

In the Matter of BLACK DIAMOND STEAMSHIP CORPORATION and
MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL No. 33.

Case No. R-107.—Decided September 24, 1936

Water Transportation Industry—Election Ordered: controversy concerning representation of employees—refusal by employer to recognize union as exclusive representative; rival organizations; request by substantial number in appropriate unit—question affecting commerce: confusion and unrest among employees—prior collective agreement with rival organization no bar to holding—*Unit Appropriate for Collective Bargaining:* occupational differences; craft; licensed personnel; established labor organizations in industry—*Certification of Representatives.*

Mr. David A. Moscovitz for the Board.

Hunt, Hill & Betts, by *Mr. John W. Crandall*, of New York City, for the Company.

Mr. Edward Patrick Trainor, of New York City, for Marine Engineers' Beneficial Association.

Mr. Herbert DeVarco, of New York City, for United Licensed Officers of the United States of America.

Mr. William Gallagher, of New York City, for International Union of Operating Engineers.

Mr. I. S. Dorfman, of counsel to the Board.

DECISION

STATEMENT OF CASE

On July 2, 1936, Local No. 33 of the Marine Engineers Beneficial Association, hereinafter called Local No. 33, filed with the Regional Director for the Second Region a petition alleging that a question affecting commerce had arisen concerning the representation of the licensed engineers employed on the vessels of the Black Diamond Steamship Corporation, New York City, New York, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935. On July 18, 1936, the National Labor Relations Board, hereinafter called the Board, authorized the Regional Director for the Second Region to conduct an investigation and provide for an appropriate hearing upon due notice. On July 23, 1936, the Regional Director issued a notice setting the hearing for August 20, 1936.

Notice of hearing was duly served on the Black Diamond Steamship Corporation, hereinafter called the Company, Local No. 33, and the United Licensed Officers of the United States of America, hereinafter called the United. Pursuant to notice, hearings were held in New York City, New York, on August 20, 21, and 24, 1936, before Benedict Wolf, Trial Examiner duly designated by order of the Board. All who were served with notice participated in the hearing. In the course of the hearing, the International Union of Operating Engineers, Marine Local Union No. 3, was given leave to, and did, file a brief in the capacity of *amicus curiae*. Full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties.

Upon the evidence adduced at the hearing and from the entire record now before it, the Board makes the following:

FINDINGS OF FACT

Black Diamond Steamship Corporation is a corporation organized and existing under the laws of the State of Delaware, and is, and has been at all times hereinafter mentioned, engaged in the general cargo and passenger business with general offices in New York City, New York. It owns and operates eight vessels which sail according to a fixed posted schedule from New York City, New York to Rotterdam, Holland; Antwerp, Belgium; Boston, Massachusetts; Philadelphia, Pennsylvania; Baltimore, Maryland; Norfolk, Virginia; Newport, Rhode Island; Portland, Maine; and return.¹ Each of the vessels is regularly engaged in both out-port and foreign sailings, transporting primarily freight and mail, and affording a limited passenger service.

We find, therefore, that the Company is engaged in traffic and commerce among the several States and between the United States and foreign countries, and that the deck officers and engineers employed on the vessels of the Company are directly engaged in such traffic and commerce.

I. QUESTION CONCERNING REPRESENTATION AND ITS EFFECT ON COMMERCE

In September, 1934, and again in September, 1935, Local No. 33, a labor organization claiming to represent a majority of the engineers employed on the vessels of the Company, endeavored without success to induce the Company to enter into an agreement covering wages, hours and working conditions of the engineers employed by it. Dur-

¹The names of the vessels are as follows: Black Eagle, Black Gull, Black Hawk, Black Falcon, Black Tern, Black Heron, Black Condor, Black Osprey.

ing the 1935 negotiations, a representative of Local No. 33 read to an officer of the Company the names of those engineers employed by the Company whom Local No. 33 claimed as members. Neither in 1934 or 1935, however, did the Company have any intention of negotiating an agreement with Local No. 33, and none was consummated.

