

In the Matter of LOUISIANA TERMINAL COMPANY and INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION, LOCAL NO. 864

Case No. R-221.—Decided September 7, 1937

Stevedoring Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; substantial doubt as to majority representation—*Unit Appropriate for Collective Bargaining:* eligibility for membership in both rival organizations; longshoremen—*Election Ordered—Certification of Representatives.*

Mr. Gerhard Van Arkel and Mr. Samuel Lang for the Board.

Mr. Walter Carroll, of New Orleans, La., for the Company.

Mr. Hyman A. Schulson, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

International Longshoremen's Association, Local No. 864, herein called the I. L. A., filed a petition on June 7, 1937, and an amended petition on July 10, 1937, with the Regional Director for the Fifteenth Region (New Orleans, Louisiana), alleging that a question affecting commerce had arisen concerning the representation of the general longshore employees of Louisiana Terminal Company, Westwego, Louisiana, herein called the Company, and requesting the National Labor Relations Board, herein called the Board, to conduct an investigation pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The I. L. A. claimed to represent 50 of the Company's general longshore employees. The amended petition stated that the Independent Freight Loaders and Unloaders Association, herein called the I. F. L. U., an independent labor organization, also claimed to represent the Company's general longshore employees. On July 12, 1937, the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing. The Regional Director duly issued a notice of hearing to be held at New Orleans, Louisiana, on July 19, 1937, copies of which were duly served upon the Company and the I. L. A. Thereafter, the hearing was postponed until July 20, 1937.

Pursuant to further notice to the parties, a hearing was held at New Orleans, Louisiana, on July 20, 1937, before D. Lacy McBryde, the Trial Examiner duly designated by the Board. The Board was represented by counsel and the Company was represented by its superintendent. Upon the request of the Company's superintendent that the case be postponed until the arrival of counsel, for the Company, the Trial Examiner adjourned the hearing to July 22, 1937. A hearing was held at New Orleans, Louisiana, on July 22, 1937, before the same Trial Examiner. The Board and the Company were represented by counsel.

Full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence bearing on the issues was afforded to all parties. Objections to the introduction of evidence were made during the course of the hearing by counsel for the parties. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On August 27, 1937, the Company wrote the Regional Director for the Fifteenth Region a letter enclosing a list of employees employed by the Company since May 1, 1937, and agreeing that this list be made part of the record in this case.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Louisiana Terminal Company is under contract with the Aluminum Line, an ocean steamship company, to perform stevedore work for the Aluminum Line and to unload all its ships which come into the port of Westwego, Louisiana. The record discloses nothing further about the business organization of the Company. The ships of the Aluminum Line transport ore to and from the City of New Orleans and other ports of the Gulf of Mexico, the Atlantic Ocean, the West Indies, and Central and South America. Ore, which is unloaded from the Aluminum Line ships at Westwego, Louisiana, is re-loaded and transported from Westwego to East St. Louis, Missouri. At the present time the Company is unloading about 14 Aluminum Line ships per month. According to a list of employees submitted by the Company to the Board on August 27, 1937, the Company had in its employ since May 1, 1937, 55 longshoremen engaged in unloading ore from the ships of the Aluminum Line at Westwego, Louisiana. The Company has no other employees.

We find, therefore, that the Company is engaged in traffic, commerce, and transportation among the several States and between

the United States and foreign countries and that its employees are directly engaged in such traffic and commerce.

II. THE UNIONS

International Longshoremen's Association, Local No. 864, is a labor organization affiliated with the American Federation of Labor. It admits to membership all those engaged in longshore work at Westwego, Louisiana, and alleges a membership of about 60.

Independent Freight Loaders and Unloaders Association is an independent labor organization, which is controlled by a New Orleans group of longshore workers. On about August 17, 1936, Joseph Smyley, then the president of the I. L. A., signed a contract¹ with D. K. Jones, president of the I. F. L. U., which provided that in consideration of D. K. Jones' joining the I. L. A. together with all the members of the I. F. L. U., D. K. Jones would be made vice president of the I. L. A. for a period of 30 days and that at the expiration of such period, Smyley would resign as president and D. K. Jones would become president of the I. L. A. In consideration for this, Smyley was to receive \$15 per week until October 1938, or as long as D. K. Jones should remain president, and a position to be agreed upon later. Smyley further agreed not to interfere with the management of the I. L. A., to assist D. K. Jones, and to turn over to him the charter of I. L. A., its books, seal, and other papers. Dan Harang was to serve as Smyley's assistant at \$5 per week as long as D. K. Jones was president.

