

maintenance employees at the Seattle works enjoy a sufficient community of interest, apart from the employees of the Employer at its other various operations, to warrant their placement in a separate bargaining unit, if they so desire. As the record also contains sufficient evidence to justify inclusion of these employees in the existing company-wide bargaining unit, we shall make no final unit determination now, but shall await the results of the self-determination election hereinafter directed. If a majority of these employees select the Petitioner or the Iron Workers, they will be taken to have indicated their desire to constitute a separate bargaining unit, and the Regional Director conducting the election directed herein is instructed to issue a certification of representatives to the Petitioner or the Iron Workers, whichever may be selected, for the unit described below, which the Board, under such circumstances, finds to be appropriate for purposes of collective bargaining. In the event a majority votes for the Steel Workers, the Board finds the existing unit to be appropriate and the Regional Director will issue a certification of results of election to such effect.

The following employees of the Employer may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: The production and maintenance employees at the Employer's Seattle works, Seattle, Washington, excluding draftsmen, office and clerical employees, full-time first-aid and safety employees, watchmen, and guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication in this volume.]

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WHITING CORPORATION, SPENCER AND MORRIS DIVISION *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. May 14, 1952*

### Second Supplemental Decision and Order

On October 18, 1950, pursuant to the Board's unpublished Decision and Direction of Election herein dated October 2, 1950, an election by secret ballot was conducted among the employees in the appropriate unit. The tally of ballots issued after the election showed that of 35 ballots cast, 17 were for, and 16 were against, the Petitioner, and 2 were challenged.<sup>1</sup>

<sup>1</sup> An intervening union, International Association of Bridge, Structural and Ornamental Iron Workers, Local 509, AFL, was on the ballot, but received no votes.

The Regional Director investigated the challenged ballots and recommended that both challenges be overruled. The Employer accepted to the recommendation for overruling its challenge to the ballot of John D. Norgard (also known as Jack Norgard). After considering the Employer's exceptions, the Board adopted the recommendations of the Regional Director and directed that the two challenged ballots be opened and counted.<sup>2</sup> A revised tally of ballots, including the 2 challenged ballots, showed that 18 votes had been cast for, and 17 against, the Petitioner. As the Petitioner had won the election, the Board certified it as bargaining representative on February 16, 1951.

Thereafter, the Petitioner requested the Employer to bargain with it for the employees in the appropriate unit. The Employer refused the request on March 28, 1951. The Petitioner filed an unfair labor practice charge with the Board on April 3, 1951. The Board issued its complaint on May 10, 1951. A hearing on the complaint was held before a Trial Examiner on July 2 and 3, 1951. At the close of the hearing, the Trial Examiner issued his Intermediate Report finding that the Employer had unlawfully refused to bargain with the Petitioner.

Thereafter, on August 6, 1951, the Employer moved to reopen the record in the representation case to redetermine the question of John D. Norgard's eligibility to vote in the election. On November 1, 1951, the Board granted the motion and remanded this representation case to the Regional Director for the purpose of conducting a hearing on the issue of Norgard's eligibility.

The hearing was held on January 3, 9, and 11, 1952, before Ben Grodsky, hearing officer.<sup>3</sup> The Employer and the Petitioner participated in the reopened hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. On February 14, 1952, the hearing officer issued his report, attached hereto, in which he found that Norgard was eligible to vote and recommended that the Board affirm its prior decision to that effect. The Employer filed timely exceptions to the hearing officer's report together with a supporting brief.

<sup>2</sup> 92 NLRB 1851.

<sup>3</sup> In its exceptions to the hearing officer's report, the Employer for the first time objected to the conduct of the hearing by a hearing officer, as contrary to the Administrative Procedure Act, and moved to set aside the hearing. The motion is denied. The present hearing was held as part of, and in connection with, the investigation into the question of representation initiated by the Petitioner's filing of its representation petition. Section 5 of the Administrative Procedure Act specifically exempts from its provisions "(6) the certification of employee representatives." No part of sections 5, 7, and 8 of the Administrative Procedure Act, including the requirement for holding hearings before a trial examiner, is therefore applicable to the present proceeding. See, *Attorney General's Manual on the Administrative Procedure Act (1947)*, pp. 43, 46, 129; *Clark Shoe Company* 83 NLRB 782; *Minnesota Mining & Manufacturing Company*, 81 NLRB 557.

