

In the Matter of OCEAN STEAMSHIP COMPANY OF SAVANNAH and  
UNITED LICENSED OFFICERS OF THE UNITED STATES OF AMERICA

Cases Nos. R-119 and R-120.—Decided March 6, 1937

*Water Transportation Industry—Election Ordered:* 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; licensed personnel; occupational differences—*Certification of Representatives.*

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

*Mr. Herbert J. DeVarco*, of New York City, for the Union.

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

*Mr. Edward T. Pinchin*, of New York City, for National Organization Masters, Mates and Pilots of America.

*Mary Lemon Schleifer*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On December 23, 1936, United Licensed Officers of the United States of America, hereinafter referred to as U. L. O., filed a petition with the Regional Director of the National Labor Relations Board for the Second Region alleging that a question affecting commerce had arisen concerning the representation of the licensed deck officers employed by Ocean Steamship Company of Savannah, hereinafter referred to as the Company. On December 30, 1936, U. L. O. filed a similar petition concerning the representation of the licensed marine engineers employed by the Company. Both petitions requested that the Board investigate and certify 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 January 11, 1937, authorized the Regional Director for the Second Region to conduct investigations and provide for appropriate hearings. On January 14, 1937, the Regional Director issued notices of a hearing to be held in New York City on January 21, 1937. Copies of the notices were duly served upon the Company, U. L. O., National Marine Engineers' Beneficial Association, hereinafter referred to as

M. E. B. A., International Union of Operating Engineers, hereinafter referred to as I. U. O. E., and National Organization Masters, Mates and Pilots of America, hereinafter referred to as M. M. P.

Pursuant to the notices, a hearing was held in New York City on January 21, 1937, before Emmett P. Delaney, the Trial Examiner duly designated by the Board. All who were served with notice, except I. U. O. E., were represented and participated in the hearing. By consent of the representatives present, it was agreed that a joint hearing be held on the two petitions. 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 were made by the various parties to the introduction of certain evidence. The Board, having reviewed the rulings of the Trial Examiner, and finding that no prejudicial errors were committed, hereby affirms the rulings made on these objections.

In a brief filed by M. E. B. A. on January 27, 1937, it is contended that the Railway Labor Act,<sup>1</sup> is applicable and that the Board therefore has no jurisdiction. The Board has carefully considered this contention and has decided that it does have jurisdiction in this case.

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

Ocean Steamship Company of Savannah is a corporation which has its principal office and place of business in New York City. Offices are also maintained in Savannah, Georgia, in Boston, Massachusetts, and in practically all of the principal cities of the New England and Southern States. The Company is a subsidiary of the Central of Georgia Railway. However, the two corporations are maintained and operated as distinct legal entities.

The Company is engaged in the operation of vessels between Savannah, Georgia and Boston, Massachusetts for the transportation of freight and passengers for hire. At the present time five vessels<sup>2</sup> are being operated in this service. Three of these ships<sup>3</sup> are used for the transportation of freight only, two for the transportation of passengers and freight. The home port of all of the vessels is Savannah, Georgia. The ships sail from Savannah every

<sup>1</sup> 45 U. S. C. 151 *et seq.*

<sup>2</sup> Named City of Birmingham, City of Chattanooga, City of St. Louis, City of Montgomery, and City of Atlanta. The City of Savannah, also owned by the Company, has been out of service for approximately a year and the Company does not contemplate returning it to service immediately.

<sup>3</sup> City of St. Louis, City of Montgomery, and City of Atlanta.

Saturday, Monday, and Wednesday, and stop at the port of New York both going to and returning from Boston, Massachusetts. About 12 days are required for a complete trip.

Each vessel operated by the Company carries four licensed deck officers consisting of a master and three assistants, and four licensed engineers consisting of a chief engineer and three assistants.

We find that the Company in the operation of vessels in a coast-wise service between ports on the eastern coast of the United States is engaged in transportation and commerce between the States of the United States, and that the licensed deck officers and licensed engineers employed on these vessels are directly engaged in such transportation and commerce.

