

In the Matter of A. L. MECHLING, GENERAL PARTNER; SARAH ELIZABETH MECHLING, LIMITED PARTNER; DONALD L. MECHLING, INDIVIDUALLY AS A LIMITED PARTNER; FLOYD A. MECHLING, LIMITED PARTNER; AND DONALD L. MECHLING, AS TRUSTEE AS A LIMITED PARTNER, DOING BUSINESS AS A. L. MECHLING BARGE LINES *and* NATIONAL MARITIME UNION, C. I. O.

In the Matter of A. L. MECHLING, GENERAL PARTNER; SARAH ELIZABETH MECHLING, LIMITED PARTNER; DONALD L. MECHLING, INDIVIDUALLY AS A LIMITED PARTNER; FLOYD A. MECHLING, LIMITED PARTNER; AND DONALD L. MECHLING, AS TRUSTEE AS A LIMITED PARTNER, DOING BUSINESS AS A. L. MECHLING BARGE LINES *and* LICENSED TUGMEN'S PROTECTIVE ASSOCIATION, AFFILIATED WITH INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, A. F. OF L.

*Cases Nos. 13-R-3536 and 13-R-3602, respectively.—Decided July 24, 1946*

*Mr. Edward B. Hayes*, of Chicago, Ill., for the Employer.

*Mr. Milton Martin*, of Joliet, Ill., and *Mr. Samuel Despeaux*, of St. Louis, Mo., for the N. M. U.

*Mr. Daniel D. Carmel*, by *Mr. Lester Asher*, and *Mr. Patrick J. Cullnan, Jr.*, of Chicago, Ill., for the L. T. P. A.

*Mr. H. B. Brannan*, of Lemay, Mo., for the N. M. E. B. A.

*Mrs. Augusta Spaulding*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

Upon separate petitions duly filed, hearing on these consolidated cases was held at Joliet, Illinois, on May 17, 1946, before Leon A. Rosell, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

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## FINDINGS OF FACT

## I. THE BUSINESS OF THE EMPLOYER

A. L. Mechling, general partner; Sarah Elizabeth Mechling, limited partner; Donald L. Mechling, individually as a limited partner; Floyd A. Mechling, limited partner; and Donald L. Mechling, as trustee as a limited partner, constitute a limited partnership, doing business as A. L. Mechling Barge Lines. The Employer is engaged in the business of towing river barges, which transport primarily grain, oil, gasoline, fuel oil and oil, and coal upon the Mississippi, Tennessee, Illinois, and Ohio Rivers. It owns and operates seven river boats. During 1945, the gross income derived from their operation exceeded \$100,000, the entire amount being obtained from matter in transit between the States.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED<sup>1</sup>

National Maritime Union and National Marine Engineers Beneficial Association, Local No. 6, herein respectively called the N. M. U., and the N. M. E. B. A., are labor organizations affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

Licensed Tugmen's Protective Association, herein called the L. T. P. A., is a labor organization, affiliated with the International Longshoremen's Association and the American Federation of Labor, claiming to represent employees of the Employer.

## III. THE QUESTIONS CONCERNING REPRESENTATION

The Employer has refused to grant recognition to the N. M. U. and to the L. T. P. A., as the exclusive bargaining representative of its employees in respectively proposed units until these organizations may be certified by the Board in appropriate units.

On November 13, 1945, the Employer and the N. M. E. B. A. entered into an agreement for a consent election to be conducted in Case No. 13-R-3336 among all engineers employed on the Employer's boats. The election was conducted by mail. Of 19 eligible voters, 4 cast valid ballots, of which 3 were for, and 1 against, the N. M. E. B. A.

On December 20, 1945, the Employer and the N. M. U. entered into an agreement for a consent election to be conducted in Case No. 13-R-3359 among non-supervisory employees aboard the Employer's boats. The election was conducted by mail. Of 27 eligible voters,

<sup>1</sup> National Organization, Masters, Mates and Pilots, served with notice, did not appear at the hearing.

11 cast valid ballots, of which 10 were for, and 1 against, the N. M. U. One ballot was void.

No written objections were filed to the conduct of either election. The Employer however questioned whether a representative vote had in fact been cast by its engineers. In the case of the election among the engineers, a number of eligible voters aboard the ships did not receive their ballots in time for them to vote and return the same to the Regional Office for counting on the day agreed upon by the parties for valid returns. A number of ballots, returned late, were declared invalid by the Regional Director and not counted. In the subsequent election among the non-supervisory employees a longer time was provided for the return of the ballots. No contract has been concluded between the Employer and the N. M. E. B. A., covering the engineers.

