

On the basis of the foregoing it appears, and we find, that on and after January 1, 1957, the employee complement at the Employer's plant will be a substantial and representative segment of the total complement which the Employer anticipates employing by July 1, 1957, and that the timing of any further expansion beyond that date is uncertain. Under such circumstances, and as this date has passed, we find that the employees now employed are entitled if they so desire to select a representative for the purposes of collective bargaining, and we therefore find no merit in the Employer's contention that the petition is premature.⁴ We shall, accordingly, provide for an election to be held on a date to be selected by the Regional Director; eligibility to vote shall be determined by the payroll period immediately preceding the issuance of a notice of election by the Regional Director.⁵

[Text of Direction of Election omitted from publication.]

⁴ *Springfield Body & Trailer Co.*, 112 NLRB 1287, 1289; *General Electric Company*, 106 NLRB 364, 365-368.

⁵ *Armstrong Cork Company*, 115 NLRB 1578, 1580-1581.

American Mail Line, Ltd. and Joseph H. Edwards. *Case No. 19-CA-1274. January 14, 1957*

DECISION AND ORDER

On July 2, 1956, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief, and the Respondent filed a brief in support of the Trial Examiner's findings.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.¹

[The Board dismissed the complaint.]

¹ The General Counsel excepts to the alleged failure of the Trial Examiner to rule on LeDoux's credibility. However, we have examined the record as a whole and find that LeDoux's testimony supports the Trial Examiner's ultimate factual findings, and that certain minor discrepancies do not, in the light of all the testimony, affect his credibility, nor the ultimate conclusions reached by the Trial Examiner. Accordingly, we find no merit in the General Counsel's exceptions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by Joseph H. Edwards, an individual, against American Mail Line, Ltd., Seattle, Washington, herein called the Respondent, the General Counsel of the National Labor Relations Board issued his complaint dated April 6, 1956, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

In respect to unfair labor practices the complaint alleges that on or about August 29, 1955, the Respondent discharged Joseph H. Edwards because he was not then a member of Marine Cooks & Stewards, AFL-CIO, a labor organization.

Prior to the hearing, which was held May 1, 2, and 3, 1956, before the duly designated Trial Examiner in Seattle, Washington, the Respondent filed its answer, admitting certain of the jurisdictional allegations of the complaint, but denying the commission of unfair labor practices. The General Counsel and the Respondent were represented at the hearing and were afforded opportunity to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. A brief from counsel for the Respondent has been received and considered. A stipulation to correct the record in certain particulars is approved and hereby made part of the record.

Upon the entire record in the case, and from my observation of the witnesses,¹ I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Based upon the allegations of the complaint as conceded in Respondent's answer, I find that American Mail Line, Ltd., is a corporation organized and existing by virtue of the laws of the State of Delaware, having its principal office and place of business in Seattle, Washington. Respondent is engaged in the operation of combination freight and passenger vessels between ports located in the States of Oregon, Washington, and California and ports located in Japan, the Philippine Islands, and other places in the Orient. From the conduct of its business, the Respondent receives annual revenues in excess of \$5,000,000. I find that Respondent's operations affect interstate commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE ORGANIZATION INVOLVED

Marine Cooks & Stewards, AFL-CIO, herein called the Union, is a labor organization affiliated with Seafarers International Union of North America, Pacific District, admitting to membership employees of the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICE

Only the reason for the discharge of Edwards is at issue. There is no assertion that any other conduct of the Respondent violated the Act. Edwards, a cook of long experience, worked as second cook and baker aboard the *Washington Mail*, one of Respondent's vessels, from October 1953 until his discharge in August 1955. At all times Edwards was a member of a labor organization other than the Union. In May 1955 the *Washington Mail* sailed from Seattle with Edwards in his accustomed job in the stewards department, but with a relief master, Walter Dinsmore, and a relief chief steward, Walter LeDoux. At the time of sailing, a question concerning the representation of members of the stewards department aboard all of Respondent's vessels had arisen and until its resolution an arrangement had been worked out whereby replacements in stewards department ratings were obtained through a central registration office without regard to union membership. Al Hambeau, the chief steward regularly employed aboard the vessel, chose in May to stay ashore for a trip. LeDoux was assigned to the vessel from the central registration office for the trip that Hambeau did not make. He was then and at all times material herein a member of the Union. LeDoux testified in his deposition that he and one Milton Berger were the only 2 members of the Union in a stewards department consisting of 12 men; the others were, in LeDoux's belief and in probable fact, members of a rival labor organization. According to LeDoux he found the condition of the vessel in respect to

