

In the Matter of PAISLEY STEAMSHIP COMPANY *and* NATIONAL MARITIME UNION OF AMERICA (CIO)

Case No. 8-R-1325.—Decided March 31, 1944

Johnson & Branand, by *Mr. John T. Jaeger*, of Cleveland, Ohio, for the Company.

Mr. Frank Jones, of Cleveland, Ohio, for the Union.

Mr. Seymour J. Spelman, 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 Paisley Steamship Company, herein called the Company, the National Labor Relation Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Cleveland, Ohio, on December 13, 1943. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. On December 18, the Company filed a request for oral argument before the Board. Said request is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Paisley Steamship Company, a Delaware corporation with its managing office in Cleveland, Ohio, owns and is engaged in operating one ship, the S. S. *Ben E. Tate*, on the Great Lakes, its connecting and tributary waters. The volume of business done by the Com-

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pany from the period January 1, 1943, to November 1, 1943, is in excess of \$50,000.

We find that the Company is engaged in traffic, transportation, and commerce among the several States, and that the unlicensed personnel employed by the Company aboard its vessel are directly engaged in such traffic, transportation, and commerce.

II. THE ORGANIZATION INVOLVED

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

The parties stipulated that on November 6, 1943, the Union notified the Company by telephone and wire that it represented a majority of the Company's employees and requested a meeting; and that the Company did not reply, since on November 9 it received a communication from the Regional Director of the Board stating that, on November 8, the Union had filed the petition in the instant proceeding.

A statement of the Trial Examiner made at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 aboard the steamship *S. S. Ben E. Tate* constitute an appropriate bargaining unit. The Company is in general agreement with the proposed unit, except that it would exclude the conveyor or boom man and the hoisters.

The evidence discloses that the *S. S. Ben E. Tate* is a self-unloader type of vessel, in that it carries with it its own equipment for loading and unloading cargo. To operate this equipment, the Company employs what it calls a conveyor or boom man and two hoisters. These three individuals are permanent members of the ship's personnel and are under the direction and supervision of the Master and the Chief Engineer. Their duties are to operate the machines

¹ The Trial Examiner reported that the Union submitted a petition which bore 26 apparently genuine original signatures; that the names of 21 persons appearing on the petition were listed on the Company's pay roll of October 31, 1943, which contained the names of 24 employees in the appropriate unit, and that the petition was dated November 1, 1943.

which load and unload the ship's cargo, and, while the ship is in voyage, to repair this machinery and keep it in running order. They are unlicensed, are not classified as seamen, and receive a higher rate of pay than the other unlicensed personnel. Although they are not directly concerned with the actual navigation, they are, on this particular type of vessel, an integral part of the working force. If they were to be excluded from the bargaining unit, they would be the sole members of the unlicensed personnel without representation in collective bargaining. In view of these facts, we shall include them in the unit.

We find that all unlicensed personnel aboard the steamship, *S. S. Ben E. Tate*, including the conveyor or boom man and the hoisters, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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 find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The record discloses that at the present time the ship is laid up, awaiting the opening of the 1944 Great Lakes shipping season in spring. Under the circumstances, we shall direct that the election to determine representatives be held at such time after the ship has resumed operations in the 1944 season as the Regional Director shall fix. Both the Company and the Union agree that, if an election is held during the early part of the 1944 season, a then current pay roll should be used to determine the eligibility of employees to participate therein. 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 who were employed during the pay-roll period immediately preceding the date of the 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Paisley Steamship Company, Cleveland, Ohio, an election by secret ballot shall be con-

ducted at such time after the Company's ship *S. S. Ben E. Tate*, has resumed operations in the 1944 season as the Regional Director shall fix, 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 the election herein, 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 (CIO), for the purposes of collective bargaining.