

In the Matter of AMERICAN DREDGING COMPANY, EMPLOYER *and*  
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION  
825D, A. F. OF L., PETITIONER *and* INLAND BOATMEN'S DIVISION,  
NATIONAL MARITIME UNION, INTERVENOR

*Cases Nos. 4-R-1908 and 4-RE-21, respectively.—Decided  
October 18, 1946*

*Mr. James H. Herbert*, of New York City, for the Employer.

*Mr. John W. Mooney*, of New York City, for the A. F. of L.

*Mr. Herman Rosenfeld*, of New York City, for the CIO.

*Mr. Warren H. Leland*, of counsel to the Board.

## DECISION

AND

## CERTIFICATION OF REPRESENTATIVES

Pursuant to a Stipulation for Certification on Consent Election, executed on January 8, 1946, by International Union of Operating Engineers, Local 825D, A. F. of L., herein called the A. F. of L.; Inland Boatmen's Division, National Maritime Union of America, CIO, herein called the CIO; and the American Dredging Company, herein called the Employer, an election by secret ballot was held on April 15, 1946, under the direction and supervision of the Regional Director for the Fourth Region.<sup>1</sup> Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

The Tally shows that of approximately 188 eligible voters, 140 cast votes for the A. F. of L.; 32 cast votes for the CIO; and there were 14 challenged ballots.

On April 18, 1946, the CIO filed objections to the results of the election alleging, *inter alia*, that supervisory employees of the Employer coerced and intimidated members of the CIO on behalf of the A. F. of L., in order to compel them to cast their votes for the A. F. of L.; members of the CIO were threatened by supervisory employees with economic reprisals if they did not join the A. F. of L.; and

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<sup>1</sup> The election was held among all employees engaged by the Employer on its dredges and tugs, principally operating in Philadelphia, Pennsylvania, and vicinity, including all bankmen and launchmen, but excluding captains of dredges and tugs.

members of the CIO were threatened with discharge in the event they would not vote for the A. F. of L., and were, in fact, discharged during the pendency of the election proceeding. On June 7, 1946, the Regional Director issued a Report on the CIO's objections finding that the objections raised material and substantial issues with respect to the election. Concurring in the finding of the Regional Director, the Board, on June 21, 1946, directed that a hearing be held on allegations 2, 3, and 5 of the CIO's objections.

Pursuant to notice duly served upon the parties, a hearing on the objections was held on July 25 and 26, and August 12 and 13, 1946. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

We shall not concern ourselves with the evidence adduced at the hearing concerning statements allegedly made by mates and operators, who were included in the voting unit. We have frequently held that supervisors, in their capacity as members of the bargaining unit, have the same freedom of action as rank and file employees with respect to joining or not joining unions and expressing their opinion on the subject.<sup>2</sup> The record in this case does not warrant a finding that the Employer authorized or ratified the alleged statements of the mates and operators, the only instance in which the Employer would be liable under the circumstances.<sup>3</sup>

With respect to alleged statements and conduct of the captains, who were not included in the voting unit, the record discloses the following:

1. Steven Boozer, a deck hand on the tug "Hayward," testified that in the fall of 1945 Captain Darby told him "If you don't join the A. F. of L. you will be out of a job, and if you do join the A. F. of L. you will have a job all the time you are on the river." Captain Darby denied having made the statement attributed to him. The Certification for Consent Election was not executed until January 1946, and the election itself was not held until April 15, 1946. We are of the opinion that the statement attributed to Captain Darby, even if made, was too remote in point of time to impair the exercise of a free choice at the election.

2. Albert Stieber, another deck hand, testified that in the middle of March 1946, Captain Darby told him that "if you don't join the A. F. of L. after April 15 (the election date) you won't have a job." Captain Darby denied having made the remark attributed to him. Since Captain Darby's alleged statement merely indicated the legitimate consequences of the A. F. of L. winning the election and obtaining

<sup>2</sup> See *Matter of Hartford Courant Company*, 64 N. L. R. B. 213; *The B. F. Goodrich Company*, 64 N. L. R. B. 1303.

<sup>3</sup> *Matter of R. E. Donnelley & Sons Company*, 60 N. L. R. B. 635, enfd 156 F. (2d) 418 (C C A 7).

a closed-shop agreement,<sup>4</sup> we are of the opinion that under the circumstances such a statement, even if made, did not impair the exercise of a free choice at the election.

3. John Smith, a deck hand aboard the dredge "Admiral," testified, in substance, that in the middle of March 1946, a day after he went aboard, he was summarily discharged and paid for one shift because of his membership in the CIO; and that, upon the advice of the CIO representative, he reported back to the "Admiral," worked for 3 days, and was again discharged. The Employer's records show, contrary to Smith's testimony, that Smith was not paid separately for one shift, but that he signed a receipt for 3½ days' pay when he was discharged for inefficiency. Under all the circumstances, we do not credit Smith's testimony.

4. Frank McHale, a deck hand on the dredge "President" testified, in substance, that early in April 1946, Captain Kelly of the tug "R. M." boarded the dredge with his mate, Dowdy, and in the latter's presence spoke in opposition to the CIO and in support of the A. F. of L. Captain Kelly denied having made the statements attributed to him, or that he was present at the time in question. In support of his denial he asserted that it was not a crew changing time, and that only on such occasions are he and the mate in attendance at the same time. The latter testimony stands uncontradicted in the record. Under all the circumstances, we do not credit McHale's testimony.

5. Thomas Carolan, a CIO organizer, testified that when he boarded the tug "Herron" about March 15 for the purpose of talking to the men, Captain Watson told him "we are going to run every God Damn [CIO] guy off the American Dredging." Captain Watson denied making this statement. There is no evidence that this alleged remark was overheard by any members of the crew. Under all the circumstances, we are of the opinion that this isolated statement, even if made, does not warrant the setting aside of the election.

There being no other credible evidence in the record warranting a finding that the objections of the CIO be sustained, said objections to the election are hereby overruled. We shall, accordingly, certify the Union which has received a majority of the valid votes cast.

The results of the election show that the A. F. of L. received a majority of the valid votes cast. As the challenged ballots are not sufficient to affect the results of the election, we shall certify the A. F. of L. as the collective bargaining representative of the employees in the appropriate unit.

<sup>4</sup> Cf. *Matter of Dahlstrom Metallic Door Company, et al*, 11 N. L. R. B. 408, enf'd 112 F. (2d) 756 (C. C. A. 2).

## CERTIFICATION OF REPRESENTATIVES

IT IS HEREBY CERTIFIED that International Union of Operating Engineers, Local 825D, A. F. of L., has been designated and selected by a majority of all employees engaged by American Dredging Company, Philadelphia, Pennsylvania, on its dredges and tugs, principally operating in Philadelphia, Pennsylvania, and vicinity, including all bankmen and launchmen, but excluding Captain of dredges and tugs, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purpose of collective bargaining, and that pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision and Certification of Representatives.