

In the Matter of MERCHANTS AND MINERS TRANSPORTATION COMPANY
and UNITED LICENSED OFFICERS

Case No. R-118.—Decided March 18, 1937

Water Transportation Industry—Election Ordered: controversy concerning representation of employees—rival organizations; refusal by employer to recognize union as bargaining agency; 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. Jacob Blum for the Board,

Mr. Thaddeus H. Swank, of Baltimore, Md., for the Company.

Mr. O. L. Bonifay, of Baltimore, Md., for the Union.

Mr. David S. McDonald, of Baltimore, Md., for National Organization, Masters, Mates and Pilots of America, Rescue Association, No. 14.

Mr. Stanley E. White, of Baltimore, Md., for Marine Engineers Beneficial Association, No. 5.

Mr. Frederick P. Mett, of counsel to the Board.

DECISION

STATEMENT OF CASE

On December 15, 1936, United Licensed Officers, hereinafter referred to as the U. L. O., filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition alleging that a question affecting commerce had arisen concerning the representation of the licensed personnel employed by Merchants and Miners Transportation Company, Baltimore, Maryland, hereinafter referred to as the Company, 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 December 28, 1936, the U. L. O. filed an amended petition with the Regional Director.¹ The National Labor Relations Board, herein-

¹ In its original petition the U. L. O. alleged that a question affecting commerce had arisen concerning the representation of the licensed officers, including masters, first, second, and third mates, as well as chief engineers, first, second, and third assistant engineers, who it claimed constituted an appropriate unit. In its amended petition it alleged that such a question had arisen concerning the following groups of employees, each of which it claimed constituted an appropriate unit: (1) masters, first, second, and third mates, and all licensed deck officers serving in other deck classifications; and (2) chief engineers, first, second, and third assistant engineers, and all licensed engineers serving in other engineering classifications. In all other respects the original and the amended petitions were identical.

after referred to as the Board, on December 29, 1936, duly authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing upon due notice. On December 31, 1936, the Regional Director issued a notice of a hearing to be held in Baltimore, Maryland, on January 14, 1937. Copies of the notice were duly served upon the Company, the U. L. O., and upon Marine Engineers Beneficial Association No. 5, hereinafter referred to as the M. E. B. A., and National Organization, Masters, Mates, and Pilots, Rescue Association No. 14, hereinafter referred to as the M. M. P., two labor organizations named in the original and the amended petitions as also claiming to represent the Company's licensed personnel.

Pursuant to the notice, a hearing was held in Baltimore, Maryland, on January 14, 1937, before Robert M. Gates, the Trial Examiner duly designated by the Board. All parties who were served with a copy of the notice of the hearing were represented at 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. Before any testimony was taken counsel for the Company filed a motion² to dismiss the petition of the U. L. O. on the ground that the Act was unconstitutional. This motion was denied by the Trial Examiner. During the course of the hearing the Trial Examiner made numerous other rulings on objections to the introduction of evidence and on other matters. The Board has reviewed all of the rulings made by the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

Merchants and Miners Transportation Company is a Maryland corporation having its principal place of business in Baltimore, Maryland. It operates a fleet of vessels transporting passengers and freight for hire between ports on the eastern coast of the United States. That the Company, in the conduct of its operations, is engaged in interstate commerce is not disputed. At the hearing counsel for the Company admitted that it was so engaged. The Company owns 22 vessels and two tugs.³ At the time of the hearing 19 of its vessels were in actual operation; one was in commission

² Respondent's Exhibit No. 1.

³ One of its tugs is stationed at Baltimore, Maryland, the other at Norfolk, Virginia. Both are engaged in handling its vessels as well as in moving scows for others.

but not working any cargo; and two were completely out of service, one of these having been laid up for a period of six months, the other for a period of about one year.

On each of its vessels in actual operation the Company employs the following, all required by law to be licensed: master, first mate, second mate, third mate, chief engineer, first assistant engineer, second assistant engineer, third assistant engineer.⁴ Licensed deck officers and licensed engineers are also employed on its tugs. On some of its vessels in actual operation the Company also employs quartermasters and others who, although not required by law to be licensed, do in some cases have a deck officer's license, as well as junior engineers, refrigerating engineers, oilers and others who, although not required by law to be licensed, do in some cases have an engineer's license.

We find that Merchants and Miners Transportation Company is engaged in transportation and commerce between the several States of the United States and that the licensed personnel employed on its vessels and tugs is directly engaged in such transportation and commerce.

II. THE UNIONS INVOLVED

The U. L. O. is an independent labor organization, which admits to membership both licensed deck officers and licensed engineers. The M. M. P. is a labor organization affiliated with the American Federation of Labor, whose membership is limited to licensed deck officers. The M. E. B. A. is a labor organization limited in membership to licensed marine engineers.

