

In the Matter of WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST, WATERFRONT EMPLOYERS ASSOCIATION OF CALIFORNIA, WATERFRONT EMPLOYERS OF WASHINGTON, WATERFRONT EMPLOYERS OF PORTLAND, MATSON TERMINALS, INC., ET AL., EMPLOYERS *and* INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, CIO, PETITIONER

In the Matter of WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST, WATERFRONT EMPLOYERS ASSOCIATION OF CALIFORNIA, WATERFRONT EMPLOYERS OF WASHINGTON, WATERFRONT EMPLOYERS OF PORTLAND, BRADY-HAMILTON STEVEDORES, INC., ET AL., EMPLOYERS *and* INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, C. I. O., PETITIONER

Cases Nos. 20-R-1615 and 20-R-1690, respectively

SUPPLEMENTAL DECISION
AND
SECOND DIRECTION OF ELECTION

January 31, 1947

On September 28, 1946, the National Labor Relations Board issued a Decision and Direction of Elections in Case No. 20-R-1615¹ and a Decision and Direction of Election in Case No. 20-R-1690.² Thereafter, and before the elections were conducted in the cases, certain questions arose concerning the voting eligibility of walking bosses and checkers in the Washington area.³ As a result, on October 24, 1946, the Board issued its Order directing (1) that the records in the two cases be reopened and that a consolidated hearing be held for the purpose of receiving evidence on the eligibility questions affecting such employees in the Washington area, and (2) that the election directed in Case No. 20-R-1615 (the walking-boss case) among the walking bosses in the Washington area, and the election directed in Case No. 20-R-1690

¹ 71 N L R B 80

² 71 N L R B 121

³ One difficulty, according to the Washington Association's brief, is the absence of any specific time period which may be called a pay-toll period, under a Washington statute requiring payment "forthwith" to the laborer who has ceased performance of his work, it has become the established practice of the longshore industry in the Washington area to make prompt payment to hourly paid checkers and walking bosses at the conclusion of each job

(the checkers case), be postponed until such time as the Board might in the future direct.⁴ The ordered consolidated hearing was held at Seattle, Washington, on November 14, 20, 21, 22 and 23, 1946, before Eugene M. Purver, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire records in these cases, the National Labor Relations Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

A. *The Period of Eligibility*

The parties are in dispute as to the voting eligibility period for foremen⁵ and checkers in the Washington area. All parties agree that the terminal date for this period should be September 4, 1946, due to strike conditions which prevailed in the longshore industry for some time after that date. The Petitioner contends, however, that because of the irregularity of work opportunities the period should begin to run on or about June 4, 1946, for the foremen and checkers who work in the ports of Seattle and Tacoma, and on V-J day 1945,⁶ for those working in all other ports, or the so-called "outports," in the Washington area. The Coast Association, the ILA, Local 38-114, and the ILA, Local 38-36, take the position that the 30-day period prior to September 4, 1946, represents a typical month in the industry in this area and is therefore proper for determining the voting eligibility of all foremen and checkers in the area.

During the war period, because of the increase in shipping activities as a result of government cargoes and the consequent need in the Washington area for additional foremen and checkers with longshore experience, large numbers of rank and file longshoremen were regularly employed in these capacities. With the end of the war and the steadily decreasing demand for foremen and checkers in the area, many of these employees reverted to their previous rank and file status. This return to peacetime employment conditions was well on its way by the spring of 1946. By this time cargoes handled in the industry also had, to a considerable degree, resumed their peacetime commercial nature. But, as normal conditions returned to the industry, longshore activities in Washington once again became casual and sporadic, especially in the outports. It is because the industry is so characterized in peacetime that longshore employment is intermittent under normal conditions.

⁴ The election in Case No 20-R-1615 among walking bosses in the California and Oregon areas was conducted as originally directed, but, pursuant to instructions from the Board, the ballots were impounded, pending the election among walking bosses in the Washington area.

⁵ Walking bosses are called "foremen" in the Washington area.

⁶ August 14, 1945.

For this reason, we are persuaded that an eligibility period longer than 30 days is desirable. Moreover, we believe, from the facts above, that the period from June 4, 1946, to September 4, 1946, inclusive, is indicative, to the best degree available, of over-all peacetime requirements for foremen and checkers in the Washington area, including the outports. This period, we conclude, shall govern the voting eligibility of the Washington foremen and checkers.

B. Time Worked as an Eligibility Requirement

The Coast Association and the ILA, Locals 38-114 and 38-36, further contend that only those employees who devote the major portion of their working time, or derive the major portion of their earnings, as foremen or checkers, should be eligible to vote. They seek this further limitation on voting eligibility because of certain abnormal conditions still prevailing in the industry, stemming from the fact that reconversion to peacetime practices has not yet been fully completed. Thus, they point out, some rank and file longshoremen continue to be used in the area in the capacity of foremen and checkers, although infrequently and for very short periods of time. In opposing this position, the Petitioner points to the fluctuating manpower needs of the longshore industry in Washington, even under normal peacetime conditions, and to the necessity for maintaining manpower pools to supply those needs. This situation is recognized by the Office of Unemployment Compensation and Placement of the State of Washington in its policy of not requiring workers engaged in longshore activities to be available for other suitable work when unemployment compensation claims are filed and considering all longshore workers temporarily unemployed because of port inactivity to be available for work on a stand-by basis in the longshore industry. The Petitioner also refers to the practice by companies, especially in the outports, of regularly calling upon certain employees to work as foremen and checkers when such work is available; at other times these employees work as rank and file longshoremen. In reply, the ILA locals argue that this practice of occasionally assigning foremen and checker work to employees other than those regularly so engaged was prevalent only during the war period and that at present, by and large, only recognized foremen perform the duties of foremen and recognized checkers perform the duties of checkers.

