

In the Matter of AMERICAN PRESIDENT LINES, LTD. and SHIP CLERKS'
ASSOCIATION, LOCAL 34, ILWU, C. I. O.

Case No. 20-R-1702.—Decided August 9, 1946

Brobeck, Phleger and Harrison, by Mr. Robert E. Burns, of San Francisco, Calif., for the Company.

Gladstein, Andersen, Resner, Sawyer & Edises, by Mr. Richard Gladstein, of Oakland, Calif., for the Union.

Mr. Phil E. Thompson, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Ship Clerks' Association, Local 34, ILWU, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American President Lines, Ltd., 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. The hearing was held at San Francisco, California, on April 26, 27, 29, 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. 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

American President Lines, Ltd., is a Delaware corporation engaged in the transportation of cargo and passengers by water between ports of the United States and ports of foreign countries. At the present time all operations of the Company are agency operations for the War Shipping Administration. In the near future some

ships will be operated by the Company as common carriers, independent of the War Shipping Administration.

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 34, ILWU is a labor organization, 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 certain of its employees until the Union 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 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 comprised of all clerical and office workers employed in the dock offices of the Company at Piers 42 and 44 in San Francisco, California, excluding supervisory and confidential employees, and employees covered by other union contracts. The Company contends that all of the employees in the unit petitioned for are either supervisory or confidential and that therefore the unit requested is inappropriate. As hereinafter indicated, the evidence in the record does not sustain this contention, but inasmuch as the Company opposes the inclusion of all employees involved herein, it becomes necessary to discuss the status of each employee with regard to his inclusion in or exclusion from the appropriate unit, excepting those instances where the exclusion of an employee is undisputed.

The record indicates that there are five departments in the dock offices involved in this proceeding, as follows:

Finance Department

The Finance Department handles the processing of purchase invoices for transmittal to the uptown office of the Company where they are recorded and paid. The chief receiving clerk is the head of the department. The parties agree that he shall be excluded as a supervisory employee.

There are four receiving clerks in this department. The Company contends that they are confidential employees in that the documents

they handle contain trade information and commercial data confidential to the Company. These employees spend most of their time on the Company's ships and piers checking incoming ship stores and supplies against purchase orders, and delivery invoices, and obtaining stores receipts from ships officers. When time allows, they assist and perform the duties of the inventory clerks hereinafter discussed. Although the purchase orders and invoices referred to above sometimes show preferential trade discounts and other commercial data which the Company considers confidential with respect to purchasing, such data has nothing to do with the labor relations of the Company. Accordingly, we find that the receiving clerks are not confidential within the Board's definition thereof and we shall include them in the unit.

A comptometer operator and a clerk assist in processing the invoices heretofore mentioned and dispatching them to the uptown office. The Company contends that they are confidential in that the invoices contain confidential trade information. Similarly, for reasons stated above, we find that the clerk and comptometer operator are not confidential within the Board's definition thereof and we shall include them in the unit.

G. R. Hampton is temporarily attached to this department. The record indicates that he was loaned to the Finance Department from the freight office, that he is still classified as a district freight agent, is still carried on the freight office pay roll and will return to that office on completion of his present temporary assignment. We are therefore of the opinion that his employment interests are identified with the freight office which is outside the scope of the unit involved herein; we shall exclude him from the unit.

Purchasing and Stores Department

This department is charged with supplying and provisioning all vessels of the Company and the purchase and distribution of stationery and office supplies. The general purchasing agent is the head of the department. He formulates and enforces company policy with respect to purchasing and supply but has no responsibility in the field of labor relations. The parties agree to his exclusion from the unit. The parties also agree to the exclusion of the truck driver attached to this department as a non-clerical employee.

The Company contends that the secretary to the general purchasing agent should be excluded as a confidential employee. As indicated above, her superior is not a managerial official in the field of labor relations. It therefore follows that this employee does not "assist and act in a confidential capacity to persons who exercise managerial functions in the field of labor relations" and cannot be considered

confidential within the Board's definition thereof.¹ We shall include the secretary to the general purchasing agent in the unit.