## II. THE UNIONS

U. L. O. is a labor organization whose membership includes both licensed deck officers and licensed engineers. M. M. P. is a labor organization which admits only licensed deck officers into membership. M. E. B. A. is a labor organization admitting only licensed marine engineers to membership.

## III. QUESTION CONCERNING REPRESENTATION

Prior to 1936, the Company met with representatives of M. M. P. for purposes of collective bargaining. In June, 1936, the Company met with representatives of U. L. O. for the same purpose, but negotiations were suspended by the Company before an agreement was reached, because M. M. P. denied the right of U. L. O. to represent the licensed deck officers. The Company has at present no agreement covering licensed personnel with any labor organization. Walter I. Percy, superintendent of the Company, testified that many conflicting claims have been made by these organizations and that the Company does not know which organization has the right to represent these employees for the purposes of collective bargaining.

We find that a question has arisen concerning the representation of the licensed deck officers and the licensed engineers, respectively, employed by the Company and that these questions tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce:

## IV. THE APPROPRIATE UNIT

Although U. L. O. admits to membership both licensed deck officers and licensed engineers, it made no claim as it has in prior cases,<sup>4</sup> that the entire licensed personnel should be included in one

<sup>4</sup> 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.

unit. For the reasons stated in prior decisions<sup>5</sup> we find that the licensed deck officers and the licensed engineers employed by the Company, each 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.

#### DISPOSITION OF CASES

At the hearing U. L. O. introduced certain evidence for the purpose of proving that a majority of the licensed deck officers and of the licensed marine engineers, respectively, now employed by the Company desire U. L. O. to represent them. This evidence consisted of receipts issued by U. L. O. for payment of dues and the written applications made by the same employees to become members of U. L. O.

As previously stated the Company employs 20 licensed deck officers and 20 licensed engineers. U. L. O. introduced dues receipts for 11 deck officers and for 15 licensed engineers. Some of these dues receipts, which Burt L. Todd, secretary of U. L. O., admitted were the last dues receipts issued to these men by U. L. O., are dated as far back as December 24, 1935. To find on this evidence that a majority of the licensed deck officers desire U. L. O. to represent them, it would be necessary to include one deck officer who last paid dues to U. L. O. on December 24, 1935. Similarly, to find that a majority of the licensed engineers desire U. L. O. to represent them, it would be necessary to include one engineer who last paid dues to U. L. O. on February 2, 1936. We believe that this is too remote to justify a finding that such employees now desire U. L. O. to represent them. We will therefore order elections to be held.

#### CONDUCT OF ELECTIONS

Round trips of the vessels operated by the Company begin and end at Savannah, Georgia, and it is at Savannah that ships articles are signed and a crew employed. There was testimony at the hearing that if elections were ordered the vessels could be posted as well as voted in New York, and apparently this is the desire of the parties. We will, therefore, order that notices of election, a sample ballot, a list of employees eligible to vote and a notice of the time and place where balloting will be held, shall be posted on each vessel upon its arrival in the port of New York from Savannah, Georgia, on the next trip, if possible, after the issuance of the Direction of Election and that balloting shall be conducted when the boat so posted returns to the port of New York from Boston, Massachusetts.

<sup>5</sup> *Ibid*

Every licensed deck officer who has been employed as such by the Company at any time between December 23, 1936, the date of the filing of the petition concerning licensed deck officers, and the date of the Direction of Election, and who makes the trip from Savannah, Georgia, in the course of which the vessel is posted and balloting takes place, in the capacity of a licensed deck officer, shall be eligible to vote.

Every licensed engineer who has been employed as such by the Company at any time between December 30, 1936, the date of the filing of the petition concerning the licensed engineers, and the date of the Direction of Election and who makes the trip from Savannah, Georgia, in the course of which the vessel is posted and balloting takes place, in the capacity of a licensed engineer, shall be eligible to vote.

