefore properly excluded from the eligibility list. We shall declare her vote invalid.

For the reasons indicated above we conclude and find that Joseph Hargreave, Frank Veverka and Carol Toth were not eligible to vote in the run-off election, and their ballots are hereby declared invalid.

We further find that William Bell, Virgil Garwood, and Louis Lewis were eligible to vote in the election and their ballots are hereby declared valid.

Since the result of the election may depend upon the counting of the three ballots declared valid, we shall direct that they be opened and counted.

DIRECTION

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 10, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Yoder Company, Cleveland, Ohio, the Regional Director for the Eighth Region shall, pursuant to the Rules and Regulations of the Board set forth above, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, within ten (10) days from the date of this Direction, open and count the ballots of William Bell, Virgil Garwood, and Louis Lewis, and thereafter prepare and cause to be served upon the parties in this proceeding, a Supplemental Run-Off Election Report, embodying therein his findings and recommendations as to the result of the ballot.

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