

IN the Matter of NEW YORK AND CUBA MAIL STEAMSHIP COMPANY and  
UNITED LICENSED OFFICERS OF THE UNITED STATES OF AMERICA

*Cases Nos. R-121 and R-122.—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; occupational differences—*Certification of Representatives.*

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

*Burlingham, Veeder, Clark & Hupper*, by *Mr. Burton H. White*, of New York City, for the Company.

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

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

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

DECISION

STATEMENT OF CASE

On December 30, 1936, United Licensed Officers of the United States of America, hereinafter referred to as U. L. O., filed two petitions with the Regional Director of the National Labor Relations Board for the Second Region concerning the representation of the licensed deck officers and of the licensed marine engineers, respectively, employed by New York and Cuba Mail Steamship Company,<sup>1</sup> New York City, hereinafter referred to as the Company. Each petition requested 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 January 11, 1937, the National Labor Relations Board, hereinafter referred to as the Board, authorized the Regional Director for the Second Region to conduct an investigation and provide for an appropriate hearing in each of the cases. On January 15, 1937, the Regional Director issued notices of hearings to be held in New York City on January

<sup>1</sup> The petitions and notices of hearings were issued in the name of New York & Cuba Steamship Company. This name was amended to New York and Cuba Mail Steamship Company at the hearing.

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

Pursuant to the notices, a hearing was held in New York City on January 22, 1937, before Emmett P. Delaney, the Trial Examiner duly designated by the Board. All who were served with notice except I. U. O. E. and M. M. P.<sup>2</sup> were represented and participated in the hearing. By agreement of the representatives present, one hearing relating to both petitions was held. 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 has reviewed the rulings of the Trial Examiner on these objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On January 27, 1937 M. E. B. A. filed a brief with the Board requesting that the petitions for certification be denied.

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

New York and Cuba Mail Steamship Company, a Maine corporation having its principal office and place of business in New York City; is engaged in the operation of vessels for the transportation of freight and passengers for hire from New York to Cuba and Mexico and return. The Company at present operates seven vessels, four of which, named Oriente, Orizaba, Siboney, and Yucatan, operate from Pier No. 13 and Pier No. 14, East River, New York City, and carry passengers and freight. The Oriente goes to and from Havana, Cuba, about six days being required for the round trip. The other three ships sail from New York to Havana, Cuba, then to Progreso and Vera Cruz, Mexico, return to Havana, Cuba, and thence to New York City. About 17 days are required for a round trip.

The three remaining ships<sup>3</sup> carry freight only and are operated from Pier No. 27, Brooklyn, New York. It is not clear from the record whether these ships go to Cuban ports, but the record does

<sup>2</sup> M. M. P. requested permission to file a memorandum within five days after the conclusion of the hearing. This request was granted by the Trial Examiner but no memorandum was ever filed.

<sup>3</sup> Cauto, Panuco, Agwistar.

show that they make stops at two or three ports in Mexico. Twenty-one to 25 days are required for the freight ships to complete a round trip.

The Company is a subsidiary of Atlantic, Gulf and West Indies Steamship Lines, which controls at least a majority of the stock of the Company. Atlantic, Gulf and West Indies Steamship Lines, however, is not an operating company and, according to the testimony of M. O. Fano, assistant to the vice-president of the Company, exercises no control over the labor policies of the Company.

The seven vessels operated by the Company carry 33 deck officers and 33 engineers required by law to be licensed, and approximately 12 junior engineers not required to be licensed.

We find that the Company in the operation of vessels between ports in New York and ports in Cuba and Mexico is engaged in transportation and commerce between the United States and foreign countries, and that the licensed deck officers, the licensed engineers and the junior engineers employed on these vessels are directly engaged in such transportation and commerce.

## II. THE UNIONS

U. L. O. is a labor organization which admits to membership both licensed deck officers and licensed marine engineers. Junior engineers not holding a license are not eligible for membership. M. E. B. A. is a labor organization whose membership is limited to licensed marine engineers. Junior engineers who do not have a license are not eligible for membership. M. M. P. is a labor organization limited in membership to licensed deck officers.

