In the Matter of INTERNATIONAL FREIGHTING CORP., *et al.* *and* INTERNATIONAL SEAMEN'S UNION OF AMERICA

In the Matter of PANAMA MAIL STEAMSHIP COMPANY *and* NATIONAL MARITIME UNION OF AMERICA

Cases Nos. R-159 and R-236.—Decided September 17, 1937

Shipping Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; confusion and unrest among employees—*Unit Appropriate for Collective Bargaining:* unlicensed personnel; decision on question concerning inclusion of unlicensed personnel employed on harbor craft, operating under prior collective agreements with companies, deferred; ballots of such employees ordered segregated—*Election Ordered.*

Mary Lemon Schleifer for the Board.

Mr. Ira A. Campbell, by *Mr. James H. Herbert*, of New York City, for Ardmore Steamship Company, Inc., Boat Owning & Operating Company, Columbian Steamship Company, Inc., International Freighting Corporation, Inc., Lykes Brothers Steamship Company, Inc., C. D. Mallory Corporation, Malston Company, Inc., Mystic Steamship Company, New England & Southern Steamship Company, Panama Mail Steamship Company, Peninsular & Occidental Steamship Company, Pocahontas Steamship Company, Seminole Steamship Company, Inc., M. & J. Tracy.

Conlen, LaBrum & Beechwood, by *Mr. Louis S. Benn, Jr.*, of Philadelphia, Pa., for American Range Lines.

Mr. Thomas Bronson Jewell, *Mr. E. R. Brumley*, and *Mr. E. J. Moore*, appearing specially for the Trustees of the New York, New Haven & Hartford Railroad Company.

Barber, Matters, Gay & Vanderclute, by *Mr. Benn Barber*, of New York City, for Pan-Atlantic Steamship Corporation.

Phillips, Mahoney & Fielding, by *Mr. W. E. Goldman* and *Mr. T. M. Kerrigan*, of New York City, for I. S. U. and for I. L. A.

Mr. Hyman N. Glickstein and *Mr. William L. Standard*, of New York City, for N. M. U.

DECISION

STATEMENT OF THE CASE

On June 17, 1937, International Seamen's Union of America, herein called I. S. U., pursuant to permission granted by the National Labor Relations Board, herein called the Board, filed 15 peti-

tions with the Board alleging that questions affecting commerce had arisen concerning the representation of the unlicensed seamen employed by the following companies: American Pioneer Line, American Range Lines, Inc., Columbian Steamship Company, Inc., International Freighting Corporation, Inc., Lykes Brothers Steamship Company, Inc., C. D. Mallory & Company, Mystic Steamship Company, New England & Southern Steamship Company, New England Steamship Company, Pan-Atlantic Steamship Corporation, Peninsular & Occidental Steamship Company, Pocahontas Steamship Company, Tampa Inter-Ocean Steamship Company, M. & J. Tracy, and United States Tank Ship Corporation. The petitions requested investigations and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On June 17, 1937, the Board ordered the petitions consolidated for the purposes of hearing under the title of *International Freighting Corp., et al. and International Seamen's Union of America.* On August 12, 1937, the Board directed that an investigation be conducted and an appropriate hearing held, and on the same day issued and duly served on all the parties, notice that a hearing would be held on the petitions in New York City on August 23, 1937.

On August 20, 1937, pursuant to permission granted by the Board, National Maritime Union of America, herein called N. M. U., filed a petition requesting an investigation and certification of representatives of the unlicensed seamen employed by Panama Mail Steamship Company. On the same date, the Board issued an order directing an investigation and, pursuant to a waiver of five days' notice of hearing, signed by Panama Mail Steamship Company and I. S. U., ordered the petition to be consolidated with the petitions included in *International Freighting Corp., et al. and International Seamen's Union of America* for the purposes of a hearing.

Pursuant to the notices, a hearing was begun on August 23, and continued on August 24, 1937, in New York City 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.

Pursuant to a motion granted by the Trial Examiner, the petition concerning C. D. Mallory & Co. was amended by substituting Ardmore Steamship Company, Inc., Boat Owning & Operating Company, C. D. Mallory Corporation, Malston Company, Inc., and Seminole Steamship Company, Inc. as the employers of the unlicensed seamen employed on the lines managed by C. D. Mallory & Company. The Trial Examiner also granted a motion to dismiss the petition concern-

ing Tampa Inter-Ocean Steamship Company on the grounds that the Board had already conducted an investigation and had directed that an election be held among the unlicensed personnel employed by Tampa Inter-Ocean Steamship Company.[1]

Counsel for the New York, New Haven & Hartford Railroad Company, principal debtor and owner of all the capital stock of the New England Steamship Company, moved that the petition concerning the New England Steamship Company be dismissed on the grounds they had not had prior notice of the hearing. Ruling was reserved by the Trial Examiner. The record shows that on August 14, 1937, a return receipt was received by the Board, signed by J. Beiluger as agent for the New England Steamship Company, showing that the Board's notice of hearing had been received by the company prior to that date. The record also shows that on August 18, 1937, the Board, upon learning of the interest of the New York, New Haven & Hartford Railroad Company, sent notice of the hearing to it directly. For these reasons the motion is hereby denied.

