

American President Lines, Ltd. and Peggy Jo Shaw

Marine Cooks and Stewards Union, Member, Pacific District, Seafarers International Union of North America, AFL-CIO and Peggy Jo Shaw. Cases Nos. 20-CA-1425 and 20-CB-620. September 24, 1959

DECISION AND ORDER

On May 26, 1959, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the consolidated 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 and a supporting brief and the Respondents filed briefs in support of the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

The Board has reviewed the rulings made by the Trial Examiner 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 the cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The appropriate unit in which the Union was certified and for which a valid union-security contract was executed consisted of "all unlicensed seagoing employees" with certain specified exclusions. The contract required all employees covered to join the Union within 31 days of their employment.

The Charging Party, Shaw, when hired for work on the SS *President Wilson*, was classified as recreational director. The Company did not have such a job title prior to the execution of the contract.

The General Counsel contends that Shaw's dismissal for refusing to join the Union, when requested to do so more than 31 days after her employment, was a violation of the Act because (1) the job of recreational director fell outside the scope of the unit which the Board had found appropriate and (2) even if it fell within it, the recreational director was a professional employee who had not been polled, pursuant to the requirement of Section 9(b) of the Act, as to whether or not she wished to be included in a unit with nonprofessionals. The Respondents oppose both contentions.

Originally, a stewardess supervised all children on the ship above the age of 2 years. The stewardess, concededly, was included in the certified unit. Following the execution of the contract, there was a

sharp increase in the number of children carried on board and an additional person was needed to handle them. Accordingly, the job formerly held by the stewardess was divided into two parts, the stewardess continuing to care for the children between the ages of 2 and 7 and the person in the newly created post of recreational director caring for the children over 7. As a result of separating the children into these age groups, it necessarily developed that the duties of the stewardess and recreational director varied in some respects. Obviously, the younger children needed more personal attention and were more restricted in their activities. By limiting the age spread of the children under the recreational director, it was possible to diversify and enlarge upon certain of their activities. Thus, the recreational director was required to possess skills and qualifications somewhat different from those of the stewardess. However, it is clear from the record that her job is merely an extension of the stewardess classification and is basically similar to it. We find, therefore, that the recreational director classification clearly fell within the description of the unit which the Respondent Union was duly certified to, and did, represent.¹

We further find that the recreational director on the SS *President Wilson* was not a professional employee within the meaning of Section 2(12) of the Act. Consequently, there was no requirement that she be afforded an opportunity to vote on whether or not she wished to be included in the unlicensed employees unit. Shaw's duties consisted primarily of keeping the children over 7 diverted so as to enable their parents and the other adult passengers to enjoy a more relaxing trip. To accomplish this, she organized various athletic events, project groups, and social activities. Unlike a teacher, Shaw's job was aimed at recreation, not education, and any educative aspects of it were merely incidental and of no particular significance. In keeping her charges occupied, the recreational director was not engaged in work "predominantly intellectual . . . in character . . . requiring knowledge of an advanced type in a field of science or learning. . . ." As Shaw was not a professional employee within the meaning of the Act and as her job properly fell within the unit covered by the Respondents' union-security contract, we shall dismiss the complaint.

[The Board dismissed the complaint.]

¹ The Trial Examiner alludes to the fact that the recreational director would have been denied representation were she not included in such unit. Our decision is in no way influenced by such fact.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner in San Francisco, California, on February 10, 11, 13, 1959, on complaint of the General Counsel of the National Labor Relations Board, herein-

after the Board, and the answers, respectively, of the Respondent Company, American President Lines, Ltd., and the Respondent Union, Marine Cooks and Stewards Union, Member, Pacific District, Seafarers International Union of North America, AFL-CIO. The issue litigated is whether the Respondent Union, in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, 61 Stat. 136, hereinafter the Act, caused the Respondent Company to terminate the employment of one Peggy Jo Shaw, the Charging Party, and whether the Respondent Company in violation of Section 8(a)(1) and (3) of the Act, acquiescing in the Union's demand, discharged the said employee. The General Counsel argued his position orally upon the record, and the Respondent Company and Respondent Union, respectively, filed briefs.