The Board <sup>4</sup> has reviewed the rulings of the hearing officer made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.<sup>5</sup> The Board has considered the hearing officer's report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings and recommendations of the hearing officer with the following amplification.

In accordance with its long-established practice, which is designed to prevent manipulation of voting lists, the Board in its Decision and Direction of Election declared as eligible to vote in the election, all employees in the appropriate unit.

who were employed during the payroll period immediately *preceding the date of this Direction of Election*, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, *but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election.* . . . [Emphasis supplied.]

The Board issued its Decision and Direction of Election on October 2, 1950. The payroll period immediately preceding that date covered the week ending September 30, 1950. Norgard worked during the early part of that week. He was therefore eligible to vote under the Board's decision, unless he quit or was discharged for cause before October 18, 1950, the date of the election itself.

The critical issue in this case is whether Norgard quit on September 26, 1950, or at any other time before the election. The events of that period are in dispute. According to Norgard, on September 26, 1950, he asked plant officials for a couple of months off because his leg was bothering him and because his wife, who had just returned from the hospital, needed his care. He understood that the officials had agreed to give him a 2-month leave of absence. He denied that he had told the officials that he wanted to quit or that he had any intention of quitting during the period in question.

Plant Manager Handley and Office Manager Klise, who had the September 26 interview with Norgard, gave a different version of what happened. According to these two officials, Norgard said that his ill wife required extended nursing care, and that due also to his own

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<sup>4</sup> Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

<sup>5</sup> The Employer has excepted to the ruling of the hearing officer permitting the introduction into evidence of a "Supplement to Exceptions" submitted by the Employer to the Board in support of its exceptions to the hearing officer's report on challenges. The supplement is part of the record in the case. It therefore was properly placed in evidence.

physical condition he thought it best either to quit or be laid off.<sup>6</sup> They testified that Norgard's principal concern was that his insurance benefits, primarily hospitalization benefits, be extended until such time as his wife recovered from her accident, and that Handley told Norgard that if he quit or was laid off, hospitalization benefits would cease as of the date of termination.<sup>7</sup> Thereupon Handley, according to his and Klise's testimony, asked Norgard if he wanted to quit, be laid off, or be given a 30-, 60-, or 90-day leave of absence, but Norgard declined to answer. Handley admitted that Norgard had never said definitely that he was quitting, but in the Employer's mind, according to Handley, Norgard was considered to have quit, although temporarily retained on the payroll for the sole purpose of enabling him to obtain hospitalization benefits for his wife.

The hearing officer credited Norgard's version of the September 26 interview and found that he had neither quit nor been laid off, but had requested and received a leave of absence which turned into a quit on December 1, 1950, when Norgard formally resigned. That was 6 weeks after the election. The hearing officer, who had the advantage of observing the witnesses, found that Norgard was a "completely truthful and forthright witness." The Employer has excepted to this finding. Our rule, when issues of credibility are raised in exceptions, is to accept the findings of the hearing officer or trial examiner, unless the clear preponderance of all the relevant evidence indicates that the resolution by the hearing officer or the trial examiner was incorrect.<sup>8</sup> No such conclusion is warranted in this case. It is true, as the Employer points out, that Norgard was uncertain about, or could not recall, some of the incidents of the period in question. But it must be remembered that Norgard was about 70 years old at the time of the hearing, and was testifying to events which had happened approximately a year and a half before. That he did not remember every-

<sup>6</sup> Shop Foreman Weatherhead testified that Norgard had made similar remarks to him on September 25, 1950. Several fellow employees of Norgard also testified that about the same time, during conversations about his wife's condition, Norgard remarked that it would be cheaper for him to stay at home personally to care for his wife than to hire a nurse to do so, and that upon being asked when he expected to return to work, Norgard replied that he didn't think he would ever be back. The hearing officer found that Norgard's remarks to his fellow employees were made in a speculative vein. We agree with this finding.

