

IN the MATTERS of INTERNATIONAL MERCANTILE MARINE COMPANY,
LUCKENBACH STEAMSHIP COMPANY, INC., BLACK DIAMOND STEAM-
SHIP CORPORATION and NATIONAL MARITIME UNION OF AMERICA

Cases Nos. R-144, R-145, and R-146.—Decided June 11, 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 and foreign commerce—*Unit Appropriate for Collective Bargaining:* unlicensed personnel; eligibility for membership in both rival organizations—*Certification of Representatives.*

Mr. David A. Moscovitz for the Board.

Mr. A. V. Charbonnier, of New York City, for International Mercantile Marine Company.

Mr. R. E. Stefferson, of New York City, for Luckenbach Steamship Company, Inc.

Hunt, Hill & Betts, by *Mr. John W. Crandall*, of New York City, for Black Diamond Steamship Corporation.

Mr. William L. Standard, *Mr. Hyman M. Glickstein*, and *Mr. Samuel M. Blinken*, of New York City, for National Maritime Union of America.

Phillips, Mahoney & Fielding, by *Mr. W. G. Goldman* and *Mr. Thomas M. Kerrigan*, of New York City, for International Seamen's Union of America.

Smith, Chambers & Clare, by *Mr. Wilkins*, of New York City, for Marine Cooks & Stewards Union of the Atlantic and Gulf.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

On May 13, 1937, National Maritime Union of America, hereinafter referred to as N. M. U., filed three petitions with the National Labor Relations Board, hereinafter referred to as the Board, alleging that questions affecting commerce had arisen concerning the representation of the unlicensed personnel employed in the deck and stewards' departments on vessels operated by International Mercantile Marine Company and its affiliated and associate companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, hereinafter collectively referred to as the Com-

panies. The petitions requested the Board to investigate and to certify representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On May 14, 1937, the Board, acting pursuant to Article III, Section 10 (a) of National Labor Relations Board Rules and Regulations—Series 1, as amended, granted the request of N. M. U. for permission to file the petitions with the Board in Washington, D. C.

On May 19, 1937, the Board, acting pursuant to Article III, Section 3 of said Rules and Regulations, ordered the Regional Director for the Second Region (New York, New York) to conduct investigations and provide for appropriate hearings and to report to the Board concerning such investigations; and, acting pursuant to Article III, Section 10 (c) (2) of said Rules and Regulations, further ordered that the three cases be consolidated for the purposes of hearing.

Pursuant to a notice of hearing duly issued by the Board on May 20, 1937, and served on all the parties, a hearing was held in New York City on May 27 and continued on May 28, 1937, before Robert M. Gates, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties. At the beginning of the hearing counsel for N. M. U. moved that the petitions be amended to include the unlicensed personnel in the engine department of each of the companies. The Trial Examiner allowed the amendment. At the close of the hearing, counsel for International Seamen's Union of America, hereinafter referred to as I. S. U., and counsel for Marine Cooks and Stewards Union, moved that the petitions for elections be denied on the grounds: (1) that no question concerning representation has arisen; (2) that the Companies have contracts in effect at the present time with I. S. U.,¹ and (3) that elections, to result in industrial peace, should include all companies operating out of Atlantic and Gulf ports of the United States. The Trial Examiner denied the motions. Many objections to the introduction of evidence were made during the course of the hearing by counsel for the various parties. The Board has reviewed the rulings of the Trial Examiner on motions and objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On June 7, 1937, pursuant to notice served upon all the parties, and in response to requests by I. S. U. and by Marine Cooks and Stewards Union, the Board heard oral argument at Washington, D. C.

¹ This position has since been abandoned.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

International Mercantile Marine Company is a New Jersey corporation with offices in New York City.² Approximately 2800 persons are employed in unlicensed capacities on the vessels operated by it and its affiliated and associated companies.

Luckenbach Steamship Company, Inc., is a New Jersey corporation with offices in New York City.³ The petition with respect to this Company pertains only to vessels which operate out of the port of New York as their home port. Approximately 479 persons are employed in unlicensed capacities on these vessels.

Black Diamond Steamship Corporation is a Delaware corporation with offices in New York City.⁴ It employs approximately 213 persons in unlicensed capacities on the vessels which it operates.

At the hearing counsel for each of the three companies entered into a stipulation which provided “. . . that these steamship lines involved in this proceeding, and for the purposes of this proceeding and hearing, are engaged in foreign and intercoastal commerce”. The stipulation further provided “. . . that the unlicensed personnel described in the petition and involved in this proceeding are employed on the vessels of the aforementioned lines and are as such themselves engaged in foreign and intercoastal commerce”.