The work of this department is divided under four subsections to wit: the Purchasing Section, the Stationery Section, the Inventory Section, and the Stores Section.

Purchasing Section: This section is responsible for the procurement and purchasing of ship stores and supplies. It is under the supervision of the purchasing agent who, the parties agree, shall be excluded.

Deck department supplies, engineering department supplies, steward's department supplies and sundries, and ship provisions are each purchased by separate buyers,² subject to the approval and direction of the general purchasing agent. Inasmuch as the record shows that the buyers can and do obligate the Company for substantial sums, we find that they perform managerial duties and we shall exclude the buyers from the unit.³

Also attached to the purchasing section are a clerk who assists the buyer of engineering supplies, a senior clerk in charge of the purchasing office who checks and approves invoice prices and handles a small petty cash fund, a typist, and a file clerk. There is no evidence in the record to show that these employees are either supervisory or confidential⁴ within the Board's definition thereof. We shall include them in the unit.

Stationery Section: This section is charged with the purchasing and distribution of stationery and office supplies. It is under the supervision of the stationery buyer. The record shows that he has authority to obligate the Company for substantial sums, and that he exercises supervisory authority over the other employees in this section. We find that the stationery buyer performs managerial functions and we shall exclude him from the unit.

Also attached to this section are a senior clerk who assists the stationery buyer in the administration of the section, a stationery clerk who works in the stationery storeroom adjacent to the stationery office, and two other clerks who process purchase requisitions, purchase orders, and purchase invoices. The Company contends that these are confidential employees because of their access to trade information appearing on papers they handle in the performance of their

¹ *Matter of Ford Motor Company*, 66 N. L. R. B. 1317.

² Deck Department supplies are purchased by George English, Purchaser of Deck Stores. From April 1, 1945, to March 1, 1946, these purchases amounted to approximately \$693,000.

Engineering Department supplies are purchased by J. D. Bisbiglia, Senior Clerk. During the above-mentioned period these purchases amounted to approximately \$505,000.

Stewards Department supplies and sundries are purchased by J. McHugh, Senior Clerk. During the above-mentioned period these purchases amounted to approximately \$693,000.

Ships Provisions are purchased by G. J. Schulz, Senior Clerk. During the above-mentioned period these purchases amounted to approximately \$3,390,000.

³ *Matter of Wagner Electric Corporation*, 67 N. L. R. B. 1104.

⁴ These employees also handle documents which contain trade data confidential to the purchasing department but which have nothing to do with the Company's labor relations.

clerical duties. As heretofore stated, this information has nothing to do with the labor relations of the Company. Accordingly, we find that these are not confidential employees within the Board's definition thereof and we shall include them in the unit.

Inventory Section: This section is charged with the taking of physical inventories of all provisions, stores and supplies aboard company ships upon their arrival in the port of San Francisco. It is under the supervision of the chief inventory clerk. The evidence shows that this employee has authority to make effective recommendations relative to the discharge, promotion, and discipline of the inventory clerks under his supervision. We find that the chief inventory clerk is a supervisory employee within the Board's definition thereof and we shall exclude him from the unit.

There are four inventory clerks in this section. The Company contends that they are supervisory employees. They board arriving ships and take the physical inventories mentioned above, incident to which they fill out regular inventory forms showing the amount and condition of stores, supplies, and storage spaces. These reports affect ships' personnel only insofar as the Company might hold such personnel responsible for shortages or deficiencies noted thereon. Inasmuch as the inventory clerks make no recommendation as to the employment status of other employees, we find that they are not supervisory within the Board's definition thereof, and we shall include them in the unit.

Stores Section: This section is charged with the operation of the storeroom, receipt of stores, and collection and disposal of salvage, empty containers and junk from company ships in the port of San Francisco. It is under the supervision of the assistant manager who has authority to make effective recommendations in regard to discharge, salary, and discipline of employees under his supervision. We find that the assistant manager is a supervisory employee within the Board's definition thereof and we shall exclude him from the unit.

