

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HNY FERRY, LLC, d/b/a NYC FERRY
Employer

and

Case 02-RC-230811

MARINE ENGINEERS' BENEFICIAL
ASSOCIATION, DISTRICT 1-PCD, AFL-CIO
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

JOHN F. RING, CHAIRMAN

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL MEMBER

Dated, Washington, D.C., January 21, 2020.

¹ In denying review of the Regional Director's decision that the captains are not supervisors under Sec. 2(11) of the Act, we do not rely on the Regional Director's finding that the captains are not held responsible for or accountable for their performance in directing deckhands. Rather, the evidence fails to establish that the captains' direction of deckhands requires the use of independent judgment as defined in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006). See *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006) (without evidence of the "factors weighed or balanced" in directing employees, employer failed to establish use of independent, nonroutine judgment). In fact, the record indicates that the captains, who were closely monitored during their short ferry trips in the New York Harbor by on-shore port captains, did not perform *any* Sec. 2(11) function with independent judgment. Further, the port captains' close monitoring of the captains during those short trips in the harbor makes this case distinguishable from several Board cases, which the Employer urges us to overrule, finding that captains or mates were not statutory supervisors. See *Buchanan Marine, L.P.*, 363 NLRB No. 58 (2015); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153 (2015); *Brusco Tug & Barge, Inc.*, 359 NLRB 486 (2012), incorporated by reference, 362 NLRB 257 (2015), *enfd.* 696 Fed.Appx. 519 (D.C. Cir. 2017). Consequently, we find that this case does not present an appropriate vehicle to revisit those precedents.

Finally, we do not rely on the Regional Director's citation to *Loparex LLC*, 353 NLRB 1224 (2009), which was decided by a two-member Board. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).