We find that International Mercantile Marine Company and its affiliated and associated companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, are engaged in traffic, transportation, and commerce among the several States and between the United States and foreign countries, and that the unlicensed personnel employed in the deck, engine, and stewards' departments of the Companies are directly engaged in such traffic, transportation, and commerce.

² For additional facts concerning the operations of this company and its affiliated and associated companies see *Matter of International Mercantile Marine Company and its subsidiaries and affiliates: American Merchant Line, Panama Pacific Line and United States Lines and International Union of Operating Engineers, Local No. 3*, I N. L. R. B. 384.

³ For additional facts concerning the operations of this Company see *Matter of Luckenbach Steamship Company, Inc., and Gateman, Watchman and Miscellaneous Waterfront Workers Union, Local 38-124; International Longshoremen's Association*, Case No. R-41, Decision and Direction of Election issued August 31, 1936 (*supra*, p 181).

⁴ For additional facts concerning the operations of this Company see *Matter of Black Diamond Steamship Corporation and Marine Engineers Beneficial Association, Local No. 33*, Case No. R-107, Decision and Direction of Election issued September 24, 1936 (*supra*, p. 241).

II. THE UNIONS INVOLVED

National Maritime Union of America is a labor organization, which was formed on May 8, 1937. It is an independent organization not affiliated with any other labor organization. Its membership is composed of unlicensed personnel employed in the deck, engine, and stewards' departments on vessels operated out of Atlantic, Gulf, and Great Lake ports of the United States and on vessels operated on some inland bays, harbors, and fisheries.

International Seamen's Union of America is a labor organization affiliated with the American Federation of Labor. It, also, admits to membership unlicensed seamen employed in deck, engine, and stewards' departments. Marine Cooks and Stewards Union of the Atlantic & Gulf is a labor organization, which is a district union of I. S. U.

III. QUESTION CONCERNING REPRESENTATION

Both I. S. U. and N. M. U. claim the right to represent the unlicensed personnel employed in the deck, engine, and stewards' departments of the Companies. In addition, counsel for each of the Companies stated that the Companies do not know which of these labor organizations is the choice of a majority of their unlicensed personnel.

We find that questions have arisen concerning the representation of the unlicensed personnel employed in the deck, engine, and stewards' departments of International Mercantile Marine Company and its affiliated and associated companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, and that such questions tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The questions which have arisen concerning representation can best be resolved by the holding of elections by secret ballot to determine which of these organizations the employees involved desire to represent them.

IV. THE APPROPRIATE UNIT

All of the parties agreed that the unlicensed personnel employed by each of the Companies in the deck, engine, and stewards' departments, constitute a unit appropriate for the purposes of collective bargaining. The only question on which there was not complete agreement concerned junior engineers. N. M. U. and I. S. U. contend that since junior engineers are not required to have licenses by the Steamboat Inspection Service, they should be included in the unit with unlicensed personnel. The record shows that Black Diamond Steamship Corporation does not employ any junior engineers; that

Luckenbach Steamship Company, Inc., as far as any of the witnesses knew, does not employ any junior engineers; that International Mercantile Marine Company employs 30 to 35 junior engineers and that with the exception of about two men who have been employed in this capacity for a number of years, the Company requires all employees acting as junior engineers to have licenses.

At the hearing in these cases, National Marine Engineers' Beneficial Association, United Licensed Officers of the United States of America, and International Union of Operating Engineers, all having jurisdiction over certain types of engineers, did not appear. Furthermore, the record is inconclusive on whether the junior engineers should be included in the unit. We believe that this question should be determined by a hearing at which all of the interested parties are represented, and full evidence is presented. We will, therefore, order that all junior engineers, whether holding licenses or not, shall be allowed to vote in the elections to be ordered in these cases, but that votes of junior engineers shall be segregated from the votes of the other unlicensed personnel, until such time as the Board determines this question for purposes of certification.

We find that the unlicensed personnel employed in the deck, engine, and stewards' departments of International Mercantile Marine Company and its affiliated and associated companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, 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

We will direct these elections to be held as soon as possible under the direction and supervision of the Regional Director for the Second Region, who shall determine in her discretion the exact time, place, and procedure for posting notices of election and for balloting on each ship, provided, however, that each ship must be posted with a notice 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, at, at least, one port of call in the United States prior to the port where balloting is conducted.

Those eligible to vote will be all unlicensed personnel employed in the deck, engine, and stewards' departments, including junior engineers, who are employed on the ship when it is posted and who are still employed in such capacity at the time balloting takes place.

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 unlicensed personnel employed in the deck, engine, and stewards' departments, including the junior engineers, of International Mercantile Marine Company and its affiliated and associated companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The unlicensed personnel employed in the deck, engine, and stewards' departments of International Mercantile Marine Company and its affiliated and associated companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, 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, 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 the 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, among the unlicensed personnel employed in the deck, engine, and stewards' departments, including junior engineers, of International Mercantile Marine Company and its affiliated and associated companies, Luckenbach Steamship Company, Inc., on the vessels which operate out of the port of New York as their home port, and Black Diamond Steamship Corporation, respectively, to determine whether they desire to be represented by National Maritime Union of America or by International Seamen's Union of America, for the purposes of collective bargaining.