¹ The testimony of Dewey Paine and Walter C. LeDoux was taken pursuant to stipulation by depositions prior to the hearing. I had no opportunity to observe either of these witnesses.

those areas for which he was responsible to be deplorable. The dry storeroom was filthy, discipline was lax, and some of the men were incompetent. On an occasion shortly after the vessel left Seattle for Yokohama, according to LeDoux, he observed that Edwards did not prepare an item which the published menu required. He upbraided Edwards for this delinquency and thereafter had only occasional difficulty with him in that respect. Throughout the voyage, however, LeDoux testified, Edwards' baking, except for pies, was poor and frequently his baked preparations were left untouched on the tables. When the vessel reached Singapore, LeDoux learned that the Union had been successful in a Board-conducted election and had become the certified representative of all unlicensed personnel in the deck and stewards departments. He acquainted the master, Dinsmore, with this development. Still later, when the vessel was proceeding to Los Angeles from the Philippines, LeDoux prepared a report on all stewards department personnel which he showed to the master. Over LeDoux's signature and with the signed concurrence of the master, this report was sent to Respondent's head office in Seattle. It stated that seven of the employees in the stewards department, including Edwards, had exhibited characteristics which, in LeDoux's opinion, made them unsuitable for further employment.² The particular complaint concerning Edwards was that he refused to follow menus and was uncooperative and surly. Among those recommended for dismissal was Berger, the only member (other than LeDoux) of the Union. The remaining four employees, and particularly the chief cook, George Foster, were praised as competent, cooperative, and in almost every respect desirable employees. None of these last was a member of the Union and all had some identification with the rival organization. At about the time of the mailing of this report, LeDoux wrote a letter to the Union's office in Portland, which later was printed in the union publication on August 12, 1955, saying that he had 10 nonunion men aboard the vessel, that it took him about 2 months to get the ship cleaned up and "these guys" straightened out, but that most of them were competent. When the vessel arrived in a Los Angeles harbor, patrolmen of the Union boarded the vessel and told LeDoux that because Berger was the only union member aboard Berger would have to be designated as a delegate to represent employees in the stewards department in such matters as might be in dispute with the master. LeDoux replied that Berger because of his work attitude was not a proper person to fill such a post. When the vessel arrived in San Francisco, another representative of the Union boarded it and, telling LeDoux that there had been some trouble with the United States Customs Service, recommended that all in the stewards department be discharged as a "bunch of dope carriers."³ LeDoux referred him to the master. The vessel next stopped at Longview, Washington. A port steward, representing the Respondent, boarded the vessel and, in conference with the master and LeDoux, the question of discharging members of the stewards crew was discussed. LeDoux recommended, he testified, that all seven whom he had denounced in his report to the Company be let go, but no final decision in the matter was reached in his presence. LeDoux left the vessel 4 days later when it arrived in Portland and the regular steward, Hambeau, returned to his job.

Walter Dinsmore, the master, testified that throughout the voyage he received numerous complaints from LeDoux concerning individuals in the stewards department. The complaint as to Edwards was that he failed on occasion to follow menus and that his baking was not acceptable. When the vessel arrived in Los Angeles on August 16, Dinsmore wrote what is known as a voyage letter to the operating department of the Respondent in Seattle, detailing the incidents of the voyage and, in comments concerning personnel, saying that the stewards department was below average in quality. Dinsmore expressed the opinion that the chief steward seemed to lose control of his department after the news spread that the Union had won the election. He observed that most of the men in the stewards department were members of the losing union and that they probably assumed they would lose their employment at the end of the voyage. Dinsmore testified that his signature on the chief steward's personnel report was intended to indicate no more than the fact that he had read it before it was dispatched. However the single word *approved* appears over his signature and it is difficult for me to believe that Respondent's officials in Seattle could have come to any conclusion other than the indicated one, that the recommendations had the approval of the master. Dinsmore explained that when he said in his voyage letter that members of the rival union anticipated discharge he was of the opinion that such a result would naturally flow from the lost election, but that before he took any action to discharge anyone he learned that such a rule was not and could not be applied. In

² Because the complaint alleges discrimination only as to Edwards, I have not considered the reasons for the other discharges.

