

IN THE MATTER OF INTERNATIONAL HARVESTER COMPANY *and* SEAFARERS
INTERNATIONAL UNION OF NORTH AMERICA, A. F. OF L., GREAT LAKES
DISTRICT

Case No. 13-R-2117.—Decided March 14, 1944

Messrs. Frank B. Schwarerer, Robert Dickman, and G. E. Moredock,
of Chicago, Ill., for the Company.

Daniel D. Carmell, by Mr. Leo Segall, of Chicago, Ill., and Mr.
Mardy Polaner, of Detroit, Mich., for the S. I. U.

Mr. Edward Hendrickson, of Chicago, Ill., for the N. M. U.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Seafarers International Union of North America, A. F. of L., Great Lakes District, herein called the S. I. U., alleging that a question affecting commerce had arisen concerning the representation of employees of International Harvester Company, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert Ackerberg, Trial Examiner. Said hearing was held at Chicago, Illinois, on January 27, 1944. The Company, the S. I. U., and the National Maritime Union of America, C. I. O., herein called the N. M. U., appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner reserved ruling upon the motion of the N. M. U. to dismiss the petition. For reasons set forth in Section III, *infra*, said motion is hereby denied. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

International Harvester Company, a New Jersey corporation with general offices in Chicago, is engaged chiefly in the production of war material for the United States Government. Formerly, the Company was engaged in the design, manufacture, assembly, repair, sale, and distribution of motor trucks, farm tractors, industrial tractors, and farm implements. The Company operates a number of plants, one of which is the Wisconsin Steel Works at Chicago, Illinois. The principal raw materials used at this plant are coal, ore, scrap, stone, magnesium, and other alloys, which were valued in 1942 at approximately \$16,000,000, of which about 85 percent represented materials purchased outside the State of Illinois. The principal products of the plant are carbon, alloy, steel, pig iron, and byproducts. The value of these products in 1942 exceeded \$40,200,000, approximately 40 percent of which was sent from the plant to points outside the State of Illinois.

The Company owns and operates two bulk freighters, *Str. The Harvester* and *Str. The International*, having gross tonnage of 7,188 and 7,986, respectively, keel lengths of 525 and 580 feet, respectively, and carrying capacities of 10,500 tons and 13,500 tons, respectively. These freighters for the most part make trips from Superior, Wisconsin to South Chicago, Illinois, carrying ore mined on the Mesabi range in Minnesota to the Wisconsin Steel Works of the Company, and are engaged in such work from about May 1 until about December 1 of each year. Occasionally the vessels make trips to other ports on the Great Lakes, but their operations are predominantly the carrying of iron ore as described above. During 1942 the annual value of the freight carried by these vessels exceeded \$1,000,000.00. This proceeding concerns only the operation of these two freighters. With respect to operation of these freighters, the Company concedes, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Seafarers International Union of North America, Great Lakes District, is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

On August 1, 1941, the Company and the N. M. U. entered into an agreement for a consent election to be conducted by the National Labor Relations Board among all unlicensed personnel aboard the Company's two freighters, *The International* and *The Harvester*. Pursuant to the agreement, an election was conducted on August 6 and 9, 1941, and, on August 13, the Company was notified by the Regional Director of the Board that the N. M. U. had been designated as the exclusive bargaining representative of the employees in the agreed bargaining unit. Thereafter, the parties entered into negotiations for a collective bargaining agreement. On November 28, 1941, they executed a one-page agreement whereby the Company agreed to rehire for the 1942 season all those qualified employees among the unlicensed personnel who had performed the usual services incident to the lay-up of the vessels at the close of the 1941 season. No further written agreements have been executed, but the Company has, in fact, recognized and dealt with the N. M. U. as the exclusive bargaining agent of its unlicensed personnel for a period of more than 2 years, and the bargaining efforts of the N. M. U., during that period, have borne fruit. Thus, in September or October 1941, in order to lighten the work of the galley crews, the Company introduced a third porter as a permanent member of the crew on each vessel. Previously, a third porter had been only occasionally employed. Some improvements were made in the living conditions of unlicensed personnel, and agreement has from time to time been reached on additional improvements which will be made when the Company can obtain the necessary equipment. A pass was granted to the N. M. U. port representative in the fall of 1941 and during the 1942 season. At the same time, a crew member on each vessel was recognized by the Company as the union delegate with the status of a shop steward who could present grievances in an informal manner, there being no agreement to formalize the grievance process. In hiring unlicensed personnel from August 1941 to December 1943, the Company called upon the N. M. U. to supply men before resorting to other employment methods.

