

In the Matter of DELAWARE-NEW JERSEY FERRY COMPANY and
MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 13

Case No. C-4

Collective Bargaining: refusal to negotiate with representatives after Board order requiring respondent to cease and desist from refusing to bargain collectively—*Interference, Restraint or Coercion*: representatives: circulation of petition among employees designating non-union representatives; denial of right of employees to be represented by non-employees; interference with freedom of choice—*Representatives*: effect of designation of when not result of free choice by employees—*Collective Agreement*: effect of, with representatives not freely chosen by employees—*Order of Board*: reaffirmed.

Mr. Samuel G. Zack and Mr. Jerome Irving Macht for the Board.
Lewis, Wolff & Gourlay, by Mr. Otto Wolff, Jr., of Philadelphia,
Pa., for respondent.

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

SUPPLEMENTAL DECISION

November 20, 1936

On December 30, 1935, after a hearing, the National Labor Relations Board, hereinafter called the Board, issued a decision¹ in the above matter, which found that Delaware-New Jersey Ferry Co., Wilmington, Delaware, a corporation, hereinafter called respondent, by refusing to bargain collectively with Marine Engineers' Beneficial Association No. 13, hereinafter called the Association, as the representative of the licensed engineers employed in that capacity by respondent, had engaged in and was engaging in an unfair labor practice within the meaning of Section 8, subdivision (5), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, and ordered respondent to cease and desist from refusing to bargain collectively with the Association as the exclusive representative of the licensed engineers employed by it in that capacity. Pursuant to Section 10 (e) of the Act, the Board on April 25, 1936, petitioned the United States Circuit Court of Appeals for the Third Circuit, hereinafter called the Court, for the enforcement of this order. On October 29, 1936, respondent filed a petition with the Court alleging in substance that subsequent to the date of the decision herein, and on and since April 1, 1936, a committee consisting of George L. Biddle, Paul Gibbons

¹ 1 N. L. R. B. 85.

and Edgar Russel, licensed engineers employed by respondent, had superseded the Association as the exclusive representative of the licensed engineers employed by it, for purposes of collective bargaining; that therefore the enforcement of the order of the Board, dated December 30, 1935, no longer presents an issue for the determination of the Court; and asking leave to adduce additional evidence in support of the allegations set forth in its petition. On November 2, 1936; the Court ordered that respondent have leave to adduce additional evidence in support of the allegations made in its petition; that the Board have leave to adduce additional evidence in support of the allegations in its complaint herein, or in reply to the additional allegations made by respondent; and that such additional evidence shall be taken before the Board, its member, agent or agency, and shall be made a part of the transcript of record in this cause.

Pursuant to notice, duly served upon the parties, a hearing on the issues set forth in the order of the Court was held in Philadelphia, Pennsylvania, on November 11, 1936, before Benedict Wolf, Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties. The rulings of the Trial Examiner on objections to the introduction of evidence are hereby affirmed.

Upon the entire record in the case, the stenographic report of the hearings and all the evidence, including oral testimony and other evidence offered and received, the Board, in addition to the findings already made in its decision of December 30, 1935, makes the following:

FINDINGS OF FACTS

Since the decision of the Board in this matter, a written contract has been entered into between respondent and a committee of three licensed engineers employed by respondent, covering wages, hours and working conditions of engineers, oilers, coal firemen and oil firemen employed on respondent's vessels. Whether this committee has superseded the Association as the exclusive representative of the licensed engineers employed by respondent we shall now consider.

The events leading up to the execution of the agreement were as follows: In October or November, 1935, more than two months after all 12 licensed engineers then employed by respondent had authorized the Association to represent them for purposes of collective bargaining, and after respondent had notified the Association that it would not bargain with an outside representative of its employees, respondent, through William Trundle, its marine superintendent, at that time, asked each of its licensed engineers individually whether

the Association represents him before this Board; whether he signed an agreement in that connection; whether he belonged to the Association; and whether he requested the Association to negotiate a wage adjustment. At the same time Trundle informed each of them that respondent was willing to grant a wage increase on condition that the employees form an organization among themselves and that they be represented in negotiations by a committee of employees. The engineers rejected that proposal, hoping to retain the Association and to gain their ends through it.

Effective January 1, 1936, William Trundle resigned from his position as marine superintendent. That position had been first created by respondent about 1933, and William Trundle, as well as his only predecessor in office, Mr. Railsback, had been graduated from the United States Naval Academy prior to the appointment as marine superintendent. When William Trundle resigned, however, Ludolph A. K. Josendale, a chief engineer employed by respondent to whom other licensed engineers looked for leadership; was elevated to the position of marine superintendent. In the latter part of March, 1936, when Josendale reported to Lehman H. Garrison, general manager of respondent, that the men were dissatisfied, Garrison replied: "They know what they can do. They know what to do. If they will appoint three men to represent them, why, we will meet them. The door is open all the time." Josendale promised to see that such a committee was appointed. He then dictated, and Mr. McAndrew, treasurer of respondent, typed, a document worded as follows:

"We the undersigned engine room personnel of the Del-New Jersey Ferry Co. hereby appoint the following chief engineers to represent us in negotiating with our officials in regard to come to a better understanding about wages and working conditions on the ferries.

