

In the Matter of LUCKENBACH STEAMSHIP COMPANY, INC. and SHIP
CLERKS ASSOCIATION LOCAL No. 34, I. L. W. U., C. I. O.

Case No. 20-R-1627.—Decided May 6, 1946

Brobeck, Phleger & Harrison, by *Mr. Richard Ernst*, of San Francisco, Calif., for the Company.

Gladstein, Andersen, Resner, Sawyer & Edises, by *Mr. Richard Gladstein*; and *Kathleen Griffin, Martha Ezralow, Mr. Raymond Hutchings*, and *Mr. Michael Johnson*, of San Francisco, Calif., for the Union.

Mr. Samuel M. Kaynard, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Ship Clerks Association Local No. 34, I. L. W. U., C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Luckenbach Steamship Company, Inc., San Francisco, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert E. Tillman, Trial Examiner.¹ The hearing was held at San Francisco, California, on March 1, 4, and 11, 1946. 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. In its brief, the Company moved for the dismissal of the petition on the grounds discussed in Section IV, *infra*. For reasons hereinafter stated, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

¹The names of the Company and the Union appear in the caption and body of this decision as they were amended at the hearing.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Luckenbach Steamship Company, Inc., is a Delaware corporation, having its principal office in Wilmington, Delaware. It is engaged in the transportation of freight and mail by water between ports in the State of California and other States of the United States and foreign countries, owning and operating as a common carrier vessels for this purpose.²

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

II. THE ORGANIZATION INVOLVED

Ship Clerks Association Local No. 34 is a labor organization affiliated with the International Longshoremen's and Warehousemen's Union, in turn affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its dock office employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

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 seeks a unit of all dock office employees employed in the Company's two dock offices in San Francisco, California, excluding employees already covered by collective bargaining contracts, engineering inspectors, the secretary to the Pacific Coast Marine Superintendent, and supervisory employees.

The Company contends that the unit of dock office employees sought by the Union is not appropriate because these workers are allegedly engaged in work of a very confidential nature relating to the opera-

² At the present time, the Company's operations are performed as general and berth agent of the War Shipping Administration.

³ The Field Examiner reported that the Union submitted 18 application cards dated in September, November, and December, 1945, and that there were 20 employees in the unit for which the Union had petitioned.

tions of the Company, and the union's parent organization presently represents the Company's waterfront employees, such as longshoremen. The Company asserts that the parent organization is now seeking to establish a single comprehensive coastwide unit of waterfront employees, and intimates that pressure will be exerted upon the dock office workers to divulge the confidential information to which they have access to the detriment of the Company.

In the event the Board is of the opinion that a unit of dock office employees is appropriate, the Company agrees that the scope of the unit should be limited to the workers at its two dock offices in San Francisco. But, contrary to the Union's desires, it would also include the several department heads, the Assistant Pacific Coast Marine Superintendent, the Assistant Stevedoring Superintendent, and the secretary to the Pacific Coast Marine Superintendent.

In its operations in San Francisco, the Company operates two adjoining piers (Piers 29 and 31) on the San Francisco waterfront. It maintains an office on each of the piers. In the office of Pier 31 are located employees of the Port Steward Department and Purchasing Department. In the office on Pier 29 are located employees of the following departments: Operating, Stevedoring, Vessel Personnel, Delivery, Timekeeping, and Claims. All these employees are engaged in clerical duties incidental to the Company's operations on the piers, its shipping activities, and its terminal and stevedoring operations. The information to which they have access relates to matters such as statistics on the cost of operations, accident and damage claims, pay rolls for ship personnel, purchase of supplies and stores, and the maintenance and overhauling of ships. The record does not reveal that the employees sought by the Union have access to information dealing with labor relations.