<sup>7</sup> The Employer did not put its group insurance policy in evidence, so that the validity of its alleged reason for keeping Norgard on the payroll could be more objectively appraised. According to a company pamphlet explaining the group insurance program, put into evidence by the Petitioner, benefits for dependents consist of hospitalization and surgical expenses. The best evidence is that Norgard's wife returned from the hospital on or before September 26. It would seem that under normal rules, the insurance company was liable for the hospitalization expense which accrued before September 26. Indeed, according to Handley, it was the possibility of *future* hospitalization for Norgard's wife which motivated him in keeping the insurance in force for an additional 60 days. On the other hand, according to Klise, the motivation was the desire to keep Norgard covered until after the bills for *past* hospitalization came in.

<sup>8</sup> *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C. A. 3); *N. L. R. B. v. Universal Camera Corporation*, 190 F. 2d 429 (C. A. 2).

thing does not serve to discredit the hearing officer's finding that he was a truthful witness. Moreover, his testimony that he did not quit but was given a leave of absence is borne out by other contemporaneous evidence.

Norgard had his interview with top plant officials on September 26, 1950. He worked that day, but not thereafter. For the balance of the week ending September 30, 1950, Norgard was carried on the Employer's payroll as "sick." According to Office Manager Klise, who was also the plant's personnel director, Norgard was carried as sick only to gain time for ascertaining the Employer's policy on Norgard's request for continued insurance coverage. On September 27 Klise telephoned Bauch, director of personnel for the entire Company, and allegedly asked for the Company's policy on Norgard's request to quit work but to retain the privilege of filing an insurance claim against his group insurance. Bauch replied, according to Klise, that he would write his answer, but that in any event Norgard was to be sent to the doctor for a physical examination. Bauch's written answer, dated October 5, contains no mention of Klise's supposed request for information concerning company policy on Norgard's alleged desire to be permitted to quit but to retain insurance benefits. It refers to the telephone conversation regarding Norgard, and then defines the term "*suspension*" as applying to the status of an employee upon being removed from the active payroll. Among the five reasons for placing employees in suspension was:

3. 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.

Bauch was not called to testify.

Klise received Bauch's memorandum on October 6. The same day, according to Klise, he telephoned Norgard, asked again what the latter wished to do, received no reply, and then informed Norgard that he was being placed in "voluntary suspension" for a period of 60 days to expire on December 4. Norgard's payroll records were so marked the same day, retroactive to October 2, 1950.

Meanwhile, on October 3, at Klise's request, Norgard reported to the company doctor for a physical examination. The report from the doctor to Klise, dated October 11, opens with the statement that Norgard was examined "as you requested for consideration of disability," recounts Norgard's complaints and the result of the examination and then concludes:

Due to his age and arthritic changes it is recommended that he [Norgard] have a temporary disability for six to eight weeks with the possibility of permanent retirement.

On October 11, 1950, Klise wrote Bauch that:

Mr. Norgard has been given a 60 day suspension with the approval of our doctor.<sup>9</sup>

We feel that there is some possibility that this will turn into a retirement at the end of the 60 days, since the doctor advises us that Mr. Norgard most likely would be unable to pass a physical examination like the ones given to new employees.

On December 1, 1950, Norgard appeared at the Employer's office and announced that he had decided to resign. Klise thereupon had him sign a termination form which, Klise admitted, is usually signed at the time an employee quits or is discharged. His name was then dropped from the payroll as of December 1, 1950, rather than any earlier date.

All this contemporaneous evidence fully supports, we believe, Norgard's testimony that he did not quit on September 26, 1950, but asked for and subsequently received an extended leave of absence for reasons of health, under terms outlined in Bauch's October 5 memorandum to Klise.<sup>10</sup>

Eligibility to vote in an election is determined by the facts as they exist on the eligibility date and on election day.<sup>11</sup> Employees otherwise eligible to vote do not become ineligible because they may intend to quit immediately after the election.<sup>12</sup> "The essential element in determining their eligibility to vote is their status on the eligibility date and on the date of the election."<sup>13</sup>

Under the Board's practice, an employee on sick leave,<sup>14</sup> or other

<sup>9</sup> Klise testified that he had received an oral report from the doctor during the week of October 2, to the effect that Norgard was suffering from an advanced case of arthritis and a recommendation that Norgard work no more. He denied that the information from the doctor had any effect on what he did concerning Norgard's status with the Employer. This appears to be contrary to the statement above in his report to Bauch.

