

In the Matters of AMERICAN-HAWAIIAN STEAMSHIP COMPANY, OCEANIC & ORIENTAL NAVIGATION COMPANY, and WILLIAMS STEAMSHIP CORPORATION and NATIONAL ORGANIZATION MASTERS, MATES & PILOTS OF AMERICA, WEST COAST LOCAL No. 90

Cases Nos. R-61, R-62, and R-63.—Decided December 12, 1936

Water Transportation Industry—Investigation of Representatives: controversy concerning representation of employees—refusal by employer to recognize union as exclusive representative; substantial doubt as to majority status—question affecting commerce: confusion and unrest among employees—*Unit Appropriate for Collective Bargaining:* no controversy as to—*Representatives:* proof of choice: consent election—*Majority Rule:* meaning of, Section 9 (a) interpreted—*Certification of Representatives.*

Mr. Bertram Edises for the Board.

Mr. Gregory A. Harrison, of San Francisco, Cal., for the Companies.

Mr. H. P. Melnikow, of San Francisco, Cal., for the Union.

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

DECISION

STATEMENT OF CASE

On July 25, 1936, National Organization Masters, Mates & Pilots of America, West Coast Local No. 90, hereinafter referred to as the Union, filed with the Regional Director for the Twentieth Region three petitions alleging that a question affecting commerce had arisen concerning the representation of the licensed deck officers employed on the vessels of American-Hawaiian Steamship Company, Oceanic & Oriental Navigation Company, and Williams Steamship Corporation, respectively, hereinafter referred to collectively as the Companies, 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. On July 28, 1936, the National Labor Relations Board, hereinafter referred to as the Board, duly authorized the Regional Director for the Twentieth Region to conduct an investigation and to provide for an appropriate hearing in each of the three cases. On July 28, 1936, the Regional Director issued notices of a joint hearing to be held in San Francisco, California on August 6, 1936. Copies of the notice of hearing were duly served on each of the Companies and the Union.

Pursuant to notice a joint hearing was held in San Francisco, California, on August 6, 1936, before Charles A. Wood, duly designated by the Board as Trial Examiner. The Companies and the Union 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. The Board finds no prejudicial error in any of the Trial Examiner's rulings at the hearing and they are hereby affirmed.

At the hearing, a stipulation was entered into by the parties in respect to the holding of an election. The terms of the stipulation were as follows:

"That there be an immediate election under the auspices of the National Labor Relations Board, in accordance with the rules of procedure to be laid down or determined by the Board, or its agent; and it is agreed on behalf of the companies, subject to acceptance, of course, of the stipulation, that if the petitioning union here, Local No. 90 of the Masters, Mates and Pilots, is designated by a majority of the deck officers of these companies, or any of them, which the Board shall certify is a fact officially, the company will recognize the union as the agent of their deck officers for the purpose of collective bargaining; and in connection with an election so ordered will produce payrolls and list of officers and other data necessary to conduct it."

Pursuant to the stipulation, the Board authorized the Regional Director for the Twentieth Region to conduct and supervise an election by secret ballot of the licensed deck officers, including first officers, second officers, third officers and fourth officers employed in such capacity between July 5, 1935, and August 15, 1936, on the vessels owned and operated by the Companies. The election was conducted as authorized, between September 14 and November 15, 1936, at San Francisco and Los Angeles, California; Boston, Massachusetts; New York, New York; Baltimore, Maryland; Seattle, Washington; and Manila, Philippine Islands. An Intermediate Report was filed by the Regional Director for the Twentieth Region on November 21, 1936, in accordance with Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended, and was duly served upon the parties. The Regional Director found as follows with respect to the results of the election:

Total number eligible to vote.....	222
Total votes cast for the Union.....	106
Total votes cast against the Union.....	95
Total votes challenged.....	2

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 COMPANIES

American-Hawaiian Steamship Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, which operates steam vessels and motorships for the transportation of freight between the Pacific Coast ports of Los Angeles, San Francisco and Oakland, California; Astoria, Oregon; Portland, Seattle and Tacoma, Washington, and the North Atlantic ports of Boston, Massachusetts; Philadelphia, Pennsylvania; Port Newark, New Jersey and New York City, and between said Pacific Coast ports and ports in foreign countries. It has offices in twelve ports at which it receives and delivers cargo, and employs agents on a commission basis at others. In addition, it has offices in four interior cities, namely, Rochester, New York; Pittsburgh, Pennsylvania; Detroit, Michigan; and Chicago, Illinois, and has agents at Liverpool, England, and Honolulu, Hawaiian Islands.

Oceanic & Oriental Navigation Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware. Fifty per cent of its capital stock is owned by American-Hawaiian Steamship Company. It is engaged in the transportation of freight between ports in the United States and ports in foreign countries, and operates 17 vessels, eight of which are operated in trade between the Pacific Coast and the Orient under the management of American-Hawaiian Steamship Company.¹

Williams Steamship Corporation is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is engaged in the same activity as American-Hawaiian Steamship Company, of which it is a wholly-owned subsidiary.

It was stipulated by the parties at the hearing that the services of the deck officers employed on the vessels operated by each of the Companies are connected with their navigation and operation. The Board finds that each of the Companies is engaged in traffic, commerce, and transportation among the several States and between the United States and foreign countries, and that the licensed deck officers employed on the vessels operated by the Companies are directly engaged in such traffic, commerce, and transportation.

