basis. Accordingly, we find that employees, such as William Ryan, who spend a regular and substantial part of their time performing supervisory duties on a seasonal basis are supervisors within the meaning of the Act, and are therefore to be excluded from the unit.[7]

[Text of Direction of Election omitted from publication.]

[7] *Stokely-Van Camp, Inc*, 102 NLRB 1259; *Libby, McNeill & Libby*, 90 NLRB 279; and other past Board cases holding that employees who divide their time between supervisory and nonsupervisory duties, on a seasonal basis, will be included during those periods in which they are engaged in nonsupervisory work, and permitted to vote in the election if they were rank-and-file employees in at least half the number of weeks in which they worked in the preceding year, are overruled to the extent that they are inconsistent with this decision.

Horder's, Incorporated *and* Warehouse and Mail Order Employees Union Local 743, AFL, Petitioner. *Case No. 13–RM–242. October 28, 1955*

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election approved on June 22, 1955, an election by secret ballot was conducted on July 13, 1955, under the direction and supervision of the Regional Director for the Thirteenth Region among the employees in the stipulated unit. Upon 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 about 109 eligible voters, 104 cast ballots, of which 60 were for and 39 against the Petitioner and 5 voted challenged ballots. The challenged ballots were not sufficient in number to affect the results of the election.

On July 20, 1955, the Employer filed timely objections to conduct affecting the election. The Regional Director investigated the objections and on August 25, 1955, issued his report on objections, in which he found that the objections were without merit and recommended that the objections be overruled and that the Petitioner be certified. On September 2, 1955, the Employer filed timely exceptions together with a supporting brief to the Regional Director's report.[1]

Upon the basis of the entire record in this case, the Board makes the following findings of fact:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

[1] The Employer's request for oral argument is denied for the reason that the exceptions and briefs fully set forth the respective positions of the parties.

3. A question affecting commerce has arisen concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The parties stipulated and we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees engaged in warehousing and related operations at the Employer's warehouse located at 231 South Jefferson, Chicago, Illinois, including maintenance employees, but excluding all general office and clerical employees, professional employees, guards, and all supervisors within the meaning of the Act.

5. In conformity with the Regional Director's recommendation, we find no merit in the Employer's objections.

The main objections [2] of the Employer refer to certain statements in a leaflet which was distributed by the Union the day before the election. These statements related to certain provisions which this Union had just negotiated with Butler Brothers, a firm located in the same general labor market area.[3] These statements consisted principally of the following claims by the Union:

> (a) All employees at Butler's, with the exception of open stock order fillers, receive $1.87½¢ per hour.
>
> (b) Open stock order fillers receive $1.60 per hour with additional increases on all jobs of 7¢ per hour for next year and 6½¢ for the following year. These are minimum rates only—over 30% of the people are receiving rates above these.
>
> (c) Members at Butler's receive up to 60 days a year sick leave with full pay.
>
> (d) Members at Butler's receive severance pay, upon leaving the company, of 1 week per each year of service.

The Regional Director found as to (a), the statement would have been true if it had been qualified by the phrase "after they have reached 30 months' service"; as to (b), the statement should have been qualified by "after they have reached 24 months' service"; as to (c), the statement should have been clarified by the phrase "only after 10 years' service"; as to (d) the statement should have been that severance pay is granted of ½ week for each year of service.[4]

[2] The other minor objections and exceptions to the Regional Director's report are not of sufficient significance to warrant further consideration.

[3] A few hours before the election, the Employer contacted Butler Bros and issued a statement to the employees, calling attention to the fact that the contract had not yet been signed, that the rates quoted in the Union's leaflet were "phony," and urging the employees to vote against the Union We find in agreement with the Regional Director that, although the contract had not yet been executed, it had been *negotiated* and that there is no evidence that the Union had claimed otherwise

[4] The Union explained that as the provision for severance pay was not part of the contract they relied on what they believed to be the severance policy of Butler Bros

The Regional Director concluded that, although the above statements in the leaflet were exaggerations and half-truths and should not be condoned, nevertheless, in conformity with Board policy that it will not police the qualitative claims of the parties in an election campaign, the objections should be overruled. Moreover, in this instance, both parties had issued many communications to the employees, the Union having issued 12 leaflets and the Employer 11 communications, including the last word before the election.