Upon the entire record and my observation of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT COMPANY

American President Lines, Ltd., a Delaware corporation with its principal office in San Francisco, California, is engaged in transporting passengers and freight on vessels owned and operated by it from ports located in the State of California to ports located in other States and in foreign countries. It annually purchases supplies, equipment, and materials originating from sources outside the State of California valued in an amount exceeding one million dollars. It annually receives an amount in excess of one million dollars for transportation of cargo from ports located in California to ports in other States and foreign countries.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Qualifications required for recreation director and the nature and scope of its duties*

This case has to do with the discharge of Peggy Jo Shaw as recreation director aboard the Company's SS *President Wilson*. Shaw was hired in this position in August 1956, and was discharged in May 1958, upon her refusal to accede to the Union's demand, acquiesced in by the Company, that she affiliate with the Union pursuant to the Union's admittedly valid union-shop contract with the Company. Shaw's position, and the position of the General Counsel in this proceeding, was and is that recreation director is a professional position within the meaning of the Act and, accordingly, Shaw could not lawfully be subjected to the requirements of an appropriate unit of nonprofessionals without her consent. Alternatively, the contention is that the position of recreation director, newly created *after* the Board's certification of the Union as bargaining representative in an appropriate unit, because of the qualifications required of one filling the job and the nature and scope of its duties, was not in any event properly included in the unit of which the Union is the certified bargaining representative.

If it be found that the position of recreation director satisfies the Act's definition of "professional employee," Shaw's discharge was unlawful, because Section 9(b) of the Act provides, *inter alia*, that the Board shall not decide "that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit. . . ." No contention is made that there were any professional employees in the unit except Shaw or that Shaw was afforded an opportunity to vote on whether or not she desired to be included in the unit.

We look first, then, to the Act's definition of professional employee and appraise the qualifications required of one filling the job of recreation director and the nature of the duties of recreation director aboard the SS *President Wilson*, in the light of that definition.

Section 2(12) of the Act provides:

The term "professional employee" means—

- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a

given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Robin B. Hatfield, the Company's manager of industrial relations, testified that the position of recreation director was established aboard the *President Wilson* and *President Cleveland* about April 1956, on an experimental basis. "It was something we had not done before and it hadn't been tried by other operators," he testified. The recreation director directs the activities of children aboard ship in the 7 through 12 age group and teenagers through 19 years of age. The number of children in this grouping average from 45 to 80. A nurse is in charge of infants through 2 years of age and a stewardess of the preschool 2 through 6 years of age group. It is not disputed that the position of stewardess is included in the appropriate unit. Prior to the establishment of the position of recreation director, the stewardess had been in charge of the activities of all age groups except infants. It appears, however, that the duties of the stewardess were largely of a custodial nature, and, with respect to the 2 to 6 years of age group, continued to be after the creation of the new position of recreation director. The duties of the recreation director, on the contrary, are varied and encompass the direction of such activities as swimming, deck games, arts and crafts, talent shows, folk dancing, illustrated films, and study assignments. The job was set up, according to Hatfield, to alleviate passenger complaints and as a means of developing the best way to keep "the little monsters" out of the hair of the adults. To insure the success of the position thus created, qualifications were established for the selection of personnel to fill it. These qualifications are succinctly stated below in the Company's letter to the Union, dated June 2, 1958, wherein it acceded to the Union's claim that the position fell within the appropriate unit of which the Union was bargaining representative.

(1) **ACADEMIC:** College education with a major of Physical Education or Recreational activities (a teacher's credential for teaching in secondary grades will also be acceptable). A Red Cross Swimming Instructor's Certificate.

(2) **EXPERIENCE:** Substantial experience as a Playground Director (Camp Counselling or Direction, Secondary School Teaching, or Children's activity direction will also be acceptable).

(3) **PERSONALITY:** Must be quiet and pleasing, inspiring confidence, good appearance and mannerisms.