III. THE QUESTIONS CONCERNING REPRESENTATION

Both the U. L. O. and the M. M. P. claim members among the licensed deck officers employed by the Company. Both the U. L. O. and the M. E. B. A. claim members among the licensed engineers employed by the Company. In its amended petition the U. L. O. claimed that it represented a majority of the licensed deck officers as well as a majority of the licensed engineers. At the hearing the U. L. O. took the same position and in support thereof introduced in evidence 103 applications for membership purported to have been signed by licensed personnel employed by the Company. No proof of membership among the licensed personnel of the Company was submitted by either the M. M. P. or the M. E. B. A. At the hearing, however, each of these organizations maintained that if an election were held among the licensed personnel over which it has jurisdic-

⁴ On each of the vessels out of service the Company employs only watchmen, not required by law to be licensed. One of these, however, is a licensed engineer.

tion, it would have a good prospect of being selected as the representative for the purposes of collective bargaining by a majority of such licensed personnel.

O. L. Bonifay, representative of the U. L. O., testified that he had made several unsuccessful attempts to bargain collectively with the Company on behalf of the members of the U. L. O. employed by the Company as licensed deck officers and licensed engineers. Why the Company refuses to deal with the U. L. O. is not clear. It is more than probable that such refusal is due to the uncertainty in the minds of the officials of the Company as to which of the labor organizations involved here is the choice of the majority of the licensed personnel in each of the classifications.

We find that a question has arisen concerning the representation of the licensed deck officers employed by the Company. We find that a question has also arisen concerning the representation of the licensed engineers employed by the Company. We further find that these questions tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and can only be resolved under the circumstances of this case by means of elections, by secret ballot.

IV. THE APPROPRIATE UNITS

All of the parties to this proceeding agreed that the licensed deck officers and the licensed engineers should be separated into units for the purpose of representation. A finding in this case that the licensed deck officers and the licensed engineers should not be thrown together into one unit but that they should rather be embraced in separate units for purposes of collective bargaining is in keeping with our previous determinations in similar cases.⁵

The only question raised as to the appropriate units concerns the licensed deck officers who are employed as quartermasters or in other unlicensed positions, and the licensed engineers who are employed as junior engineers, refrigerating engineers, oilers, or in other unlicensed positions. In its amended petition and at the hearing the U. L. O. took the position that these licensed deck officers and licensed engineers should be included in the respective units designated by the Board as appropriate. At the hearing the U. L. O. contended that even though they were not included in the appropriate units they should be given an opportunity to participate in an election ordered by the Board. Both the M. M. P. and the M. E. B. A. joined in this contention. The Company, however, took the position that these employees should not be included in the units

⁵ 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), and cases cited therein.

designated and should not be allowed to participate in an election ordered by the Board.

Although licensed deck officers and licensed engineers employed in unlicensed positions are eligible to membership in the labor organizations involved here, that fact standing alone does not, under the circumstances of this case, warrant their inclusion in the respective units designated. Whether any of these employees should, however, be allowed to participate in the elections hereinafter ordered by the Board presents another question. At the hearing Robert Taylor Merrill, general marine superintendent of the Company, testified that it was the policy of the Company as far as possible to require every one of its employees to hold a license one grade higher than the position which he occupies. This fact was not disputed by any of the parties and accounts for the presence of some of the licensed deck officers and licensed engineers in unlicensed positions. Nowhere in the record does it appear, however, that these particular men will ever have an opportunity in the future to be promoted to positions where licenses are required by law, or that it is the policy of the Company so to promote them. Although licensed, the status of these men in unlicensed positions is permanent. Since they have no apparent interest in matters concerning licensed deck officers and licensed engineers employed as such they should not be allowed to participate in the elections hereinafter ordered by the Board.

Non-eligibility to vote in such elections should not, however, attach to all of the licensed deck officers and licensed engineers employed in unlicensed positions. It is more than likely that some of the licensed deck officers and licensed engineers in unlicensed positions are engaged in such positions only temporarily. It is clearly shown by the record that the Company pursues the policy of retaining in various unlicensed positions, subject to being returned to their former positions, those licensed deck officers and licensed engineers for whom it has no employment as such as a result of the shifting about of its licensed personnel which accompanies the taking of vessels out of service. As previously stated, two of the Company's vessels were out of service at the time of the hearing and without a regular staff of licensed personnel. In view of the Company's policy, it is clear that it had in its employ at that time, and most likely still has today, in unlicensed positions, some licensed deck officers and licensed engineers formerly employed as such who have worked in such unlicensed positions since these vessels were taken out of service. These men will most likely be returned to their former positions or to some other licensed positions in their classification as soon as the vessels now out of service are put back into service. Under these circumstances it is clear that they have an interest in the terms and conditions of

employment of the licensed personnel employed as such, as well as in the identity of the representatives for the purposes of collective bargaining regarding such terms and conditions of employment. In view of such interest they should be allowed to participate in the elections hereinafter ordered to determine such representatives.