Mr. George Biddle Mr. Paul Gibbons Mr. Edgar Russell."

It will be noted that the names of the members of the committee were typed on the document.

Josendale then approached individually each of the engineers, oilers, coal firemen and oil firemen, and generally said: "I was talking to the Captain today, and you know if you appoint a committee among yourselves, you can go up there and I believe you can get what you want." Garrison, when asked on cross-examination whether he had promoted Josendale to the position of marine superintendent in order to more easily sway the licensed engineers to appoint a collective bargaining committee from among themselves, replied that he had been training Josendale for the position since 1931.

It will be remembered that the position was not created until 1933, and that two men preceded Josendale in that position in the interim between 1931 and 1936. Also the appointment was a surprise to Josendale. Twenty-two employees signed the authorization circulated by Josendale, including 11 licensed engineers. No meeting was called for the purpose of nominating or electing the designated representative, nor were the candidates consulted as to their availability to serve on the committee. Josendale alone then delivered the signed document to Garrison, who thereafter, on April 11, 1936, by letter notified the members of the committee that a meeting for the purpose of discussing wages and general working conditions would be held on April 14, 1936. Incidentally, a similar document was circulated among the deck officers of respondent, and Garrison, without consulting either committee, scheduled his meeting with both committees to take place at the same place and time. At the first meeting the committee representing the engineers and engine room employees presented nothing in the way of demands. At a second meeting the committee presented a proposed wage scale, and at a third meeting an agreement was entered into between respondent and the committee, which provided for an increase in wages, decrease in working hours, and for other working conditions more favorable than had existed theretofore, effective April 1, 1936, for a period of one year.

The mere recital of events in chronological order brings into bold relief the obvious machinations of respondent to dictate terms from the top, despite its ludicrously transparent effort to simulate the process of collective bargaining. In going through the motions of collective bargaining, incidentally, respondent completely ignored the previous finding of the Board that licensed engineers alone constitute an appropriate unit. The absurdity of respondent's contention that the committee of three engineers has superseded the Association as the freely chosen representative of the licensed engineers is further apparent in the following facts: At all times herein considered, both prior to and after the decision of the Board, it was the position of respondent that it would deal only with such representatives of its employees as were acceptable to it, and that it would not negotiate with an outside representative of its employees. This was known to the licensed engineers. Respondent had been ready to increase the wages of the licensed engineers since July, 1935, but refused to grant such an increase through the Association. When Josendale circulated the authorization among the men, respondent let it be known that an increase in wages and decrease in hours of work could then be obtained, but only through a committee of employees, and not through the Association. The

licensed engineers were tired of waiting for improvements in working conditions, and were thus impelled to sign the authorization in order to obtain the immediate benefits they had good reason to believe would follow. In the words of a recent decision of the United States Supreme Court: "The power to confer or withhold unlimited benefits is the power to coerce or destroy . . . This is coercion by economic pressure. The asserted power of choice is illusory."² Some of the licensed engineers, respondent's own witnesses, testified that despite the appointment of the committee, they still desired in the future to be represented by the Association, and that the men discussed means of accomplishing this among themselves.

We conclude, therefore, that the designation of the committee, consisting of George Biddle, Paul Gibbons and Edgar Russel, was not the result of a free choice on the part of the licensed engineers, and hence that it has not superseded the Association as the representative of the licensed engineers, employed in that capacity by respondent, for purposes of collective bargaining.

In coming to this conclusion, we do not pass judgment on the validity of the contract entered into between respondent and the committee. We merely hold that Marine Engineers' Beneficial Association No. 13, despite the intervening events since the date of our last decision, still is the representative of the licensed engineers employed in that capacity by respondent, for purposes of collective bargaining. Assuming the contract is valid, it does not preclude further bargaining between respondent and the Association with reference to extension, modification or termination of the agreement upon its expiration date, April 1, 1937.

At the hearing of October 31, 1935, respondent questioned the authority of the Association to represent the licensed engineers on the ground that the employees signed cards authorizing the national organization and not the local Association to represent them. At the hearing of November 11, 1936, this misunderstanding was corrected. The licensed engineers had authorized Marine Engineers' Beneficial Association No. 13 to represent them.

We see no reason for modifying the order of the Board, dated December 30, 1935, and hereby reaffirm it.

² *United States v. Butler et al., Receivers of Hoosac Mills Corporation*, 297 U. S. 1, 71.