

In the Matter of CASTLE & COOKE TERMINALS, LTD. and INTERNATIONAL
LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 137 (CIO)

Case No. 20-R-425 (R-2130)

SUPPLEMENTAL DECISION

February 12, 1946

On March 20, 1941, the Board certified International Longshoremen's & Warehousemen's Union, Local 137 (CIO), herein called the Union, as the exclusive bargaining representative of certain employees of Castle & Cooke Terminals, Ltd. (herein called the Company), including gang foremen and leadingmen.¹ On October 6, 1944, the Company moved the Board to amend its certification to exclude the above-mentioned categories of employees. Inasmuch as the Company at that time gave the Board no basis for the requested action other than a broad allegation that its gang foremen and leadingmen were supervisory employees, the Board on November 17, 1944, issued an Order summarily denying the motion. Thereafter, on January 5, 1945, the Company filed a motion requesting the Board to reconsider its Order of November 17, 1944, and accompanied the motion with an affidavit setting out facts upon which the Company based its allegation. The Union filed an answer to the motion, stating (1) that the gang foremen and leadingmen employed by the Company are not supervisory employees, and (2) that if they are to be considered supervisory employees, they are, by *custom* in the industry, that type of supervisory employee included in bargaining units together with non-supervisory employees under the doctrine enunciated in *Matter of Maryland Drydock Company*.²

On February 2, 1945, the Board issued an Order reopening the record in the proceeding for the purpose of hearing evidence to resolve the dispute raised by the parties' conflicting allegations, and provided for an appropriate hearing upon due notice before A. L. Wills, Trial Examiner. Said hearing was held at Honolulu, Territory of Hawaii, on April 25, 26, 27, 28, and May 2, 3, 4, 7, 8, 10, 1945, and at San Francisco, California, on July 27, 1945. The Company and the Union appeared and participated, and 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

¹ 30 N. L. R. B. 475

² 49 N. L. R. B. 733

65 N. L. R. B., No. 175.

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 finds that gang foremen and leadingmen employed by the Company exercise some supervisory functions; that in the exercise of these supervisory functions, they are themselves closely supervised by ship foremen; that they differ to some extent from supervisors of comparable standing employed in ports of the West Coast of the United States, in that they, as well as the members of gangs with whom they work, are permanent employees of the Company, whereas the West Coast supervisors, and the gangs with whom they work, are hired for particular jobs through a union hiring hall. We further find that it is a well-established custom in the industry on the West Coast to include these minor supervisors in bargaining units together with non-supervisory employees, and that, despite the variance on other subjects between practice in the Islands and on the Coast, contracts on the Islands have, since the inception of collective bargaining in the industry there, followed the custom established on the Coast and have included in the bargaining unit minor supervisors of the grade corresponding to the Company's gang foremen and leadingmen.

Accordingly, we hereby deny the Company's motion to amend the certification of March 20, 1941.

MR. GERARD D. REILLY, dissenting:

I am constrained to disagree with the refusal of my colleagues to amend the certification to exclude all supervisory employees from the appropriate bargaining unit.

The majority decision concedes that the employees whom the Company seeks to exclude are supervisory within the Board's customary definition of the term, and apparently that the custom in the industry on the West Coast waterfront is not determinative because of important differences in employment practices followed by the West Coast and the Island industries. Evidently the only basis for the majority opinion is that, since the inception of collective bargaining in the industry, minor supervisors have been included in the bargaining unit. According to the record, the history of collective bargaining among longshoremen in the Islands began in 1941, and since that time only five collective bargaining contracts have been executed. Even assuming that supervisory employees such as gang foremen and leadingmen have been included in the units covered by these five contracts, an assumption not clearly supported by the record,¹ this

¹ It appears that each of the Companies involved in these contracts has supervisory hierarchies structurally different from those of the others, and that job titles are not always descriptive of the actual job duties throughout the industry.

does not constitute a history or tradition which the Board has heretofore held sufficient to warrant departure from its general rule that supervisory employees are not entitled to a voice in the selection of a bargaining representative or to participate in the affairs of the rank and file employees whom they supervise. In the *Matter of Shell Petroleum Corporation*,² a union contended that in substantially all collective bargaining contracts between employees and companies in the petroleum refining industry, certain supervisory employees classified as stillmen and treaters had been included in bargaining units, and requested the Board to approve their inclusion in the unit in that case. The Board noted that "the history of trade union organization in the industry, itself of recent origin, fails to show a long practice antedating the National Labor Relations Act and reflecting general acceptance and accommodation by employers, of including supervisory employees under collective bargaining contracts," and denied the request. In the *Shell* case, decided by the Board on May 5, 1944, the first exclusive bargaining contract in the industry had been signed about 1934, and the entire history of effective collective bargaining consisted of about 10 years' experience. In the Islands, collective bargaining among longshoremen began not more than 5 years ago. Thus, in the Islands' ship-loading industry, any custom which conceivably might exist of including supervisory employees in rank and file units has been formulated during a period when the Board, in dealing with the formation of collective bargaining units in other industries, has consistently held that supervisory employees must be excluded from such units and has frequently applied sanctions to enforce that policy.³ The Board's recognition of the practice of the printing trade unions in admitting foremen to membership and including them in collective bargaining contracts was predicated upon the fact that the practice arose long before the adoption of the National Labor Relations Act.⁴ Recognition of such a practice by the Board in this case can only be justified upon the proposition that persistence will legitimize conduct which is otherwise illegal.

² 56 N L R B 318, 324, 325, 326.

³ For example, in *Matter of Brown Company*, 65 N L R. B. 208, the Board ordered an employer to disestablish a labor organization as the representative of any of its employees where the sole evidence of the illegality of the organization consisted of the fact that certain supervisory employees had signed a petition calling for the formation of the organization.

⁴ See *Matter of Maryland Drydock Company*, 51 N. L. R. B. 640.