During approximately the same periods, negotiations looking toward an agreement were carried on between the Company and the United Licensed Officers of the United States of America, a labor organization, which claimed to represent a majority of the deck officers and of the engineers employed by the Company. Despite the contradictory nature of the claims presented by the rival organizations, the Company, on November 26, 1935, entered into an agreement with the United in respect to wages, hours and working conditions of all its deck officers and engineers, effective December 1, 1935, and to remain in force for one year, and from year to year thereafter unless notice of desired amendment or abrogation is given by either party within 30 days prior to the end of any year. The Company made no effort to determine the validity of the claims of either labor organization. After November 26, 1935, the Company, in reply to the requests of Local No. 33 for an agreement, protested that it would not violate its contract with the United.

At the hearing documents were introduced in evidence signed by a majority of the engineers of the Company authorizing Local No. 33 to bargain collectively on their behalf. Carbon copies of receipts issued by Local No. 33 to engineers of the Company on payment of dues were also introduced in evidence. The United, in support of its membership claims, presented applications for membership signed by a number of the engineers employed by the Company. We find the proof presented on this issue inconclusive for the following reasons: (1) The authorizations as well as some of the applications for membership are undated; (2) some of the applications for membership and some of the carbon copies of receipts are dated 1934; and (3) a few engineers signed applications for membership in the United as well as the authorization of Local No. 33.

The confusion manifest here may best be resolved, and the free choice of representatives for purposes of collective bargaining assured and ascertained, by means of an election by secret ballot.

We find that a question concerning the representation of the engineers employed by the Company has arisen. This question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce between the States and between the United States and foreign countries.

II. THE APPROPRIATE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING,
AND EMPLOYEES ELIGIBLE TO PARTICIPATE IN THE ELECTION

In its petition Local No. 33 avers that the unit should consist of approximately 37 engineers employed on the vessels of the Company. The United contends that licensed deck officers as well as engineers should be included in the unit. The company is in agreement with the latter view. The International Union of Operating Engineers, Marine Local Union No. 3, though not a party to this matter, filed a brief setting forth its interest in the determination of the issue, and urged that the unit in question should embrace engineers only and not deck officers.

In previous cases we have held that licensed engineers constitute an appropriate unit for purposes of collective bargaining, and should not be bracketed in one unit with deck officers.² We so held for the following reasons:

(a) The qualifications, responsibilities and duties of the licensed engineers differ in kind from those of licensed deck officers. The United States Bureau of Navigation and Steamboat Inspection, as a prerequisite to the issuance of a license to an engineer, requires of the applicant education and experience substantially different from that of an applicant for a deck officer's license.³ Deck officers navigate the ship, stand deck watches and check cargo in and out of the vessel, while engineers confine their activities almost wholly to the operation and maintenance of the engine department. The chief engineer is subordinate to, takes orders from, and receives a wage rate lower than the master;

(b) ". . . there are already in this field two well-established labor organizations (Local No. 33, and the International Union of Operating Engineers, Local No. 3), whose membership is limited to engineers, and a third established labor organization, the Masters, Mates & Pilots, restricted to deck officers. In the light of this situation; in the absence of proof of a present desire on the part of engineers and deck officers to combine in one unit . . . , we are of the opinion that the policy of the Act would be best served here by

² *In the Matter of Delaware-New Jersey Ferry Co and M E B A. No 19*, Case No C-4, decided December 30, 1935 (1 N L R B 85); *In the Matter of International Mercantile Marine Co, et al, and International Union of Operating Engineers, Local No 3*, Case No R-24, decided March 21, 1936 (1 N L R B. 384); and *In the Matter of Lykes Brothers Steamship Co, Inc. et al. and National Marine Engineers' Beneficial Association et al.*, Cases Nos. R-36, R-37, and R-38, decided July 8, 1936 (*supra*, p. 102).

³ As to qualifications for service as a licensed deck officer see R. S. § 4131; U. S. C. Title 46, § 221; R. S. § 4439; U. S. C. Title 46, § 226; R. S. § 4440; U. S. C. Title 46, § 228.

Minimum requirements for licensed engineers are cited in R. S. § 4441; U. S. C. Title 46, § 229

not requiring that deck officers and engineers be combined in one unit for the purposes of collective bargaining.”⁴

The case at hand presents no facts which would warrant reconsideration of our previous decisions on this point.

