

In the Matter of MIDLAND STEAMSHIP LINE, INC. and NATIONAL MARITIME UNION OF AMERICA, CIO

*Case No. 8-R-1295.—Decided November 18, 1943*

*Duncan, Leckie, McCreary, Schlitz & Hinslea, by Mr. Lee C. Hinslea, of Cleveland, Ohio, for the Company.*

*Mr. Frank Jones, of Cleveland, Ohio, and Mr. William L. Standard, of New York City, by Mr. Herman Rosenfeld, for the Union.*

*Mr. Glenn L. Moller, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by National Maritime Union of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Midland Steamship Line, Inc., Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis Plost, Trial Examiner. Said hearing was held on October 21 and 28, 1943, at Cleveland, Ohio. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board. Following the hearing, the parties filed a stipulation providing for certain corrections of the record. Said corrections are hereby incorporated into the record. On November 12, 1943, the Company filed a motion for leave to present oral argument. The motion is hereby denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Midland Steamship Line, Inc. is a Delaware corporation with its principal office at Cleveland, Ohio. The Company is engaged in the  
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operation of bulk freight vessels on the Great Lakes, carrying bulk freight such as coal, ore, and grain, to various ports on the Great Lakes. Its principal business is the transportation of iron ore from various ports on Lake Superior to ports on Lake Erie and Lake Michigan, and carrying coal from ports on Lake Erie to ports on Lake Superior. During the winter season when shipping on the lakes is closed, the Company's vessels are used for grain storage in various ports on Lake Erie. The Company operates 7 steamers with a total carrying capacity of 47,500 tons. The Company has approximately 232 employees, 176 of whom are listed as unlicensed personnel. During the year 1942 the Company carried approximately 2,480,000 tons of freight in its vessels.

The Company admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

National Maritime Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about September 30, 1943, the Union requested recognition from the Company as the exclusive bargaining representative of its unlicensed personnel and requested a bargaining conference. When the Company indicated that it would not recognize the Union unless the Union produced evidence of its majority, the Union filed its petition for investigation and certification.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

## IV. THE APPROPRIATE UNIT

The Union contends that all unlicensed personnel on all vessels operated by the Company constitute an appropriate bargaining unit. The Company agrees with the contention of the Union except that it

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<sup>1</sup> The Field Examiner reported that the Union submitted 9 petitions bearing a total of 113 apparently genuine signatures. These petitions authorized the Union to represent the signers for the purposes of collective bargaining. The Trial Examiner reported at the hearing that 63 of the 113 were the names of persons whose names appear on the Company's pay roll of October 19, 1943, which pay roll listed a total of 176 unlicensed personnel.

would exclude from the unit the steward on each vessel, contending that they are supervisory employees.

Unlicensed personnel in the maritime industry is divided into three general divisions, the deck department, engine department, and steward's department. On small freighters, such as are here involved, the steward's department consists of a steward, or chief cook, a second cook, and two porters. The steward is in charge of the employees in his department, handles the procurement of such employees when it is necessary to hire them, and makes recommendations relative to their tenure and discharge, although final action in such matters must be taken by the ship's master. The steward's principal duty on a freighter is to prepare all meals for the crew. He does almost all the cooking, the second cook's time being devoted to other duties such as waiting on table. In conjunction with his work as ship's cook, the steward has charge of the purchasing of food and galley supplies. In order that he may go ashore whenever necessary to make such purchases, he has a season shore pass. He is the only unlicensed employee who possesses such a pass. The record establishes that the stewards possess substantial supervisory authority. For this reason the Company urges that the stewards should be excluded from the bargaining unit. We find no merit to this contention. Although, as a general rule, the Board insists that supervisory employees be excluded from bargaining units, it has long recognized the universal custom in the maritime industry whereby supervisory employees are covered by collective bargaining contracts.<sup>2</sup> The Union contends that the history of collective bargaining in the maritime industry reveals that stewards on freight vessels have, since the inception of collective bargaining in the industry, always been included in bargaining units of unlicensed personnel. There is undisputed evidence that there have been maritime unions of unlicensed personnel in existence on the Great Lakes for at least 20 years, and that during that entire period stewards have been included in the bargaining units. Although this precise issue has never before been raised in any case involving the maritime industry on the Great Lakes or other inland waterways, no doubt because of the long established custom in the industry,<sup>3</sup> the issue has arisen in one case involving small ocean-going vessels.<sup>4</sup> In that case the Company contended that the chief stewards on its ocean-going tankers were supervisory employees. The Board rejected this contention, even

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<sup>2</sup> *Matter of Jones & Laughlin Steel Corporation*, 47 N. L. R. B. 1272, motion to reconsider denied, 51 N. L. R. B. 1204. See also *Matter of W. F. Hall Printing Company*, 51 N. L. R. B. 640.

<sup>3</sup> See *Matter of The Jupiter Steamship Company*, 52 N. L. R. B. 1437; *Matter of Jones & Laughlin Steel Corporation*, 37 N. L. R. B. 366; *Matter of Pittsburgh Supply Company*, 45 N. L. R. B. 1219; *Matter of John I. Hay Company et al.*, 40 N. L. R. B. 1022.

<sup>4</sup> *Matter of Standard Oil Company of New Jersey*, 43 N. L. R. B. 528.

though the stewards had more employees in their department than do stewards on Great Lakes freighters.<sup>5</sup> We shall include the stewards in the appropriate unit.

We find that all unlicensed personnel, including stewards, on all the Company's vessels, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### DIRECTION OF ELECTION

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, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Midland Steamship Line, Inc., Cleveland, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, 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, to determine whether or not they desire to be represented by National Maritime Union of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

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<sup>5</sup> Cf. *Inter-Island Steam Navigation Co.*, 34 N. L. R. B. 132, where stewards on large vessels were excluded while those on small vessels were included.