

In the Matter of IROQUOIS CHINA COMPANY and DISTRICT 50, UNITED  
MINE WORKERS OF AMERICA

*Case No. 3-R-703*

SUPPLEMENTAL DECISION

AND

DIRECTION

*March 7, 1944*

On January 10, 1944, the National Labor Relations Board issued a Decision and Direction of Election in the above-entitled proceeding.<sup>1</sup> Pursuant to the Direction of Election, an election by secret ballot was conducted on February 8, 1944, under the direction and supervision of the Regional Director for the Third Region (Buffalo, New York). Upon the conclusion of the election a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board. The tally shows that of the approximately 167 eligible voters, 150 cast valid votes, of which 76 were for District 50, United Mine Workers of America, and 74 against. One ballot was challenged, and 3 were void.

On February 14, 1944, the Company filed Objections to the Conduct of the Election. On February 16, 1944, the Regional Director, acting pursuant to Article III, Section 10, of National Labor Relations Board Rules and Regulations—Series 3, issued a Report on Objections. On February 21, 1944, the Company filed Exceptions to the Report. We have considered the Objections, the Report, and the Exceptions, and find that the Company's objections Nos. 1, 2, and 4, do not raise any substantial and material issues with respect to the conduct of the ballot; they are, accordingly, hereby overruled.

The Company's objection No. 5 relates to a ballot which the Board's agent in charge of the election counted as a valid "yes" ballot, but which the Company contends should have been declared void, because defaced. The Regional Director also recommended that the ballot be counted as a valid "yes" vote. This ballot contains an "x" in the "yes" box and a single diagonal mark ("\/") in the "no" box. Although we

<sup>1</sup> 54 N. L. R. B. 446

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

have on occasion disregarded minor deviations from the approved method of voting solely by marking an "x" in the appropriate square, we have done so only where the ballot nevertheless reflects the clear intention of the voter. We are of the opinion that the ballot here in question is not so marked as to reveal a clear intent; accordingly we find this ballot to be void.

The Company's objection No. 3 relates to the ballot cast by an employee, Peter Boscarolo, who was challenged by the Union. The Company contends that this ballot should be counted as that of an eligible voter, averring in support thereof that Boscarolo is a regular, part-time, production employee. The Company alleges that he has been in its employ for 21 years, but now is restricted to \$15.00 per month in earnings, and approximately 28 hours per month in working time, by reason of considerations relating to his age and receipt of Social Security benefits. If the Company's allegations correctly reflect the factual situation with respect to the nature of his employment, it would appear that he was eligible to vote in the election. However, in view of his recommendations as to the other objections, the Regional Director made no finding or recommendation as to this challenged ballot. Since the challenged ballot may now determine the results of the election, we shall direct that the Regional Director investigate the issues raised by the Company's objection No. 3 and prepare and serve upon the parties a Report on Challenged Ballot. We shall make no determination of the results of the election pending said report.

#### 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 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purpose of collective bargaining with Iroquois China Company, Syracuse, New York, the Regional Director for the Third Region shall, pursuant to the Rules and Regulations of the Board set forth above, and subject to Article III, Sections 9 and 10, of said Rules and Regulations, within ten (10) days from the date of this Direction, investigate the issues with respect to Company's objection No. 3, and thereafter prepare and cause to be served upon the parties in this proceeding a Report on Challenged Ballot embodying therein his findings and recommendations.

MR. JOHN M. HOUSTON, took no part in the consideration of the above Supplemental Decision and Direction.

[See *infra*, 55 N. L. R. B. 1022 for Second Supplemental Decision and Certification of Representatives.]