

**A. L. Mechling Barge Lines, Inc.<sup>1</sup> and District 2, Marine Engineers Beneficial Association, AFL-CIO, and Inland Boatmen's Union of the Seafarers International Union of North America, AFL-CIO,<sup>2</sup> Joint Petitioners.** Case 13-RC-12165

August 27, 1971

DECISION AND DIRECTION OF  
ELECTION

BY CHAIRMAN MILLER AND MEMBERS BROWN  
AND JENKINS

Upon a petition and an amended petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before D. Richard Froelke, Hearing Officer of the National Labor Relations Board.<sup>3</sup> Following the hearing, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 13, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Joint Petitioners and Intervenor N.M.U. and M.M.P. filed timely briefs, and the Employer filed a timely memorandum, which has been duly considered.<sup>4</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, including the briefs, memoranda and statements of the parties, the Board finds:

1. The Employer is engaged in commerce within

the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.<sup>5</sup>

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Employer is a Delaware corporation engaged in providing towboat and barge inland waterway transportation services. At the time of the hearing, the Employer operated approximately five river tow vessels out of its principal facility located at Joliet, Illinois.

The Joint Petitioners seek to represent a unit of all employees of the Employer including pilots, assistant engineers, head deckhands, relief head deckhands, watchmen, deckhands, oilers, cooks, maids, messmen, and shorebased engineers, excluding all other employees including captains, relief captains, chief engineers, relief engineers, office clerical employees, guards and supervisors as defined in the Act. Intervenor M.O.A. is willing to represent any unit that the Board deems appropriate. Intervenor N.M.U. takes the position that pilots and shore-based engineers should be excluded on the grounds, respectively, of supervisory status and lack of community of interest with the crew members. Intervenor M.M.P., too, would exclude the pilots and, in addition, the head deckhands and watchmen, all on supervisory grounds. The Employer, although not opposing the unit sought, requests that the Board make specific unit findings with respect to pilots, head deckhands, watchmen, assistant engineers, and shore-based engineers.

In 1968, the M.O.A. was certified by the Board pursuant to an election conducted under the terms of a Stipulation for Certification Upon Consent Election in Case 13-RC-11378. The unit certified therein is identical to that in the above-described amended petition.

The Employer operates five towboats. The typical towboat crew consists of a master, pilot, chief

purposes; that it has been certified by the Board to represent certain employees of Federal Barge Lines, Inc., for the purpose of negotiating their wages, hours, and other terms and conditions of employment; and that employees participate in the affairs of the organization, which also represents marine engineers, who are supervisors within the meaning of the Act.

In addition, M.M.P. refused to stipulate that the incumbent Intervenor, M.O.A., Local 54, is a labor organization within the meaning of Section 2(5) of the Act. The record shows, however, that it is a party to contracts with employers, concerning wages, hours, and other working conditions; that the Board certified it in 1968 as representative of certain employees of the Employer; that of its membership, about one-half are rank-and-file employees and the other half, marine officers (masters, mates, and pilots); and that employees participate in the internal affairs of the organization.

On the basis of the foregoing, we find that District 2, M.E.B.A., and Local 54, M.O.A., are labor organizations within the meaning of Section 2(5) of the Act.

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The Inland Boatmen's Union intervened in this proceeding on the basis of interest among the subject employees. Thereafter, the original petition was amended to include the I.B.U. with M.E.B.A. as Joint Petitioners.

<sup>3</sup> Permitted to intervene at the hearing on the basis of their showings of interest, were International Organization of Masters, Mates and Pilots, Great Lakes and Rivers District, Local 47 (M.M.P.); National Maritime Union of North America, AFL-CIO (N.M.U.); and Marine Officers' Association, Local 54, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (M.O.A.).

<sup>4</sup> Union Barge Lines (a subsidiary of the Dravo Corporation), which appeared and participated at the hearing as a possible party in interest, also filed a statement with the Board.

