

In the Matter of PANAMA RAIL ROAD COMPANY and MARINE  
ENGINEERS BENEFICIAL ASSOCIATION

*Case No. R-108.—Decided October 21, 1936*

*Water Transportation Industry—Investigation of Representatives:* controversy concerning representation of employees—rival organizations; substantial doubt as to majority status—question affecting commerce: employees directly engaged in interstate commerce—*Unit Appropriate for Collective Bargaining:* community of interest; craft; established labor organizations in industry; occupational differences; licensed personnel—*Representatives:* proof of choice: membership in union; statement designating—*Certification of Representatives:* after investigation but without election.

*Mr. David A. Moscovitz* for the Board.

*Mr. Edward Patrick Trainor*, of New York City, for the Union.

*Mr. John Milliken* and *Mr. Bert L. Todd*, of New York City, for United Licensed Officers of the United States of America.

*Mr. Fred. G. Krivonos*, of counsel to the Board.

DECISION

STATEMENT OF CASE

On July 2, 1936, the Marine Engineers Beneficial Association, hereinafter termed the M. E. B. A., 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 Panama Rail Road Company, New York, N. Y., hereinafter termed the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act (49 Stat. 449), hereinafter termed the Act. The petition, in substance, avers that the bargaining unit claimed to be appropriate by the petitioner is composed of the licensed engineers employed in the maintenance of the mechanical equipment of the boats of the Company, "in distinction of the work of navigation performed by licensed deck officers"; that the United Licensed Officers, hereinafter termed the U. L. O., on April 18, 1936, having at that time in its membership only one licensed engineer employed by the Company, made an agreement with the Company on behalf of all licensed engineers and licensed deck officers; that the licensed engineers employed by the Company and affected by the agreement are in fact members of the M. E. B. A. and desire to be

represented by the M. E. B. A. for the purpose of collective bargaining with the Company.

On July 21, 1936, the National Labor Relations Board, hereinafter termed the Board, duly authorized the Regional Director for the Second Region to conduct an investigation and provide for an appropriate hearing upon due notice, pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended. On August 11 and 18, 1936, the Regional Director issued and duly served notice and amended notice of hearing on the Company, the M. E. B. A. and the U. L. O. Pursuant to notice, a hearing was held in New York, N. Y., on August 21 and 22, 1936, before Benedict Wolf, duly designated by the Board as Trial Examiner. The Company, the M. E. B. A. and the U. L. O. appeared and participated in the hearing; the Board was represented by counsel. 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.

We find no prejudicial error in any of the Trial Examiner's rulings at the hearing and they are hereby affirmed. The Board has accepted a brief filed by the International Union of Operating Engineers, Marine Local Union No. 3, in the capacity of *amicus curiae*.

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

### FINDINGS OF FACT

#### I. THE COMPANY

I. The Panama Rail Road Company is a New York corporation organized in 1849, with its principal office in New York, N. Y. In 1904, at about the time of the acquisition of the Panama Canal, the capital stock of the Company was purchased by the government of the United States. The Company is owned and controlled by, and operated for the account of the United States. It is a corporation engaged in business for profit, and competes with other railroads and steamship companies.

II. The Company owns and operates, in addition to a railroad and other business enterprises in the Canal Zone, four steamships which make regular advertised and scheduled sailings between New York, N. Y., Haiti and the Canal Zone<sup>1</sup> Two of the vessels<sup>2</sup> are regularly engaged in the carriage of passengers, freight (general

<sup>1</sup>The four vessels are the steamships *Ancon*, *Cristobal*, *Buenaventura* and *Guayaquil*. They make regular scheduled trips between the ports of New York, N. Y., Port Au Prince, Haiti, and Cristobal, Canal Zone (Exhibit B-3).

<sup>2</sup>The *Ancon* and the *Cristobal*

cargo) and refrigeration between these ports; the other two<sup>3</sup> are confined to freight (general cargo). The ships also carry mail.<sup>4</sup>

III. The Company is engaged in traffic and commerce between the United States and foreign countries<sup>5</sup> and the deck officers and engineers employed on the vessels operated by the Company are directly engaged in such traffic and commerce.