We find no merit to the Company's general objections to the unit urged as appropriate by the Union. None of the employees the Union seeks assists and acts in a confidential capacity to a person who exercises "managerial" functions in the field of labor relations. Consequently, they are not confidential employees within the meaning of the *Ford* decision.⁴ Moreover, we reject the implication that there is any necessary conflict between the dock office workers' union membership and their faithful performance of duty. We have heretofore held that the same labor organization which represents an employer's "production" workers may also represent its office workers in a separate unit.⁵

⁴ See *Matter of Ford Motor Company (Chicago Branch)*, 66 N. L. R. B. 1317.

⁵ See *Matter of Oliver Farm Equipment Company*, 53 N. L. R. B. 1078; *Matter of The Babcock & Wilcox Co.*, 52 N. L. R. B. 900; *Matter of Armour and Company*, 49 N. L. R. B. 638; *Matter of Armour and Company*, 54 N. L. R. B. 1462.

We turn now to a discussion of the disputed categories of employees.

*Department heads, Assistant Pacific Coast Marine Superintendent,
Assistant Stevedoring Superintendent*

It is clear from the record that the following facts, with the exceptions noted, apply to all *the department heads* in the two dock offices:⁶ Each is in charge of one of the dock office departments which contains employees for whom the Union seeks to bargain. With the exception of the Pacific Coast Claims Agent, they report directly to the Pacific Coast Marine Superintendent, who is in charge of all dock activities, and have authority to recommend to him the changes in the status of employees in their respective departments. We are satisfied from the record that their recommendations are accorded weight by the Marine Superintendent. The Pacific Coast Claims Agent is not directly under the Marine Superintendent and makes his recommendations as to hire and discharge directly to the Company's acting Pacific Coast Manager, who is in charge of all of the Company's operations on the Pacific Coast. Employees in the several dock office departments normally go to their respective department heads to discuss wage matters and grievances. With the exception of the Chief Timekeeper, the department heads receive salaries which indicate that they are a group separate and apart from the office employees under their supervision. All department heads are exempted from the overtime provisions of the Fair Labor Standards Act as administrative employees. Each department head is separately discussed below.

The *Stevedoring Superintendent* is head of the Stevedoring Department and directly supervises an assistant and a clerk. He is also in direct charge of the Company's walking bosses, who in turn supervise the longshoremen employed by the Company. He has authority to hire and discharge both walking bosses and the longshoremen.

The *Pier Superintendent* is in complete charge of operations involving the receiving and delivery of cargoes. In this capacity he directly supervises two stenographic clerks and two clerks in the Delivery Department whom the parties agree to include in the unit. He also supervises the receiving and delivery clerks employed by the Company, who are already covered by a collective bargaining contract. He communicates with a hiring hall for such clerks as are needed on a daily basis; likewise he determines when to lay off such

⁶ We note, in this connection, that the Operating Department, comprising a secretary to the Pacific Coast Marine Superintendent, a secretary to his assistant, and a stevedoring statistician, has no head other than the Pacific Coast Marine Superintendent, who exercises control over all departments.

clerks hired on a day to day basis and makes recommendations as to the discharge of clerks hired on a monthly basis.

The *Pacific Coast Claims Agent*, who is the head of the Claims Department, is in charge of all loss and damage claims arising on the Pacific Coast. He reviews files and has authority to authorize the payment of claims. He also has authority to recommend the hiring and discharge of employees in other claims offices on the Pacific Coast as well as, as noted heretofore, those in the claims office in San Francisco. He directs the work of the four employees in the Claims Department in San Francisco,⁷ and generally oversees the work of the other claims offices.

The *Pacific Coast Purchasing Agent* is responsible for the purchasing of supplies for vessels and for the various offices and departments of the Company on the Pacific Coast. He directs the work of seven employees in the Purchasing Department in San Francisco.⁸ In the absence of the Port Steward, he also supervises the employees in the Port Steward Department.

The *Head of Vessel Personnel* is responsible for the hiring of sea-going personnel and checking pay rolls for use in paying off ship personnel. He directs the work of an assistant head and two stenographer clerks in the Vessel Personnel Department.

The *Chief Timekeeper* directs the work of three clerk timekeepers in the timekeeper's office.

