

In the Matter of SWAYNE & HOYT, LTD. and NATIONAL MARINE  
ENGINEERS' BENEFICIAL ASSOCIATION, PACIFIC COAST DISTRICT

Case No. R-106.—Decided October 2, 1936

*Water Transportation Industry—Election Ordered:* controversy concerning representation of employees—majority status disputed by employer; rival organizations—question affecting commerce: confusion and unrest among employees; employees directly engaged in interstate commerce—prior collective agreement with rival organization no bar to holding—*Unit Appropriate for Collective Bargaining:* craft; established labor organizations in industry; occupational differences; no controversy as to—*Petition for Investigation and Certification of Representatives:* withdrawn with consent of Board.

*Mr. Bertram Edises* for the Board.

*Lillick, Olson, Levy & Geary*, by *Mr. Joseph J. Geary*, of San Francisco, Cal., for the Company.

*Mr. H. P. Melnikow* and *Mr. James T. Landye*, of San Francisco, Cal., for the Union.

*Pillsbury, Madison & Sutro*, by *Mr. John A. Sutro*, of San Francisco, Cal., for Gulf Pacific Licensed Officers Association.

*Mr. Aaron W. Warner*, of counsel to the Board.

DECISION

STATEMENT OF CASE

On July 27, 1936, National Marine Engineers' Beneficial Association, Pacific Coast District, hereinafter referred to as the Union, filed with the Regional Director for the Twentieth Region a petition alleging that a question affecting commerce had arisen concerning the representation of the licensed marine engineers employed on the vessels of Swayne & Hoyt, Ltd., San Francisco, California, hereinafter called the Company, and requesting an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act (C. 372, 49 Stat. 449), approved July 5, 1935. The petition sets forth in substance that a majority of the aforementioned employees have designated the Union to represent them in collective bargaining with the Company, but that the Company has nevertheless refused to bargain collectively with the Union.

On July 29, 1936, the National Labor Relations Board, hereinafter called the Board, duly authorized the Regional Director for the

Twentieth Region, to conduct an investigation and provide for an appropriate hearing in connection therewith. On the same day the Regional Director issued and duly served a notice to the Company of a hearing to be held on August 7, 1936, at San Francisco, California. Copies of the notice of hearing were sent to the Union and to the Gulf Pacific Licensed Officers Association,<sup>1</sup> hereinafter referred to as the G. P. L. O. A.

On August 7, 1936, a hearing was held in San Francisco, California, before Charles A. Wood, the Trial Examiner duly designated by the Board. The Company, the Union, and the G. P. L. O. A. were represented and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties. Many objections to the admission of evidence were made by counsel representing the Company. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed.

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

## FINDINGS OF FACT

### I. THE COMPANY

Swayne & Hoyt, Ltd., is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada. It is engaged in the transportation of freight and passengers, with offices in the City and County of San Francisco, State of California. It operates merchant vessels between ports in the State of California and elsewhere in the United States and in foreign countries. The aforementioned vessels<sup>2</sup> call regularly at the following ports outside the State of California: Mobile, Alabama; New Orleans, Louisiana; Galveston, Texas; Portland, Oregon; Seattle, Washington; and Vancouver, British Columbia. The vessels likewise call regularly at the ports of San Pedro, California, and San Francisco, California.

The Board finds, therefore, that the Company is engaged in traffic and commerce among the several States and between the United States

<sup>1</sup> This organization also claims to represent a majority of the employees

<sup>2</sup> The vessels operated by the respondent, together with their respective tonnage, are as follows:

*Point Ancha*, 4727 tons, gross.  
*Point Arena*, 3290 tons, gross.  
*Point Bonita*, 3283 tons, gross.  
*Point Brava*, 4834 tons, gross.  
*Point Coleta*, 4823 tons, gross.  
*Point Chico*, 4905 tons, gross.  
*Point Clear*, 4839 tons, gross.  
*Point Gorda*, 3283 tons, gross.  
*Point Judith*, 4727 tons, gross.