## II. THE QUESTION CONCERNING REPRESENTATION

IV. The M. E. B. A. is a labor organization which admits to membership marine engineers licensed by the United States Steamboat Inspection Service. It has been in existence since 1864, and under its present name since 1883.<sup>6</sup> Until 1921, the M. E. B. A. bargained collectively and entered into agreements with the Company in behalf of its engineer members for some years. Thereafter, and until the present time, the M. E. B. A. has had members among the licensed engineers employed by the Company.

V. The U. L. O., formed in about 1933 or 1934, is a labor organization which admits to membership both deck officers and marine engineers licensed by the United States Steamboat Inspection Service. Early in 1936, the U. L. O. approached Thomas H. Rossbottom, vice-president of the Company in charge of the operations of its steamship line, and proposed an agreement covering wages, hours and working conditions for both deck officers and engineers. After several conferences, such an agreement, including a provision for employment of U. L. O. members "whenever possible", was entered into between the U. L. O. and the Company on April 18, 1936.<sup>7</sup> The U. L. O. at the time informed Rossbottom that it represented a membership of more than 50 per cent of the 32 deck officers and engineers employed by the Company.<sup>8</sup>

<sup>3</sup> The *Buenaventura* and the *Guayaquil*.

<sup>4</sup> For the year ending June 30, 1935, the Company's total revenue from its steamship line was \$1,162,268 67. Freight carried totalled 163,304 tons. Passengers totalled 6,546. (Exhibit B-2, table p 37.)

<sup>5</sup> The status of the Canal Zone, for the purposes of commerce, is that of a foreign country. 33 Stat. 843, 19 U. S. C. A., Sec. 126 ("All laws affecting imports of articles . . . from foreign countries shall apply to articles . . . from the Canal Zone, Isthmus of Panama, and seeking entry into any State . . . of the United States . . ."). See 27 Op. Atty. Gen. 594 (holding that the Canal Zone is not one of the possessions of the United States, but rather a place subject to the use, occupation and control of the United States, for the purpose of constructing and maintaining the Panama Canal). See also *Kaufman v. Smith* (C. C., D. N. J.) 175 F. 887 (importations into the United States from the Canal Zone are dutiable). Further, the Company steamships sail regularly between New York and Haiti en route to the Canal Zone; the ships carrying passengers stop regularly at Port Au Prince, Haiti, on the voyages between Cristobal and New York (Exhibit B-3).

<sup>6</sup> Exhibit B-5.

<sup>7</sup> Exhibit B-4.

<sup>8</sup> Each of the Company's four vessels employs four licensed deck officers, the captain, and a first, second and third officer, and four licensed engineers, a chief and three assistants. The Company's licensed personnel thus totals 32, consisting of 16 deck officers and 16 engineers.

VI. The M. E. B. A. learned of the agreement five or six days after it was signed, and protested to Rossbottom, reciting its claim that the Company's engineers were mostly M. E. B. A. members. Rossbottom replied that the Company did not know how many engineers were in fact U. L. O. members; that he would look into the matter; and that if he discovered that a majority or many of the engineers were M. E. B. A. members, he would take up with the U. L. O. the matter of abrogating the agreement concerning the engineers. Rossbottom then, through his superintending engineer, questioned the licensed officers employed on the Company's vessels, and, sometime in June, ascertained that of the 16 deck officers, 13 or 14 were U. L. O. members; and that of the 16 engineers, two were U. L. O. members, one belonged to no organization, and 13 were members of the M. E. B. A.