The *Port Steward* is charged with the responsibility of properly storing vessels, maintaining a close check on the cost of supplies used by vessels, and guarding against waste and pilferage of stores. He supervises the work of an assistant and two clerks in the Port Steward's Department. His duties often carry him up and down the Pacific Coast, and, as noted above, in his absence the Purchasing Agent supervises the employees of his department.

It is our opinion that the department heads are clearly supervisory employees within the Board's customary definition. Accordingly, we shall exclude them from the unit.

Assistant Pacific Coast Marine Superintendent: His duties involve the preparing and overhauling of ships and estimating the cost and time of repairs. He supervises the work of the engineering inspectors whom both parties have agreed to exclude from the unit. He takes the place of the Pacific Coast Marine Superintendent in the latter's absence. As in the case of the department heads, he is exempt from the overtime provisions of the Fair Labor Standards Act. The work and the responsibility of the Assistant Pacific Coast Marine Super-

⁷ Namely, a chief claims clerk, a claims inspector, a secretary to the Claims Agent, and a stenographic clerk.

⁸ Namely, an assistant purchasing agent, five clerks, and a stenographic clerk.

intendent are such that he is clearly a management representative. We shall, accordingly, exclude him from the unit.

Assistant Stevedoring Superintendent: He takes the place of the Stevedoring Superintendent in his absence. On other occasions he exercises the same authority over walking bosses and longshoremen with respect to one ship which the Stevedoring Superintendent would be exercising in regard to another. He, too, is exempt from the overtime provisions of the Fair Labor Standards Act. Inasmuch as the Assistant Stevedoring Superintendent exercises authority over employees of the Company equivalent to that exercised by the Stevedoring Superintendent, we shall exclude the Assistant from the unit as a supervisory employee.

Secretary to the Pacific Coast Marine Superintendent

The Union would exclude this employee on the ground that if and when the Union is certified as the collective bargaining representative of the dock office employees, the Marine Superintendent will become the Company's bargaining representative in collective bargaining relations with the Union, and the secretary will then have access to confidential information pertaining to labor relations. In its dealing with unions, the Company acts through the Waterfront Employers Association. However, the evidence reveals that, in matters affecting the Company's waterfront employees, representatives of the Waterfront Employers Association conduct all investigations at the docks and consult with the Marine Superintendent. Furthermore, inasmuch as the Marine Superintendent is the Company's highest representative on the docks, it would appear that he exercises "managerial" functions in the field of labor relations. We are of the opinion that his secretary is a confidential employee within the meaning of the *Ford* decision,⁹ and we shall exclude her.

We find that all dock office employees employed by the Company on Piers 29 and 31, San Francisco, California, excluding employees already covered by collective bargaining contracts, engineering inspectors, the Pacific Coast Marine Superintendent, the Assistant Pacific Coast Marine Superintendent, secretary to the Pacific Coast Marine Superintendent, the Stevedoring Superintendent, the Assistant Stevedoring Superintendent, the Pier Superintendent, the Pacific Coast Claims Agent, the Pacific Coast Purchasing Agent, the Head of Vessel Personnel, the Chief Timekeeper, the Port Steward, and all other 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

⁹ See *Matter of Ford Motor Company (Chicago Branch)*, *supra*.

the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.¹⁰

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot. The Union contends that eligibility to vote should be determined by a pay roll covering the pay-roll period between February 15 and 28, 1946. We are not persuaded that the Board should depart from its customary procedure in determining eligibility. Accordingly we shall direct that those eligible to vote in the election shall be all employees in the appropriate unit who were employed during the pay-roll period immediately preceding 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 Luckenbach Steamship Company, Inc., San Francisco, California, 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 Twentieth 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 this Direction, 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 Ship Clerks' Association Local No. 34, I. L. W. U., C. I. O., for the purposes of collective bargaining.

¹⁰ In *Matter of Luckenbach Steamship Company, Inc.*, 12 N. L. R. B. 1333, substantially the same unit was found to be appropriate.