Suffice it to say that Shaw met the qualifications, having a college degree, some specialized training and experience in education and the direction of recreational activities, a teacher's certificate, etc. She was in fact, according to Hatfield, "over-qualified" for the job. Our primary concern, however, is not whether Shaw was qualified to perform work that satisfied the Act's definition of professional employee—there is no doubt she was—but whether the job of recreation director required the performance of work that met the statutory definition. Hatfield testified that the qualifications were actually set higher than required by the job because of the great number of applicants due to the "lure of the sea and the glamour and romanticism connected with women going to sea," and that the standard thus established eliminated 80 to 90 percent of applicants. He admitted that because of the qualifications set for the job the Company was able to recruit personnel of professional status though, according to him, such requirements as teacher's qualifications and credentials were not actually necessary in the performance of the duties of recreation director. He testified that actually the most important qualification for the job was the "personal qualifications of that ability to keep the interest and have the confidence of both the children and their parents, that they are being well cared for." His testimony is partially borne out by the fact that Shaw's successor in the job was a male "trainee" who had only a general college background.

Coming to a closer scrutiny of the job itself, we find that it is under the supervision of the chief purser who, in addition to other duties, directs recreational programs for adults aboard ship, coordinates all recreational programs including those for children, but does not himself actually participate in the direction of such programs

for children other than "to keep them out of the elevators and off the chandeliers." It appears from Shaw's testimony that while she was answerable to the chief purser as her superior, there was little if any actual day-by-day supervision of her work. When she was hired the program of her activities as recreation director was canvassed with her superiors, and she was given a schedule prepared by her predecessor in the job. Shaw testified that she prepared and organized a program and submitted it to the director of shipboard services on reporting for work, but admitted that she made no substantial or drastic changes in the program of activities prepared by her predecessor and generally adhered to it. Concerning the nature and scope of her original contributions to the programming, if any, we are not enlightened. Admittedly, she had no authority to make substantial revisions in the program without clearing with her superior. In the actual effectuation and scheduling of established activities, however, she was given a sufficient latitude in the application of her own judgment and discretion to meet the requirements of Section 2(12)(a)(ii) of the Act. It further appears that the work was sufficiently varied in character partially to satisfy the requirements of subsection (a)(i), and that the requirements of (a)(iii) are met. The real problem arises with respect to the requirement in (a)(i) that the work performed shall be "predominantly intellectual."

Shaw's testimony of her activities as recreation director emphasizes the educative nature of the job. Thus she testified that with respect to children traveling with school or study assignments, she supervised their lessons and set up study halls if required, and that she has had study groups for teenagers through high school. She further testified that there were units of study of the different countries visited, giving generally the history, background of each country and its people, its customs, with the study supplemented by illustrated films which she selected and which were run by an engineer at her request. With respect to arts and crafts, she testified that she taught painting, modeling, leather crafts, jewelry making, knitting, etc. She also instructed the children in folk dancing, and organized and directed theme parties, birthday parties, talent shows, and similar festivities. In all of these fields, as well as in the more athletic field of swimming and various deck games, she had received specialized training in college and in various teaching experiences she had had since leaving college. In sum, relying solely on her testimony on direct examination, one might draw an impression of children on shipboard above the age of 6 constituting a rather serious study and work group presided over and directed by one primarily devoted to the development of their mental skills and talents, with intervals for play and refreshment. In short, one might conclude that the position might more properly have borne the title "Education Director."

A closer scrutiny of the actual scheduling of activities discloses, however, that recreation director was, after all, an apt and accurately descriptive title, for not only did these activities follow an established program but they were predominantly recreational or athletic in character. Admittedly, on some voyages there were few, if any, teenagers aboard, and therefore most of the activities centered around children 7 through 12. And while Shaw testified that she prepared a daily schedule of activities, her testimony on cross-examination shows that these "normally" followed a set pattern. Swimming was from 9 to 10 a.m., followed by refreshments, for which 15 minutes was allowed. For the next hour, according to the "usual" program, there was deck games, shuffleboard, deck tennis, ping-pong, etc. There was time out until 1 p.m. then for lunch, after which came another hour of swimming. According to Shaw, the balance of the afternoon until 4:30 or 5:00, was given over to a program of various and varying activities, such as arts and crafts, music, folk dancing, children's theatre, and more deck games. The program was resumed at 6:30, when, according to Shaw, there would be units of study, music, dancing, and story-telling. Shaw would explain to the children the rules and regulations regarding children aboard ship, safety rules, and shipboard life in general as a part of the study unit. Continuing, Shaw testified, "we had music appreciation; we had story hour that consisted of either reading a complete novel during the voyage, a section per evening, or we had the telling of stories; or we had records which would give detailed children's stories; or we had planning for the talent show, rehearsals for it. It varied in the evening program."

