

In the Matter of WHITING CORPORATION, SPENCER AND MORRIS DIVISION,  
EMPLOYER *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON  
SHIPBUILDERS & HELPERS OF AMERICA, FOR AND ON BEHALF OF  
SUBORDINATE LODGE No. 92, AFL, PETITIONER

*Case No. 21-RC-1353*

SUPPLEMENTAL DECISION AND DIRECTION

*February 2, 1951*

On October 18, 1950, pursuant to the Board's unpublished Decision and Direction of Election herein, dated October 2, 1950, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Twenty-first Region, among the employees in the unit found appropriate. At the close of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations. The tally showed that, of the 35 ballots cast, 17 were for the Petitioner, none were for the Intervenor,<sup>1</sup> 16 were against both labor organizations, and 2 were challenged. No objections to the conduct of the election were filed within the time provided therefor.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director, pursuant to the Board's Rules and Regulations, investigated the challenges, and on November 16, 1950, issued his "Report on Challenges." In his report, the Regional Director recommended, in substance, that the challenges which had been made to the ballots of W. Werner and Jack Norgard be overruled, and that these ballots be opened and counted. The Employer timely filed exceptions to the Regional Director's report with regard to Norgard, and a supplement and brief in support thereof. The Petitioner filed a statement in support of the Regional Director's report.

As no exceptions were filed to the Regional Director's recommendation concerning the challenged ballot of Werner, we<sup>2</sup> shall adopt his recommendation that Werner's ballot be opened and counted.

---

<sup>1</sup> International Association of Bridge, Structural and Ornamental Iron Workers, Local 509, AFL.

<sup>2</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

As to Norgard, the Regional Director found that, at the time of the election, Norgard was an employee of the Employer on sick leave and was, therefore, entitled to vote. The Employer contends that Norgard was ineligible to vote because his employment terminated on September 26, 1950, and he had no expectancy of, nor right to, reemployment.

The essential facts are substantially undisputed. Norgard, age 70, had been employed by the Employer for a number of years as a yardman in charge of loading and unloading steel. During about the last year, he had been in poor physical condition and the company doctor, on several occasions, recommended that he be removed from the job. However, the Employer refused to adopt such recommendations as Norgard was not subject to the Employer's retirement program and the Employer believed that it furthered its relations with its employees to retain him.

On September 26, 1950, Norgard advised the Employer that he desired to be relieved from work because of his physical condition, and because his wife had recently broken her hip and it was necessary for him to assume the nursing duties. He desired assurance that his group insurance benefits would be continued and, although questioned, would not state to the Employer either how long he desired to be away from work, or whether he thought that his physical condition would permit his resumption of work. The Employer mentioned that Norgard's reemployment would depend upon his physical qualifications, but added that he would be informed definitely as to his status after the Employer contacted its home office in Harvey, Illinois.

On October 6, the Employer informed Norgard, after the latter had undergone a physical examination, that he was being assigned to the status of "Voluntary Suspension" for a period not to exceed 60 days, and that his group insurance would be maintained during that time. This status, which was made retroactive to October 2,<sup>3</sup> was defined as follows in the Employer's home office memorandum:

Suspension is a term applied to the status of employees upon being removed from the active payroll. *Employees are placed on suspension for . . . reasons of health, in which case a leave of 30, 60 or 90 days is granted upon presentation of sufficient evidence to substantiate the claim. In this event, the Whiting Corporation maintains and pays the insurance premiums.* [Emphasis supplied.]

Norgard was classified as on "Voluntary Suspension" at the time of the election on October 18, 1950.

<sup>3</sup> From September 27 to September 29, Norgard was carried on the payroll as "Sick."

The Employer admits that Norgard was never categorically advised that his employment had terminated, and his official status, which was designated as a "leave" for "reasons of health," and called for the continued payment of group insurance premiums by the Employer, was in effect that of an employee on sick leave. Although the Employer claims that Norgard had no reasonable expectancy of returning to work, his physical condition had been previously disregarded for about a year in order to further the Employer's personnel relations. Moreover, as late as October 11, 1950, in a letter from the Employer to its home office concerning Norgard, the Employer stated that there was merely "some possibility that [his suspension] will turn into a retirement." Under all the circumstances, we are of the opinion that, at the time of the election, Norgard's return to work was still uncertain and, as his employment had not been actually severed, we find, like the Regional Director, that Norgard was entitled to vote.<sup>4</sup>

Accordingly, we shall overrule the challenge to the ballot of Jack Norgard and, as recommended by the Regional Director, direct that his ballot be opened and counted.

#### DIRECTION

IT IS HEREBY DIRECTED that the Regional Director for the Twenty-first Region shall, pursuant to the Rules and Regulations of the Board, within ten (10) days from the date of this Direction, open and count the ballots cast by W. Werner and Jack Norgard, and thereafter prepare and serve upon the parties to this proceeding a supplemental tally of ballots, including therein the count of said challenged ballots.

---

<sup>4</sup> See *Tyre Brothers Glass & Paint Co.*, 85 NLRB 910, 913; cf. *Sylvania Electric Products, Inc.*, 91 NLRB 296. Although the Employer on December 1, 1950, advised the Board that Norgard had, on that date, voluntarily terminated his status of "Voluntary Suspension," such action is clearly not dispositive of his status at the time of the election on October 18, 1950.