

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

Case No. 8-R-1295

SUPPLEMENTAL DECISION
AND
CERTIFICATION OF REPRESENTATIVES

October 17, 1944

During the period from June 1, 1944, to June 8, 1944, inclusive, pursuant to the Third Amendment to Direction of Election issued by the Board herein on May 24, 1944,¹ an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Eighth Region (Cleveland, Ohio). Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

The Tally showed that of the approximately 165 eligible voters, 1 cast a void ballot and 157 cast valid votes, of which 79 were for National Maritime Union of America (CIO), 31 were for Seafarers' International Union of N. A., Great Lakes District (AFL), 43 were against the participating unions, and 4 were challenged ballots.

The A. F. L. filed two objections to the election. The first objection set forth an allegation that ballots were cast by 22 individuals who were not eligible to vote; the second set forth an allegation that a Board agent had improperly declared one ballot to be void. The Company filed 6 objections to the election. The second alleged that ballots were cast by 12 individuals who were not eligible to vote since they had completed their employment prior to casting their votes; the third alleged that ballots were cast by 10 individuals not eligible to vote, since they had secured employment with the Company for the sole purpose of voting at the election;² and the remaining 4 set forth allegations of improper arrangements and conduct on the part of the Board's agents with respect to the election procedure, and interference with the election on the part of the participating unions. On

¹ 56 N. L. R. B. 839 (The original Decision and Direction of Election is published in 53 N. L. R. B. 727) The Third Amendment to Direction of Election was corrected by a Board Order (unpublished) dated May 25, 1944

² These 22 individuals are the same as those involved in the A. F. L.'s objections.

July 15, 1944, the Regional Director issued his Report on Objections in which he found no merit in the said objections and recommended that they be overruled. Subsequently thereto, the A. F. L. and the Company filed exceptions to the Regional Director's Report on Objections. On August 17, 1944, the Board directed that the Regional Director issue a Supplemental Report on Objections to the Election. On September 22, 1944, the Regional Director issued said Supplemental Report. On September 27, 1944, and October 2, 1944, the Company and the A. F. L., respectively, filed exceptions to said Supplemental Report.

We have considered the objections, the Report and Supplemental Report on Objections, and the exceptions filed thereto, and we concur in the conclusion of the Regional Director that the objections raise no substantial or material issues regarding the conduct of the Board's agents or the participating unions with respect to the election procedure. We further concur in his conclusion that the contentions raised by the objections with respect to the ballot listed as void are without merit.³

The Company and the A. F. L. allege that 22 individuals cast ballots in the election although they were ineligible to participate therein. It appears that 10 of these individuals, at the time polling was conducted on the steamers on which they were employed, were in the employ of the Company as evidenced by the Company's pay-roll records which show that they were paid for work performed during the periods the election was conducted.⁴ As to the allegations that these 10 employees accepted employment for the sole purpose of voting in the election, the only facts disclosed herein are that 10 employees accepted or obtained employment for periods ranging from approximately 9 to 61 days; that the election herein was held during such periods of employment; and that the employment of each of these men ceased shortly after the election. We are of the opinion that these facts are not sufficient, *per se*, to raise a reasonable probability that further investigation would verify the allegations. Accordingly, we shall dismiss the objections relating to this contention.

With respect to the remaining 12 men,⁵ the Company and the A. F. L. contend that their employment with the Company ended before they cast their ballots in the election. Although balloting was conducted on the steamers before the personnel had left at the end of the voyage, the pay-roll records of the Company show⁶ that the pay

³ This ballot was deposited in the ballot box after it had been torn into two pieces. One piece bore only the square wherein a vote for one of the participating unions was indicated.

⁴ Except in the case of Gendelman, discussed below.

⁵ Namely, Edward J. Conrady, Albert Leach, Swen Rodin, Stanley Seme, Bartley J. Burns, Stewart Coyle, Bernard Ourella, Frank M. Humphrey, Gust Lundstrom, Martin Macaro, Roymond Matyjakowski, and Arthur St. Onge.

⁶ Except in the case of Arthur St. Onge, whose pay status ended June 3, 1944, a m., and who voted at 10.45 a m., on June 3, 1944.

of each of these men stopped prior to the time the election was held; and these records are relied upon by the Company and the A. F. L. to support their contentions. We note that another employee, Harry Gendelman, who was employed on the *Steamer J. H. Macoubrey*, voted immediately after that boat docked, at approximately 4:20 a. m., on June 8, 1944, while the pay-roll records show that his pay stopped on June 7, 1944. Therefore, for the purpose of our determination of this issue, we shall include Gendelman with the group of 12 men named above. Under ordinary circumstances, pay-roll records in most industries reflect the duration and exact moment of the termination of an individual's course of employment. However, it is apparent in the instant case that the Company's pay-roll records here relied on do not afford such information. A seaman, because of his inability to leave the ship, is considered to be in the course of his employment if engaged in any manner incidental to his required duties, such as sleeping, eating, or attending to other personal requirements during a voyage.⁷ In the instant case, for example, the pay-roll records of the Company show that Harry Gendelman's pay stopped on June 7, 1944, but the Supplemental Report discloses that when the *Steamer J. H. Macoubrey* docked at approximately 4:20 a. m. on June 8, 1944, Gendelman, a seaman employed on that steamer, was on board and sleeping in his quarters. It is evident, therefore, that although his pay stopped on June 7, 1944, he was still in the course of his employment at 4:20 a. m. on June 8, 1944⁸ when he voted, prior to leaving his ship. Similarly, as stated above, the other 12 employees in question voted, apparently, after their last watch, but before leaving their ships. In view of the fact that the votes objected to by the Company and the A. F. L. were cast by individuals prior to the termination of the course of their employment,⁹ we find no merit in the objections with respect to their ballots.¹⁰ The objections of the Company and the A. F. L. are hereby overruled.

Since the results of the balloting show that a majority of the employees in the appropriate unit have selected the National Maritime Union of America (CIO) as their bargaining representative, and since the challenged ballots are insufficient in number to affect the results of the balloting, we shall certify the National Maritime Union of America as bargaining representative of the employees within the unit hereinbefore found appropriate for the purposes of collective bargaining.

⁷ See *Sundberg v. Washington Fish & Oyster Co.*, 138 F. (2d) 801.

⁸ It is immaterial that on June 7, 1944, Gendelman announced his intent to quit at the end of the voyage.

⁹ An employee continues in the course of his employment until he has left his place of employment (see *Wong Bar v. Suburban Petroleum Transport, Inc.*, 119 F. (2d) 745, and cases cited therein).

¹⁰ Seven of the 12 men named in footnote 3, *supra*, did not vote in the election.

CERTIFICATION OF REPRESENTATIVES

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, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, as amended,

IT IS HERBY CERTIFIED that National Maritime Union of America, affiliated with the Congress of Industrial Organizations, has been designated and selected by a majority of all unlicensed personnel, including stewards, on all vessels of the Midland Steamship Line, Inc., and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. GERARD D. REILLY took no part in the consideration of the above Supplemental Decision and Certification of Representatives.