## III. QUESTION CONCERNING REPRESENTATION

Burt L. Todd, secretary of U. L. O., testified that he had requested officials of the Company to deal with U. L. O. in May, June, and late in the summer of 1936. He testified that the Company did not, apparently, question the right of U. L. O. to represent the employees but that the Company never indicated whether it would or would not meet with representatives of U. L. O. At the hearing, Fano testified that M. E. B. A. and U. L. O. claim to represent the engineers and that M. M. P. and U. L. O. claim to represent the deck officers, and that the Company does not know that any organization does or is entitled to represent these employees.

We find that a question has arisen concerning the representation of the deck officers and of the marine 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. APPROPRIATE UNIT

All of the parties represented at the hearing concurred in the belief that deck officers and marine engineers should be separated into two units for the purposes of representation. The reasons given for such a division, mainly the distinct and different types of ability required and duties performed by each, have been stated in detail by the Board in many prior cases.<sup>4</sup>

The only question raised as to the appropriate unit concerned the junior engineers. As previously stated, junior engineers are not required by law to be licensed. As a matter of fact, some junior engineers do hold licenses but many do not. Also as previously stated, junior engineers who do not have a license are not eligible for membership in either U. L. O. or M. E. B. A. Todd, of U. L. O., and E. P. Trainer, representing M. E. B. A., both testified they believed junior engineers who hold licenses should be included in the unit but that junior engineers who do not have licenses should not be included. Todd further testified he believed all junior engineers employed by the Company were licensed but no proof of this fact was introduced.

If, as is highly probable, some of the junior engineers employed by the Company do not have licenses, we are faced with the same problem as was raised in *In the Matter of Grace Line, Inc. and Panama Mail Steamship Company and National Marine Engineers' Beneficial Association Local No. 33*.<sup>5</sup> None of the reasons there stated for the inclusion of all junior engineers, whether holding licenses or not, have been shown to be erroneous in the instant case. In addition, Trainer admitted that M. E. B. A. has represented unlicensed personnel employed in the engine room before the Railway Mediation Board. It is apparent, therefore, that the procedure of representing persons not eligible to membership is not new to M. E. B. A. No testimony was introduced at the hearing to show in what specific duties junior engineers employed by the Company are engaged. There was some testimony by Todd that the duties performed by junior engineers vary widely between ships and between companies. We feel that unless and until more specific testimony is developed in particular cases to show unlicensed junior engineers should not be included, unlicensed junior engineers should be included in a bargaining unit which includes licensed junior engineers.

We find that the licensed deck officers employed by the Company constitute a unit appropriate for the purposes of collective bargain-

<sup>4</sup> See for example, *In the Matter of Black Diamond Steamship Corporation and Marine Engineers Beneficial Association, Local No. 33*, Case No. R-107, decided September 24, 1936 (*supra*, p. 241).

<sup>5</sup> Case No. R-110, decision issued November 13, 1936 (*supra*, p. 369); supplementary decision issued February 4, 1937 (*supra*, p. 378).

ing in respect to rates of pay, wages, hours of employment and other conditions of employment.

We find that the licensed marine engineers and the junior engineers, whether licensed or not, 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.

#### DISPOSITION OF CASES

Certain receipts for dues paid by licensed personnel employed by the Company and the applications of the same persons for membership were put in evidence by U. L. O. for the purpose of proving that a majority of the licensed personnel employed by the Company desire U. L. O. to represent them. We have carefully considered this material and have decided that it would be inadvisable to certify U. L. O. on the basis of this evidence under all the circumstances of this case. Clearly decipherable and completely filled in dues receipts plus applications showing in what capacity these men are employed were introduced for only 19 deck officers and 27 engineers. As previously stated, the Company employs 33 deck officers and approximately 45 engineers. Some of these receipts, which Todd admitted are the last dues receipts issued by U. L. O. to these men, are dated as far back as January and February, 1936, almost a year before the petitions were filed in this case. As we stated in *In the Matter of Ocean Steamship Company of Savannah and United Licensed Officers of the United States of America*,<sup>6</sup> we believe that a payment at a time so far prior to a petition for certification is too remote to justify a clear implication that such persons desire U. L. O. to represent them now. The Board is of course aware of the unsettled conditions which have existed in the maritime industry in the last several months and that some of the unions have been on strike while others have not. It is less reasonable to draw such an inference under these circumstances than it would otherwise be.