VII. The situation created by the representations of the U. L. O. to the Company and the agreement of April 18th caused the M. E. B. A. to secure signatures to an authorization for collective bargaining from engineer members as the Company's ships arrived in New York during the six weeks after May 23rd. (The authorization will be discussed more fully hereafter.) When the third engineer of the steamship *Buenaventura*, a member of the M. E. B. A., left the Company's employment during this time, he was replaced by an engineer who was a member of the U. L. O., under the terms of the April agreement. Further, a list of U. L. O. members as of the date of the hearing, introduced into the record, shows the names of three engineers who signed the M. E. B. A. authorization and who were claimed as dues-paying members by M. E. B. A. at the time of the hearing. There is testimony indicating that the situation created by the April agreement may have caused some engineers, dues-paying members of the M. E. B. A., employed by the Company, to join the U. L. O. as well.

VIII. A question has arisen concerning the representation of licensed engineers employed on the Company's vessels. This question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce between the United States and foreign countries.<sup>9</sup>

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<sup>9</sup> Statistics compiled by the Bureau of Labor Statistics, United States Department of Labor, and certified with the seal of the Department by the Acting Secretary of Labor and the Commissioner of Labor Statistics, show that in 1934, in the water transportation industry, out of 76 strikes and lockouts in that year involving 28,590 workers and causing 1,069,642 man-days of idleness, 25 were over "organization" issues, including union recognition, involved 12,844 workers and caused 501,818 man-days of idleness. From January through July, 1935, in the same industry, 24 out of 45 strikes were over "organization" issues, and involved 5,155 workers and caused 125,366 man-days of idleness (Exhibit B-7).

## III. THE APPROPRIATE UNIT

IX. As to the unit appropriate for collective bargaining, the M. E. B. A., in its petition, alleges that it should be composed of the 16 engineers employed on the Company's vessels. The U. L. O. contends for a unit to include the 32 licensed officers on the Company's ships, deck officers as well as engineers. The Company, through Rossbottom, expressed its willingness to bargain collectively with the organization chosen by its licensed personnel, whether it be one unit or several.<sup>10</sup> The brief filed by the International Union of Operating Engineers, Marine Local Union No. 3, in the capacity of *amicus curiae*, pleads for a unit composed of engineers alone.

X. In a number of cases we have determined that licensed marine engineers constitute an appropriate unit for the purposes of collective bargaining and should not be included in one unit with deck officers.<sup>11</sup> By reason of their training, required qualifications, responsibilities and duties, licensed marine engineers form a homogeneous group, quite distinct in interest from licensed deck officers.<sup>12</sup> Moreover, licensed marine engineers and licensed deck officers have traditionally been members of separate labor organizations, and have traditionally bargained separately through such organizations. The agreement between the company and the U. L. O., a single agreement covering both groups, was the first agreement of the kind in Rossbottom's experience extending over several decades.

XI. The U. L. O. seeks to support its contention for the larger bargaining unit by evidence of the use of the term "licensed officers" to include both deck officers and engineers in the published wage scales of the United States Shipping Board;<sup>13</sup> in the form of the Certificate of Inspection of the United States Bureau of Navigation and Steamboat Inspection;<sup>14</sup> in various rules and regulations affecting such officers issued by the Department of Commerce; and in federal legislation enacted and proposed. The U. L. O. bases its contention as well on the fact that deck officers and engineers are examined and licensed by the same federal agency, the Bureau of

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<sup>10</sup> Rossbottom explained in his testimony that he had been "misinformed" as to the membership of licensed officers employed by the company in the U. L. O. at the time the April agreement was entered into.

<sup>11</sup> *In the Matter of Delaware-New Jersey Ferry Co.*, Case No. C-4, decided December 30, 1935 (1 N. L. R. B. 85); *In the Matter of International Mercantile Marine Co.*, Case No. R-24, decided March 21, 1936 (1 N. L. R. B. 384); *In the Matter of Lykes Brothers Steamship Co., Inc., et al.* Cases Nos. R-36, 37, 38, decided July 8, 1936 (*supra*, p. 102). *In the Matter of Black Diamond Steamship Corporation*, Case No. R-107, decided September 24, 1936 (*supra*, p. 241); *In the Matter of Swayna & Hoyt, Ltd.*, Case No. R-106, decided October 2, 1936 (*supra*, p. 282).

<sup>12</sup> See *In the Matter of Black Diamond Steamship Company, supra*, for a statement of these reasons.