*Point Lobos*, 4802 tons, gross.  
*Point Montara*, 3283 tons, gross.  
*Point Palmas*, 4869 tons, gross.  
*Point Reyes*, 3286 tons, gross.  
*Point Salmas*, 4886 tons, gross.  
*Point Sur*, 3290 tons, gross.  
*Point Vincente*, 4700 tons, gross.  
*Point Estero*, 4700 tons, gross.

and foreign countries, and that the deck officers and engineers employed on the vessels operated by the Company are directly engaged in such traffic and commerce.<sup>8</sup>

## II. THE LABOR ORGANIZATIONS INVOLVED

National Marine Engineers' Beneficial Association is a national labor organization, organized on February 23, 1875, with 47 locals in various cities throughout the United States. In accordance with its constitution,<sup>4</sup> its jurisdiction is divided into the following districts: Gulf Coast District, Atlantic Coast District, Great Lakes District, River District, and Pacific Coast District.<sup>5</sup> Membership in the Union is open to "United States licensed or commissioned marine engineers in good standing" and "Any person licensed by the United States Steamboat Inspection Service, or commissioned as an engineer in either the United States Navy or United States Coast Guard Service". At the time of the hearing, the Union had entered into agreements in respect to rates of pay, wages, hours of employment, and other conditions of employment, with employers representing about 95 per cent of the shipping industry on the Pacific Coast. It has no agreement with Swayne & Hoyt, Ltd., but claims to have enrolled as members 45 of approximately 60 marine engineers employed by that Company, and to have been chosen as representative for the purposes of collective bargaining by other of the employees who have not become members.

Gulf Pacific Licensed Officers Association is a labor organization formed in August, 1934, unaffiliated with any other body, admitting to membership only the licensed personnel in the employ of Swayne & Hoyt, Ltd.<sup>6</sup> The object of the organization, according to its constitution,<sup>7</sup> is "To unite in one organization those persons licensed by constituted authority and sailing under such license on the various vessels of the company".<sup>8</sup> At the time of the hearing, the G. P. L. O. A. claimed a membership of about 55 marine engineers<sup>9</sup> and a total membership of 112.

<sup>8</sup> It was agreed by stipulation of the parties at the hearing that, "All and singular said employees perform services which are a part of the actual operation of said vessels, and which are essential to the efficiency, safety and operation of said vessels."

<sup>4</sup> Petitioner's Exhibit No. 1.

<sup>5</sup> Included in the jurisdiction of the Pacific Coast District is Local No. 97, of San Francisco, California.

<sup>6</sup> The licensed personnel includes officers in the deck department as well as in the engine department.

<sup>7</sup> Petitioner's Exhibit No. 12.

<sup>8</sup> It is further stated in the Constitution that, "Wherever the word 'Company' shall be used herein and in the By-Laws it shall be understood to mean Swayne and Hoyt Limited and/or its wholly owned subsidiaries."

<sup>9</sup> It is admitted by both the Union and the G. P. L. O. A. that a number of their members belong to both organizations.

## III. THE RIVALRY BETWEEN THE TWO LABOR ORGANIZATIONS

Both the Union and the G. P. L. O. A. claim to represent for the purposes of collective bargaining the marine engineers employed on the vessels of the Company. The rivalry between the two organizations is one of long standing. In 1934 an election had been held under the auspices of the National Longshoremen's Board, and the G. P. L. O. A. received a majority of the votes cast.<sup>10</sup> Thereafter, on August 3, 1935, the G. P. L. O. A. entered into an agreement with the Company in respect to rates of pay, wages, hours of employment, and other conditions of employment, as the representative of the licensed officers in the deck and engine departments of the Company.<sup>11</sup> The Union now claims that the G. P. L. O. A. no longer represents a majority of the employees in the engine department. The Company, however, has denied a request by the Union for a conference, stating that to negotiate with the Union under the circumstances would be "not only improper but illegal, and such negotiations will not be considered unless by their own action our licensed personnel requests them".<sup>12</sup>

