

In the Matter of SEAS SHIPPING COMPANY and NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, LOCAL NO. 33

Case No. R-109.—Decided December 4, 1936

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

Mr. David A. Moscovitz for the Board.

Mr. Frank V. Barns, of New York City, for the Company.

Mr. Edward P. Trainer, of New York City, for National Marine Engineers' Beneficial Association.

Mr. Herbert G. 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.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

On September 28, 1936, National Marine Engineers' Beneficial Association, Local No. 33, hereinafter referred to as M. E. B. A., filed a petition with the Acting Regional Director for the Second Region alleging that a question affecting commerce had arisen concerning the representation of the licensed marine engineers employed by Seas Shipping Company, New York, New York, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. The National Labor Relations Board, hereinafter referred to as the Board, on October 5, 1936, authorized the Acting Regional Director for the Second Region to conduct an investigation, and to provide for a hearing jointly with a hearing on the petition filed by M. E. B. A. concerning the representation of engineers employed by Grace Line, Inc.¹ On October 6, 1936, the Acting

¹ *In the Matter of Grace Line, Inc and Panama Mail Steamship Company and National Marine Engineers' Beneficial Association, Local No 33, Case No R-110, decided November 13, 1936 (supra, p. 369).*

Regional Director issued notice of a joint hearing to be held in New York City on October 13, 1935. Copies of the notice of hearing were duly served on Seas Shipping Company, hereinafter called the Company, M. E. B. A. and on United Licensed Officers of the United States of America, hereinafter referred to as U. L. O., and International Union of Operating Engineers, Local No. 3,² hereinafter referred to as I. U. O. E., two labor organizations which had been named in the petition as purporting to represent the engineers.

Pursuant to the notice, a joint hearing was held in New York City on October 13, 1936, before Charles A. Wood, the Trial Examiner duly designated by the Board. All who were served with notice were represented at the hearing.

On November 5, 1936, the Board, having found the evidence introduced at the first hearing to be inadequate, issued notice of a further hearing to be held in New York City on November 12, 1936. The notice of hearing limited the evidence to be introduced to matters relating to the determination of what specific persons are employed as engineers by the Company and any further evidence of the desire of these engineers to have one or the other of the labor organizations represent them. Copies of the notice of hearing and of an order adjourning the hearing, subsequently issued by the Board, were duly served on all parties. Pursuant to the notice of adjournment, a hearing was held in New York City on November 19, 1936, before Walter Wilbur, the Trial Examiner duly designated by the Board, at which all of the parties were represented.

Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties. The Board has reviewed the rulings of the Trial Examiners on objections to the admission of evidence made by representatives of the various parties and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE COMPANY

Seas Shipping Company, New York, New York, is a New York corporation engaged in the business of operating four vessels plying between the United States and Africa. These vessels are used principally for the transportation of freight, though they also carry occasional passengers. New York City is the home port of the vessels. They also receive and discharge cargo at the ports of Phila-

² Erroneously referred to at the hearing as National Association of Operating Engineers.

delphia, Pennsylvania and Baltimore, Maryland in the United States. In Africa the vessels call at ports from Cape Town to Beira in South Africa and up the east coast of Africa to Mombasa.

A chief and three assistant engineers, all required by law to be licensed, are employed on each of the four vessels.

We find that the Company is engaged in transportation and commerce between the States and between the United States and foreign countries, and that the marine engineers employed by the Company are directly engaged in such transportation and commerce.

II. THE UNIONS INVOLVED

M. E. B. A. is a labor organization whose membership is confined to licensed marine engineers. U. L. O. is a labor organization whose membership includes both licensed marine engineers and licensed deck officers. The membership of I. U. O. E., which is a labor organization affiliated with the American Federation of Labor, includes all those engaged in the operation of steam boilers, stationary, marine, Diesel, portable, hoisting, and electrical engines, gas engines, internal combustion engines, or any machine that develops power.

III. THE QUESTION CONCERNING REPRESENTATION

M. E. B. A., U. L. O. and I. U. O. E. all claim members among the engineers employed by the Company. Frank V. Barns, counsel for the Company, who also appeared as a witness, testified that it had come to the attention of the Company that various labor organizations were seeking to represent the engineers and that he believed an election for the purpose of determining which organization was entitled to represent them would settle the matter. Representatives of M. E. B. A. and of I. U. O. E. testified that the question of representation which had arisen had caused unrest among the engineers employed by the Company.

We find that a question has arisen concerning the representation of the licensed 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.

IV. THE APPROPRIATE UNIT

M. E. B. A. and I. U. O. E. contend that the licensed engineers constitute an appropriate unit. U. L. O., as in other cases which have come before the Board involving licensed maritime personnel, insists that the entire licensed personnel, including licensed deck officers and licensed engineers, constitute an appropriate unit. There were no facts developed at the hearings in this case which indicate that the situation is in any wise different from that existing in other

cases where we found the licensed engineers alone to be an appropriate unit.³ For the reasons stated in those cases, we find that the licensed chief and assistant engineers employed by the Company constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

V. CERTIFICATION

M. E. B. A. has submitted in evidence cards received from nine engineers authorizing M. E. B. A. to represent them for the purposes of collective bargaining. At the second hearing, the Company's payroll was checked against ship's articles procured from the United States Shipping Board, by which check it was shown that these nine engineers are presently employed on the vessels operated by the Company. Four of these cards were mailed to M. E. B. A. on September 12, 1936, two on October 24, 1936, and three on November 14, 1936.

Eight of the nine cards were signed by the engineers, while the name on one was typewritten. Neither U. L. O. nor I. U. O. E. made any attempt at the hearing or otherwise to attack the authenticity of any of the authorizations, or to show that any one of the nine engineers who had authorized M. E. B. A. to represent them had indicated in any other way that he did not desire to have M. E. B. A. represent him, or that he desired either of the other organizations to represent him. The nine authorizations submitted by M. E. B. A. must therefore be accepted as evidence that nine of the 16 engineers employed by the Company have designated M. E. B. A. as their representative. M. E. B. A., having been designated by a majority of the licensed engineers employed by the Company as their representative, is, by virtue of Section 9 (a) of the Act, the exclusive representative of all of the licensed engineers for the purposes of collective bargaining, and we will so certify.

Trainer, representing M. E. B. A., testified that two other engineers employed by the Company are members of M. E. B. A., Local No. 5. He based this conclusion on statements made to him by engineers who had recently been employed on the ship with these men that they had seen their membership cards. However, since the nine engineers who signed authorizations constitute a majority of the 16 engineers employed by the Company, it is unnecessary for us to determine whether such evidence is sufficient proof of the desire of these two engineers to have M. E. B. A. represent them.

³ See *In the Matter of Panama Rail Road Company and Marine Engineers' Beneficial Association*, Case No R-108, decided October 21, 1936 (*supra*, p. 290), and cases cited therein.

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 the licensed chief and assistant engineers employed by Seas Shipping Company, within the meaning of Section 9 (c) of the National Labor Relations Act.

2. The licensed chief and assistant engineers employed by Seas Shipping Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. National Marine Engineers' Beneficial Association, having been designated by a majority of the licensed chief and assistant engineers employed by Seas Shipping Company as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, 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.

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 National Marine Engineers' Beneficial Association has been designated by a majority of the licensed chief and assistant engineers employed by Seas Shipping Company, New York, New York, as their representative for the purposes of collective bargaining with Seas Shipping Company, and that, pursuant to the provisions of Section 9(a) of the National Labor Relations Act, National Marine Engineers' Beneficial Association 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.