#### CONCLUSIONS OF LAW

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

1. Questions affecting commerce have arisen concerning the representation of the licensed deck officers and of the licensed engineers, respectively, employed by Ocean Steamship Company of Savannah, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.
2. The licensed deck officers and the licensed engineers employed by Ocean Steamship Company of Savannah, each constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

#### DIRECTION OF ELECTIONS

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

DIRECTED that, as part of the investigations authorized by the Board to ascertain representatives for collective bargaining with Ocean Steamship Company of Savannah, elections by secret ballot shall be conducted as soon as convenient and beginning as promptly as is practicable after the date of this Direction, in conformity with the rules set forth hereinabove for the conduct of such elections, under the direction and supervision of the Regional Director for the Second 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:

(1) among the licensed deck officers employed by Ocean Steamship Company of Savannah to determine whether they desire to be represented by United Licensed Officers of the United States of America or by National Organization Masters, Mates and Pilots of America, for the purposes of collective bargaining; and

(2) among the licensed engineers employed by Ocean Steamship Company of Savannah to determine whether they desire to be represented by United Licensed Officers of the United States of America or by National Marine Engineers' Beneficial Association, for the purposes of collective bargaining.

[SAME TITLE]

### CERTIFICATION OF REPRESENTATIVES

*May 6, 1937*

On December 23, 1936, United Licensed Officers of the United States of America, hereinafter referred to as U. L. O., filed a petition with the Regional Director for the Second Region (New York City) alleging that a question affecting commerce had arisen concerning the representation of the licensed deck officers employed by Ocean Steamship Company of Savannah, hereinafter referred to as the Company. On December 30, 1936, U. L. O. filed a similar petition concerning the representation of the licensed marine engineers employed by the Company. Both petitions requested the National Labor Relations Board, hereinafter referred to as the Board, to investigate and certify representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449. On January 11, 1937, the Board authorized the Regional Director to conduct investigations and provide for appropriate hearings. Pursuant to notices duly served on all the parties, a hearing was held in New York City on January 21, 1937. By agreement of the parties, the hearing was held jointly on the two petitions.

On March 6, 1937, the Board issued a Decision and Direction of Elections in which it ordered elections to be held under the direction and supervision of the Regional Director for the Second Region among the licensed deck officers employed by the Company to determine whether they desired to be represented by U. L. O. or by National Organization Masters, Mates and Pilots of America, for the purposes of collective bargaining; and among the licensed engineers employed by the Company to determine whether they desired to be represented by U. L. O. or by National Marine Engineers' Beneficial Association, for the purposes of collective bargaining.

Pursuant to the rules set forth for the conduct of the elections in the Decision and Direction of Elections, balloting was conducted

among the eligible licensed deck officers and among the eligible licensed engineers on each vessel operated by the Company at various times between April 16 and April 26, 1937. On April 29, 1937, the Regional Director for the Second Region filed an Intermediate Report with the Board pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended. The Intermediate Report stated that the result of the balloting among the licensed deck officers was as follows:

1. Total number eligible to vote.....	18
2. Total number of ballots cast.....	18
3. Total number of votes for U. L. O.....	17
4. Total number of votes for National Organization Masters, Mates and Pilots of America.....	1

The result of the balloting among the licensed engineers was:

1. Total number eligible to vote.....	19
2. Total number of ballots cast.....	19
3. Total number of votes for U. L. O.....	19
4. Total number of votes for National Marine Engineers' Beneficial Association.....	0

NOW THEREFORE, 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 and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Licensed Officers of the United States of America has been selected by a majority of the licensed deck officers employed by Ocean Steamship Company of Savannah as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, United Licensed Officers of the United States of America is the exclusive representative of the licensed deck officers employed by Ocean Steamship Company of Savannah for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; and

IT IS HEREBY CERTIFIED that United Licensed Officers of the United States of America has been selected by a majority of the licensed engineers employed by Ocean Steamship Company of Savannah as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, United Licensed Officers of the United States of America is the exclusive representative of the licensed engineers employed by Ocean Steamship Company of Savannah for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.