

The Board has held that a supervisor cannot act as a representative of employees to decertify a union.⁴ Nor can an employer's supervisor represent its employees for purposes of collective bargaining.⁵ Accordingly, the Intervenor's motion to dismiss the petition for this reason is hereby granted.

Order

IT IS HEREBY ORDERED that the petition in this case be, and it hereby is, dismissed.

⁴ *Glyde D. Morris*, 77 NLRB 1375

⁵ *Douglas Aircraft Company, Inc.*, 53 NLRB 486

OCEAN TOW, INC., PETITIONER *and* SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA *and* PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS ASSOCIATION. *Case No. 19-RM-77. February 13, 1952*

Decision and Direction of Elections

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Donald D. McFeely, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.

Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, herein called the Marine Firemen, contends that a memorandum of agreement which it signed with the Employer on March 20, 1951, is a bar to this proceeding. Seafarers International Union of North America, Atlantic and Gulf Districts, affiliated with the American Federation of Labor, herein called the SIU, joins the Employer in opposing the Marine Firemen's motion to dismiss the petition on this ground.

The Employer is engaged in operating freight vessels. It started business in January 1951, with the purchase of two vessels, the *Alaska Cedar* and the *Alaska Spruce*. At that time, the Employer intended to join the Pacific American Shipowners Association, now known as

the Pacific Maritime Association, and herein called PMA. For this reason it sent letters to each of the unions representing employees of PMA members, indicating its intention to join PMA and to operate under the "PMA pattern." The *Alaska Cedar* was outfitted first, and by March 20 a full complement of four unlicensed engine-room employees had been hired for it and one other for the *Alaska Spruce*. On that date, the Employer and the Marine Firemen signed a "Memorandum of Agreement," providing that the Employer would observe the terms and conditions of a master agreement between PMA and the Marine Firemen. The Pacific Maritime agreement is limited to unlicensed engine-room personnel (firemen, oilers, and wipers), the only employees involved in this proceeding.

On April 26, 1951, the Employer entered into a contract with the SIU, covering, among others, the engine-room employees previously affected by the PMA agreement. At about this same time, it discharged four members of the Marine Firemen then working on the *Alaska Cedar*.¹ Thereafter both vessels made voyages. The record does not show affirmatively whether the Employer operated under the terms of the PMA agreement or its contract with the SIU. At the time of the hearing, both vessels were in drydock, and the exact date for resumption of sailings was unknown.

The coexistence of agreements with separate unions covering the same group of employees during the first year of this Employer's operations requires an examination of all the circumstances, in order to determine whether or not the first of these agreements constitutes a bar. There is much in the record indicating that the memorandum of agreement was no more than a "binder," used to set wages, hours, and working conditions on a stopgap basis until the Employer should become a full-fledged PMA member. We also note that in July, after the Employer established contractual relations with the SIU, the Pacific Maritime agreement was substantially modified, and that the Employer's promise (a one-page document) to Marine Firemen to abide by PMA conditions does not clearly show an intent also to adhere to future material changes in these conditions.

Without determining the precise character of the agreement with Marine Firemen, we believe that the peculiar facts of this case raise a serious question as to whether that agreement is still in existence. Certainly the record as a whole clouds the Marine Firemen's conten-

¹ On April 18, 1951, the Marine Firemen filed a charge alleging the discriminatory discharges of these four employees. On July 19, 1951, the Employer and the Marine Firemen executed a settlement agreement in that case, providing for back pay to these four employees, reinstatement to three of them, and an offer of reinstatement to the fourth (Irwin Brockway), provided either the Marine Firemen or Brockway notified the Employer of his availability for employment within 5 days of his discharge from another vessel then on a voyage.

tion that the memorandum of agreement is now binding upon the original parties. We are convinced, therefore, that these employees should not now be denied the right to select a bargaining representative of their own choosing.² For this reason, the Marine Firemen's motion to dismiss the petition on the grounds of contract bar is denied.

Accordingly, we find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Employer and SIU contend that all unlicensed engine-room employees on ships presently owned by the Employer or that may later be acquired comprise a single bargaining unit. The Marine Firemen contends that the employees of each ship should constitute a separate appropriate unit.

The record shows that working conditions on the two vessels are substantially similar, and that the pattern of bargaining in this industry has been on a fleet, rather than single vessel, basis. These facts indicate the feasibility of a single unit comprising the two vessels of the Employer. However, as the Board has often held, absent a significant bargaining history on a multivessel basis,³ and with no evidence of transfer or interchange of employees among vessels, a separate unit for each vessel could also be appropriate.⁴ Accordingly, we shall not make any final unit determination at this time, but shall first ascertain the desires of these employees as expressed in the elections herein directed. We shall direct that separate elections by secret ballot be held among the following groups of the Employer's employees:

(a) All unlicensed engine department employees on the ship *Alaska Cedar*, excluding all other employees and all supervisors as defined in the Act.

(b) All unlicensed engine department employees on the ship *Alaska Spruce*, excluding all other employees and all supervisors as defined in the Act.

5. The determination of representatives:

The Marine Firemen contends that no election should be conducted at this time because the ships, at the time of the hearing at least, were not in operation. The Employer urges that any election herein directed be held at the first port available after the unlicensed engine

² See *La Follette Shirt Company*, 65 NLRB 952.

³ We deem the short and confused "bargaining history" among these employees of little weight in determining the appropriate unit. See *Aggett & Myers Tobacco Company*, 74 NLRB 513.

⁴ See *Nicholson Transit Company*, 85 NLRB 955. In view of our finding herein, and also in accord with Board precedent, we shall not include in any unit found appropriate personnel on any additional ships which the Employer may acquire in the future. *American Steel and Wire Company of New Jersey*, 63 NLRB 1244.

department employees are all on board. The SIU apparently takes no position on this issue.

In view of the uncertainties surrounding this type of election and the time normally consumed in voting personnel assigned to seagoing vessels, we shall vest in the Regional Director for the Nineteenth Region discretion to determine the exact time, places, and procedure for holding the elections, except that balloting shall be completed no more than 120 days from the date the first ballots were cast.⁵

The Marine Firemen apparently also urge that Irwin Brockway, an employee discharged in the spring of 1951, be held eligible to vote. As the record does not show whether or not Brockway is entitled to reinstatement, we shall make no determination at this time as to his eligibility, but shall permit him to vote subject to challenge.

[Text of Direction of Election omitted from publication in this volume.]

⁵ *American Export Lines, Inc.*, 84 NLRB 134.

WESTERN GEAR WORKS *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 94, LOCAL No. 311, PETITIONER. *Case No. 21-RC-2149. February 14, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Daniel J. Harrington, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

Upon the entire record of this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. Since 1943 when the Petitioner, after a consent election, was certified as the representative of the Employer's production and maintenance employees, it has represented those employees under a series of contracts. The Employer contends that the current contract, effective by its terms from July 31, 1950, to September 2, 1955, constitutes a bar to this proceeding. Admittedly, however, the plant clerical employees whom the Petitioner now seeks to represent are not covered by the contract; nor does it appear that the Petitioner had expressly agreed