On March 19, 1946, the N. M. U. filed its petition in Case No. 13-R-3536, seeking certification as exclusive bargaining representative of the Employer's masters and pilots. On April 22, 1946, the L. T. P. A. filed its petition in Case No. 13-R-3602, seeking certification as exclusive bargaining representative of the Employer's masters, pilots, and engineers. The parties question whether the consent election in November 1945 held among the Employer's engineers constitutes a bar to a present determination of representatives among these employees. We find that it does not. In the consent election held, only 21 percent of the eligible engineers cast a valid ballot, and only 15 percent of those eligible voted for representation by N. M. E. B. A. The late return of other ballots indicated the desire of other eligible employees to vote in the election. In the election subsequently held among the Employer's non-supervisory employees, a longer period was allowed for the return of the ballots, and 40 percent of the eligible voters cast valid ballots within the time allowed for the return and 37 percent cast ballots for representation by the N. M. U. Under these circumstances,<sup>2</sup> we find that the vote cast by the Employer's engineers in Case No. 13-R-3336 was not a representative vote. The election therefore is no bar to the petition filed herein by the L. T. P. A. concerning the Employer's engineers.

During the course of the hearing the L. T. P. A. and the N. M. E. S. A. each presented to the Trial Examiner certain authorization cards, expressing its desire to participate in any election that the Board might direct among employees in whom each claimed an interest. The Employer objected to the receipt of the cards by the Trial Examiner and their consideration by the Board in connection with the issues raised in those cases, inasmuch as the cards were not

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<sup>2</sup> We cannot set down in terms of percentage of returns what constitutes a representative vote. As we have frequently stated, what constitutes a representative vote depends upon the circumstances of each case. *Matter of Stiefel Construction Corporation*, 65 N. L. R. B. 925, and cases cited therein.

formally introduced in evidence and made part of the official record in this case. We find no merit in this contention.<sup>3</sup>

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

#### IV. THE APPROPRIATE UNITS

The N. M. U. contends that the Employer's masters and pilots constitute an appropriate bargaining unit.<sup>4</sup> The N. M. E. S. A. contends that the Employer's engineers and assistant engineers constitute a separate appropriate bargaining unit. The L. T. P. A. contends that the Employer's masters, pilots, engineers, and assistant engineers constitute a single appropriate bargaining unit. All these masters, pilots, engineers, and assistant engineers employed for the operation of the Employer's boats perform the duties usually connected with their respective categories of employment.

In support of its contention, the L. T. P. A. points out that, in a prior representation proceeding involving the Employer's employees,<sup>5</sup> the Board found that the Employer's masters, pilots, engineers, and assistant engineers constitute a single appropriate unit, and urges that no changes have taken place in connection with their employment which would render this combined unit inappropriate at this time.

Following an election among employees in the combined unit noted above, the Board certified River Boatmen's Union (Independent) as their bargaining representative. Shortly after certification, River Boatmen's Union (Independent) became inactive, and no bargaining contract was ever entered into between the Employer and the certified bargaining representative. Since 1942, other labor organizations have organized these employees. The N. M. U. and the N. M. E. S. A. presently desire to represent in separate respective units the deck officers and engineers. In view of this situation, since no bargaining ever resulted from the Board's prior determination of the unit, we believe that separate units presently are appropriate for the employees herein concerned.<sup>6</sup>

We find that the Employer's masters and pilots constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

<sup>3</sup> *Matted of O. D. Jennings & Company*, 68 N. L. R. B. 516.

<sup>4</sup> The Employer does not have any employees classified as mates.

<sup>5</sup> See *Matter of A. L. Mechling Barge Line*, 40 N. L. R. B. 1022.

<sup>6</sup> See *Matter of Nicholson Transit Company*, 65 N. L. R. B. 418.

We further find that the Employer's engineers and assistant engineers constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the Act.

### DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with A. L. Mechling, general partner; Sarah Elizabeth Mechling, limited partner; Donald L. Mechling, individually as a limited partner; Floyd A. Mechling, limited partner; and Donald L. Mechling, as trustee as a limited partner, doing business as A. L. Mechling Barge Lines, Joliet, Illinois, separate elections 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 Thirteenth 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 employees in the groups described below, 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:

(1) Among masters and pilots in the unit found appropriate in Section IV, above, to determine whether they desire to be represented by National Maritime Union, C. I. O., or by Licensed Tugmen's Protective Association, affiliated with International Longshoremen's Association, A. F. of L., for the purposes of collective bargaining, or by neither; and

(2) Among engineers in the unit found appropriate in Section IV, above, to determine whether they desire to be represented by Licensed Tugmen's Protective Association, or by the National Marine Engineers' Beneficial Association, Local No. 6, CIO, for the purposes of collective bargaining, or by neither.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Elections.