A description of the job from a completely objective source, conveying both the essential content as well as the "feel" of the work performed by the recreation director, is found in the report of Shaw's predecessor in the job, a report which Shaw was shown when she was employed and which she admittedly adhered to in general, making such changes in scheduling as were required by weather conditions and the like:

Schedule for Program

9:00 to 10:00	Swimming
10:00 to 11:00	Crafts—Music—Reading—Games—Indoor and outdoor Sports
1:00 to 2:00	Swimming
2:00 to 4:30	Music—Story Records—Games—Movies—Crafts—Tours of the Ship
6:30 to 8:00	Quiet Games—Tournament—Bingo—Storytime—Dancing and Musical Games

Sail from San Francisco at 4:00 p.m. Start to get the children organized for the evening program. Contacts are the Children's Playroom and the Dinner Table that evening and insert your program in the Ship's Paper. You do not get the full group the first night but with the program in the Ship's Paper and contact at the swimming pool you immediately start to organize. The first day out show a movie, after the movie tell the children you will meet them at 6:30 and tell them a special event you are going to have. The evening program starts with name games so the group will become acquainted with the recreation director and the other children.

The program progresses in the manner as scheduled. You start your tournaments, talk about the coming talent show and work on crafts. Also inform the children of the swimming races and start your swimming lessons as soon as possible. Also begin your outdoor tournaments if weather permits. Try and get the children interested in craft projects that take a few days to finish. This keeps their interest and their minds occupied. Take the children on a tour of the Bridge, they always enjoy steering the ship and finding out what makes the ship run. If the children are ten and over take them on an engine room tour. The Mates and the Engineers are always glad to help you with these matters.

If you have time after leaving Honolulu have another checker, chess, sorry or any other type of tournament you may think of for the evening program. Also if the children get restless take them out on the boat deck and have them run races. They always enjoy active games and races.

Bingo is a wonderful game for evening diversion. We usually start playing bingo at 7:15 and the prizes are five cent candy bars. You have forty five minutes before to have your races, tournaments, story hour, dancing, or various other activities.

We usually have a movie every other day except when we have an extra large group of children then we have a movie every afternoon.

The children enjoy folk and square dancing. They also enjoy the active game records we have. Anything with activity and body movements seem to make a good impression on the children and also take much of their excess energy away.

You can use the program mentioned above all the way to Manila and then start again at Hong Kong or Yokohama. Most of your programing is based on the number of children you carry. You can always be sure of having a full program from San Francisco to Yokohama and Yokohama back to San Francisco. The program around the loop definitely depends on the number of children you have aboard. You have to use your own judgment about your program.

The program can be handled without any trouble. Everyone aboard is very cooperative and willing to help at all times.

The talent show is always the climax of the trip. The children look forward to performing and the adults always enjoy the program. You serve ice cream and cookies after the program and have a party for the children. With this climax all the children and adults leave the Wilson with a very fine impression. I'm sure that anyone taking the job of Recreation Director will find it quite interesting and profitable in their further work.¹

¹ I gather from Respondent Company's brief that a more detailed breakdown of activities made by Shaw's predecessor, occurs in a document identified but not offered in evidence by the General Counsel. Obviously, Respondent Company in making this reference was under the impression that the document was received. Had I been made aware at the hearing of the document's contents I would have required its admission into evidence inasmuch as it apparently (again referring to Company's brief) makes a separate and detailed breakdown of activities as between the 6 to 10 age group and the 11-teenage group, something which the record of this proceeding lacks.

