

In the Matter of MARSHALL, MEADOWS & STEWART, INC. and UNITED
SHOE WORKERS OF AMERICA, C. I. O.

Case No. 3-R-861

SUPPLEMENTAL DECISION

AND

DIRECTION

December 29, 1944

On October 28, 1944, pursuant to the Board's Decision and Direction of Election in the above-entitled proceeding,¹ an election by secret ballot was conducted on November 17, 1944, under the direction and supervision of the Regional Director for the Third Region (Buffalo, New York). On November 17, 1944, the Regional Director, acting pursuant to Article III, Section 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended, issued and duly served upon the parties a Tally of Ballots.

As to the balloting and its results, the Tally of Ballots shows as follows:

Approximate number of eligible voters.....	251
Void ballots.....	1
Votes cast for United Shoe Workers of America, affiliated with the Congress of Industrial Organizations.....	118
Votes cast against participating labor organization.....	114
Valid votes counted.....	232
Challenged ballots.....	11
Valid votes counted plus challenged ballots.....	243

Since the challenged ballots were sufficient to affect the outcome of the election, the Regional Director, acting pursuant to Article III, Section 10, of Rules and Regulations of the National Labor Relations Board, caused an investigation of the challenges to be made and incorporated his findings in a Report on Challenged Ballots, which was duly served upon the parties on November 25, 1944. Thereafter, the Company filed Exceptions to the Regional Director's report.

¹ 58 N. L. R. B. 1489.

59 N. L. R. B., No 234

The Board, having considered the Regional Director's Report on Challenged Ballots and the Company's Exceptions thereto, makes the following findings:

Ballots alleged to have been improperly marked

An examination of photostatic copies of the four ballots in question shows: one ballot marked with a "No" on the negative side instead of the conventional "X"; one ballot marked with an "X" and, in addition, a "No" beside it on the negative side; one ballot marked with a triple "X" on the negative side; and one ballot marked with a "Yes" on the affirmative side instead of the conventional "X." Upon the ground that the ballots were improperly marked, the Union challenged the validity of the first three ballots, and the Company the validity of the fourth.

Since the ballots were unambiguously marked and the intent of the voters is clear, we adopt the Regional Director's recommendation to overrule the challenges to these ballots. We find that these ballots are valid and shall direct that they be counted.²

Other Challenged ballots

Anna Callaghan: The ballot of this employee was challenged by the Company on the ground that her name did not appear upon the eligible list of voters. However, this was an error which was later corrected, and the Company withdrew its challenge. We, therefore, adopt the Regional Director's recommendation that the ballot of this employee be opened and counted.

Emma Signor: The ballot of this employee was challenged by the Union for the asserted reason that she had not been working on the day of the election. The Union, finding that it erred in challenging this ballot, later withdrew its challenge. We shall direct that this ballot be opened and counted.

Catherine Dwyer, Sophia Tokarz, and Nancy Surace: The ballots of these employees were challenged by the Board's representative on the grounds that (1) the names of these employees did not appear on the eligibility list of voters, and (2) the record shows that these three employees are supervisory and, therefore, they were excluded from the bargaining unit. The record is clear as to the supervisory status of these employees. It also appears that, prior to the election, the Company and the Union agreed to exclude them from the eligibility list of voters. Accordingly, we adopt the Regional Director's recommendation to sustain the challenges to the ballots of these three voters. We shall direct that these ballots not be opened and counted.

² See *Matter of Van Raalte Company, Inc*, 49 N. L. R. B. 985.

Frances Siracusa and Susan Bianco: The ballots of these employees were challenged by the Company on the ground that they had been discharged prior to the election. However, the names of these two employees appeared on the eligibility list of voters; Siracusa was not advised that she had been discharged until November 20, 1944, 3 days after the election,³ and Bianco never received notice of her discharge. In accordance with the recommendation of the Regional Director, we shall direct that the ballots of these two employees 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, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended; it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Marshall, Meadows & Stewart, Inc., Auburn, New York, the Regional Director for the Third Region (Buffalo, New York) shall, pursuant to the Rules and Regulations of the Board, set forth above, and subject to Article III, Section 10, of said Rules and Regulations, within ten (10) days from the date of this Direction, count the four ballots alleged to have been improperly marked, and open and count the ballots of Anna Callaghan, Emma Signor, Frances Siracusa, and Susan Bianco, and shall thereafter prepare and cause to be served upon the parties in this case a Supplemental Tally of Ballots embodying his findings therein and his recommendations as to the results of the secret ballot.

³ Siracusa was notified of her severance from the Company's employ by means of a work "release" dated November 16, 1944, which however, was not issued to her until November 20, 1944.