¹ The other nine vessels are operated between ports of the Pacific Coast and Australasia, and are not involved in this proceeding.

II. THE UNION

National Organization Masters, Mates & Pilots of America is a national labor organization, organized in 1857, with about 45 locals in various cities throughout the United States. It is affiliated with the American Federation of Labor, and has approximately 7000 members, representing all grades of licensed deck officers. At the time of the hearing, it had entered into agreements in respect to rates of pay, wages, hours of employment, and other conditions of employment with the great majority of shipping companies operating on the Pacific Coast. It had no agreement with any of the Companies in this case, but claimed to have enrolled as members a majority of the licensed deck officers employed by the Companies, and to have been chosen as representative for the purposes of collective bargaining by other employees who had not become members.

West Coast Local No. 90 was organized in November, 1933, and has approximately 2000 members. Its jurisdiction includes all of the ports on the Pacific Coast between Nome, Alaska and San Diego, California.

III. QUESTION CONCERNING REPRESENTATION

Early in 1935, E. B. O'Grady, secretary and business manager of the Union, requested Thomas G. Plant, vice president and operating manager of the Companies, to negotiate with the Union. Plant replied that any time the Union could give him assurance that it represented 51 per cent of the licensed deck officers employed by the Companies, he would enter into an agreement forthwith. On July 23, 1936, the Union sent a letter to each of the Companies, signed by O'Grady, requesting a conference for the purpose of collective bargaining.² The letters were answered on behalf of the Companies by Plant, who stated that there was "no information on which to base an assumption that the National Organization of Masters, Mates & Pilots of America represents . . . [the] licensed Deck Officers for the purpose of collective bargaining. The Company therefore suggests that you follow the usual procedure if you claim the right to such representation".³

There was evidence at the hearing to the effect that the refusal by the Companies to recognize the Union as the representative of the employees was engendering unrest among the employees, and that a continuation of the dispute might lead to strikes and stoppages in the business of the Companies.

² Board's Exhibits Nos. 19a, 19b, and 19c.

³ Board's Exhibit No. 3b.

The Board finds that a question has arisen concerning the representation of the licensed deck officers employed by the Companies, and that this question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE APPROPRIATE UNIT

There was no dispute as to the appropriateness of the licensed deck officers as a unit for the purposes of collective bargaining, and the Companies in this case have agreed⁴ by stipulation, as hereinbefore stated, to deal with the representative of a majority of the licensed deck officers in their employ.

In accordance with the terms of the stipulation, and in conformity with the inter-relationship of management and operation of the Companies, the Board finds that all of the licensed deck officers employed on the vessels of the Companies constitute an appropriate unit for the purposes of collective bargaining.⁴

V. CONCLUSION

In determining whether the Union may be certified as the exclusive representative for collective bargaining, a question arises in respect to the effect of the stipulation. It is the opinion of the Board that the stipulation was intended only to invoke the regular machinery of the Board in the conduct of the election, and that the phrase, "designated by a majority of the deck officers", was used with reference to the language of Section 9 (a), which provides:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . ."

However, even if it is contended that the stipulation was intended to establish a rule for this case independent of the Act, the contention must be rejected. This question was fully discussed by the Board in *Matter of R. C. A. Manufacturing Company, Inc. and United Electrical & Radio Workers of America*, Case No. R-39, decided on November 7, 1936 (*supra*, p. 168), wherein the principle was stated that the right of a labor organization to be certified as the exclusive representative must be decided solely by reference to Section 9 (a) of the

⁴In this connection it should be noted that the Companies have jointly signed an agreement with the Maine Engineers' Beneficial Association as representative of the licensed engine room officers employed on the vessels of the Companies. Board's Exhibit No. 15

Act. It was also held in that case that the phrase, "majority of the employees", refers to a majority of the eligible employees voting in an election, and that the organization receiving a majority of the votes cast is to be certified as the exclusive representative.⁵

In the instant case, the number of eligible employees who voted in the election was 203, of whom 106 voted to be represented by the Union. Thus the Union has received a majority of the votes cast. The Board finds, therefore, that the Union has been designated as their representative for the purposes of collective bargaining by a majority of the licensed deck officers employed on the vessels of the Companies, and, pursuant to Section 9 (a) of the Act, is the exclusive representative of all the licensed deck officers so employed.

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 deck officers employed as such on the vessels owned and operated by American-Hawaiian Steamship Company, Oceanic & Oriental Navigation Company, and Williams Steamship Corporation, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the Act.

2. The licensed deck officers employed as such on the vessels owned and operated by American-Hawaiian Steamship Company, Oceanic & Oriental Navigation Company, and Williams Steamship Corporation constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. National Organization Masters, Mates & Pilots of America, West Coast Local No. 90, having been designated by a majority of the licensed deck officers employed on the vessels owned and operated by American-Hawaiian Steamship Company, Oceanic & Oriental Navigation Company, and Williams Steamship Corporation 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 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 Re-

⁵ See also *Virgman Railway Company v. System Federation No 40*, 84 F. (2nd) 641 (C. C. A. 4); affirmed March 29, 1937, 57 S. Ct. 592.

lations 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 Organization Masters, Mates & Pilots of America, West Coast Local No. 90, has been designated by a majority of the licensed deck officers employed on the vessels owned and operated by American-Hawaiian Steamship Company, Oceanic & Oriental Navigation Company, and Williams Steamship Corporation 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, National Organization Masters, Mates & Pilots of America, West Coast Local No. 90, 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.