However, although the parties were able to bargain successfully regarding the matters described above, they reached an impasse in negotiating with respect to wages, a hiring plan, passes and working rules, and, on August 18, 1942, a dispute involving these issues was certified to the National War Labor Board. On February 2, 1943, the National War Labor Board issued a Directive Order, ordering the parties to continue negotiations with respect to passes, working rules, and a hiring plan, and granting a wage increase of \$22.00 per month to all unlicensed personnel. Subsequent negotiations between the parties, pursuant to the Directive Order, proved fruitless, and on

March 2, 1943, the National War Labor Board issued a Supplementary Directive, ordering the Company to issue a pass to authorized representatives of the N. M. U., to institute a system of proportionate hiring for the 1943 season, and again directing the parties to negotiate regarding working rules.

Thereafter, the parties being unable to agree on the proportion to be observed in hiring for the 1943 season, an arbitrator was appointed to determine the issue. On September 1, 1943, the National War Labor Board issued a decision adopting the findings of the arbitrator regarding the percentage of N. M. U. members whom the Company must employ for the 1943 season under the terms of the Supplementary Directive of March 2, 1943.

On October 18, 1943, the S. I. U. wrote to the Company, claiming to represent a majority of the unlicensed personnel aboard *The International* and *The Harvester* and requesting recognition as their exclusive bargaining representative. The Company replied, on October 19, declining to accord recognition to the S. I. U., on the ground that the N. M. U. had been "certified" by this Board and that the parties were engaged in contract negotiations, pursuant to a Directive Order of the National War Labor Board.

Negotiations between the Company and the N. M. U. regarding working rules—the only unresolved issue—continued over an extended period, but failed to result in agreement. As a result, on November 22, 1943, the War Shipping Panel of the National War Labor Board assumed jurisdiction, and, on February 4, 1944, a hearing on the issue of working rules was conducted. No decision in the matter has issued. No other issue involving the parties is pending before the National War Labor Board.

The N. M. U. contends, in effect, that the pendency of the dispute over working rules before the National War Labor Board operates to divest this Board of jurisdiction in the instant representation proceeding. We find no merit in this contention. While it is true that in some cases we have declined to proceed to a determination of representatives in the presence of a dispute before the National War Labor Board, we did so, not on jurisdictional grounds, but because we were of the opinion that to order an election in those cases might unfairly deprive a recently certified or recognized representative of a reasonable opportunity to obtain the benefits of exclusive representation, inasmuch as its initial bargaining efforts, following recognition or certification, had proved fruitless primarily as a result of unavoidable delays consequent upon its voluntary resort to the proceedings of the National War Labor Board.¹ It is clear that we are not here

¹ See *Matter of Allis-Chalmers Mfg Co*, 50 N. L. R. B. 306; and *Matter of Kennecott Copper Corp., Nevada Mines Division*, 51 N. L. R. B. 1140.

confronted with such a factual situation. For over 2 years, the N. M. U. has been the exclusive bargaining representative of the unlicensed personnel aboard the Company's two freighters. During that period, it has obtained, both through the collective bargaining process and through directives of the National War Labor Board, many substantial benefits for itself and its membership. All disputed matters before the National War Labor Board, except working rules, have been resolved. In these circumstances, we believe that the policies of the Act can best be effectuated by providing the employees herein with the opportunity to express their present representation desires in an election by secret ballot.²

A statement of the Regional Director, introduced into evidence at the hearing, and a statement of the Trial Examiner made at the hearing, indicates that the S. I. U. and the N. M. U. each represents a substantial number of employees in the unit hereinafter found appropriate.³

