

In the Matter of LLOYD CORPORATION, LTD., EMPLOYER and OILWORKERS.
INTERNATIONAL UNION, CIO, PETITIONER

Case No. 21-UA-647.—Decided October 20, 1948

DECISION
AND
CERTIFICATION OF RESULTS

Following the filing of a petition, pursuant to Section 9 (e) (1) of the National Labor Relations Act, as amended, an election was conducted herein under the direction and supervision of the Regional Director for the Twenty-first Region. Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.¹

The Tally shows that out of approximately 30 eligible voters, 15 cast valid ballots in favor of authorizing the Petitioner to make an agreement with the Employer requiring membership in the Petitioner as a condition of employment; and 10 cast ballots against such authorization, with 1 challenged ballot. The challenged ballot is sufficient to affect the results of the election.

The ballot of Bert Vervoon was challenged by the Board agent upon the ground that his name did not appear on the eligibility list. Vervoon's name was omitted from the eligibility list upon the ground that he was a supervisor within the meaning of the Act. On July 30, 1948, the Regional Director issued his Report on Challenge to Ballot, in which he recommended that Vervoon's ballot be opened and counted, to which report exceptions were filed by the Employer. Thereafter, on August 13, 1948, the Regional Director issued a Supplemental Report on Challenge to Ballot, in which he withdrew his recommendation made in the original Report on Challenge to Ballot and recommended that the challenge to the ballot be sustained upon the ground that Vervoon was a supervisor within the meaning of the Act.

¹ 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-man panel consisting of the undersigned' Board Members [Chairman Herzog and Members Houston and Reynolds].

In the Supplemental Report on Challenge, the Regional Director finds that, while Vervoon performs manual labor along with his gang, he is an assistant roustabout foreman, with authority effectively to make recommendations concerning the discipline, promotion, or discharge of employees in his gang. Therefore, the Regional Director recommends that Vervoon's ballot be sustained upon the ground that he is a supervisor within the meaning of the Act. The Petitioner filed exceptions to this recommendation.

The Petitioner, in its exceptions, does not deny the facts upon which the Regional Director predicates his recommendation. On the other hand, the Petitioner criticizes the Board's decision in the comparatively recent *Wasatch* case,² and contends that it was not the intent of Congress to include working foremen within the category of supervisors, as defined in the amended Act, although they may effectively recommend the promotion or discharge of employees. We do not agree. The Board has consistently held that working foremen with authority to recommend the promotion or discharge of employees are within the category of supervisor as defined in the amended Act.³

As the Petitioner's exceptions filed to the Supplemental Report on Challenge to Ballot do not raise an issue of fact and as we agree with the finding that Vervoon is a supervisor, we hereby adopt the Regional Director's recommendations therein. We find that Vervoon is a supervisor and accordingly sustain the challenge to his ballot.

Upon the basis of the Tally of Ballots and the entire record in the case,

IT IS HEREBY CERTIFIED that a majority of the employees eligible to vote have not voted to authorize the Petitioner to make an agreement with the Employer requiring membership in such organization as a condition of employment, in conformity with Section 8 (a) (3) of the Act, as amended.

² *Matter of Wasatch Oil Refining Company*, 76 N. L. R. B. 417, wherein the Board held, among other things, that a pump mechanic with authority effectively to recommend discharge or employment of his assistants was a supervisor within the meaning of the amended Act.

³ *Matter of Continental Industries, Incorporated, of Kansas City, Missouri*, 76 N. L. R. B. 561; *Matter of Farmville Manufacturing Company*, 76 N. L. R. B. 237; *Matter of Royal Tallow & Soap Co., Inc.*, 78 N. L. R. B. 834; and *Matter of Merrill-Stevens Dry Dock & Repair Company*, 79 N. L. R. B. 962.