

**Belcher Towing Company and Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO.**<sup>1</sup> *Case No. 12-CA-1018. January 19, 1960*

DECISION AND ORDER

STATEMENT OF THE CASE

Upon a charge filed on June 3, 1959, by Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO, hereinafter called the Union, and amended on July 1, 1959, the General Counsel of the National Labor Relations Board, hereinafter called respectively the General Counsel and the Board, by the Regional Director for the Twelfth Region (Tampa, Florida) issued a complaint, dated July 17, 1959, against Belcher Towing Company, hereinafter called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charge, the amended charge, and the complaint were duly served on the Respondent.

With respect to the unfair labor practices, the complaint alleges in substance that on January 9, 1959, following a Board-directed election in *Belcher Towing Company*, Case No. 12-RC-304,<sup>2</sup> in which a majority of the Respondent's employees in the unit found appropriate by the Board chose the Union as their collective-bargaining representative, the Board certified the Union as such representative; that thereafter the Union requested the Respondent to bargain with it collectively with respect to the wages, rates of pay, hours of employment, and other conditions of employment of the employees in the appropriate unit; and that the Respondent refused and continues to refuse to do so, thereby engaging in unfair labor practices in violation of Section 8(a)(5) of the Act, and thereby interfering with, restraining, and coercing the Respondent's employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) thereof. On or about July 27, 1959, the Respondent filed an answer to the complaint, admitting its jurisdictional allegations and the refusal to bargain as alleged, but denying that the Respondent had committed the alleged unfair labor practices.

Thereafter, on September 30, 1959, desiring to avoid the need for a hearing, the parties entered into a stipulation, which set forth an

<sup>1</sup> The name of the Union is amended to conform to its designation in the representation case discussed hereinafter.

<sup>2</sup> Unpublished.

agreed statement of facts. The stipulation further provided, in effect, that: (1) The Board may find the facts contained in the stipulation, in addition to those portions of the complaint admitted in the answer, to be true and correct; (2) the parties waive a hearing herein, the issuance of an Intermediate Report and Recommended Order by a Trial Examiner, and any other Board procedures inconsistent with the stipulation; (3) the Board may make findings of facts and conclusions of law on the basis of the facts set forth in the stipulation and issue its Decision and Order based thereon, as if these facts had been adduced in an open hearing before a duly authorized Trial Examiner of the Board; (4) the stipulation, complaint, notice of hearing, and answer constitute the entire record upon which the Board may make its findings as to the matters alleged in the complaint; (5) the stipulation constitutes the entire agreement of the parties in this matter, and they have entered into no other stipulations or collateral agreements; and (6) the parties request permission to file briefs herein with the Board in Washington, D.C., and that they be given until October 5, 1959, to do so. On October 5, the Respondent filed a brief with the Board.<sup>3</sup>

On October 6, 1959, the Board issued an Order approving the stipulation and making it a part of the record and transferring this proceeding to and continuing it before the Board, for the purpose of making findings of fact and conclusions of law and issuing a Decision and Order.

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 Fanning].

Upon the basis of the aforesaid stipulation, the Respondent's brief, and the entire record in this case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

The Employer, a Florida corporation with its principal office and place of business at Miami, Florida, is engaged in the transportation of oil and gasoline products along intercoastal waterways from Ft. Pierce, Florida, to Key West, Florida. The Respondent is wholly owned and controlled by Belcher Oil Company, herein called the Oil Company, which has its principal office at the same location as the Respondent. The Board has found,<sup>4</sup> and the Respondent admits, that the Respondent and the Oil Company constitute a single employer

<sup>3</sup> In its brief, the Respondent requested that the Board dismiss the complaint. For reasons hereinafter set forth, the request is denied.

<sup>4</sup> *Belcher Towing Company*, Case No. 12-RC-304, *supra*.

for jurisdictional purposes. As the Oil Company during the past 12 months purchased more than \$100,000 worth of petroleum products which were shipped to it from points outside Florida, we find that the Respondent is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction over the Respondent's operations.<sup>5</sup>

## II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization which admits to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. *The sequence of events*

On August 20, 1958, the Board issued its Decision and Direction of Election in *Belcher Towing Company*, Case No. 12-RC-304, *supra*, directing an election among all unlicensed tugboat employees working out of the Respondent's headquarters at Miami, Florida, and out of Port Everglades, Florida, including deckhands (otherwise called "mates"), cooks, and enginemen, but excluding captains and supervisors as defined in the Act. On September 10 and 12, 1958, the election was held. The tally of ballots shows that 18 ballots were cast, of which 8 were for, and 6 were against, the Union, and 4 were challenged.<sup>6</sup> As the challenged ballots—those of Lawson, Siefert, Sharpe, and MacNeal—were sufficient in number to affect the results of the election, the Regional Director investigated these ballots. In his report on challenged ballots, he recommended that all four challenges be sustained, and that the Board certify the Union as the exclusive bargaining representative of the employees in the unit found appropriate by the Board in the Decision and Direction of Election. The Respondent filed timely exceptions to these recommendations. On January 19, 1959, the Board issued its Supplemental Decision and Certification of Representatives in Case No. 12-RC-304.<sup>7</sup> In that decision, a majority of the Board (1) found that Lawson, Siefert, and Sharpe were ineligible to vote in the election and sustained the challenges to their ballots; (2) found it unnecessary to rule on the challenge to the remaining ballot (MacNeal's), as the Board had already sustained three of the four challenges and as MacNeal's ballot therefore could not affect the results of the election; and (3) certified the Union as the collective-bargaining representative of the employees in the unit previously found appropriate. Thereafter, on or about January 27, 1959, the Union requested the

<sup>5</sup> *Siemons Mailing Service*, 122 NLRB 81.