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 parties are agreed that all unlicensed employees aboard the Company's two vessels, *The International* and *The Harvester*, excluding the wireless operators, constitute an appropriate unit.⁴

The Company expressed doubt regarding the propriety of including stewards in the unit. The record discloses that the steward, an unlicensed employee, has charge of the galley on each vessel. He acts as chief cook and has the responsibility of making out orders for the purchase of provisions. The stewards were eligible to vote in the consent election of 1941, and since that time have been included in the bargaining unit. In view of these facts, we shall include stewards in the unit.⁵

The S. I. U. stated that it would prefer that the appropriate unit be described as "all unlicensed personnel aboard the Company's vessels."

² *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1181; *Matter of Ft. Dodge Creamery Company*, 53 N. L. R. B. 928; *Matter of Columbia Protokosite Co., Inc.*, 53 N. L. R. B. 560; *Matter of Americus J. Leonard et al.*, 51 N. L. R. B. 1424; *Matter of American Finishing Company*, 54 N. L. R. B. 996

³ The Regional Director and the Trial Examiner reported that the S. I. U. submitted 32 authorization cards, all of which bore apparently genuine original signatures; that the names of 24 persons appearing on the cards were listed on the Company's pay roll of November 18, 1943, which contained the names of 55 employees in the appropriate unit; and that the cards were dated in September and October 1943.

The N. M. U. submitted petitions which bore 34 apparently genuine original signatures. The names of 27 persons appearing in the petitions were contained in the aforesaid pay roll. The petitions were executed in October 1943.

⁴ This is the same unit for which the N. M. U. has bargained since 1941.

⁵ See *Matter of Midland S. S. Lines, Inc.*, 53 N. L. R. B. 727.

The evidence shows that the Company does not contemplate any change in the identity or number of vessels it will operate in the foreseeable future, and both the Company and the N. M. U. request that the names of the vessels be specified. In view of these facts, we shall, in our designation of the appropriate bargaining unit, specify the names of the vessels. In so doing, we do not determine whether employees on possible future additions to the Company's fleet could be appropriately included in the bargaining unit established herein.

We find that all unlicensed employees aboard the Company's vessels, *The International* and *The Harvester*, including stewards, but excluding wireless operators, 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

The two vessels involved herein sail between Chicago, Illinois, and Superior, Wisconsin, from about May 1 to December 1 of each year. The fitting-out period begins about April 15 of each year, and each vessel makes between 35 and 37 round trips in a season. In the last 2 years about 60 percent of the unlicensed crew which laid up a vessel at the end of a season returned to work for the next season. There has been in the past few seasons a turn-over of approximately 4 men per vessel on each trip, and about 50 percent of the unlicensed employees who worked on the first trips of the 1941 and 1942 seasons worked throughout those seasons. Of the 50 percent who did not finish the season, three-fifths worked at least half of the season. For each round trip of each vessel the Company prepares a new pay roll.

For the purpose of determining eligibility to vote, the parties consider reasonable the use of the pay rolls for the second trip of each vessel of the 1944 season, although the S. I. U. would prefer to limit eligibility to those employees whose names appear on the last pay rolls of the 1943 season and who are reemployed in 1944. In view of the facts set out above, we believe and find that the use of the pay rolls for the second trip of each vessel of the 1944 season will best insure a fully representative determination.

We shall, therefore, direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit whose names appear on the pay rolls for the second trip of each vessel in the 1944 season, subject to the limitations and additions set forth in the Direction of Election hereinafter.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with International Harvester Company, Chicago, Illinois, an election by secret ballot shall be conducted as early as possible, under the direction and supervision of the Regional Director for the Thirteenth 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, whose names appear on the pay rolls for the second trip of each vessel in the 1944 season, including employees whose names do not appear on said pay rolls 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 they desire to be represented by Seafarers International Union of North America, A. F. of L., Great Lakes District, or by National Maritime Union of America, C. I. O., for the purposes of collective bargaining, or by neither.