<sup>10</sup> Superintendent Handley testified that the term "voluntary suspension" given to Norgard on the payroll was not applied in the sense described in Bauch's memorandum, but was intended to show that Norgard had quit, but was being retained on the payroll for insurance purposes only. We discredit this explanation. It is directly contrary to a statement contained in an affidavit of Handley's submitted to the Board on November 24, 1950, in connection with exceptions filed to the Regional Director's report upholding Norgard's right to vote. In this affidavit dated November 2, 1950, Handley swore that the term "voluntary suspension" was applied on the basis of the sick leave provision in Bauch's October 5 memorandum. Moreover it seems strange that Klise did not mention the unusual use of the term "voluntary suspension" in his letter of October 11 to Bauch, his superior. Finally, the medical examination, the doctor's report, and Klise's letter strongly support the inference that the steps taken in respect to Norgard literally followed the requirements for sick leave suspension outlined in Bauch's letter.

<sup>11</sup> *Sioux City Brewing Company*, 85 NLRB 1164.

<sup>12</sup> *Bill Heath, Inc.*, 89 NLRB 1555.

<sup>13</sup> *Idem.*

<sup>14</sup> *Seaton Welding Company*, 96 NLRB 454; *Standard-Coosa-Thatcher Company*, 74 NLRB 1401.

temporary leave of absence,<sup>15</sup> is eligible to vote in an election. Similarly, an employee temporarily laid off is entitled to vote.<sup>16</sup> Despite their not working, such individuals retain their employee status and are therefore considered to have sufficient interest in the outcome of the election to be permitted to vote. Sometimes it is difficult to ascertain whether an employee is permanently or only temporarily laid off, or in other words, whether he has lost or retained his status as an employee. In such cases, the Board applies the "reasonable expectation of further employment" standard as an aid in resolving the question.<sup>17</sup> When the retention of employee's status on election day is clear, as we have found it to be in this case, the Board does not make further inquiry as to the expectation of future employment. Employee status having been established, the right to vote is similarly established. The Board will no more inquire into the prospects or expectations of an employee temporarily on leave on the day of the election, than it will into the similar prospects or expectations of an employee who is actually working on election day. This rule may not be a perfect one to determine eligibility, but in the Board's opinion it is the only practicable one, if election results are not to be held back by endless investigations into states of mind or of future prospects.

Accordingly we find, as did the hearing officer, that as John D. Norgard had worked during the eligibility period and was on temporary leave of absence on election day, he was eligible to vote in the election and his vote was properly counted. We shall therefore affirm the Board's previous decision.<sup>18</sup>

### Order

IT IS HEREBY ORDERED that the Board's "Supplemental Decision and Direction" issued in the above-entitled matter on February 2, 1951 (92 NLRB 1851), be, and it hereby is, affirmed.

#### Hearing Officer's Report, Findings of Fact, and Recommendations

On February 16, 1951, the Board issued a certification of representatives in the above-entitled proceeding. Thereafter, on August 5, 1951, counsel for the

<sup>15</sup> *Stoua City Brewing Company*, 85 NLRB 1164. In this case, an employee who had purchased a tavern asked for and received a 30-day leave of absence from his employer, upon the representation that he would return to work after the expiration of his leave. He did not, however, return to work thereafter. The Board held that he was eligible to vote in the election held during the period that he was on leave, because he retained his employee status on the eligibility date.

<sup>16</sup> *Sylvania Electric Products, Inc.*, 91 NLRB 296.

<sup>17</sup> *Clippard Instrument Laboratory, Inc.*, 86 NLRB 424; *United States Rubber Company* 86 NLRB 338; *Lima Hamilton Corporation*, 85 NLRB 455.

<sup>18</sup> 92 NLRB 1851.

Employer filed a "Motion to Reopen Record and Set Hearing." The Board, deeming it necessary to receive further evidence in the record with respect to the eligibility of John D. Norgard<sup>1</sup> to vote in the election conducted herein on October 18, 1950, ordered that the record be reopened, and that a further hearing be held for the purpose of taking evidence on that issue. The undersigned was designated as hearing officer by the Regional Director for the purpose of conducting the hearing and preparing and causing to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the issue. The hearing was held on January 3, 9, and 11, 1952, before the undersigned hearing officer, at which time the Employer and the Petitioner appeared and participated and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

#### FINDINGS OF FACT

The sole issue here, as limited by the Board's order directing hearing, is whether Norgard was eligible to vote at the election conducted on October 18, 1950. Under the terms of the Board's Decision and Direction of Election of October 2, 1950, employees within the appropriate unit on the payroll who were in the employ of the Employer during the payroll period ending September 30, 1950, were eligible to vote.