[SAME TITLES]

AMENDMENT TO DECISION

June 22, 1937

On June 11, 1937, the National Labor Relations Board, hereinafter referred to as the Board, issued a Decision and Direction of Elections in the above entitled cases. On June 14, 1937, counsel for Black Diamond Steamship Corporation notified the Board that the Decision erroneously stated Black Diamond Steamship Corporation is engaged in intercoastal commerce. Further examination of the record shows an interpretation may reasonably be made that counsel for Black Diamond Steamship Corporation agreed to the stipulation set forth in Section I of Findings of Fact, on the basis that it should state Black Diamond Steamship Corporation is engaged only in foreign commerce. We, therefore, amend the Decision issued June 11, 1937, by finding that Black Diamond Steamship Corporation is engaged in foreign commerce.

[SAME TITLES]

SUPPLEMENTAL DECISION

July 10, 1937

In the Decision and Direction of Elections issued in the above entitled cases on June 11, 1937, the Board directed that junior engineers, whether licensed or not, be allowed to vote, but that their ballots should be segregated until such time as the Board finally determined whether or not junior engineers should be included in a unit comprised of unlicensed personnel.

The Board having further considered the question in connection with the hearing held in *Matter of American France Line et al. and International Seamen's Union of America*, Case No. R-157, now determines that only the ballots of those junior engineers who do not hold licenses shall be counted in the elections being held pursuant to the Direction of Elections issued in the above entitled cases on June 11, 1937.

[SAME TITLES]

CERTIFICATION OF REPRESENTATIVES

(Cases Nos. R-145 and R-146)

September 9, 1937

On May 13, 1937, National Maritime Union of America, hereinafter referred to as N. M. U., filed three petitions with the National Labor Relations Board, hereinafter referred to as the Board, alleging that questions affecting commerce had arisen concerning the repre-

presentation of the unlicensed personnel employed in the deck and stewards' departments on vessels operated by International Mercantile Marine Company and its affiliated and associate companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively. The petitions requested the Board to investigate and to certify representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On May 14, 1937, the Board, acting pursuant to Article III, Section 10 (a) of National Labor Relations Board Rules and Regulations—Series 1, as amended, granted the request of N. M. U. for permission to file the petitions with the Board in Washington, D. C.

On May 19, 1937, the Board, acting pursuant to Article III, Section 3 of said Rules and Regulations, ordered the Regional Director for the Second Region (New York, New York) to conduct investigations and provide for appropriate hearings and to report to the Board concerning such investigation; and, acting pursuant to Article III, Section 10 (c) (2) of said Rules and Regulations, further ordered that the three cases be consolidated for the purposes of hearing.

Pursuant to a notice of hearing duly issued by the Board on May 20, 1937, and served on all the parties, a hearing was held in New York City on May 27 and continued on May 28, 1937, before Robert M. Gates, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties.

On June 11, 1937, the Board issued a Decision (*supra*, p. 971), in which it found that a question affecting commerce had arisen concerning the representation of the unlicensed personnel employed in the deck, engine, and stewards' departments, including the junior engineers who do not hold licenses, of International Mercantile Marine Company and its affiliated and associate companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, and that such employees 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.¹ In its Decision the Board directed that elections be held among such employees of the three companies, respectively, to determine whether they desire to be represented by National Maritime Union of America or by International Seamen's Union of America, for the purposes of collective bargaining.

Pursuant to the Board's Decision, elections by secret ballot were conducted by the Regional Director for the Second Region among the

¹ On June 22, 1937, the Board issued an Amendment to Decision (*supra*, p. 977), in which it found that Black Diamond Steamship Corporation is engaged in foreign commerce. On July 10, 1937, the Board issued its Supplemental Decision (*supra*, p. 977), in which participation of the junior engineers was limited to those who do not hold licenses.

employees of Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, constituting the bargaining unit found appropriate by the Board. On July 27, 1937, and August 18, 1937, the Regional Director issued and duly served upon the parties to the proceeding her Intermediate Reports on the ballots of Black Diamond Steamship Corporation and Luckenbach Steamship Company, Inc., respectively.² No exceptions to the Intermediate Reports have been filed by any of the parties.

As to the results of the secret ballots the Regional Director reported :

BLACK DIAMOND STEAMSHIP CORPORATION

Total number eligible to vote.....	205
Total number of ballots cast.....	199
Total number of votes in favor of National Maritime Union of America.....	197
Total number of votes in favor of International Seamen's Union of America.....	1
Total number of blank votes.....	0
Total number of void ballots.....	1
Total number of challenged ballots.....	0

LUCKENBACH STEAMSHIP COMPANY, INC.