We do not believe that those employees who spent a minor part of their working time in the industry as foremen or checkers, even in light of the peculiar nature of employment practices in the longshore industry, may be said to have a sufficiently substantial interest to entitle them to a voice in the *selection of bargaining representatives for those groups*, although we believe they may be *represented* in respect

to that part of their employment in which they act in such capacities.⁷ Accordingly, only those employees who, during the period from June 4, 1946, to September 4, 1946, inclusive, have worked more than 50 percent of their time spent in the longshore industry⁸ in the capacity of foremen (for purposes of the walking-boss case), or of checker (for purposes of the checkers case), shall be eligible to vote. No particular number of days is required to have been worked as foreman or checker during the 3-month eligibility period.

C. *Miscellaneous Issues*

1. *Utility foremen:*

Considerable testimony was received at the reopened hearing concerning the work category of utility foreman. It appears that the parties were attempting thereby to raise again the unit issue with respect to such employees—an issue which was framed at the original hearing when full opportunity was afforded the parties to introduce all evidence relevant thereto and which was disposed of in our original walking-boss Decision by the inclusion of utility foremen in the two voting groups. We have, however, considered the evidence adduced at the reopened hearing, together with the evidence received at the original hearing, and are convinced that our original determination in this matter is correct as to the general classification of utility foreman and should not be modified to exclude and thereby disenfranchise particular individuals. All persons classified as utility foremen who meet the eligibility requirements set forth above shall be eligible to vote.

2. *Union representatives:*

All the parties agreed at the reopened hearing that those individuals regularly employed in the industry as foremen or checkers but who are temporarily working in the industry as union representatives should be eligible to vote, although they may not have worked in their usual capacities during the eligibility period defined by the Board. We shall give effect to this desire of the parties and permit such individuals to vote.

3. *So-called Markers:*

Some dispute arose at the reopened hearing as to the eligibility of so-called “markers.” “Marking” consists of marking off, for identification purposes, lots of lumber being loaded for water transport. This work is ordinarily an incident of the rank and file longshoremen’s duties, although checkers also perform this function on occasion. It appears from the record that there is no classification of “marker,” as such. We conclude, therefore, that checkers, otherwise

⁷ Cf. *Matter of Hunt Foods, Inc.*, 68 N. L. R. B. 800

⁸ Work performed outside the longshore industry is regarded by us as immaterial

eligible, who performed marking work shall be eligible to vote, and that rank and file longshoremen who performed this work shall not be eligible to vote.

Having resolved the eligibility issues raised at the reopened hearing, we shall supplement our original Decision by issuance of a Second Direction of Election in each of the above-entitled proceedings.⁹

SECOND DIRECTION OF ELECTION IN CASE NO. 20-R-1615

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employers involved in Case No. 20-R-1615, including the companies listed in Appendices A, B, C, and D of the original Decision therein, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Second 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 Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in voting group (1) described in Section IV of the original Decision therein, who were employed during the period June 4, 1946, to September 4, 1946, inclusive, subject to the limitations and additions set forth in our Supplemental Decision, above, including employees who did not work during said 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 they desire to be represented by International Longshoremen's Association (AFL), or by International Longshoremen's and Warehousemen's Union (CIO), for the purposes of collective bargaining, or by neither.

SECOND DIRECTION OF ELECTION IN CASE NO. 20-R-1690

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employers involved in Case

⁹ In directing an election in the walking-boss case (20-R-1615), the Board is aware of its announcement of January 9, 1947, "not to conduct any new hearings or render any further decisions in foremen's cases until the Supreme Court has spoken" in the *Packard* case. That announcement, however, further stated that in a few instances Regional Offices might be permitted to conduct elections theretofore directed by the Board. Inasmuch as the original Decision in this proceeding was rendered by the Board on September 28, 1946, in which elections were directed to be held within 30 days, and this is merely a supplementary matter, our present action is outside the intent of the moratorium announcement and the walking-boss election should proceed. The election in the California and Oregon areas has in fact been conducted and the ballots have been impounded awaiting the election in the Washington area.

No. 20-R-1690, including the companies listed in the Appendix annexed to the original Decision therein, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Second 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 Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the voting group described in Section IV of the original Decision therein, who were employed during the period June 4, 1946, to September 4, 1946, inclusive, subject to the limitations and additions set forth in our Supplemental Decision, above, including employees who did not work during said 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 they desire to be represented by International Longshoremen's Association (AFL), or by International Longshoremen's and Warehousemen's Union (CIO), for the purposes of collective bargaining, or by neither.

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Supplemental Decision and Second Directions of Election.