The assistant manager has an assistant and two typists under his supervision in the stores section. There is no evidence in the record to show that these employees are either supervisory or confidential within the Board's definition thereof. We shall include them in the unit.

Operating Department and San Francisco Dock Pay Roll

This department directs the operation of the vessels of the Company throughout the world and is charged with the supervision and direction of all licensed and unlicensed deck personnel afloat. The marine superintendent is the head of the department. Other depart-

ment officials are the port master, two relief masters, a senior clerk acting as and performing the duties of a relief master,⁵ five port pursers, and the shipping master. Among their responsibilities are the formulation and enforcement of labor policies with respect to deck employees afloat, including representation of the Company in overtime disputes involving these employees. The parties agree to their exclusion from the unit. The parties also agree to the exclusion of the port superintendent, the assistant port superintendent, and the pier superintendent. These officials are responsible for all port operations, including the loading and physical handling of company ships while in the port of San Francisco. There is no evidence in the record to show that these officials have any managerial responsibility in the field of labor relations.

The chief clerk acts as assistant to the marine superintendent. He hires licensed deck personnel through the National Organization of Masters, Mates and Pilots, subject to the approval and supervision of the marine superintendent. He also represents the Company in overtime disputes arising under collective bargaining agreements involving licensed and unlicensed deck personnel. We are of the opinion that the chief clerk is charged with managerial functions in the field of labor relations and we shall exclude him from the unit.

Two stenographers serve interchangeably as secretaries to the marine superintendent and the chief clerk. The shipping master is assisted by a clerk and two stenographers who handle and have access to confidential data relating to the Company's labor relations. In view of the fact, as indicated above, that these employees assist and act in a confidential capacity to persons who exercise managerial functions in the field of labor relations, we find that they are confidential employees and we shall exclude them from the unit.

Two mail clerks handle distribution of mail from the offices to the Company's ships and piers. One of these clerks sometimes acts as chauffeur to the marine superintendent. They are neither supervisory nor confidential. We shall include the mail clerks in the unit.

Homer Heap acts as clerk and secretary to W. C. Galt, one of the port pursers, whose responsibility is limited to personnel and other matters involving vessels owned or operated by Lykes Brothers, for whom the Company is agent in the port of San Francisco. The Company contends that Heap is a confidential employee. However, inasmuch as he does not handle or have access to any data relating to employees of the Company, we are of the opinion that he is not a confidential employee within the Board's definition thereof and we shall include him in the unit.

⁵ This employee is classified as a senior clerk rather than a relief master because he is not licensed.

Two stenographers act as secretaries to the port superintendent and assistant port superintendent. As heretofore indicated, their superiors do not exercise any managerial functions in the field of labor relations. We are therefore of the opinion that these secretaries are not confidential employees within the Board's definition thereof and we shall include them in the unit.

The paymaster, assistant paymaster, and a typist clerk are attached to the operating department. They audit dock pay rolls. The paymaster supervises the work of the other two employees but all matters affecting their employment status are referred to the central office. We find that these employees are neither supervisory nor confidential within the Board's definition thereof and we shall include them in the unit.

Engineering Department

This department is charged with the service and repair of ships owned and operated by the Company, and the direction and supervision of engineering personnel afloat. The superintending engineer is the head of the department. Included in his responsibilities are the formulation and enforcement of labor policies of the Company with regard to engineering personnel afloat. The parties agree to the exclusion of the superintending engineer as a managerial official. The parties also agree to the exclusion of assistant engineers, assistant port engineers, and the chief engineer overseeing construction, who are licensed engineers and managerial officials.

The chief clerk hires engineering personnel for company vessels through the Marine Engineers Beneficial Association. He receives voyage and personnel records kept in the department. He also represents the Company in overtime disputes involving engineering employees. We find the chief clerk exercises managerial functions in the field of labor relations and we shall exclude him from the unit.