Total number eligible to vote.....	452
Total number of ballots counted.....	446
Total number of votes in favor of National Maritime Union of America.....	436
Total number of votes in favor of International Seamen's Union of America.....	8
Total number of blank votes.....	1
Total number of void ballots.....	1
Total number of challenged votes.....	0

National Maritime Union of America, having been selected by a majority of the unlicensed personnel employed in the deck, engine, and stewards' departments, including the junior engineers who do not hold licenses, of Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, 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 such employees of each 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 National Maritime Union of America has been selected by a majority of all unlicensed personnel employed

² Proceedings pursuant to the Direction of Elections have not yet been completed in the case of International Mercantile Marine Company.

in the deck, engine, and stewards' departments, including the junior engineers who do not hold licenses, of Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, National Maritime Union of America is the exclusive representative of all such employees of each company for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

[SAME TITLES]

CERTIFICATION OF REPRESENTATIVES

(Case No. R-144)

September 23, 1937

On May 13, 1937, National Maritime Union of America, hereinafter referred to as N. M. U., filed three petitions with the National Labor Relations Board, hereinafter referred to as the Board, alleging that questions affecting commerce had arisen concerning the representation of the unlicensed personnel employed in the deck and stewards' departments on vessels operated by International Mercantile Marine Company and its affiliated and associate companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively. The petitions requested the Board to investigate and to certify representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On May 14, 1937, the Board, acting pursuant to Article III, Section 10 (a), of National Labor Relations Board Rules and Regulations—Series 1, as amended, granted the request of N. M. U. for permission to file the petitions with the Board in Washington, D. C.

On May 19, 1937, the Board, acting pursuant to Article III, Section 3 of said Rules and Regulations, ordered the Regional Director for the Second Region (New York, New York) to conduct investigations and provide for appropriate hearings and to report to the Board concerning such investigations; and, acting pursuant to Article III, Section 10 (c) (2) of said Rules and Regulations, further ordered that the three cases be consolidated for the purposes of hearing.

Pursuant to a notice of hearing duly issued by the Board on May 20, 1937, and served on all the parties, a hearing was held in New York City on May 27 and continued on May 28, 1937, before Robert M. Gates, the Trial Examiner duly designated by the Board. Full

opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

On June 11, 1937, the Board issued a Decision (*supra*, p. 971) in which it found that a question affecting commerce had arisen concerning the representation of the unlicensed personnel employed in the deck, engine, and stewards' departments, including the junior engineers who do not hold licenses, of International Mercantile Marine Company and its affiliated and associate companies, Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation, respectively, and that such employees 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.¹ In its Decision the Board directed that elections be held among such employees of the three companies, respectively, to determine whether they desire to be represented by National Maritime Union of America or by International Seamen's Union of America, for the purposes of collective bargaining.

Pursuant to the Board's Decision, an election by secret ballot was conducted by the Regional Director for the Second Region among the employees of International Mercantile Marine Company, constituting the bargaining unit found appropriate by the Board. On September 1, 1937, the Regional Director issued and duly served upon the parties to the proceeding her Intermediate Report on the ballots of International Mercantile Marine Company.² No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballots the Regional Director reported:

Total number eligible to vote.....	3, 119
Total number of ballots counted.....	2, 790
Total number of votes in favor of National Maritime Union of America.....	2, 563
Total number of votes in favor of International Seamen's Union of America.....	170
Total number of blank votes.....	33
Total number of void ballots.....	24
Total number of challenged votes.....	0

National Maritime Union of America, having been selected by a majority of the unlicensed personnel employed in the deck, engine, and stewards' departments, including the junior engineers who do not hold licenses, of International Mercantile Marine Company, as their representative for the purposes of collective bargaining, is, by virtue

¹ On June 22, 1937, the Board issued an Amendment to Decision (*supra*, p. 977), in which it found that Black Diamond Steamship Corporation is engaged in foreign commerce. On July 10, 1937, the Board issued its Supplemental Decision (*supra*, p. 977), in which participation of the junior engineers was limited to those who do not hold licenses.

² A certification in the cases of Luckenbach Steamship Company, Inc., and Black Diamond Steamship Corporation was issued by the Board on September 9, 1937 (*supra*, p. 977).

of Section 9 (a) of the Act, the exclusive representative for the purposes of collective bargaining of all of such employees of said 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 National Maritime Union of America has been selected by a majority of all unlicensed personnel employed in the deck, engine, and stewards' departments, including the junior engineers who do not hold licenses, of International Mercantile Marine Company, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, National Maritime Union of America is the exclusive representative of all such employees of said company for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.