Also, charges were made at the hearing by Trainer, representing M. E. B. A., that the Company in the past had given passes to representatives of U. L. O. permitting them to go aboard the vessels of the Company for the purpose of organizing the employees but that the Company had denied similar privileges to other labor organizations. The testimony on this point was inadequate for the Board to determine the truth of these charges. Nevertheless, we feel that since such a situation may have existed, this is an additional

<sup>6</sup> Cases No R-119 and No R-120 (*supra*, p. 588)

reason against certification of U. L. O. on the basis of the evidence introduced.

Under all these circumstances we feel that the policy of the Act will be best served by determining the present desires of these employees under conditions which can only be obtained in an election by secret ballot.

#### CONDUCT OF ELECTIONS

The record shows that the licensed personnel employed on the *Oriente* sign articles for a period of three or four months, but that on all other ships operated by the Company new ship's articles are signed by a crew before each trip. We will, therefore, follow the procedure ordinarily used by the Board in maritime elections. Notices of the election, a sample ballot, a list of employees eligible to vote and a notice of the time and place where balloting will be conducted shall be posted on each vessel before it leaves a port of New York, on the next trip, if possible, following the issuance of this Direction of Election, and shall remain posted until the vessel returns to a port of New York where balloting shall be conducted at a time and place to be designated by the Regional Director for the Second Region.

Every licensed deck officer who has been employed as such by the Company at any time between December 30, 1936, the date of the filing of the petition, and the date of the Direction of Election, and who makes the round trip on which the vessel is posted and at the conclusion of which the election is held in the capacity of a licensed deck officer, shall be eligible to vote.

Every engineer who has been employed as a licensed or junior engineer by the Company at any time between December 30, 1936, the date of the filing of the petition, and the date of the Direction of Election, and who makes the round trip on which the vessel is posted and at the conclusion of which the election is held in the capacity of a licensed or junior engineer, shall be eligible to vote.

#### CONCLUSIONS OF LAW

On 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 and junior engineers, respectively, employed by New York and Cuba Mail Steamship Company, 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 employed by New York and Cuba Mail Steamship Company constitute a unit appropriate for the pur-

poses of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. The licensed engineers and the junior engineers, whether licensed or not, 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 New York and Cuba Mail Steamship Company, 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 these 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—as amended:

(1) among the licensed deck officers employed on the vessels operated by New York and Cuba Mail Steamship Company, to determine whether or not they desire to be represented by United Licensed Officers of the United States of America, for the purposes of collective bargaining; and

(2) among the licensed engineers and the junior engineers, whether licensed or not, employed on the vessels operated by New York and Cuba Mail Steamship Company, 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]

### AMENDED DIRECTION OF ELECTIONS

*March 27, 1937*

On March 6, 1937, the National Labor Relations Board, hereinafter referred to as the Board, issued a Decision and Direction of Elections in the above-entitled case. The Direction of Elections ordered an election to be held among the licensed deck officers em-

ployed by New York and Cuba Mail Steamship Company to determine whether or not they wished to be represented by United Licensed Officers of the United States of America, hereinafter referred to as U. L. O., for the purposes of collective bargaining.<sup>1</sup> On March 10, 1937, National Organization Masters, Mates and Pilots of America, hereinafter referred to as M. M. P., filed objections with the Board and requested that the Board amend the Direction of Elections by directing the name of M. M. P. to be placed on the ballot. On March 16, 1937, the Board issued and duly served on U. L. O., M. M. P., and the Company notice of a hearing to be held in Washington, D. C. on March 24, 1937, for the purpose of oral argument on the request of M. M. P. Pursuant to the notice, a hearing was held and the Board heard oral argument by Edward T. Pinchin, representing M. M. P. No representative of U. L. O. appeared at the hearing, but a brief was filed by U. L. O. on March 24, 1937, requesting that the Board refuse the request of M. M. P. because M. M. P. had failed to appear at the hearing held in New York on January 22, 1937.