When Joseph Ryan, president of the National I. L. A., learned of Smyley's attempt thus to destroy the I. L. A., he sent Jerry Jones, an international representative and member of the executive committee of the I. L. A., to restore the I. L. A. charter and seal to the Westwego group. After the New Orleans group refused to yield, a meeting was held on May 30, 1937, at which the old officers were suspended and new ones were elected. Subsequently the International granted a duplicate charter and seal to the Westwego group and recognized it as the official I. L. A. Local No. 864. Its new officers are George Edwards, Sr., president; Joseph Allen, vice president, and George Edwards, Jr., secretary and treasurer.

III. THE APPROPRIATE UNIT

As already set forth, all of the employees of the Company are engaged in unloading ships of the Aluminum Line at Westwego, Louisiana. We find, therefore, that a unit composed of all the employees of the Company engaged in unloading the ships of the

¹ Board's Exhibit No. 2.

Aluminum Line at Westwego, Louisiana, would insure to them the full benefit of their right to self-organization and collective bargaining, and otherwise effectuate the policies of the Act, and constitutes a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

IV. QUESTION CONCERNING REPRESENTATION AND ITS EFFECT ON COMMERCE

There is dispute as to which union represents the majority of the Company's employees. Apparently, the I. L. A. is unable to bargain collectively with the Company without a certification from the Board.

We find, therefore, that a question has arisen concerning the representation of the employees of the Company engaged in unloading the ships of the Aluminum Line at Westwego, Louisiana, and that such question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. We further find that this question can only be resolved by means of an election by secret ballot.

CONCLUSIONS OF LAW

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

1. All the employees of the Company engaged in unloading the ships of the Aluminum Line at Westwego, Louisiana, 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 the National Labor Relations Board Rules and Regulations—Series 1, as amended it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the Louisiana Terminal Company, an election by secret ballot shall be conducted within 15 days from the date of the Direction, under the

direction and supervision of the Regional Director for the Fifteenth Region, acting in the matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among all the employees of the Louisiana Terminal Company engaged in unloading ore from the ships of the Aluminum Line at Westwego, Louisiana, since May 1, 1937, whose names appear on the list submitted by the Company to the Board on August 27, 1937, except those who have quit or have been discharged for cause, to determine whether they desire to be represented by the International Longshoremen's Association, Local No. 864, or the Independent Freight Loaders and Unloaders 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.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

October 18, 1937

International Longshoremen's Association, Local No. 864, herein called the I. L. A., filed a petition on June 7, 1937, and an amended petition on July 10, 1937, with the Regional Director for the Fifteenth Region (New Orleans, Louisiana), alleging that a question affecting commerce had arisen concerning the representation of the general longshore employees of Louisiana Terminal Company, Westwego, Louisiana, 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.

Pursuant to notice duly served upon the Company and the I. L. A., a hearing was held in New Orleans, Louisiana, on July 20, 1937, before D. Lacy McBryde, the Trial Examiner duly designated by the National Labor Relations Board, herein called the Board. On September 7, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot should be held among all the employees of the Company engaged in unloading ore from the ships of the Aluminum Line at Westwego, Louisiana, since May 1, 1937, whose names appear on the list submitted by the Company to the Board on August 27, 1937, except those who have quit or have been discharged for cause, to determine whether they desire to be represented by the International Longshoremen's Association, Local No. 864, or the Independent Freight Loaders and Unloaders Association for the purposes of collective bargaining.

Pursuant to the direction, balloting was conducted on September 22, 1937. Full opportunity was accorded to all the parties to this investigation to participate in the conduct of the secret ballot and to make challenges.

On the same day, September 22, 1937, the Regional Director for the Fifteenth Region, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, filed an Intermediate Report with respect to the election held pursuant to the Direction of Election. The Intermediate Report found the results of the election to be as follows:

Total eligible voters.....	60
Total ballots cast.....	41
Total ballots protested.....	0
Total ballots officially counted.....	41
Total vote for International Longshoremen's Association, Local No. 864.....	39
Total vote for Independent Freight Loaders and Unloaders Association.....	2

On September 24, 1937, the Regional Director issued and duly served upon the parties to the proceeding his Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

International Longshoremen's Association, Local No. 864, having been selected by a majority of all the employees of the Louisiana Terminal Company engaged in unloading ore from the ships of the Aluminum Line at Westwego, Louisiana, since May 1, 1937, as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative of all such employees for the purposes of collective bargaining, and we will so certify it.

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 International Longshoremen's Association, Local No. 864, has been selected by a majority of all the employees of the Louisiana Terminal Company engaged in unloading ore from the ships of the Aluminum Line at Westwego, Louisiana, since May 1, 1937, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the Act, International Longshoremen's Association, Local No. 864, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.