The G. P. L. O. A., as a result of the aforementioned claims made by the Union, requested its members to indicate their attitude in regard to the holding of another election for the purpose of selecting a representative of the employees.<sup>13</sup> Of the 112 members of the G. P. L. O. A., 83 indicated their willingness to participate in a new election.<sup>14</sup>

There was ample evidence at the hearing to the effect that the rivalry between the Union and the G. P. L. O. A. is engendering fear and unrest among the employees. It was also testified that a continuation of the dispute might lead to strikes and stoppages in the conduct of the business of the Company. The activities performed by the aforementioned employees are essential to the conduct of the interstate and foreign commerce in which the Company is engaged.

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<sup>10</sup> The G. P. L. O. A. was elected to represent the engine room officers in preference to the Union, and the deck officers in preference to the National Organization of Masters, Mates & Pilots of America. In this manner the G. P. L. O. A. became the representative for the purpose of collective bargaining of the entire licensed personnel of the Company.

<sup>11</sup> The agreement, which is in evidence by reason of the stipulation dated September 18, 1936, was entered into by the G. P. L. O. A., Swayne & Hoyt, Ltd., and Gulf Pacific Mail Line, Ltd. The vessels of the latter company, according to the testimony, are managed by Swayne & Hoyt, Ltd.

<sup>12</sup> See Board's Exhibit No. 3 (c).

<sup>13</sup> The request was made in the form of a circular letter to the masters of the vessels of the Company, calling for a vote on board each vessel. See Board's Exhibit No. 13.

<sup>14</sup> Since the G. P. L. O. A. represents both engineers and deck officers, it is impossible to tell how many of the 83 were engineers. However, since the G. P. L. O. A. claims to represent about 57 deck officers, at least 26 engineers who are members of G. P. L. O. A. desire an election.

The Board finds that a question has arisen concerning the representation of the marine engineers employed by the Company, and that this question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. An election by secret ballot is a suitable method of resolving the controversy in this case.

#### IV. THE APPROPRIATE UNIT

There is no real dispute as to the appropriateness of the marine engineers as a unit for the purposes of collective bargaining. The Union testified at the hearing that it has entered into agreements with employers representing about 95 per cent of the shipping industry on the Pacific Coast on behalf of engine room officers, and that this class of employees is recognized generally in the industry as a separate bargaining unit. This was not denied by either the Company or the G. P. L. O. A., both of whom admitted that the engineers had participated as a distinct unit in the National Longshoremen's Board election.<sup>15</sup> Accordingly, the Board finds that the marine engineers employed on the vessels of the Company, including the chief, assistant, and all other licensed engineers, constitute a unit appropriate for the purposes of collective bargaining.

#### THE EXISTING CONTRACT BETWEEN THE G. P. L. O. A. AND THE COMPANY

The Company has stated that it regards its agreement with the G. P. L. O. A. as valid and binding until such time as one of the parties thereto terminates the agreement in accordance with its provisions.<sup>16</sup> The Board considers it unnecessary to consider this issue at any length. Even if the agreement is assumed to be valid and binding, it nevertheless is no bar to an election and consequent bargaining by the certified representatives of the employees, and can in no wise be construed so as to curtail the right of the employees to change their representatives for bargaining. *In the Matter of New England Transportation Company*, Case No. R-10, decided January 21, 1936 (1 N. L. R. B. 130, 138-9), the Board stated: "The whole process of collective bargaining and unrestricted choice of

<sup>15</sup> As in the prior election, the Company and the G. P. L. O. A. now seek to have both the engine room and deck officers participate in the choosing of a representative or representatives for the purposes of collective bargaining. In spite of the alleged convenience of this method, it is impossible in this proceeding, since the Union cannot represent the deck officers, and the National Association of Masters, Mates & Pilots of America is not before the Board as a party.