³ There is no assertion here that this accusation had substance.

San Francisco, representatives of the Union asked Dinsmore to give immediate effect to LeDoux's recommendation of discharge. Dinsmore refused to do so. According to Dinsmore, he listened in Longview to the chief steward's complaints about the 7 individuals concerning whom recommendation of discharge had been made and decided that it was necessary to take such action only in respect to 3. Before discharging Edwards, Dinsmore testified, he consulted with Foster, the chief cook. In response to Dinsmore's questioning, Foster said, "He had seen better and had seen worse." Because 2 of the individuals affected by LeDoux's recommendations were on for only 1 trip, it was unnecessary, according to Dinsmore, to do anything to get rid of them except to permit them to leave the vessel as they were in any event scheduled to do. Another, Berger, was let go because there no longer were passengers aboard which required the service he was hired to give. A fourth was in the master's opinion a good enough employee to retain if he could satisfy his employer that he was in good physical condition.

Edwards testified that he had never heard complaints from anyone concerning his baking or directed to his work performance in any respect until LeDoux came aboard. On the only occasion when, according to Edwards, he was accused of deviating from the menu, it was in a situation where it was physically impossible to prepare the item which the menu advertised. Edwards agreed that he was criticized sharply by LeDoux for this variance, but asserted that he could not have done what LeDoux required of him. George Foster, a member of the same union as Edwards and one whom it seemed to me was not disposed to exaggerate in his testimony to favor either contention in this matter, testified that Edwards was a very good cook and a "fair" baker. Foster testified that he had heard of some difficulty between LeDoux and Edwards concerning a menu change, but had no firsthand knowledge about it. It is inferable from his testimony that there was only one such occasion and that LeDoux at no time complained to Foster about Edwards.

Al Hambeau, the regular chief steward, testified that Edwards worked under his supervision for a couple of years and that he had no complaints about him.

Willard Baker was the purser during the voyage and in that capacity was something akin to a chief clerk to the master. Baker typed, at LeDoux's request, the report concerning stewards department personnel which has been referred to. He had custody of what might be termed personnel cards for those working in the stewards department and I suppose elsewhere on the vessel. These cards remained aboard the vessel and in Baker's possession from the time that an individual was hired until the time that he left, and showed the date of employment, the date of leaving, and the reason for separation. As to Edwards, Baker noted on the personnel card which he then sent in to the head office of the Respondent that on August 28, 1955, Edwards was taken off the vessel at Portland by the Union at the steward's request. In his testimony Baker explained that no one told him that this was so but that he knew of the letter report by LeDoux and assumed that in consequence the Union had demanded that Edwards be discharged. Later in his testimony he said that his assumption was that Edwards had lost his job because of the recommendation of LeDoux to the Respondent.

Following his discharge, Edwards made application to the Employment Security Department of the State of Washington for unemployment compensation, which was granted him. The department reported to Edwards that, according to his Employer, he was removed from the vessel by the Union at the request of the chief steward in order to give other members of the Union employment.

William Rosene, Respondent's labor relations representative, agreed that he received a copy of this report but testified that the misstatement of reason for discharge did not cause him concern. Edwards, he testified, was entitled to the benefit which he received and whatever the reason found by the department for the discharge, the tax liability of the Employer was not affected. Rosene explained that in all probability the information reported by the department as coming from the Employer was obtained by a telephone call to his office and supplied by some clerical employee reading from the personnel card sent in by Purser Baker. LeDoux, who recommended the discharge, and Dinsmore, who effectuated the recommendation, both denied that any consideration of union policy or membership entered into the recommendation or decision.

