

In the Matter of WYANDOTTE TRANSPORTATION COMPANY and NATIONAL ORGANIZATION, MASTERS, MATES AND PILOTS OF AMERICA, A. F. L.¹

Case No. 7-U-1526.—Decided April 29, 1946

DECISION

AND

ORDER

On March 7, 1946, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report, attached hereto. On April 23, 1946, the Board heard oral argument at Washington, D. C., in which the Respondent and the Union participated.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Wyandotte Transportation Company, Detroit, Michigan, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with National Organization, Masters, Mates and Pilots of America, A. F. L., as the exclusive bargaining representative of all its employees employed as mates on its vessels.

(b) In any manner interfere with the efforts of National Organization, Masters, Mates and Pilots of America, A. F. L., to bargain col-

¹The name of the Union, which appears in the complaint as National Organization of Masters, Mates and Pilots of America, A. F. L., has been corrected to conform to the proof.

lectively with it on behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with National Organization, Masters, Mates and Pilots of America, A. F. L., as the exclusive bargaining representative of all persons employed as mates on its vessels with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post upon each of its vessels and upon its shore premises in all places where notices to mates are customarily posted, copies of the notice attached to the Intermediate Report, marked "Appendix A".² Copies of said notice, to be furnished by the Regional Director for the Seventh Region, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to mates are customarily posted. Reasonable steps shall be taken by the Respondent to insure that these notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

INTERMEDIATE REPORT

Mr. David Citrin, for the Board.

Dykema, Jones and Wheat, by Mr. Elroy O. Jones, of Detroit, Mich., for the respondent.

Mr. Stanley Barr, of Wyandotte, Mich., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on January 24, 1946, by National Organization, Masters, Mates and Pilots of America, A. F. L., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint, dated February 13, 1946, against Wyandotte Transportation Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notices of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that all of the mates employed on the respondent's vessels constitute an appro-

² Said notice, however, shall be, and it hereby is amended by striking from the first paragraph thereof the words "RECOMMENDATION OF A TRIAL EXAMINER" and substituting in lieu thereof the words "A DECISION AND ORDER."

prate unit, as found by the Board in its Decision and Direction of Election dated July 30, 1945, in a representation case involving said employees;¹ (2) that at all times since September 15, 1945, by virtue of a Board ordered election held on September 12, 14, and 15, 1945, and a resultant Board certification issued on October 8, 1945, the Union has been the exclusive representative of the employees in the aforesaid appropriate unit; (3) that on or after about January 4, 1946, the respondent has refused to bargain with the Union as the representative of the employees in the said unit; and (4) that by such refusal the respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

On February 21, 1946, the respondent filed its answer, admitting that the Board had issued its said Decision and Direction of Election and that the Board had certified the Union as the bargaining agent for the employees in a unit which it had determined to be appropriate. The answer alleged that the Board's determination and directions were "contrary to law and not in accordance with the facts, and against the objection of the respondent," and that the respondent has failed to recognize the Union because the mates on its vessels are not "employees" within the meaning of the Act and "do not constitute an appropriate bargaining unit."

Pursuant to notice, a hearing was held on February 26, 1946, at Detroit, Michigan, before Earl S. Bellman, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by one of its officers. All participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the hearing, without objection, the pleadings were conformed to the proof as to formal matters. The parties were afforded an opportunity to argue orally before the undersigned and to file briefs. Counsel for the Board and counsel for the respondent argued orally. No briefs have been filed.

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

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

Wyandotte Transportation Company, a Michigan corporation with its principal offices in Detroit, Michigan, is a wholly owned subsidiary of Wyandotte Chemical Company, the principal offices of which are located in Wyandotte, Michigan. The respondent owns and operates four cargo vessels which are engaged in the regular transportation of materials and products on the Great Lakes and connecting rivers between points in the States of Michigan, Ohio, and Wisconsin.² During the calendar year 1945, the respondent transported, aboard its ships and between points in the aforesaid States, materials and products valued in excess of \$1,000,000.

