

In the Matter of WILSON TRANSIT COMPANY, EMPLOYER and SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, GREAT LAKES DISTRICT, AFL, PETITIONER

Case No. 8-R-2611.—Decided November 6, 1947

Johnson, Branard & Jaeger, by Messrs. Gilbert R. Johnson and John T. Jaeger, of Cleveland, Ohio, for the Employer.

Messrs. Russell Smith, Paul Warren, and Stanley Wares, of Detroit, Mich., for the Petitioner.

Messrs. Herman Rosenfeld and Josh Lawrence, of Cleveland, Ohio, for the N. M. U.

Mr. Meyer A. Cook, of Cleveland, Ohio, for the Independent.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Cleveland, Ohio, on June 5, 1947, before Ramey Donovan, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer moved to dismiss the petition on various grounds. For the reasons stated in Section IV, below, the motion is hereby denied.¹

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Wilson Transit Company, a Delaware corporation, is engaged in the business of transporting ore, coal, grain, and other materials by

¹The Employer moved to dismiss the petition on the further ground that if the proof of authorization given by persons exercising supervisory authority was deleted from the showing of interest of the Petitioner and the N. M. U., there would be less than a substantial number of employees desiring collective bargaining representation by either of the labor organizations involved. However, inasmuch as the requirement that a labor organization file with the Board proof of a substantial showing of interest is an administrative expedient, adopted solely for the convenience of the Board, and as such, it not subject to direct or collateral attack by any of the parties, the Employer's contention is clearly without merit.

steam cargo vessels to various ports on the Great Lakes. During the 1946 season the Employer hauled on its vessels material in excess of 1,000,000 tons.

We find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

National Maritime Union of America, herein called the N. M. U., is a labor organization, affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

Lake Sailors Union, unaffiliated, herein called the Lake Sailors, is a labor organization claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner seeks a unit composed of all unlicensed personnel aboard all vessels owned and/or operated by the Employer, excluding all licensed personnel. The N. M. U., apparently, also desires to represent the employees sought by the Petitioner, while the Lake Sailors gave no indication of its unit position. At the hearing the Employer was in general agreement with the appropriateness of the requested unit although it sought to exclude chief cooks and the utility engineer, on the ground that these employees exercise supervisory authority. Subsequent to the hearing, however, the Employer moved to dismiss the petition on the ground, among others, that the requested unit involves supervisors who are not employees within the meaning of the Act, as amended, and that the Board, on July 3, 1947, instructed its Regional Directors to "dismiss immediately all petitions seeking certification of units involving supervisory employees."²

² It is apparent that the Employer has misinterpreted the Board's directive of July 3, 1947, which sought to have dismissed only those petitions seeking certification of supervisory units. The Employer's contention that the petition should be dismissed is therefore without merit, although the supervisory status of certain employees must itself be considered.

Chief Cooks:

On each of its vessels the Employer employs a chief cook,³ who is in charge of the ship's galley, and whose duties consist of planning meals and menus, and purchasing provisions such as galley supplies, cabin supplies, linen and laundry. In connection with these duties he has the authority to issue requisitions which are binding upon the Employer and are honored by provision and supply dealers. Although a majority of his time is spent in the preparation of foods, he also directs the work of other employees of the galley crew, determines their duties, and passes judgment on the nature and quality of their work. In this connection he has authority to hire, promote, and discharge the employees under his supervision, subject to the approval of the master of the vessel. Chief cooks are not required to carry a license either by law or by the Employer's own rules. It is apparent, from the foregoing facts, that chief cooks possess and exercise supervisory authority within the meaning of Section 2 (11) of the Act, as amended. Inasmuch as the term "employee," as defined in Section 2 (3) of the Act, as amended, excludes "any individual employed as a supervisor," we shall exclude chief cooks from the unit sought herein.⁴

Utility Engineer:

Since 1943 the Employer has employed a utility engineer aboard one of its vessels. This employee works under the supervision of the chief engineer, and is in charge of machinery maintenance such as the repair of motors, pumps and deck engines. In connection with his duties, he may, on rare occasions, direct the work of oilers, firemen, and coal passers, who are at times assigned to work with him; however, he has no authority to hire or discharge such employees, or effectively to recommend such action. He is not required by law to possess a license in order to perform the functions of a utility engineer, but, under the Employer's own rules, he must have an engineer's license to hold his job.⁵ Apparently the Employer has imposed this requirement so that, in addition to his regular duties aboard ship, the utility engineer may be used during emergencies to stand watches or to fill temporary vacancies among the licensed engineers. The salary of this employee is approximately the same as that received by a third assistant engineer on the Employer's small vessels. It is significant, however, that the existing collective bargaining contract between the Employer and another labor organization, covering licensed engineers, does not include

³ The term "chief cook" is apparently interchangeable with the term "steward."

⁴ *Matter of The Kinsman Transit Company*, 75 N. L. R. B 150.

⁵ In this connection the record discloses that, in the past, the Employer has employed aboard its ships persons with unlicensed ratings such as oilers, firemen, and coal passers who possessed engineer's licenses. Such classifications are included in the present unit.

in its coverage the classification herein described as utility engineer. Upon the basis of the foregoing, and upon the entire record, we are of the opinion that the utility engineer does not possess or exercise supervisory authority within the meaning of Section 2 (11) of the Act, as amended. Accordingly we shall include the utility engineer in the appropriate unit.

We find that all unlicensed personnel including the utility engineer, but excluding chief cooks, any other supervisors, and all licensed personnel aboard all vessels owned and/or operated by the Employer, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁶

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Wilson Transit Company, 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, and subject to Sections 203.61 and 203.62, of National Labor Relations Board Rules and Regulations—Series 5, 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, 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 Seafarers' International Union of North America, Great Lakes District, AFL, for the purposes of collective bargaining.⁷

⁶ It was stipulated by the parties, and we find, that the above unit description embraces only the following named vessels of the Employer: Charles S Hebard, Robert L Ireland, Edward S. Kendrick, A T Kinney, E J Kulas, James MacNaughton, Charles A Paul, S H Robbins, Frank E Taplin, J E Upson, Robert B Wallace, Thomas Wilson.

⁷ Having failed to achieve compliance, or to initiate steps for compliance, with the filing requirements of Section 9 (i), (g), and (h), of the Act, as amended, by October 31, 1947, the N. M. U. will not be accorded a place on the ballot. The N. M. U.'s request for oral argument to contest the constitutionality of Section 9 (f), (g), and (h), and the Board's authority in connection with the interpretation thereof, is hereby denied. See *Matter of Rite-Form Corsset Company, Inc.*, 75 N. L. R. B. 174.

Inasmuch as the Lake Sailors made no showing of representation among the employees involved herein as of the time of the hearing, although such showing was requested by the Board's Field Examiner on April 28, 1947, and also admitted that it had no representation among such employees, we shall not grant it a place on the ballot.