<sup>6</sup> All the challenged ballots were challenged by the Union.

<sup>7</sup> 122 NLRB 1019.

Respondent to bargain with it as the collective-bargaining representative of the employees in the appropriate unit, with respect to wages, rates of pay, hours of employment, and other conditions of employment. On or about January 30, 1959, the Respondent refused to bargain as requested, and it still refuses to do so.

### *B. Contentions and conclusions*

The Respondent contends that its refusal to bargain did not violate Section 8(a)(5) or (1) of the Act, on the ground, in substance, that the record in Case No. 12-RC-304 fails to disclose that the Union received a majority of the valid votes cast among the employees in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. In support of its contention, the Respondent asserts that the Board erred (1) in its Decision and Direction of Election in Case No. 12-RC-304 in excluding captains from the appropriate unit; (2) in its Supplemental Decision and Certification of Representatives in that case in sustaining the challenges to the ballots of Lawson, Siefert, and Sharpe; and (3) in said Supplemental Decision in failing to overrule the challenge to the remaining ballot—MacNeal's. As to (1), nothing new has been presented as to the unit placement of captains that has not been previously considered by the Board. As to (2), nothing new has been presented as to the status of these employees on the eligibility date (August 16, 1958), which date is significant for purposes of determining eligibility to vote. As to (3), as noted above, the Board in its Supplemental Decision found it unnecessary to rule on the challenge to MacNeal's ballot for the reason that the Board had sustained the remaining three challenges, and MacNeal's ballot could not affect the results of the election. As we adhere to our ruling on the other three ballots, it remains unnecessary to consider the challenge to MacNeal's ballot.

We therefore reject the Respondent's contention, and find that at the time of the Respondent's refusal to bargain with the Union, it represented a majority of the Respondent's employees in the following appropriate unit: All unlicensed tugboat employees working out of the Respondent's headquarters at Miami, Florida, and out of Port Everglades, Florida, including deckhands (otherwise called "mates"), cooks, and enginemen, but excluding captains and supervisors as defined in the Act. We find that by refusing to bargain collectively with the Union, as aforesaid, on and after January 30, 1959, the Respondent has violated and is violating Section 8(a)(5) of the Act, and that by thus interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent also violated Section 8(a)(1) thereof.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth above, occurring in connection with the operations of the Respondent described herein, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that the Respondent had engaged in and is engaging in unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As set forth herein, it has been found that, following a Board-directed election in which a majority of the Respondent's employees in the appropriate unit selected the Union as their collective-bargaining representative, the Board certified the Union as such representative, and that the Respondent refused to bargain with the Union. Accordingly, we shall order that the Respondent, upon request, bargain with the Union as the exclusive representative of the employees in the appropriate unit.

## CONCLUSIONS OF LAW

1. The Respondent, Belcher Towing Company, is engaged in commerce within the meaning of the Act.

2. Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All the Respondent's unlicensed tugboat employees working out of its headquarters at Miami, Florida, and out of Port Everglades, Florida, including deckhands (otherwise called "mates"), cooks, and enginemen, but excluding captains and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The aforesaid labor organization was on January 27, 1959, and at all times thereafter, has been the exclusive representative of all employees in the appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. By refusing to bargain collectively with the aforesaid labor organization as the exclusive representative of the Respondent's employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other conditions of employment, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

### ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Belcher Towing Company, Miami, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO, as the exclusive representative of all its employees in the following appropriate unit with respect to wages, rates of pay, hours of employment, and other conditions of employment: All unlicensed tugboat employees working out of the Respondent's headquarters at Miami, Florida, and out of Port Everglades, Florida, including deckhands (otherwise called "mates"), cooks, and enginemen, but excluding captains and supervisors as defined in the Act.

(b) In any like or related manner interfering with the efforts of Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO, to bargain collectively.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO, as the exclusive representative of all the employees in the aforesaid unit with respect to wages, rates of pay, hours of employment, and other conditions of employment, and, if an agreement is reached, embody such understanding in a signed agreement.

(b) Post in conspicuous places at its headquarters at Miami, Florida, and at its place of business at Port Everglades, Florida, including all places where notices to employees are customarily posted, copies of the notice attached hereto marked "Appendix."<sup>8</sup> Copies of

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<sup>8</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Twelfth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that :

WE WILL NOT refuse to bargain collectively with Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO, as the exclusive representative of all our employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other conditions of employment.

WE WILL NOT in any like or related manner interfere with the efforts of Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO, to bargain collectively.

WE WILL, upon request, bargain collectively with Seafarers' International Union of North America, Atlantic & Gulf District, Harbor & Inland Waterways Division, AFL-CIO, as the exclusive representative of all employees in the following bargaining unit with respect to wages, rates of pay, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our unlicensed tugboat employees working out of our headquarters at Miami, Florida, and out of Port Everglades, Florida, including deckhands (otherwise called "mates"), cooks, and engine-men, but excluding captains and supervisors as defined in the Act.

BELCHER TOWING COMPANY,  
*Employer.*

Dated\_\_\_\_\_ By\_\_\_\_\_

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.