II. THE ORGANIZATION INVOLVED

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

¹ *Matter of Wyandotte Transportation Company*, 62 N. L. R. B. 1518, designated Case No. 7-R-2003, and herein called the representation case.

² Among the goods and materials transported are limestone, coal, soda ash, caustic soda, chlorine, bicarbonate of soda, and calcium carbonate.

III. THE UNFAIR LABOR PRACTICES

A. *Chronology of events*

On April 23, 1945, a representation hearing involving the mates employed by the respondent was duly held upon a petition filed by the Union. The respondent participated in the hearing and took the position that the unit sought by the Union was inappropriate because the mates were "executive personnel" and because they were officers of the Coast Guard. After the representation hearing, the respondent filed a brief with the Board setting forth its reasons for contending that the mates on its vessels should not be held to constitute an appropriate unit.³

On July 30, 1945, the Board issued its Decision and Direction of Election in the representation case. With respect to the respondent's contention that its mates are "executive officers" and therefore may not form an appropriate unit, the Board found as follows:

The Company contends, further, that the proposed unit is inappropriate because mates are executive officers and constitute a part of the management of the Company. This contention also has been considered by us in many previous cases, and we have found it to be without merit. No persuasive argument has been presented in the instant case for a reversal of our previous holdings on this question. The first mate is in direct charge of the hire and discharge of the unlicensed personnel, and to him the other mates make their recommendations on these subjects. In the event of the incapacity or absence of a master, a mate takes over the master's position, in which case he has absolute control over his ship, its cargo, and all personnel, including the other mates, when the ship is not in port. Except for that single instance, the mates have no supervisory authority over each other. The position of these employees is the same as that of the licensed deck officers involved in our prior decisions, wherein we determined that, despite their supervisory authority and managerial responsibility, such employees are entitled to the benefits of the Act.⁴ We reaffirm that determination.

On September 12, 14, and 15, 1945, an election was conducted by secret ballot and the "Tally of Ballots," bearing signatures of representatives of the Board, the Union, and the respondent, was duly issued on September 21, 1945. This Tally of Ballots states that of the approximately 14 eligible voters, 11 cast valid ballots, all of which were for the Union, the only labor organization involved. No other ballots were cast.

On October 8, 1945, the Board issued its Certification of Representatives in which it certified that the Union had been "designated and selected by a majority of all the mates employed on the vessels of Wyandotte Transportation Company, Detroit, Michigan, as their representative for the purposes of collective bargaining."

³ At the hearing before the undersigned, it was established by stipulation among the parties that on or about December 1, 1945, the respondent's mates had been discharged from the Coast Guard. The respondent's attorney also stated on the record that the respondent no longer urges the militarized status of its mates as a ground for objecting to their inclusion in a bargaining unit, but now limits its contention to the sole ground that they are representatives of management.

⁴ *Matter of Ohio Barge Line, Inc.*, 59 N. L. R. B. 154; *Matter of Jones & Laughlin Steel Corporation* (3 cases), 37 N. L. R. B. 366; 47 N. L. R. B. 1272, and 51 N. L. R. B. 1204, 54 N. L. R. B. 679, enfd 146 F. (2d) 833 (C. C. A. 5), cert den June 18, 1945, 325 U. S. 886; *Matter of Dravo Corporation, Keystone Sand Division*, 39 N. L. R. B. 846; *Matter of Tide Water Associated Oil Company*, 38 N. L. R. B. 582; *Matter of Carnegie-Illinois Steel Company*, 37 N. L. R. B. 19.

On December 26, 1945, the Union wrote the respondent,⁵ stating that since it had been certified by the Board as the sole bargaining agent of the mates employed on the respondent's vessels, it desired to meet with the respondent to discuss conditions affecting the mates.

On January 4, 1946, counsel for the respondent wrote the Union that its letter had been received and that, as "previously set forth in briefs and arguments" before the Board, the respondent would not grant collective bargaining rights to the Union and would not enter into negotiations. The Union received no further communication from the respondent concerning its request for a bargaining conference.

