

In the Matter of McCABE, HAMILTON AND RENNY, LIMITED and
HONOLULU LONGSHOREMEN'S ASSOCIATION, LOCAL 38-136 OF THE
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

Case No. R-150.—Decided September 2, 1937

Stevedoring Industry—Investigation of Representatives: controversy concerning representation of employees: majority status disputed by employer—*Unit Appropriate for Collective Bargaining:* confined to regular, as distinguished from casual, employees; regular employees defined—*Election Ordered*

Mr. E. J. Eagen for the Board.

Mr. Frank E. Thompson and *Mr. Montgomery E. Winn*, of Honolulu, Territory of Hawaii, for the Company.

Mr. Julius Schlezinger, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

In February 1937, the Honolulu Longshoremen's Association, herein called the Union, filed a petition with the Regional Director for the Twentieth Region (San Francisco, California) alleging that a question affecting commerce had arisen concerning the representation of the longshoremen employed by McCabe, Hamilton and Renny, Limited, Honolulu, Territory of Hawaii, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On March 9, 1937, the National Labor Relations Board, herein called the Board, issued an order authorizing the Regional Director for the Twentieth Region to conduct an investigation and provide a hearing in connection therewith. Notice of hearing was duly served upon the parties.

Pursuant to the notice, a hearing was conducted by J. Frank McLaughlin, the Trial Examiner duly designated by the Board, on May 18 and 20, 1937, in Honolulu, Territory of Hawaii, and testimony was taken. Full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence bearing upon the issues was afforded all parties. The Board has reviewed the conduct of the hearing and the rulings of the Trial Examiner and finds

that no errors were committed. All rulings of the Trial Examiner are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

McCabe, Hamilton and Renny, Limited, a Hawaiian corporation, is engaged in the business of stevedoring in Honolulu, Territory of Hawaii. Among the steamship companies, for whom the Company loads and unloads steamers at the Port of Honolulu, are the Dollar Steamship Company, Nippon Yusen Kaisha Line, Canadian Pacific Line, and Canadian Australasian Line. It also does work for the United States Army and Navy.

II. THE UNION

Honolulu Longshoremen's Association, Local 38-136 of the International Longshoremen's Association is a labor organization affiliated with the American Federation of Labor. It admits as members waterfront employees employed in the Port of Honolulu.

III. THE APPROPRIATE UNIT

The longshoremen employed by the Company are divided into ten regular gangs of about 24 men each. These gangs are under the supervision of five head foremen, each of whom is in charge of two of the gangs. When a steamer, which is to be unloaded by the Company, arrives in the Port it is assigned to one of the head foremen. This head foreman, with the assistance of his subforeman, then makes up his gangs from the stevedores on the waterfront. It is customary for the same men to be selected each time the gangs are made up. However, when vacancies occur or an especially heavy schedule requires extra men, additional stevedores are hired by the head foreman on the waterfront. As a result, a great many persons appear on the Company pay roll who are not normally employed by it.

The Company classifies its employees as either regular or casual. The regular employees are those normally employed by the Company, while the casual are those employed only at infrequent intervals. The Company contends that there is a sharp distinction between its regular and casual employees, and that only the former should be considered in determining the exclusive bargaining agency. The Union does not deny this contention. Only the regular employees of the Company will be included in the appropriate unit, therefore.

There is some difficulty, however, in determining which longshoremen are regular employees of the Company. The Company claims that it has about 310 regular employees. It arrives at this figure by defining a regular employee as a stevedore who has worked for the Company for at least a year and has earned no less than \$100 during that period. In distinguishing between regular and casual employees some limitations must of necessity be set. We will include in the appropriate unit those longshoremen who have been employed by the Company for not less than 75 hours during the last six months. Since the men earn 60¢ an hour this determination does not vary widely from that requested by the Company. The six months period is preferable in this case because the evidence indicates that conditions just previous to this period were badly unsettled because of the Pacific Coast maritime strike.

We find that in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, the longshoremen who have been employed by the Company for not less than 75 hours during the six months immediately preceding the date of this Decision and Direction of Election constitute a unit appropriate for the purposes of collective bargaining.

IV. QUESTION CONCERNING REPRESENTATION

The Union contends and the Company denies that it represents a majority of the Company's employees. It is impossible to determine from the evidence introduced at the hearing whether or not the contention of the Union is correct. We conclude that a question concerning representation has arisen which can best be settled by a secret ballot.

V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

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

1. The longshoremen who have been employed by McCabe, Hamilton and Renny, Limited, for 75 hours or more during the six months immediately preceding the date of this Decision and Direction of Election constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of the employees in the aforesaid unit, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) 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 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 investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with McCabe, Hamilton and Renny, Limited, an election by secret ballot shall be conducted within thirty (30) days from the date of this Decision and Direction of Election, under the direction and supervision of Lawrence Norrie, Honolulu, Territory of Hawaii, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations, among the longshoremen who have been employed by McCabe, Hamilton and Renny, Limited, for 75 hours or more during the six months immediately preceding the date of this Direction, to determine whether or not they desire to be represented by Honolulu Longshoremen's Association, Local 38-136 of the International Longshoremen's Association for the purposes of collective bargaining.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Direction of Election.