

In the Matter of OHIO BARGE LINE, INC., and NATIONAL ORGANIZATION,
MASTERS, MATES AND PILOTS OF AMERICA, LOCAL 25, AFL

Case No. 6-R-1001.—Decided November 8, 1944

*Messrs. Paul J. Winschel and Edward J. Resler, of Pittsburgh, Pa.,
for the Company.*

*Messrs. Zeno Fritz and W. H. Griffith, of Pittsburgh, Pa., for the
Union.*

Miss Ruth E. Bliefeld, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the National Organization, Masters, Mates and Pilots of America, Local 25, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ohio Barge Line, Inc., Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on September 6, 1944. The Company and the Union 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.

At the close of the hearing the Company moved to dismiss the petition on the ground that the bargaining unit requested by the Union is inappropriate because all the employees therein are representatives of management charged with the responsibility for the safety of the Company's valuable property and the masters and mates perform supervisory services of the highest character; and upon the further ground that the pilots sought to be included in the unit are independent contractors in their relationship to the Company. For the reasons hereinafter indicated, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial

59 N. L. R. B., No. 34.

error and are hereby affirmed.¹ All parties were afforded 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

Ohio Barge Lines, Inc., is a Pennsylvania corporation with its office and principal place of business in Pittsburgh, Pennsylvania. It is a subsidiary of, and wholly owned by the United States Steel Corporation of New Jersey, herein called the Corporation. The Company is engaged in the regular operation of two river boats and towing barges for the transportation of raw materials from New Orleans, Louisiana, and intermediate points, to plants of the Corporation located in the Pittsburgh, Pennsylvania, area, and the transportation of finished and semi-finished products from the Pittsburgh plants to New Orleans and intermediate points. During 1943 it transported by its river boats a total of approximately 87,953 net tons, of which approximately 25 percent represented raw materials which were transported to the Corporation's plants in the Pittsburgh area from points outside Pennsylvania, and approximately 75 percent represented finished and semi-finished products sold and shipped from the Corporation's plants in the Pittsburgh area to points outside Pennsylvania.

The Company stipulates that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

National Organization Masters, Mates and Pilots of America, Local 25, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

It was stipulated at the hearing that a question concerning representation arose on July 11, 1944, when the Union requested recognition as exclusive bargaining representative of employees in the unit claimed herein by the Union to be appropriate. The Company refused the

¹ During the course of the hearing the Company offered to prove that the Union and maritime unions operating in the Pittsburgh District act in concert in making demands on various employers and collaborate very closely, arguing that the allowance of the present petition will not effectuate the purposes of the National Labor Relations Act insofar as the petition seeks to compel the Company to bargain with supervisory employees, because a necessary result will be that the Company will not be able to bargain effectively with non-supervisory employees. The Trial Examiner rejected the offer of proof as immaterial, and his ruling is hereby upheld. In view of our determination, *infra*, that the supervisory employees in question constitute an appropriate bargaining unit, it is immaterial that they may be represented by organizations which also represent non-supervisory employees comprising other appropriate units. See *Matter of Packard Motor Car Co.*, 47 N. L. R. B. 932; *Matter of Soss Mfg Co.*, 56 N. L. R. B. 348.

request, alleging that the claimed unit was inappropriate and stating that it would not deal with the Union until an election had been held and the Union certified by the Board in an appropriate unit.

A statement of the Field Examiner introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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 requests a unit composed of all masters, mates, and pilots employed by the Company on its river towboats.