B. The refusal to bargain

1. The appropriate unit and the Union's majority representation therein

In the hearing before the undersigned, the respondent attempted to justify its refusal to bargain with the Union solely on the ground that its mates are part of management and hence are not "employees" within the meaning of the Act. The respondent sought to introduce no additional evidence as to the duties of its mates.⁶ The respondent's reasons for its position, stated in its argument before the undersigned, were substantially like those stated in its brief before the Board in the representation case. The respondent cites no change in the policy of the Board since its decision in the representation case; the undersigned knows of no such change in policy.

Upon due consideration, the undersigned finds that the Board's finding as to the appropriate unit, made in its decision in the representation case and the Board's subsequent certification of the Union, are binding upon the respondent. Accordingly, the undersigned finds that all mates employed on the respondent's vessels constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, and that on and at all times after September 15, 1945, the Union, pursuant to Section 9 (a) of the Act, has been the exclusive representative of all such employees.

2. The refusal to bargain

From the facts set forth above, it is clear that the respondent, by its letter of January 4, 1946, refused to extend recognition to the Union, or to meet with it, upon request, after it had been certified by the Board as the sole bargaining agent in an appropriate unit. For the reasons stated by the Board in its decision in the representation case, the respondent's contention, whereby it seeks to justify its admitted refusal to bargain, on the ground that its mates are not "employees" within the meaning of the Act, is without merit, and does not excuse its refusal to bargain with the Union. Accordingly, the undersigned finds that on January 4, 1946, and at all times thereafter, the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained,

⁵ Since the mates had been discharged from the Coast Guard about December 1, one of the respondent's two objections to the unit no longer existed at the time this letter was written.

⁶ By agreement of the parties, the record in the representation case was incorporated by reference in the record herein, and it was stipulated that if witnesses in that case were called by the respondent they would testify in the instant case regarding the duties of the mates as they had testified in the representation case. The parties also agreed that the Board take notice of a brief filed by the respondent in the representation case, for the purpose of considering its arguments in support of its contention relative to the managerial status of the mates.

and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The undersigned finds that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union as such representative. As there is no evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, the undersigned will not recommend that the respondent cease and desist from the commission of any other unfair labor practices.⁷

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. National Organization, Masters, Mates and Pilots of America, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of the respondent employed as mates on its vessels constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. National Organization, Masters, Mates and Pilots of America, affiliated with the American Federation of Labor, was on September 15, 1945, and at all times thereafter has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing, on January 4, 1946, and at all times thereafter, to bargain collectively with National Organization, Masters, Mates and Pilots of America, affiliated with the American Federation of Labor, as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By said acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

⁷ See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the Respondent, Wyandotte Transportation Company, Detroit, Michigan, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with National Organization, Masters, Mates and Pilots of America, affiliated with the American Federation of Labor, as the exclusive representative of all its employees employed as mates on its vessels;

(b) In any manner interfering with the efforts of National Organization, Masters, Mates and Pilots of America, affiliated with the American Federation of Labor, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with National Organization, Masters, Mates and Pilots of America, affiliated with the American Federation of Labor, as the exclusive representative of all persons employed as mates on its vessels with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post upon each of its vessels and upon its shore premises in all places where notices to mates are customarily posted, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Seventh Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to mates are customarily posted. Reasonable steps shall be taken by the respondent to insure that these notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33,

should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

EARL S. BELLMAN,
Trial Examiner.

Dated March 7, 1946.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively, upon request, with National Organization, Masters, Mates and Pilots of America, affiliated with the American Federation of Labor, as the exclusive representative of all of our employees employed as mates on our vessels and if an understanding is reached, we will embody such understanding in a signed agreement.

We will not in any manner interfere with the efforts of the above-named union to bargain with us or refuse to bargain with said Union as the exclusive representative of all of our employees employed as mates on our vessels.

WYANDOTTE TRANSPORTATION COMPANY.

By -----

Dated-----

This notice must remain posted for sixty (60) days from the date of posting, and must not be altered, defaced, or covered by any other material.