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.

CONDUCT OF ELECTIONS

The record does not disclose the sailing schedules, the home ports of the Company's vessels, or where its licensed personnel signs articles. In the absence of this information we will 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 conducted shall be posted on each vessel of the Company in operation, at the port at which its articles are signed, on the next trip, if possible, following the issuance of the Direction of Election in this case, and shall remain posted until the vessel returns to the same port where balloting shall be conducted at a time and place to be designated by the Regional Director for the Fifth Region.

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 conducted shall also be posted on each of the Company's tugs, and on each of its vessels out of service as soon as possible following the issuance of the Direction of Election in this case, and shall remain posted for a period of at least two days, after which balloting shall be conducted at a time and place to be designated by the Regional Director for the Fifth Region.

Every licensed deck officer and licensed engineer who has been employed as such by the Company at any time between December 15, 1936, the date of the filing of the original petition, and the date of the Direction of Election in this case, and who makes the trip in the capacity of a licensed deck officer or licensed engineer at the conclusion of which balloting takes place in his classification, shall be eligible to vote.

Every licensed deck officer and licensed engineer who has been employed as such by the Company at any time during the year and one-half next preceding the date of the Direction of Election in this case, who is employed in an unlicensed position on the trip at the conclusion of which balloting takes place, and who occupies such position only as a result of the shifting about of the Company's

licensed personnel which accompanies the taking of vessels out of service, shall be eligible to vote.

Every licensed deck officer and licensed engineer who has been employed as such by the Company at any time between December 15, 1936, the date of the filing of the original petition, and the date of the Direction of Election in this case, and who is employed as such on one of the Company's tugs on the day on which balloting takes place in his classification, shall be eligible to vote.

Every licensed deck officer and licensed engineer who has been employed as such by the Company at any time during the year and one-half next preceding the date of the Direction of Election in this case, who is employed in an unlicensed position on any of the Company's vessels out of service on the day on which balloting takes place, and who occupies such position only as a result of the shifting about of the Company's licensed personnel which accompanies the taking of vessels out of service, 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. A question affecting commerce has arisen concerning the representation of the licensed deck officers employed by Merchants and Miners Transportation Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of the licensed engineers employed by Merchants and Miners Transportation Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

3. The licensed deck officers employed by Merchants and Miners Transportation Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

4. The licensed engineers employed by Merchants and Miners Transportation Company 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 ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Rela-

tions 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 investigation ordered by the Board to ascertain representatives for collective bargaining with Merchants and Miners Transportation 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 Fifth 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:

(1) among the licensed deck officers employed on the vessels and tugs of Merchants and Miners Transportation Company, to determine whether they desire to be represented by United Licensed Officers or by National Organization, Masters, Mates and Pilots of America, Rescue Association No. 14, for the purposes of collective bargaining; and

(2) among the licensed engineers employed on the vessels and tugs of Merchants and Miners Transportation Company, to determine whether they desire to be represented by United Licensed Officers or by Marine Engineers Beneficial Association, No. 5, for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT TO DECISION

March 26, 1937

In its Decision in this case, issued on March 18, 1937 (*supra*, p. 747), the Board stated the following in the first paragraph of the section entitled "Conduct of Elections":

"The record does not disclose the sailing schedules, the home ports of the Company's vessels, or where its licensed personnel signs articles. In the absence of this information we will 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 conducted shall be posted on each vessel of the Company in operation, at the port at which its articles are signed, on the next trip, if possible, following the issuance of the Direction of Election in this case, and shall remain posted until the vessel returns to the same port where balloting shall be conducted at a

time and place to be designated by the Regional Director for the Fifth Region."

Subsequent to the issuance of the Decision the Board was advised that most of the Company's vessels now in operation are engaged in making short trips, that separate articles are not signed by its personnel for each of such trips, but that general articles are signed for a period of six months, that the articles are entered into not at one port but at many ports, and that its vessels do not return to a particular port for a considerable length of time nor with an identical personnel. In view of these facts, and in order to facilitate the conduct of the elections, the Board hereby amends its Decision in the case to make the above quoted paragraph read as follows:

"The record does not disclose the sailing schedules, the home ports of the Company's vessels, or where its licensed personnel signs articles. In the absence of this information we will 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 conducted shall be posted on each vessel of the Company in operation, at a port which is most convenient to the Regional Director for the Fifth Region, on the next trip, if possible, following the Direction of Election in this case, and shall remain posted until the vessel calls at a port designated by the Regional Director for the Fifth Region, where balloting shall be conducted at a time and place to be designated by said Regional Director."