<sup>13</sup> Exhibit U. L. O.-1.

<sup>14</sup> Exhibit U. L. O.-2.

Navigation and Steamboat Inspection of the Department of Commerce.

But it is plain that these uses of the term "licensed officers" to include both groups are a matter of convenience in phraseology, and have no bearing on their identity or lack of identity in function or interest for collective bargaining. And the license qualifications and examinations for the two groups are utterly different in character, although administered by the same federal agency, thus further emphasizing, if anything, the distinct character of each group. We find nothing in the record before us requiring any departure from our previous decisions on this point.

XII. We find, therefore, that in order to insure to the licensed engineer employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, all licensed marine engineers employed as marine engineers on the vessels operated by the Company constitute a unit appropriate for the purposes of collective bargaining.

#### IV. DESIGNATION OF REPRESENTATIVES

XIII. Of the 16 licensed marine engineers employed on the Company's four vessels, 14 were members of the M. E. B. A. on April 18, 1936, when the Company entered into agreement with the U. L. O., according to the uncontradicted testimony of Clinton Cassell, organizer for the M. E. B. A., who had collected dues from such members during this time. The inquiry conducted by the Company after the M. E. B. A. protested the agreement (see finding VI above) revealed that 13 of the engineers were members of the M. E. B. A. This result is verified by the signatures of 13 licensed engineers employed by the Company appended to an authorization, dated May 23, 1936, designating the M. E. B. A. to represent them for collective bargaining.<sup>15</sup> These signatures were secured by Cassell during a six-week period following this date, as the Company's four ships docked in New York.<sup>16</sup> Cassell testified, in addition, that 13 of the engineers were dues-paying members of the M. E. B. A. at the time of the hearing. However, a list of the licensed officers employed by the Company claimed to be members of the U. L. O.

<sup>15</sup> Exhibits B-6a and B-6b.

<sup>16</sup> The authorization (Exhibit B-6) bears 19 signatures, secured by Cassell and executed in his presence, each specifying the subscriber's title and ship. Cassell testified that five of the signatures were of engineers temporarily replacing regularly employed engineers for a trip, of junior engineers or of non-licensed engineers. One signature, that of C. Edward Douglass, is followed by the words, "*ex s/s Buenaventura 3rd Asst.*"; there is testimony that the third engineer on that vessel left the Company's employment and was replaced by one Calder, a member of the U. L. O. The 13 remaining signatures are clearly those of licensed engineers regularly employed on the Company's four vessels.

at the time of the hearing includes the names of three engineers who signed the M. E. B. A. authorization. The testimony indicates that because of the April agreement some of the engineers applied for membership in the U. L. O. while retaining membership in the M. E. B. A. Assuming that the choice of these three engineers of a representative for collective bargaining is thus made doubtful, there still remains a total of ten licensed engineers, of the 16 licensed engineers regularly employed by the Company on its four vessels, who had designated the M. E. B. A. as their representative for the purposes of collective bargaining at the time of the hearing.

XIV. We find, therefore, that the M. E. B. A. has been designated as their representative for the purposes of collective bargaining by a majority of the licensed engineers employed by the Company on its four vessels.

#### CONCLUSIONS OF LAW

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

1. A question affecting commerce has arisen concerning the representation of licensed marine engineers employed as marine engineers on the vessels of the Panama Rail Road Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the Act.

2. The licensed marine engineers employed as marine engineers on the vessels of the Panama Rail Road Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. The Marine Engineers Beneficial Association, having been designated by a majority of the licensed marine engineers employed on the vessels of the Panama Rail Road Company as their representative for the purpose of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

#### CERTIFICATION OF REPRESENTATIVES

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 CERTIFIED that the Marine Engineers Beneficial Association has been designated by a majority of the licensed marine engineers employed on the vessels of the Panama Rail Road Com-

pany, New York, N. Y., as their representative for the purposes of collective bargaining with the Panama Rail Road Company, and that, pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, the Marine Engineers Beneficial Association is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.