

**A. & S. Transportation Co. and Seafarers International Union of North America, Atlantic & Gulf District, AFL-CIO, Petitioner.** *Case No. 2-RC-8321. September 7, 1956*

**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 Nathan Cohen, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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.<sup>1</sup>

3. 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 parties agree that the appropriate unit consists of all persons employed by the Employer in the operation of vessels that it owns or operates in the movement of sludge in the Port of Newark area to sea, who are concerned with the management, navigation, and operation of vessels and also the combination relief and dockmen in the Employer's employ, excluding guards, watchmen, professional employees, and supervisors as defined in the Act. They disagree, however, as to the unit placement of three individuals.

At present, the Employer operates only 1 nonself-propelled barge and employs only a single 8-man crew, including the 3 individuals in dispute. When the barge leaves the dock, it is lashed alongside of a tug for approximately the first half of its journey, but is hauled by the tug on a line tow when it reaches the open sea. After the sludge is pumped out at sea, the same procedure is followed in returning to the dock. Loading the barge takes about 14 hours and the round trip at sea lasts approximately the same length of time.

*The captain:* The Employer and the Petitioner contend that the captain of the barge should be excluded from the unit as a supervisor within the meaning of the Act, while the Intervenor would include him. The record shows that the captain is the master in full charge of the vessel and the crew and that he has the authority to hire, discharge, direct, and discipline employees. We find that the captain is a supervisor and shall exclude him from the unit.

<sup>1</sup>Local 333, United Marine Division, National Maritime Union, AFL-CIO, was permitted to intervene upon the basis of a showing of interest.

The *assistant captain*: The Employer would also exclude the "assistant captain" as a supervisor. The Petitioner and the Intervenor contend that he should be included in the unit.<sup>2</sup>

The assistant captain takes charge of the barge at regular intervals whenever the captain is off duty, *e. g.*, when the latter is asleep. When he is in command, the assistant captain has the same duties as the captain in providing for the safety of the vessel and the crew and in running the ship. In such capacity, the assistant captain exercises independent judgment in responsibly directing the members of the crew in the performance of their duties, including the wheelsman in steering the barge. As the assistant captain exercises supervisory authority for regular and substantial periods of time, we find that he is a supervisor within the meaning of the Act and shall exclude him from the unit.<sup>3</sup>

The *clerk*: The Petitioner contends that the clerk should be excluded from the unit on the alternative grounds that (a) her interests are allied with management; (b) she is an office clerical employee; or (c) she is a confidential employee. The Employer and the Intervenor would include her in the unit. The clerk, Mrs. Van Doren, is the captain's wife and lives and works aboard the barge. Among her duties are the making and keeping of the records for the barge, including loading and payroll records, as well as the ship's log. She and the captain share responsibility for buying supplies and materials used in the Employer's business which may total as much as \$18,000 per month. She does not perform any manual labor and does not work in conjunction with any other crew member. In view of the foregoing, including the fact that she is authorized to make substantial purchases for the Employer's account, and upon the record as a whole, we find that the interests of the clerk are allied with management and shall exclude her from the unit.<sup>4</sup>

We find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All persons employed by the Employer in the operation of vessels that it owns or operates in the movement of sludge in the Port of Newark area to sea, who are concerned with the management, navigation, and operation of vessels and also the combination relief and dockmen in the Employer's employ, excluding the captain, assistant captain, clerk, guards, watchmen, professional employees, and supervisors as defined in the Act.

<sup>2</sup> In the alternative, the Intervenor asserts that, if the Board finds the captain to be a supervisor, the assistant captain should also be excluded, as his duties are identical with those of the captain.

<sup>3</sup> *Sears, Roebuck & Company*, 112 NLRB 559 at 562

<sup>4</sup> *Swift & Company*, 115 NLRB 752

5. The Employer requests, because of the high turnover rate among the employees in the bargaining unit, that the Board direct the use of a payroll eligibility date as close as possible to the date of the election. However, we see no reason to depart from our usual practice as set forth in the Direction of Election, which we believe provides for a sufficiently current payroll eligibility date.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

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**Non-Corrosive Products Company of Texas, Petitioner and Local 130, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO.** *Case No. 39-RM-50. September 11, 1956*

#### DECISION AND ORDER

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

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 employees of the Employer.

3. No 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, for the following reasons:

The Union contends that the petition is barred by a contract between it and the Employer, executed September 10, 1955, effective until July 1, 1956, and from year to year thereafter, absent notice of termination given by either party to the other 60 days prior to the anniversary date. The Employer asserts that, although it did not give the required notice to the Union and did not file the present petition until after the automatic renewal date of the contract, proper notice of termination was given by the Houston Chapter, Painting and Decoration Contractors of America, (hereinafter called PDCA), and, therefore, the contract is not a bar to a present determination of representatives.

PDCA is a multiemployer association of painting and decorating contractors in the Houston, Texas, area, and, although the Employer is engaged in painting and decorating, it is not a member of the association. For many years PDCA has bargained for its members with the