During September 1950, Norgard was in charge of the Employer's steelyard and his duties consisted of keeping the steel stored properly and supplying it to the various employees as they needed it. The job was physically very demanding and Norgard had a regular helper, Campbell, who operated a crane at Norgard's direction and in other ways assisted Norgard in the placement of the steel. Norgard was about 68 years of age at the time and had an arthritic condition which apparently gave him trouble from time to time. In July 1950 Norgard was examined by a company physician with reference to a complaint concerning a pain in the lower part of his back. Because the physician recommended that Norgard be taken off the heavy work he was doing, Norgard was instructed to permit Campbell to do the heavy work and for himself to perform the relatively lighter tasks of his helpers, but after several weeks Norgard disregarded this order and continued to perform the same work which he had previously performed until September 26, 1950, to the knowledge and without further advice from the Employer.

Sometime about the middle of September 1950, Norgard's wife suffered an accident and was hospitalized. Several employees testified that Norgard told them, during this period, that when his wife came home from the hospital she would require nursing care, and that he would be money ahead if he stayed home and took care of her rather than engage the services of a nurse. He also indicated that he did not know how long he would be off and speculated about the possibility of retiring and of securing his old age and social security benefits.

On September 25, Norgard told Robert W. Weatherhead, shop foreman, that his leg was hurting, that his wife was coming home from the hospital, and that

<sup>1</sup> Referred to in the Board's order as Jack Norgard.

he wanted an extended leave of absence.<sup>2</sup> Weatherhead promised to arrange for Norgard to discuss this with Plant Manager Handley and later reported the matter to Woodside, the general plant foreman. The following morning, Norgard was interviewed by Handley, Woodside, and Office Manager Klise in Handley's office.<sup>3</sup> At this meeting, Norgard asked for a couple of months off from work because his leg was bothering him and because his wife had just come home from the hospital. Handley agreed to let him have the requested leave. Norgard also asked information concerning keeping his hospitalization insurance in force during this period. After this conference, he returned to work and finished out the day; he has not worked at the plant since then.<sup>4</sup>

Handley testified that at the time the interview with Norgard was completed on September 26, he had firmly fixed in his mind a conclusion that Norgard would no longer work for the Employer, but admitted that he did not communicate this to Norgard. He further stated that shortly thereafter he instructed Woodside to notify Campbell that he would thereafter be a permanent replacement

<sup>2</sup> Weatherhead also testified that in the course of this conversation Norgard said that he would be better off "just quitting and drawing his unemployment"; that "he was going to have to quit or have the Company lay him off"; and that he was "getting too damn old to work". Norgard, who impressed the undersigned as a completely truthful and forthright witness, testified that he recalled having a conversation with Weatherhead but did not testify as to its details. In view of the discussions of the following day between Norgard and Weatherhead's superiors, set forth more fully below, I find that, while Norgard may have mentioned these matters to Weatherhead, it was in a speculative vein and not as a decided upon course of action; and that the only request Norgard had in mind was to secure an extended leave of absence. Moreover, inasmuch as Norgard later approached Woodside independently, his conversation with Weatherhead, while appropriate background, and while apparently communicated by Woodside to Handley, does not constitute the request upon which Plant Manager Handley acted.

<sup>3</sup> Norgard testified, without contradiction, that he first approached Woodside alone and stated his request. that Woodside then took him into Klise's office where he repeated his request to Woodside and Klise and that thereafter the three went to Handley's office. Inasmuch as the matters discussed at these earlier meetings were again discussed at the meeting in Handley's office, I find it unnecessary to make detailed findings concerning the substance of these preliminary discussions.