The Company seeks to exclude masters on the grounds that they are supervisory employees, and direct representatives of management, having almost unlimited supervisory and managerial powers. A witness for the Company testified that the masters have sole authority to hire and discharge employees, and that the hiring of employees is not done through a personnel department, as is the case with other riverboat companies. The evidence also indicates that the masters are in complete charge of the Company's property and merchandise, and are responsible for the proper maintenance of the vessel at all times. Accepting this evidence as true, we perceive no reason to differentiate between the masters in the Company's employ, and other ship and boat masters, or to depart from our usual practice of approving the inclusion of masters in units such as the one herein proposed. Employees are not, of course, debarred from collective bargaining merely because they may be entrusted with the care of valuable property of their employer, or otherwise charged with heavy responsibility. So far as the supervisory status of the masters is concerned, the Company here appears to be invoking, mistakenly, the doctrine enunciated in the *Maryland Drydock* case.³ Maritime supervisors, despite the fact that they characteristically bear great responsibility and exercise authority over subordinate personnel, which in many situations is almost absolute, are excepted from the application of that doctrine,⁴ and the inclusion of masters is approved wherever they seek to bargain in the conventional unit of masters, mates and pilots.⁵ We shall include the masters in the

² The Field Examiner reported that the Union submitted eight authorization cards, two of which were dated June 1944 and six were dated July 1944, and there are eight employees in the appropriate unit.

³ See *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733.

⁴ See *Matter of Jones & Laughlin Steel Corporation*, 47 N. L. R. B. 366, 47 N. L. R. B. 1272, and 54 N. L. R. B. 679; *Matter of Midland Steamship Company*, 53 N. L. R. B. 727; *Matter of Cleveland Cliffs Iron Co., Marine Dept.*, 58 N. L. R. B. 708.

⁵ *Matter of Seas Shipping Co.*, 8 N. L. R. B. 422; *Matter of Tidewater Assoc., Oil Co.*, 9 N. L. R. B. 823; *Matter of Campbell Transportation Co.*, 36 N. L. R. B. 1030; *Matter of Jones & Laughlin Steel Corp.*, 37 N. L. R. B. 366; *Matter of Carnegie Illinois Steel Corporation*, 37 N. L. R. B. 19; *Matter of Tidewater Associated Oil Co.*, 38 N. L. R. B. 582; *Matter of Dravo Corp., Keystone Sand Division*, 39 N. L. R. B. 846.

unit. The mates, who are subordinate supervisory employees, will likewise be included for the same reasons.

The Company also seeks to exclude the pilots on the ground that they are "contract pilots," and in the nature of independent contractors. The testimony shows that the pilots are hired on a trip basis under an oral contract or understanding, the terms of which are not set forth in the record, and are free to accept employment with other riverboat companies when not actually engaged in the Company's service. It further appears that the Company regularly engages the four pilots, whom the Union seeks to include in the unit, that these pilots generally hold themselves available for work with the Company and that three of them devoted a substantial part of a pilot's normal annual working time to the Company's service in 1943.⁶ It also appears that there has been no turn-over in the pilot force during the past 3 months. The pilots perform duties and have the functions usually associated with the position on other river boats operating in the area. We find that the pilots regularly employed by the Company are its employees within the meaning of the Act, and we shall include them in the unit.⁷

We find that all masters, mates and all regular pilots employed by the Company on its river boats 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 between the date of the filing of the petition and 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 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Ohio Barge Line,

⁶ The record shows that the Company has used the service of four pilots almost exclusively during the past 2 years. Three of the pilots, who are still in the Company's employ, worked the following number of days during the year 1943 for the Company: Louis E. Bradford, 116 days, Wm. McCune Howder, 248 days, Harry A. Hamilton, 110½ days. A fourth pilot, Wm. F. Edwards, worked a total of 69 days for the Company during 1943, and has since entered the Government service. The usual contract providing for the exclusive services of a pilot embraces a working period of 220 days a year, and 125 days of rest.

⁷ See *Matter of Jones & Laughlin Steel Corporation*, 47 N. L. R. B. 1272.

Inc., Pittsburgh, Pennsylvania, 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 Sixth 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 between the date of the filing of the petition and the date of this Direction, including employees who did not work during the said 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 the National Organization, Masters, Mates and Pilots of America, Local 25, AFL, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.