The confidential secretary to the superintending engineer and the clerk and clerk typist in the office of the chief clerk all handle and have access to confidential information regarding the labor policies of the Company. As indicated above they assist and act in a confidential capacity to persons who exercise managerial functions in the field of labor relations. Accordingly, we find that they are confidential employees within the Board's definition thereof and we shall exclude them from the unit.

The parties agree to the exclusion of the assistant engineers, assistant port engineers, and the chief engineer overseeing construction, who are all licensed engineers and managerial officials.

Port Steward

This department is charged with the provisioning of all company vessels and the supervision and direction of steward's department personnel afloat.

The catering superintendent is the head of the department. The port steward directs the work of the department in the port of San Francisco. Included in their responsibilities are the formulation and enforcement of labor policies with regard to stewards department employees afloat. The parties agree to their exclusion from the unit.

The record shows that the assistant port stewards represent the Company in overtime disputes involving steward's department personnel, which, as heretofore indicated, we consider a managerial function. They also possess supervisory authority over steward's department employees. We shall exclude them from the unit.

A stenographer acts as secretary to the catering superintendent and the port steward. Inasmuch as she acts in a confidential capacity to persons who exercise managerial functions in the field of labor relations, we find that she is a confidential employee within the Board's definition thereof and we shall exclude her from the unit.

The food analysis section compiles statistical data relating to food costs on company ships. This work is directed by the chief clerk who has authority to make effective recommendations with regard to the discharge, salary, and disciplining of employees under his supervision. We find that he is a supervisory employee and we shall exclude him from the unit.

A clerk and a stenographer work under the supervision of the chief clerk in the food analysis section. The stenographer is also a comptometer operator. We find that they are neither supervisory nor confidential and we shall include them in the unit.

The care and laundry of ship's linen is under this department. The laundry foreman is in charge of the linen room and also directs and supervises ships' laundries and laundry personnel. It is clear from the record that he is a supervisory employee and we shall exclude him from the unit.

Two seamstresses are employed in the linen room. They repair and renovate damaged linens, and are paid on an hourly basis. A linen man is temporarily employed in the linen room handling linens from vessels being laid up due to the termination of the war. We are of the opinion that they are not clerical employees and we shall exclude them from the unit.

Claim Department

This department handles cargo damage and personal injury claims against the Company. The claim agent is the head of this department. The parties agree to his exclusion from the unit.

The chief clerk takes over the duties of the claim agent when the latter is away from the San Francisco office.⁶ He has discretion to negotiate and settle claims within specified limits, obligating the Company for payment thereof. We are of the opinion that he performs managerial functions and we shall exclude him from the unit.

There are two clerks in this department who make up claim files and perform general clerical work incident to the operation of the department. There is no evidence in the record which indicates that they are either supervisory or confidential. We shall include them in the unit.

G. L. Rhodes is an employee of the Company acting⁷ as a dispatcher of ships coming in from the central Pacific. His employment arises under an arrangement with the War Shipping Administration and there is no indication in the record as to when it will terminate. There is no evidence that his duties are either supervisory or confidential. We shall include him in the unit.

We find that all office and clerical employees of the Company in its offices at Pier 42 and Pier 44 at San Francisco, California, including all employees listed on Appendix A,⁸ but excluding employees covered by other union contracts, employees listed in Appendix B,⁹ and all other supervisory employees¹⁰ 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 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 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.

⁶ The records show that the claim agent is out of his office approximately 50 percent of the time.

⁷ He appears in the record as a clerk in the claim department.

⁸ Appendix A lists all employees included in the unit pursuant to our discussion herein.

⁹ Appendix B lists all employees excluded from the unit either by agreement of parties or pursuant to our discussion herein.

¹⁰ The exclusion of supervisory employees obviates the necessity for consideration of the Company's contention that supervisory and non-supervisory employees should not be represented by the same union.

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 American President Lines, Ltd., 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 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 34, ILWU, C. I. O., for the purposes of collective bargaining.