We therefore find that all chief, assistant and licensed junior engineers employed as engineers on the vessels operated by the Company constitute a unit appropriate for the purposes of collective bargaining.

This does not mean that the United will be precluded from representing the engineers of the company. The names of both the United and Local No. 33 will appear on the ballot of the projected election. The engineers will then be free to choose.

THE CONTRACT

The mere holding of the election will in no way affect the rights and duties, if any, arising out of the contract entered into between the Company and the United. Moreover, since that contract is shortly subject to termination (December 1, 1936), and the representatives of the engineers, who will have been ascertained prior to that date, may elect to terminate it, we deem it unnecessary to determine what would otherwise be the effect of the contract on the petition before us.

THE ELECTION

In the conduct of this election we take into consideration the following factors: that separate ships' articles are signed for every round trip voyage; that in some instances the names of the personnel of a given vessel are not known sufficiently in advance of sailing time to permit a well ordered election prior to that time; and that between voyages the employees may be in port for very short periods.

In these circumstances, notice of the election will be posted as soon as is convenient on each vessel of the Company before it leaves the port of New York on the first trip, if possible, next following the date of the issuance of this decision, and remain in view until the election has been held. Such notice of election will be accompanied by a sample ballot and a list of engineers eligible to vote in the election. The ballots will be cast in the presence of a representative of this Board upon the return of each vessel to the port of New York either from any of the out-ports or from Antwerp or Rotterdam.

⁴ *In the Matter of International Mercantile Marine Co., et al. and International Union of Operating Engineers, Local No. 3, Case No R-24, decided March 21, 1936 (1 N. L. R. B. 384, 390)*

Due to the special circumstances of this case we find it necessary to limit the right to vote to those licensed engineers within the unit above described who are employed on the round trip voyage of the respective vessels of the Company on which notices of election have been posted, and who also were employed as engineers on any vessel operated by the Company at any time between July 2, 1936, the date of the filing of the petition herein, and the date of the direction of election in this matter.

CONCLUSIONS OF LAW

Upon the basis of the above findings, the following conclusions of law are made by the Board:

1. The chief engineers, assistants and licensed junior engineers employed as engineers on the vessels of the Black Diamond Steamship Corporation operating out of the port of New York, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of chief engineers, assistants and licensed junior engineers employed on the vessels of the Black Diamond Steamship Corporation, within the meaning of Section 9 (c) of the Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the Black Diamond Steamship Corporation, New York City, an election by secret ballot shall be conducted as soon as convenient, and beginning as promptly as is practicable after the date of this Direction, based on sailing dates of vessels, subject to the suggestions for the administration of this election contained hereinabove, under the direction and supervision of the Acting Regional Director for the Second Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the chief engineers, assistant engineers and licensed junior engineers employed as engineers on the vessels of the Black Diamond Steamship Corporations operating out of the port of New York, to determine whether they desire to be rep-

resented by the Marine Engineers Beneficial Association, Local No. 33, or by the United Licensed Officers of the United States of America.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Decision and Direction of Election.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

December 11, 1936

A petition for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, having been duly filed, and an investigation and hearing having been duly authorized and conducted, and an election by secret ballot having been conducted beginning on October 3 and ending on December 3, 1936, among the licensed chief, first assistant, second assistant and third assistant engineers employed as engineers on the vessels of the Black Diamond Steamship Corporation operating out of the port of New York, and an Intermediate Report upon the secret ballot finding that the Marine Engineers' Beneficial Association, Local No. 33, had been selected by a majority of the engineers in the appropriate unit, having been prepared by Elinore Morehouse Herrick, the agent of the Board designated to conduct the election, and duly served upon the parties, and no objections to the ballot and to the Intermediate Report having been filed with the Board by the parties pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

THEREFORE, by virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the said Act, and pursuant to Article III, Section 8 of the said Rules and Regulations,

IT IS HEREBY CERTIFIED that Marine Engineers' Beneficial Association, Local No. 33, has been designated by a majority of the licensed chief, first assistant, second assistant and third assistant engineers employed as engineers on the vessels of the Black Diamond Steamship Corporation operating out of the port of New York, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, Marine Engineers' Beneficial Association, Local No. 33, is the exclusive representative of all such engineers for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.