<sup>5</sup> Although the Employer declined at the hearing to stipulate that one of the Joint Petitioners, District 2, M.E.B.A., is a labor organization within the meaning of Section 2(5) of the Act, the record shows that its purpose is to represent persons employed in the marine industry for collective-bargaining

engineer, assistant engineer, oiler, head deckhand, watchman, four deckhands, a cook, and a maid.<sup>6</sup> The boats operate 24 hours a day. The master is in overall charge of all aspects of the boat's operation, and is on call 24 hours per day. The crews work two 6-hour watches in each 24-hour period. The master, chief engineer, head deckhand, and two deckhands stand the forward watch (from 6 a.m. to 12 noon, and from 6 p.m. to midnight). The pilot, assistant engineer, watchman, and two other deckhands stand the after watch (from 12 noon to 6 p.m. and from 12 midnight to 6 a.m.).

### The Pilots

Pilots spend the major part of their time steering the vessel. In doing this, they periodically check the radar equipment, tachometer, and various navigational guides. Pilots also direct the deckhands, in a "team effort," in picking up and tying on barges; and, when lining up a tow, signals and verbal instructions pass readily back and forth between the deck and the pilot house.<sup>7</sup> This flow of instructions from the pilot house to the deckhands varies with the experience of the crew, the operational tasks confronting them, and the personality of the pilot. Pilots, when on watch, determine whether a lookout is needed and call for one over the intercom. All the pilot's instructions, as to what barges to pick up, where they are going, what to drop off, and where, come from company headquarters or the master. Masters decide, singly or together with the pilot, on the specific arrangement of barges in a tow. Pilots, while on watch in dock, routinely countersign the crew separation report which all crew members must sign when leaving the boat. Although pilots, like masters, have manual ability to operate a vessel, they do not perform the overall administrative or managerial functions required of masters to command the vessel and crew. Thus, the master is in overall charge of the boat even when off duty and is available by phone or messenger to the pilot at all times. Pilots, in turn, are expected to contact the master, whether on board or ashore, to make a decision in any emergency.

The hiring of all boat personnel is done by Hilton, the Employer's director of personnel aboard vessels. Although Hilton testified that pilots could hire a crew member, if an emergency situation arose during an afterwatch causing the vessel to be a man short, he conceded on further examination that he could not recall any specific occasion on which this had occurred, and also admitted it had not happened at

all in "recent years." Pilots do not have power to discharge crew members; this and other personnel decisions on the boat are made by the master and Hilton. Although a pilot may recommend discharge or discipline of a crew member to a master, the master investigates the recommendations and, in turn, makes his recommendations to Hilton who, apparently, actually effects any discipline or discharge and writes the letter of termination. Pilots are hired in the same manner as all other crew members, and receive the same fringe benefits as other employees such as deckhands, except that pilots have private sleeping accommodations on most boats, while deckhands share a room. Pilots and deckhands are all covered by the same company benefit plan.

Upon the foregoing, we conclude that the pilots are not supervisors within the meaning of the Act. Most of their time is spent in their primary duty, steering the vessel; operating instructions to the deckhands do not involve responsible direction within the meaning of the statute, but cast pilots more in the role of leadmen. They lack authority to hire, fire, or discipline other crew members, and their recommendations with respect to discipline are limited principally in the interest of assuring a harmonious relationship between themselves and the crew during the lengthy periods they will be in constant contact aboard the vessel.<sup>8</sup> In the circumstances present, we find that duties of the pilot do not reflect the degree of responsible direction or effective recommendation necessary to constitute indicia of supervisory authority within the Act's definition. Accordingly, we shall include the pilots in the unit.

### The Head Deckhands

The head deckhands stand the forward watch. They are responsible for the routine maintenance and upkeep of the vessel—such as cleaning, scraping, chipping, keeping the rigging straight, painting the boat about twice a year, making line lashings as necessary, and splicing wires. The head deckhand performs this kind of work along with two deckhands. The instructions he gives to deckhands are limited to the manner in which they perform their immediate task. In addition to the foregoing work, the deckhands mop and swab the deck. Hilton testified that the working relationship between deckhands and the head deckhand approximates that of a plumber and his helper. Although there have been occasions when head deckhands have recommended the discharge of crew members, there is no evidence that these recommendations were effective.