APPENDIX A

Finance Department

Receiving Clerks

Clerk

Comptometer Operator

Purchasing and Stores Department

Secretary—General Purchasing Agent

Senior Clerk—Purchasing Section (C. H. Miller)

Typist—Purchasing Section (Bernice Anderson)

File Clerk—Purchasing Section (N. Eggleston)

Clerk—Assistant to Purchaser Engineering Stores (D. Hart)

Stationery Clerk (P. J. Meyer)

Clerks—Stationery Section (K. Wadsworth and R. Retzbach)

Inventory Clerk—Deck Department

Inventory Clerk—Engine Department

Inventory Clerks—Stewards Department

Clerk—Stores Section (R. Christie)

Typist—Stores Section (T. Chickner and W. Moore)
Senior Clerk—Stationery Section (E. Colbert)

Operating Department and San Francisco Dock Pay Roll

Mail Clerks (G. Meadows and E. Pasvola)
Paymaster
Assistant Paymaster
Typist Clerk—Paymaster
Stenographers—Port Superintendent (P. Thomas and B. Orr)
Stenographer—Port Purser (Homer Heap)

Port Steward Department

Clerk—Food Analysis Section
Stenographer—Food Analysis Section

Claim Department

Clerks (R. Lindberg and F. Preston)
Dispatcher (G. L. Rhodes)

APPENDIX B

Finance Department

- * Chief Receiving Clerk
- District Freight Agent

Purchasing and Stores Department

- * General Purchasing Agent
- * Purchasing Agent
- Stationery Buyer
- Senior Clerk—Purchaser Deck Stores
- Senior Clerk—Purchaser Engineering Stores
- Senior Clerk—Purchaser Stewards Supplies and Sundries
- Senior Clerk—Purchaser Provisions
- Chief Inventory Clerk
- Assistant Manager
- * Truck Driver

Operating Department and San Francisco Dock Pay Roll

- * Marine Superintendent
- * Port Master
- * Relief Masters

Senior Clerk—Acting Relief Master

- * Port Pursers
- * Shipping Master
- * Port Superintendent
- * Assistant Superintendent
- * Pier Superintendent

Chief Clerk

Stenographers—Marine Superintendent (C. Williams, L. Heim)

Clerks—Shipping Master (R. Ross)

Stenographers—Shipping Master (M. Mikolovich and B. Boyd)

Engineering Department

- * Superintendent Engineer
- * Assistant Engineers
- * Assistant Port Engineers
- * Chief Engineer Overseeing Construction
- Chief Clerk
- Secretary-Superintending Engineer
- Clerk
- Clerk-Typist

Port Steward Department

- * Catering Superintendent
- * Port Steward
- Assistant Port Stewards
- Chief Clerk—Food Analysis Section
- Secretary—Catering Superintendent
- Laundry Foreman
- Linen Man
- Seamstresses

Claim Department

- * Claim Agent
- Chief Clerk
- * Exclusion undisputed

MR. GERARD D. REILLY, dissenting in part:

I disagree with that portion of the Decision and Direction of Election which proposes that the secretary to the general purchasing agent and the secretaries to the port superintendent and assistant port superintendent be allowed to vote as a part of the general clerical unit.

Until the recent *Ford* case,¹¹ I assumed the doctrine to be well established that secretaries to officials who exercise managerial func-

¹¹ *Matter of Ford Motor Company (Chicago Branch)*, 66 N. L. R. B. 1317, overruling *The Yale & Towne Manufacturing Company*, 60 N. L. R. B. 626.

tions could not properly be included in collective bargaining units, whether such units were joined with the rank and file or not, because of the confidential nature of their work. The *Ford* case limits the excluded group to employees who serve in a confidential capacity to those who exercise managerial functions in the field of labor relations. I cannot agree with this limitation, as all of the considerations which have been urged upon this Board for not using the processes of the Act to compel employers to deal with unions representing their rank and file employees as representatives of their supervisors, as well, apply with even greater force to employees who act in a confidential capacity to officials who exercise managerial functions.