Upon the basis of the oral argument and upon further consideration, the Board hereby issues this Amended 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 New York and Cuba Mail Steamship Company, elections by secret ballot shall be conducted as soon as convenient, and beginning as promptly as is practicable after the date of this Amended Direction, in conformity with rules for the conduct of the elections set forth in the decision issued March 6, 1937, 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 on the vessels operated by New York and Cuba Mail Steamship Company, 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

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<sup>1</sup> The Direction of Elections also ordered an election to be held among the licensed and junior engineers employed by the Company. This portion of the election order, however, was not objected to by any of the parties.

(2) among the licensed engineers and the junior engineers, whether licensed or not, employed on the vessels operated by New York and Cuba Mail Steamship Company, 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.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amended Direction of Elections.

[SAME TITLE]

## CERTIFICATION OF REPRESENTATIVES

AND

### . DIRECTION OF ELECTION

*August 14, 1937*

On December 30, 1936, United Licensed Officers of the United States of America, herein called U. L. O., filed two petitions with the Regional Director for the Second Region (New York City) concerning the representation of the licensed deck officers and the licensed marine engineers, respectively, employed by New York and Cuba Mail Steamship Company, New York, N. Y., herein called the Company. The petitions requested an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Pursuant to notice duly served on all the parties, a hearing was held in New York City on January 22, 1937, before Emmett P. Delaney, the Trial Examiner duly designated by the Board. On March 6, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections. Thereafter, on March 24, 1937, pursuant to notice duly served on all the parties and at the request of National Organization Masters, Mates, and Pilots of America, herein called M. M. P., the Board heard oral argument on the case at Washington, D. C. On March 27, 1937, the Board issued an Amended Direction of Elections.

The Amended Direction of Elections provided that an election by secret ballot be held among the licensed deck officers employed by the Company to determine whether they wished to be represented by M. M. P. or by U. L. O. for the purposes of collective bargaining, and that an election by secret ballot be held among the licensed engineers and the junior engineers, whether licensed or not, employed by the Company to determine whether they wished to be represented

by National Marine Engineers' Beneficial Association, herein called M. E. B. A., or by U. L. O., for the purposes of collective bargaining.

Pursuant to the Direction, balloting was conducted on the vessels of the Company beginning April 23, 1937. On April 30, 1937, M. M. P. filed a protest with the Regional Director for the Second Region against further balloting of employees of the Company on the grounds that there had been interference with the conduct of the election. On May 24 and June 7, 1937, M. E. B. A. filed protests with the Regional Director for the same reason and for the additional alleged reason that a majority of the licensed engineers had joined M. E. B. A. since the election.

On June 12, 1937, balloting having been completed on the vessels of the Company, the Regional Director certified that a count of the ballots cast showed:

#### I. LICENSED DECK OFFICERS

1 Total eligible to vote -----	32
2. Total ballots cast -----	31
3 Total votes for U. L. O. -----	27
4. Total votes for M. M. P. -----	3
5. Total blank ballots -----	1

#### II. ENGINEERS

1. Total eligible to vote -----	40
2. Total ballots cast -----	40
3 Total votes for U. L. O. -----	34
4. Total votes for M. E. B. A. -----	6

On July 6, 1937, the Regional Director, acting pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a notice that a hearing would be held on the protests. Pursuant to the notice, a hearing was held in New York City on July 12, 1937, before Samuel Gusack, the Trial Examiner duly designated by the Board.