B. *Conclusions on the Professional Employee issue*

Without in any way disparaging the high degree of skill and mental ability required for directing the recreational activities of children aboard ship during a voyage of some 6 weeks' duration, I am of the opinion that this work does not fulfill the statutory requirement of "predominantly intellectual" work "requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes." As an aid to reaching a decision in this matter, the General Counsel has supplied a quantity of material bearing generally on the classification as "professional" of the position of recreation director by other agencies, and its designation as such in scholarly and not-so-scholarly journals of one kind or another. However, concerned as we are with the construction of a statutory definition, not involved in any of the submitted material, material not shown to have had any bearing on congressional intent, and furthermore, concerned as we are with a particular job of recreation director affecting the activities of children aboard ship 7 years of age or older, this material, while possessing collateral interest, is obviously of limited application and no controlling significance. Emphasizing again that we are not primarily concerned with the qualifications Shaw brought to the job but what the job required, it is dubious to say the least that it required "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction in an institution of higher learning or a hospital." Apparently, a general college education with emphasis on physical education or recreational activities was sufficient, and in fact did suffice in the case of Shaw's successor in the job.

Again, without denigration, it must be questioned whether supervision of deck games, the playing of records, dancing, bingo, the screening of motion pictures, and similar *recreational* activities can be said to constitute work "predominantly intellectual" within the meaning of the Act. And yet who could doubt that aboard ship for the some 6 weeks constituting a voyage, the controlling emphasis is recreation, with sufficient variety to keep the youngsters occupied and happy while their elders relax and have fun. I am not unaware of the high degree of artistry which may be brought into play in such activities as story telling, folk dancing, and the development of aptitudes in arts and crafts. It is, I think, a matter of emphasis. I think that we may reasonably infer that the pursuit of such activities aboard ship was of a casual, nonexacting nature. In the matter of arts and crafts, Shaw's predecessor wrote: "Try and get the children interested in craft projects that take a few days to finish. This keeps their interests and their minds occupied." Clearly, the emphasis here is not on education as such but on providing an interesting way in which to keep "the little monsters" out of their elders' hair. I would think that a certain amount of lecturing on the peoples and customs of countries visited, accompanied by informative motion pictures, folk dancing, etc., might be termed "intellectual," but when it is considered that the same voyage is repeated over and over and that a large majority of the children are 12 years of age or younger, I would doubt that such activities, constituting a minor part of the whole, would go very far toward satisfying the statutory definition. In the matter of study hall and school assignments, this record contains no breakdown of the time consumed in such activities or the average number and ages of children involved, but it is a fair inference that quantitatively speaking, it was insignificant. And qualitatively, it was not of such character as to require a teacher's certificate or a major in education from an accredited college. On the other hand, a Red Cross swimming instructor's certificate was undoubtedly a "must," without which no applicant could hope to be appointed to the position. As with other sports, such as professional baseball, football, tennis, etc., a high degree of mental competency and skill is undoubtedly required, but so far as I know no competent authority has seriously described the practice of these professions as intellectual pursuits.

I am further convinced that the duties of recreation director were predominantly of a routine nature. There were variances in the schedule of activities such as would be required to meet weather conditions, conditions of health aboard ship, and the like, as well as the ages of a particular group, but all these variances occurred within a program which remained constant, voyage after voyage, the same program passed on to Shaw by her predecessor. So many hours were set aside for swimming, for deck games, for dancing, for music and story-telling (including records), for motion pictures, etc. In short there was flexibility in the application of an established program of activities but it appears that no authority resided in the recreation director substantially to change the program itself.

Finally, there is "that magical quality of mind called imagination," abundant in the young, to which the General Counsel pays eloquent tribute. I, too, have a tender (albeit, somewhat fearful) regard for it, but we need little adult imagination to envision the chaos and havoc aboard ship if this wonderful natural gift were not submitted to appropriate restraints.² I think the chief function of the recreation director was not to nurture and develop the imagination of the young but to keep the young occupied in wholesome and happy pursuits in order that their elders be spared what otherwise might be the disconcerting and possibly catastrophic results of their "applied" imagination.³

My conclusion is that as recreation director aboard the SS *President Wilson*, Shaw was not a professional employee within the meaning of the Act.