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Decision.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

April 30, 1937

On December 15, 1936, United Licensed Officers, hereinafter referred to as the U. L. O., filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition alleging that a question affecting commerce had arisen concerning the representation of the licensed personnel employed by Merchants and Miners Transportation Company, Baltimore, Maryland, hereinafter referred to as the Company, 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 December 28, 1936, the U. L. O. filed an amended petition with the

Regional Director.¹ The National Labor Relations Board, hereinafter referred to as the Board, on December 29, 1936, duly authorized the Regional Director for the Fifth Region to conduct an investigation and to provide for an appropriate hearing upon due notice. Pursuant to notice duly issued and served upon the parties by the Regional Director on December 31, 1936, a hearing was held on January 14, 1937, at Baltimore, Maryland, before Robert M. Gates, the Trial Examiner duly designated by the Board. The Company, the U. L. O., National Organization, Masters, Mates and Pilots of America, Rescue Association No. 14, and Marine Engineers Beneficial Association, No. 5, were represented at and participated in the hearing.

On March 18, 1936, the Board issued a Decision in which it found that questions affecting commerce had arisen concerning the licensed deck officers and licensed engineers employed by the Company, respectively, that such employees each constituted a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and that the questions concerning representation could only be resolved by means of elections by secret ballot. In its Decision the Board directed that such elections be held among the licensed deck officers and licensed engineers employed by the Company to determine whether the former desired to be represented for the purposes of collective bargaining by the U. L. O. or by the National Organization, Masters, Mates and Pilots of America, Rescue Association No. 14, and whether the latter desired to be represented for the purposes of collective bargaining by the U. L. O. or by the Marine Engineers Beneficial Association, No. 5. On March 26, 1936, the Board issued an amendment to the Decision wherein it modified its original direction for the conduct of such elections.

Pursuant to the Board's Decision, the Direction of Election therein, and the amendment thereto, elections by secret ballot were conducted between April 7, 1937, and April 20, 1937, by the Regional Director for the Fifth Region, among the licensed deck officers and licensed engineers employed by the Company. Thereafter the Regional Director issued and duly served upon the parties to the proceeding

¹ In its original petition the U. L. O. alleged that a question affecting commerce had arisen concerning the representation of the licensed officers, including masters, first, second, and third mates, as well as chief engineers, first, second, and third assistant engineers, who it claimed constituted an appropriate unit. In its amended petition it alleged that such a question had arisen concerning the following groups of employees, each of which it claimed constituted an appropriate unit: (1) masters, first, second, and third mates, and all licensed deck officers serving in other deck classifications, and (2) chief engineers, first, second, and third assistant engineers, and all licensed engineers serving in other engineering classifications. In all other respects the original and the amended petitions were identical.

his Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the secret ballot among the licensed deck officers, the Regional Director reported:

Total number of eligible licensed deck officers.....	87
Total number of ballots cast by licensed deck officers.....	80
Total number of blank ballots.....	11
Total number of void ballots.....	None.
Total number of ballots cast for representation by U. L. O.....	67
Total number of ballots cast for representation by National Organization, Masters, Mates and Pilots of America, Rescue Association No. 14.....	2
Total number of ballots challenged.....	1 (not cast)

As to the secret ballot among the licensed engineers the Regional Director reported:

Total number of eligible licensed engineers.....	93
Total number of ballots cast by licensed engineers.....	81
Total number of blank ballots.....	8
Total number of void ballots.....	None.
Total number of ballots cast for representation by U. L. O.....	71
Total number of ballots cast for representation by Marine Engineers Beneficial Association, No. 5.....	2
Total number of ballots challenged.....	None.

Clearly the 67 licensed deck officers who cast ballots for representation by the U. L. O. constitute a majority, not only of the number of licensed deck officers who voted, but also of the number eligible to vote. Likewise, the 71 licensed engineers who cast ballots for representation by the U. L. O. constitute a majority, not only of the number of licensed engineers who voted, but also of the number eligible to vote. The U. L. O., having been selected by a majority of the licensed deck officers and by a majority of the licensed engineers as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative for the purposes of collective bargaining of all of the licensed deck officers and of all the licensed engineers employed by the Company, and we will so certify it.

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 has been selected by a majority of the licensed deck officers employed by Merchants and Miners Transportation Company on its vessels and tugs 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 is the exclusive representative of all of the licensed deck officers employed by Merchants and Miners Transportation Company on its vessels and tugs 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 has been selected by a majority of the licensed engineers employed by Merchants and Miners Transportation Company on its vessels and tugs 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 is the exclusive representative of all of the licensed engineers employed by Merchants and Miners Transportation Company on its vessels and tugs for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.