The evidence adduced at the hearing shows that on April 23, 1937, when William Meyer, agent of the Board, and the duly designated representatives of M. M. P. and of M. E. B. A. sought to board the steamer *Siboney* for the purpose of conducting the balloting, they were denied admission to the vessel because they did not have a pass issued by the Company. After applying to the office of the Company they were taken aboard the vessel by an agent of the Company. Shortly after they arrived on board, the representative of U. L. O. came into the chief engineer's room where balloting was to be conducted, and in response to questioning, admitted he had been aboard about 25 minutes, but stated he had not been electioneering but had been talking with one of the engineers who was a friend of his. Meyer, M. E. B. A., and M. M. P. allege that the representative of U. L. O. stated he had secured admission to the vessel by means of a

day-to-day pass issued by the Company. The Company denies that it issued any passes to U. L. O., while denying them to M. M. P. and M. E. B. A. The record does not prove to our satisfaction whether or not a pass had been issued to U. L. O. for the purpose of securing members, prior to the election. We do not believe, however, that the evidence sufficiently establishes interference which would warrant our declaring that the elections should be voided.

At the hearing on the protests, M. E. B. A. introduced in evidence cards signed by 40 engineers employed by the Company applying for membership in M. E. B. A. These cards had been signed during the period of and subsequent to the election; apparently many of the engineers signed these cards shortly after they had voted for U. L. O. In a case like this, where prior to the Board's certification of the results of an election there is an apparent change in the wishes of a majority of the men, we believe that another election should be held.

In accordance with our decision in *Matter of American France Line et al. and International Seamen's Union of America*,<sup>1</sup> in which New York and Cuba Mail Steamship Company was a party, we hereby amend our original Decision in this case, by finding that the appropriate unit consists of the engineers who are required to be licensed by the United States Bureau of Marine Inspection and Navigation, and the junior engineers who hold licenses.

Every engineer will be eligible to vote who has been employed as a licensed or junior engineer by the Company at any time between December 30, 1936, the date of the filing of the petition, and March 6, 1937, the date of the first Direction of Elections, and who makes the round trip, at the conclusion of which the election is held, in the capacity of a licensed engineer or a junior engineer, provided, such junior engineers hold licenses at the time balloting is conducted.

## CERTIFICATION OF REPRESENTATIVES

(Case No. R-122)

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 New York and Cuba Mail Steamship Company as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor

<sup>1</sup> Case No R-157, Decision and Direction of Elections issued July 16, 1937

Relations Act, United Licensed Officers of the United States of America is the exclusive representative of the licensed deck officers employed by New York and Cuba Mail Steamship Company for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

### DIRECTION OF ELECTION

*(Case No. R-121)*

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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, an election 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 for the conduct of such election in the Decision of the Board issued March 6, 1937 (*supra*, p. 595), under the direction and supervision of the Regional Director for the Second Region, acting in the matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the licensed engineers and the junior engineers who hold licenses employed on the vessels operated by New York and Cuba Mail Steamship Company, 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]

### SUPPLEMENTAL DECISION

AND

### AMENDMENT TO DIRECTION OF ELECTION

*October 1, 1937*

Petitions having been filed on December 30, 1936, by United Licensed Officers of the United States of America, herein called the U. L. O., concerning the representation of the licensed deck officers and the licensed marine engineers, respectively, employed by New York and Cuba Mail Steamship Company, New York City, herein called the Company, and a hearing having been held in New York City on January 22, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections on

March 6, 1937 (*supra*, p. 595). Thereafter, on March 24, 1937, pursuant to notice duly served on all the parties and at the request of National Organization Masters, Mates, and Pilots of America, herein called M. M. P., the Board heard oral argument on the case at Washington, District of Columbia. On March 27, 1937, the Board issued an Amended Direction of Elections (*supra*, p. 601).

The Amended Direction of Elections provided that an election by secret ballot be held among the licensed deck officers employed by the Company to determine whether they wished to be represented by M. M. P. or by U. L. O. for the purposes of collective bargaining, and that an election by secret ballot be held among the licensed engineers and the junior engineers, whether licensed or not, employed by the Company to determine whether they wished to be represented by National Marine Engineers' Beneficial Association, herein called M. E. B. A., or by U. L. O. for the purposes of collective bargaining.

Pursuant to the Direction, balloting was conducted on the vessels of the Company, beginning April 23, 1937. On April 30, 1937, M. M. P. filed a protest with the Regional Director for the Second Region against further balloting of employees of the Company, on the grounds that there had been interference with the conduct of the election. On May 24 and June 7, 1937, M. E. B. A. filed protests with the Regional Director for the same reason and for the additional alleged reason that a majority of the licensed engineers had joined M. E. B. A. since the election.