<sup>4</sup> Handley and Klise testified that Norgard stated at this meeting that he wanted to quit or be laid off and that the only thing which stood in his way was the matter of insurance. For the reasons and in view of the circumstances to be discussed below, the undersigned believes, and finds, that Norgard only sought a leave of absence. It should be noted, in passing, that the Employer's witnesses do not claim that a quit or layoff took place but that they contend that the meeting ended inconclusively. The subsequent behavior of both Klise and Norgard belie this, and I find that Norgard was in fact granted the leave he requested, subject to modification as to its duration after consultation with the Employer's head office.

In crediting Norgard's version that the interview of September 26, 1950, ended with him being given a leave rather than his quitting or being laid off, in addition to the facts set out in other parts of this Report, I am further mindful of the fact that on December 1, a few days before the leave would have expired by his understanding, as discussed below, Norgard went to the plant and told Klise that he would be unable to return to work. I am in addition mindful of the fact that at one point in testifying, Norgard placed a date at "it was after I quit my work, I think," (transcript, page 247, line 2) when he meant thereby "after September 26". In view of the totality of Norgard's testimony, I find that he used the phrase "I quit my work" in the instance quoted to denote that he had ceased physically working and not that he had severed his employment relations with the Employer.

Handley testified that he asked Norgard whether he desired to quit, be laid off, or be granted a leave of 30, 60, or 90 days and that Norgard was noncommittal. From the subsequent events which are recited below I infer, and find, that the September 26 conference ended with Norgard being granted a leave of indefinite duration, and that thereafter Klise advised Norgard that the leave would expire on December 4.

for Norgard. Neither Woodside nor Campbell testified,<sup>6</sup> nor were any records adduced to show any change in status for Campbell during this period.<sup>6</sup>

Handley and Klise also testified that their sole concern was to retain Norgard formally on the payroll so that his wife could continue to benefit from the hospitalization insurance. I discredit this testimony because of the subsequent behavior of the Employer in securing Norgard's physical reexamination, because of the treatment of Norgard's status for payroll purposes and because Norgard's act of returning to the plant on December 1, 1950, to resign discloses that, after he left the plant on September 26, and that after he spoke to Klise by telephone on October 6, he still considered himself an employee.<sup>7</sup>

After September 26, for the balance of the week, Norgard was retained on the company payroll as "sick." Thereafter, sometime during the week of October 2, Klise had the payroll entry altered to "voluntary suspension" for the period beginning October 2. Norgard's name remained on the payroll with the notation "voluntary suspension" until December 4, 1950. Klise telephoned Norgard on October 6 and advised him of the decision to retain him in the status of "voluntary suspension" until December 4. From the fact that the leave was for a period of 60 days and would expire December 4, 1950, I infer, and find, that he was placed in that status on October 4, 1950. Norgard's next contact with the Employer (after the October 6 telephone call) was on December 1, when he saw Klise at the plant and advised him that he was resigning forthwith. Among the several reasons specified by the Employer for the placement of employees on "voluntary suspension" are reasons of health. I find that Norgard was placed in that status because he reported that he was unable to perform his work due to the impairment of his leg.<sup>8</sup>

Summing up the evidence, I find that Norgard asked for an indefinite period of time off during the interview of September 26; thereafter, on or about October 6, Klise telephoned him and advised him that he could only be granted until December 4, 1950, and still be retained on the company payroll; that on December 1, 1950, Norgard had decided that he could not return to work by December 4, 1950, and therefore advised the Employer that he was quitting as of that time. I further find that at no time prior to December 1, 1950, was Norgard told that he was no longer an employee of the Employer. I further find that Norgard was an employee of the Employer during the payroll period ending September 30, 1950, within the appropriate bargaining unit, and therefore eligible to vote.

[Recommendations omitted from publication in this volume.]

<sup>6</sup> Campbell apparently is no longer employed by the Employer.

<sup>6</sup> Handley testified that there was no reason to change his job classification and that Campbell was notified that when he gained in experience he would receive an increase in rate.

<sup>7</sup> I place no significance in the fact that Norgard also requested information concerning his possible old age benefits and social security benefits in view of his understanding that he could thereafter relinquish them and return to his job.

<sup>8</sup> As additional support for that finding, I note the fact that on October 3, 1950, at the Employer's instructions, Norgard submitted to an examination by the Employer's physician, and that on October 27 the Employer made further inquiry from the doctor concerning Norgard's health, at which time the doctor stated that he did not believe that on or about December 4, 1950, Norgard would be in a position to resume his former duties.