<sup>16</sup> The agreement, dated August 3, 1935, provides as follows: "This agreement shall continue in full force and effect for a period of one year from date and thereafter until cancelled by six months notice in writing by either of the parties thereto."

representatives assumes the freedom of the employees to change their representatives, while at the same time continuing the existing agreements under which the representatives must function." Consequently, in this case, whichever organization is chosen as representative of the employees for the purposes of collective bargaining will be free to continue the existing agreement, to bargain concerning changes in the existing agreement, or to follow the procedure provided therein for its termination.

#### THE ELECTION

In view of the difficulty of attempting to assemble the employees at any one place at a given time, the conduct of the election shall be as follows: Notice of the election will be posted as soon as is convenient on each vessel of the Company before it leaves the port of San Francisco or San Pedro on the first trip, if possible, next following the date of the issuance of the Direction of Election, 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 San Francisco or San Pedro at the time and place that the engineers are paid by the Company. All licensed engineers within the unit above described who were employed as engineers on any vessel operated by the Company at any time between July 27, 1936, the date of the filing of the petition herein, and the date of the Direction in this matter, and who also are employed on the round trip voyage on the respective vessels of the Company at the conclusion of which the election is to be held, are eligible to vote.

#### CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. The chief engineers, assistants and all other licensed engineers on the vessels of Swayne & Hoyt, Ltd., constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

2. A question affecting commerce has arisen concerning the representation of chief engineers, assistants, and all other licensed engineers employed on the vessels of Swayne & Hoyt, Ltd., within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) 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 the National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, 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 Regional Director for the Twentieth 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, assistant, and all other licensed engineers employed as engineers on the vessels of Swayne & Hoyt, Ltd., to determine whether they wish to be represented by National Marine Engineers' Beneficial Association, Pacific Coast District, or by Gulf Pacific Licensed Officers Association.

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

[SAME TITLE]

## SUPPLEMENTARY DIRECTION OF ELECTION

*October 16, 1936*

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 (49 Stat. 449), and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, an election by secret ballot shall be conducted as provided in the Decision of the Board in this matter issued on October 2, 1936; and it is hereby further

DIRECTED that notices of the election may be posted on any vessel of the Company when it leaves any port in the United States; and it is hereby further

DIRECTED that in all other respects the Decision and Direction of Election of the Board issued on October 2, 1936, shall remain in full force and effect.

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

[SAME TITLE]

## ORDER PERMITTING WITHDRAWAL OF PETITION

*February 18, 1937*

A petition having been duly filed by the National Marine Engineers Beneficial Association, Pacific Coast District, on July 27, 1936, requesting an investigation and certification of representatives of the licensed engine room officers in the employ of Swayne and Hoyt, Ltd., and the Board, after a hearing, having issued a Direction of Election on October 2, 1936, and balloting having been commenced pursuant to the Direction of Election, which balloting was interrupted by a strike of maritime employees on the Pacific Coast, and a charge having been filed by Marine Engineers Beneficial Association, Local 97 with the Regional Director for the 20th Region on December 10, 1936, charging that Swayne and Hoyt, Ltd., has engaged in unfair labor practices within the meaning of the National Labor Relations Act, with relation to its activities in connection with the Gulf-Pacific Licensed Officers Association, said Association being one of the labor organizations placed on the ballot in this case, and a request for permission to withdraw said petition having been made on February 16, 1937, by the National Marine Engineers Beneficial Association, and due consideration having been given to the facts herein set forth,

IT IS HEREBY ORDERED that the request of the National Marine Engineers Beneficial Association for permission to withdraw its petition be, and hereby is granted and that the request of said Union that the election now being conducted be terminated without further balloting be and hereby is granted, and that the aforesaid case be and hereby is closed.