On June 12, 1937, balloting having been completed on the vessels of the Company, the Regional Director certified that a count of the ballots cast showed:

#### I. LICENSED DECK OFFICERS

1. Total eligible to vote-----	32
2. Total ballots cast-----	31
3. Total votes for U. L. O-----	27
4. Total votes for M. M. P-----	3
5. Total blank ballots-----	1

#### II. ENGINEERS

1. Total eligible to vote-----	40
2. Total ballots case-----	40
3. Total votes for U. L. O-----	34
4 Total votes for M. E. B. A-----	6

A hearing having been held on July 12, 1937, on the protests filed by M. M. P. and M. E. B. A., the Board issued a Certification of Representatives and Direction of Election on August 14, 1937 (*supra*, p. 603), in which it found that the evidence offered at the hearing did not sufficiently establish interference to warrant declaring that the election should be voided. On the basis of the election results, the Board certified U. L. O. as the exclusive representative of the licensed

deck officers employed by the Company for the purposes of collective bargaining. In the case of the engineers employed by the Company, the Board ordered that another election be held, inasmuch as cards signed by 40 engineers during the period of and subsequent to the election applying for membership in M. E. B. A. indicated an apparent change in the wishes of the men prior to the Board's certification of the results of the election. The Board also amended its original decision in this case, in accordance with its decision in *Matter of American France Line et al. and International Seamen's Union of America*,<sup>1</sup> by finding that the appropriate unit consists of the engineers who are required to be licensed by the United States Bureau of Marine Inspection and Navigation, and the junior engineers who hold licenses.

On August 16, 1937, M. M. P., in a letter to the Board, stated that it held signed authorizations from every deck officer, with the possible exceptions of certain masters, authorizing M. M. P. to represent them for the purposes of collective bargaining, and subsequently, on August 27, 1937, M. M. P. requested a rehearing or another election among the licensed deck officers. On September 1, 1937, the Board notified M. M. P. that its request for a rehearing or another election was denied. On August 18, 1937, U. L. O. protested to the Board against its order directing a second election among the licensed engineers. On September 17, 1937, all parties to the proceeding were given an opportunity to present to the Board oral arguments on the issues involved.

The Board, after giving careful consideration to the arguments presented, affirms its Certification, dated August 14, 1937, of U. L. O. as the exclusive representative of the licensed deck officers employed by New York and Cuba Mail Steamship Company for the purposes of collective bargaining. The M. M. P. made no offer of evidence at the hearing of July 12, 1937, to indicate that a majority of the licensed deck officers had changed their membership subsequent to the election and, at the date of the hearing, had become members of M. M. P. Moreover, an examination of applications for membership in M. M. P., submitted to the Board for its examination at the oral argument on September 17, 1937, discloses that at the date of the hearing on the protests on July 12, 1937, a majority of the licensed deck officers had not yet applied for membership in M. M. P. In view of these considerations, we cannot set aside our Certification, dated August 14, 1937.

The Board also affirms its Direction of Election, dated August 14, 1937, directing that an election by secret ballot be conducted among the licensed engineers and the junior engineers who hold licenses,

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<sup>1</sup> Case No R-157, Decision and Direction of Elections issued July 16, 1937

employed on the vessels operated by New York and Cuba Mail Steamship Company.

Following the Amendment to Decision and Supplemental Decision in *Matter of American France Line et al. and International Seamen's Union of America*,<sup>2</sup> the direction of election in this case will be amended to permit expression of choice by a voter that he does not desire either of the unions designated on the ballot to represent him.

### AMENDMENT TO DIRECTION OF ELECTION

(*Case No. R-121*)

The Direction of Election, issued August 14, 1937, is hereby amended by adding a comma after the words, "United Licensed Officers of the United States of America", and by striking out the period after the words, "for the purposes of collective bargaining", appearing at the end of such Direction of Election, and inserting in place thereof ", or by neither."

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<sup>2</sup> Case No R-157, Amendment to Decision and Supplemental Decision issued August 16, 1937