C. Conclusions with respect to inclusion of recreation director in the unit represented by the Union

The appropriate unit in which the Union was certified as bargaining representative was composed of "unlicensed seagoing employees," with certain specified exclusions such as chief steward and associate chief stewards, staff officers, musicians, doctors, nurses, etc. Children later to come under the jurisdiction of the recreation director were then cared for aboard ship by a stewardess and, as previously noted, the stewardess was included, without dispute, in the unit. At the time the dispute arose over the inclusion of the recreation director in the unit, and at all times material herein, she was an "unlicensed seagoing employee," and the position was not named in the exclusions. Therefore, a literal application of the wording descriptive of the appropriate unit, would include the position of recreation director. It is argued with a good deal of persuasiveness, however: first, that the position was not in existence at the time of the certification and therefore it cannot be said that the Board, in its description of the appropriate unit, had the precise issue of its inclusion or exclusion before it, unless in fact, as Respondents argue, it was merely a revision or extension of the stewardess job; second, that it was something more than a mere extension of the stewardess job.

As indicated in Hatfield's testimony, it was substantially more than a mere extension of the stewardess job. Qualifications which had not governed the hiring of a stewardess, were set up, and a program of activities, not previously charged to a stewardess, was established. There are various other indicia of rank and privilege which distinguish the position from that of a stewardess. The stewardess wore a uniform aboard ship; the recreation director did not. The stewardess served food and drink to the children; the recreation director did not. The stewardess had regularly scheduled and posted hours of work; the recreation director did not. The recreation director was not paid for "overtime"; the stewardess was. The recreation director occupied first class passenger quarters; the stewardess did not. I think we must conclude that in setting up new qualifications for the job and by inaugurating a new program of activities, the Company intended to and did establish the position at a higher level than that of stewardess. This is a significant factor, though not necessarily of controlling significance, since it has never been contended, to my knowledge, that a unit was appropriate only if composed of employees of identical rank and job and pay classifications.

In this connection it is interesting to note that the Board in its determination of the appropriate unit (*Pacific Maritime Association, et al.*, 110 NLRB 1647, 1650, 1651) had before it the issue of whether the steward department should be included in the same unit with other unlicensed personnel, without permitting a vote in the matter, and resolved the issue by including all unlicensed personnel, including engine and deck personnel, although there had been a history of separate (albeit somewhat tainted) bargaining on behalf of the stewards as a separate unit. The Board's conclusion was that the "interests of the steward department personnel and of all other unlicensed seagoing employees will be best served if they are represented for collective-bargaining in a single overall unit."

Though not entirely without doubt I incline to the view that the Respondents reasonably concluded that the position of recreation director was sufficiently related to the steward department and other unlicensed personnel to fall within the unit of

² Recommended reading: Richard Hughes' *The Innocent Voyage*, Harper & Bros., 1929; Limited Editions Club, 1944.

³ Possibly, Shaw's predecessor had something like this in mind when she wrote, "Anything with activity and body movements seem to make a good impression on the children and also take much of their excess energy away."

the Board's certification. While Shaw's testimony tended to stress the complete separateness of her functions from those of the stewardess, there was a certain homogeneity in the two jobs, both having to do with the custody and care of children aboard ship and with something less than a clear line of demarcation between the age groups. Thus, children under the age of 7 did have access to the swimming pool, participated in talent shows, and attended, if they wished, the screening of motion pictures, all activities directed by Shaw. The following excerpt from Shaw's testimony on cross-examination is illustrative:

Q. Did you ever have anything to do with the children between the ages of two to six?

A. Yes.

Q. In what respect?

A. Supervision at the swim pool and afternoon theater, and I integrated that group with my talent show.

Granting then the separatedness of their functions and responsibilities, there nevertheless was a relatedness in the jobs of stewardess and recreation director due to their common involvement in the care and custody of children, and, to some extent, the same children.