<sup>6</sup> Some boats do not have an oiler or a maid.

<sup>7</sup> For example, the pilot may say, "Untie that line" or "Catch a line" while crew members may call out, "Get down there," "Get that barge over

in line," or "Get that . . . boat over here."

<sup>8</sup> See *Willis Shaw Frozen Food Express, Inc.*, 173 NLRB 487.

In these circumstances, we find that the head deckhands are not supervisors and, therefore, shall include them in the unit.

### The Watchmen

The duties of the watchman, who stands the after watch, parallel those of the head deckhand. Hilton, when asked "what the watchman does," testified, "He is the head deckhand of that watch." Hilton also testified that the only difference in authority or responsibility between the head deckhand and the watchman is that the former, as he goes off watch, tells the watchman what remains to be done in regard to boat maintenance. Inasmuch as the watchmen perform duties and have responsibilities substantially identical to those of the head deckhands, we find, for the same reason, that the watchmen are not supervisors, and shall include them in the unit also.

### The Shore-based Engineers

There are two shore-based engineers who normally work at the Employer's shop located at Joliet, Illinois. Their immediate supervisor is the port engineer, under whose direction they work. The shore-based engineers are usually promoted to that classification from among chief engineers aboard the vessels, an admittedly supervisory position. The shore-based engineers possess welding, electrical, and mechanical skills. They repair and build equipment for the boats, make spare parts, and perform major overhauls on the vessels. Their only contact with the crew members of the vessels occurs when, on occasion, they are aboard the boat to engage in maintenance repair work, during an overhaul, or an emergency breakdown. While working aboard the vessel, the shore-based engineers remain under the supervision of the port engineer, who is also normally aboard for these situations. Shore-based engineers normally work from 8 a.m. to 4:30 p.m., in contrast to the two 6-hour watches of crew members, and their vacation, sick leave, and overtime compensa-

tion arrangements are also different from those of vessel employees. Although a shore-based engineer might substitute for a chief or assistant engineer on a vessel in an emergency (e.g., sickness), such instances appear to occur very rarely. In light of their separate supervision, relative lack of work contacts, and generally different hours and working conditions, we find that, despite their previous inclusion by agreement of the parties in the historic unit, the shore-based engineers lack sufficient community of interest to warrant their inclusion in the unit and shall, accordingly, exclude them.

### The Assistant Engineers

The Employer requests that the Board determine the unit status of assistant engineers, whose inclusion is requested by the Joint Petitioners without opposition. The assistant engineers stand the afterwatch. Their duties include maintenance of the equipment in the engine room and keeping the engine room records. They are responsible to their chief engineer, are authorized to sign crew separation reports, and may occupy a private room, depending on the particular boat. The assistant engineers have been included in the historical unit, and we find that assistant engineers are appropriately included in that unit.

On the basis of the foregoing, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All employees including pilots, assistant engineers, head deckhands, relief head deckhands, watchmen, deckhands, oilers, cooks, maids, and messmen, but excluding all other employees including captains, relief captains, chief engineers, relief engineers, shore-based engineers, office clerical employees, guards and supervisors as defined in the Act.<sup>9</sup>

[Direction of Election<sup>10</sup> omitted from publication.<sup>11</sup>]

<sup>9</sup> Intervenor N.M.U. and Union Barge Lines contend that an election should not be conducted, but the proceedings held in abeyance, because the Employer's vessels will assertedly accrete to an existing N.M.U. bargaining unit at Union Barge Lines when the Employer is merged into the named company. A petition to obtain the necessary Interstate Commerce Commission preliminary approval for such a merger has been initiated but substantial details remain for determination and agreement in the event such approval is received. As the contemplated merger is dependent on facts which are uncertain both as to approval and time, we find that the proposed merger is too speculative to warrant denial of a choice by employees concerning representation at this time. *Federal Electric Corporation, Western Test Range*, 157 NLRB 1130, 1133, fn. 6.

<sup>10</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all

parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director of Region 13 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

<sup>11</sup> As we find no merit in the objection thereto, the name of Joint Petitioner I.B.U. shall appear in this manner on the ballot as requested.