If I understand the theory of the General Counsel in this matter correctly, it is that LeDoux accomplished the discharge of Edwards because the latter was not a member of the Union. It is clear enough, and I find, that LeDoux did not possess authority to discharge but had to persuade the master to exercise the power to that end. The evidence is sufficient, however, to establish that LeDoux occupied a supervisory status in regard to steward department personnel and that in the discharge of his duties he was expected to inform the master of his opinions as to the

competency of the crew which he directed with appropriate recommendations affecting their tenure. Two questions then must be answered. Did LeDoux's recommendation as to Edwards derive from a desire to replace him because he was not a member of the Union? If so, then a violation of the Act is described for a recommendation by a supervisor upon such considerations designed to accomplish a discharge is a restraint and coercion within the meaning of the Act. Next, did the master discharge Edwards because of LeDoux's recommendation? If so, the discharge was unlawful and the complaint must be sustained.

It is not contended and upon this record cannot be found that the selection of LeDoux as chief steward was made upon any basis other than that he was next in line at the central registration office for employment. The Respondent had no opportunity to choose a man known to have any union predilection. But LeDoux did turn out to be a stout believer in the Union and one convinced that union members as opposed to those who were not were, in general at least, considerably more competent and therefore more desirable in stewards department ratings. To bring about the replacement of all who were not members of the Union, it is impliedly argued, must have been LeDoux's design.

I do not find that the evidence, upon a fair appraisal, supports the General Counsel's contention in this regard. It is notable, of course, that LeDoux included in his recommendations of discharge that Berger, the only member of the Union in the crew, be let go. I consider it significant, also, that the chief cook, Foster, and Stewards Mosely, Rasby, and Redditt, none of them a union member, were highly recommended. If LeDoux was attempting to replace all those in his department with union members, it seems unlikely that he would have singled out for praise any who were not members. But why was Edwards discharged at a time when Foster, as an example, was highly praised?

The evidence does not persuade that Dinsmore would have discharged Edwards without a recommendation to that effect from LeDoux. I think it probable that Edwards' qualifications were most objectively appraised by Foster, the chief cook under whom he worked. Edwards had been good enough to hold the job for nearly 2 years, and I consider it extremely doubtful that one whom Foster described as a very good cook though only a fair baker, would have been discharged as he was except for the recommendation of LeDoux. One comes back to LeDoux and his motivation. I am unconvinced that it derived from considerations of union membership or policy. It is my conviction, based upon the evidence, that LeDoux was a strict disciplinarian; that he demanded a quality of work performance which may have been unreasonable; and that he thus failed to endear himself to his crew. The selection of Edwards for discharge seems to me likely to have been based upon a perhaps unfair appraisal of Edwards' work performance. Indeed, the Respondent has since offered Edwards similar employment on another of its vessels. It may well have been that he expected more of a second cook and baker than he had a right to expect. Certainly, no other reason is suggested by this record to explain why nonunion member Edwards was not acceptable to LeDoux at the same time that nonunion members Foster, Redditt, Rasby, and Mosely were desirable. Edwards' identification with another labor organization was no sharper than that of the others.

The explanation of the entry on Edwards' personnel card attributing his discharge to a union policy or request merits belief. Baker, who made the entry, was in no manner concerned in the discharge, and his conclusion is but an opinion which the record does not support.

The General Counsel has presented here some pieces of evidence which, viewed separately, seem to indicate that they are fragments of a whole picture of discrimination, but when fitted together with other components they retreat into true perspective.

I find that there was no discrimination, within the meaning of the Act, attending the discharge of Joseph Edwards.

CONCLUSIONS OF LAW

1. Marine Cooks & Stewards, AFL-CIO, affiliated with Seafarers International Union of North America, Pacific Division, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The operations of the Respondent described herein are in commerce and affect commerce within the meaning of Section 2 (6) and (7) of the Act.

The Respondent has not discharged Joseph H. Edwards in violation of Section 8 (a) (1) and (3) of the Act.

[Recommendations omitted from publication.]