True, the Company was reluctant to bring the position within the unit, and finally consented only under pressure from the Union, but the reasons for its resistance do not appear to have hinged on a reasonable doubt that the position was encompassed by the Board's certification. Its foremost reason was that it wanted to preserve to itself an unfettered choice in the selection of a recreation director because, as Hatfield testified, the most important qualification for the job was the personality of the director and the "ability to keep the interest and have the confidence of both the children and their parents, that they are being well cared for." A second reason doubtless was Shaw's opposition to representation by the Union. Neither of these reasons is persuasive that the recreation director should be denied—or spared, as the case may be—union representation, and that would have been the result had not the Company acquiesced in the Union's demand, for while Shaw professed a willingness to be included in the purser's unit in which the American Merchant Marine Officers' Association, an independent labor organization, was bargaining representative, she was, to her knowledge ineligible for inclusion in this unit composed wholly of licensed personnel. Therefore with her, it was a case of being represented by the Union or of having no bargaining representation whatever. When it is considered that lacking union representation, the position had none of the *protected* benefits of the Union's contract in matters such as salary, overtime pay, insurance, etc., and that when the position was finally, subsequent to Shaw's discharge, brought under a union contract the salary was substantially advanced, it cannot be said that it served the interests of the job to be entirely without union representation.

Doubtless it will be argued, as well it may be, that subsequent to Shaw's discharge the position of recreation director was shifted to the purser's or staff officers' unit, and therefore it was never appropriately included in the unit represented by the Union. The change occurred when an affiliate of the same International as the Union became representative of the purser's unit, succeeding the independent labor organization which had previously functioned in that capacity. When this change occurred the Union apparently ceded jurisdiction over the job. My opinion in the matter is that the most this shows is that the position of recreation director was appropriately included in the purser's unit when that became possible, but as long as inclusion in that unit was denied unlicensed personnel, and recreation director was unlicensed personnel, it does not follow that the position of recreation director did not qualify for inclusion in the only unit available to it for union representation. It may well be that Shaw for reasons personal to herself or out of conviction that representation by the Union would lower her prestige or, as she testified, prove a detriment to her in her "professional work in later years," refused to affiliate with the Union, but it is not Shaw's view of the matter which must prevail but the nature of the position itself and her views are material only to the extent that they assist us in determining the nature of the position. Convinced as I am that the position, while generally and in layman's terms professional in character, did not meet the requirements of the Act's definition of "professional," I think Shaw had no choice in the matter except the choice which she exercised. In other words, such doubts as I have in the matter have not been resolved in the General Counsel's favor by what I regard as a predominance of the material and probative evidence. Accordingly I must recommend dismissal of the complaint.

CONCLUSIONS OF LAW

1. The operations of the Respondent Company, described in section I, above, constitute and affect trade, traffic, and commerce among the several States and foreign countries, within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondents have not individually or jointly engaged in any of the unfair labor practices alleged to have been committed by them in the complaint.

[Recommendations omitted from publication.]

Bridgeton Transit and Brotherhood of Railroad Trainmen, AFL-CIO, Lodge #1007, Petitioner. *Case No. 4-RC-3804. September 24, 1959*

SUPPLEMENTAL DECISION AND CERTIFICATION
OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election issued May 18, 1959,¹ an election by secret ballot was conducted on June 17, 1959, under the direction and supervision of the Regional Director for the Fourth Region, among the employees in the appropriate unit. Following the election, the parties were furnished a tally of ballots which showed that, of approximately 13 eligible voters, 7 cast valid ballots for, and 6 against, the Petitioner. Thereafter, the Employer filed timely objections to conduct affecting the results of the election. The Regional Director investigated the objections and, on July 8, 1959, issued and duly served upon the parties his report on objections, in which he recommended that the objections be overruled and that the Petitioner be certified as the exclusive bargaining representative. The Employer filed timely exceptions to the Regional Director's report.

The Board² has considered the objections, the Regional Director's report, and the exceptions thereto, and agrees with the findings and recommendations of the Regional Director.

The Employer objected to the counting of two marked ballots. One had a check mark instead of an "X" in the "YES" square. On the other, the "YES" square was blocked in with pen lines. The Regional Director concluded that these markings indicated clearly the voters' choice and could not reasonably be construed as means to identify the voters.

¹ 123 NLRB 1196.

² 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 Leedom and Members Rodgers and Bean].