The Employer urges that under the rule in the *Gummed Products* case,[5] the misstatements noted above were so misleading that the conduct exceeded the limits of legitimate propaganda and lowered the standards of campaigning to a level which impaired the free and untrammeled expression of choice by the employees herein. We do not agree.

Although there are certain similarities, we believe that a number of factors clearly distinguish the *Gummed Products* case and make it inapplicable to the present proceeding. Thus in the *Gummed Products* case a union leaflet claimed that the contract with another firm had been *signed*, and after the Employer had issued a communication calling attention to discrepancies in the union leaflet, the Union reaffirmed the claim that certain rates were in effect, although no such contract had been signed and no such rates were in effect. In the instant case, there is no contention that the Union claimed the contract had been signed whereas in fact it had not. Furthermore, as the statements referred to in the leaflet could well have covered a substantial number of employees, who had served the period required for receiving these rates, such statements would not have been untrue as applied to the employees in this group. Finally, we note that, unlike the *Gummed Products* case, *supra*, the statements here were not *repeated* by the Union after their contradiction by the Employer, a factor which the Board observed in the *Gummed Products* case made such statements "entitled to greater than ordinary weight."

The Board has frequently held that it will not police ordinary campaign representations for their truth or falsehood but will allow the good sense of the employees to determine which are true and which are false insofar as they may affect the validity of the election.[6] In view of the foregoing, we find that, although exaggerations and half-truths are not condoned by the Board, the representations herein are not so misleading and false as to justify us in setting the election aside.[7]

In accordance with the Regional Director's recommendations we hereby overrule the Employer's objections. As the Warehouse and Mail Order Employees Union Local 743, AFL, has secured a majority

[5] 112 NLRB 1092.
[6] *Stewart-Warner Corporation*, 102 NLRB 1153, 1158
[7] See *Gong Bell Manufacturing Co.*, 114 NLRB 342

of the valid votes cast, we shall certify it as the bargaining representative of the employees in the appropriate unit.

[The Board certified Warehouse and Mail Order Employees Union, Local 743, AFL, as the designated collective-bargaining representative of the employees engaged in warehousing and related operations at the Employer's warehouse.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Certification of Representatives.

Seaboard Terminal and Refrigeration Company *and* International Brotherhood of Longshoremen, AFL

Seaboard Terminal and Refrigeration Company *and* International Longshoremen's Association, AFL (now known as International Brotherhood of Longshoremen, AFL), Petitioner.
Cases Nos. 2–CA–4071 and 2–RC–6496. October 28, 1955

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVES

On April 26, 1955, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also recommended that the objections to conduct affecting the results of the election held on September 23, 1954, in Case No. 2–RC–6496 be found without merit. Thereafter, the General Counsel, the International Brotherhood of Longshoremen, AFL (hereinafter called IBL–AFL), and Local 976, International Longshoremen's Association, Independent (hereinafter called ILA) filed exceptions to the Intermediate Report and supporting briefs. The Respondent filed a brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.[1] The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopt the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications.

[1] We find that Baffa's affidavit, as contended by the General Counsel, was erroneously rejected by the Trial Examiner. Such affidavit, to the extent it contained prior inconsistent statements, was admissible as tending to discredit Baffa's testimony at the hearing. *N. L. R. B. v. Quest-Shon Mark Brassiere Co., Inc.*, 185 F. 2d 285, 289 (C. A. 2). In the circumstances present here, however, we do not deem the Trial Examiner's error as prejudicial, nor does it affect the result reached herein.