A petition for intervention was made on behalf of the International Longshoremen's Association, herein called I. L. A., and its affiliated and subordinate locals, Lighter Captains' Union, Local 996, I. L. A.; Local 933–4 of the I. L. A.; Tidewater Boatmen's Union, Local 933–1, I. L. A.; and United Marine Division of the International Longshoremen's Association. Permission to intervene was granted by the Trial Examiner. Counsel for the intervenors offered in evidence four contracts executed by the above locals, respectively, with owners of certain types of harbor craft operated in the port of New York and vicinity. The Trial Examiner reserved ruling on the offer. The contracts are hereby admitted into evidence.

Objections to the admission of evidence were made 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.

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

Findings of Fact

I. THE BUSINESS OF THE COMPANIES

Counsel for the companies stipulated that American Range Lines, Inc., Ardmore Steamship Company, Inc., Boat Owning & Operating Company, Columbian Steamship Company, Inc., International Freighting Corporation, Inc., Lykes Brothers Steamship Company, Inc., C. D. Mallory Corporation, Malston Company, Inc., Mystic

[1] *Matter of American France Line et al. and International Seamen's Union of America,* Case No. R–157, Decision and Direction of Elections issued July 16, 1937, *supra,* p. 64.

Steamship Company, New England & Southern Steamship Company, Panama Mail Steamship Company, Pan-Atlantic Steamship Company, Peninsular & Occidental Steamship Company, Pocahontas Steamship Company, Seminole Steamship Company, Inc., M. & J. Tracy, and United States Tank Ship Corporation are engaged in the operation of vessels plying between ports in the various States of the United States and/or ports in the United States and ports in foreign countries.[2]

Roosevelt Steamship Company, Inc., under an agreement with the United States Maritime Commission, manages and operates vessels owned by the United States Maritime Commission. These vessels are operated between ports on the Atlantic coast and ports in foreign countries.

The trustees of the New York, New Haven & Hartford Railroad Company, pursuant to an order of the District Court of the United States for the District of Connecticut allowing the Trustees to so discontinue, have discontinued the operation of the Fall River and New Haven Lines of the New England Steamship Company. The New England Steamship Company is now operating only the New Bedford, Martha's Vineyard and Nantucket Line between the mainland of the State of Massachusetts and the Islands of Martha's Vineyard and Nantucket, also within the State of Massachusetts. Counsel for the New York, New Haven & Hartford Railroad Company characterized this operation as intrastate. It is clear that such operation falls within the meaning of commerce among the several States.[3]

We find that American Range Lines, Inc., Ardmore Steamship Company, Inc., Boat Owning & Operating Company, Columbian Steamship Company, Inc., International Freighting Corporation, Inc., Lykes Brothers Steamship Company, Inc., C. D. Mallory Corporation, Malston Company, Inc., Mystic Steamship Company, New England & Southern Steamship Company, New England Steamship Company, Panama Mail Steamship Company, Pan-Atlantic Steamship Corporation, Peninsular & Occidental Steamship Company, Pocahontas Steamship Company, Roosevelt Steamship Company, Inc., Seminole Steamship Company, Inc., M. & J. Tracy, and United States Tank Ship Corporation, herein collectively called the Companies, are engaged in traffic, transportation, and commerce among the several States and/or between the United States and foreign countries, and that the seamen employed on the vessels of the Companies are directly engaged in such traffic, transportation, and commerce.

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[2] Stipulation of counsel for American Range Lines, Inc. was limited to the operation of vessels between ports in the various States of the United States; stipulation of counsel for M. & J. Tracy was limited to steamships owned by the company.

[3] *Gibbons* v. *Ogden,* 9 Wheat. 1; *Lord* v. *Steamship Company,* 102 U. S. 541.

II. THE UNIONS

I. S. U. is a labor organization affiliated with the American Federation of Labor. I. S. U. admits to membership all seamen not required to hold licenses by the United States Bureau of Marine Inspection and Navigation.

N. M. U. is a labor organization affiliated with the Committee for Industrial Organization. It likewise admits to membership all unlicensed seamen.

III. THE QUESTIONS CONCERNING REPRESENTATION

I. S. U., in its petitions, and again by the testimony of Gus H. Brown, vice president of the I. S. U., claims that a majority of the unlicensed seamen employed by each of the Companies desire I. S. U. to represent them for the purposes of collective bargaining. N. M. U. denies that this is so, and claims that a majority of these men in each of the Companies are members of N. M. U. The testimony shows that these conflicting claims of I. S. U. and N. M. U. have led to confusion and unrest.

We find that questions have arisen concerning the representation of the unlicensed seamen employed by each of the Companies, 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 the representation of the unlicensed seamen employed by the Companies can best be resolved by the holding of elections by secret ballot.

IV. THE APPROPRIATE UNITS

Both I. S. U. and N. M. U. contend that all unlicensed seamen employed by each of the Companies, respectively, constitute a unit appropriate for the purposes of collective bargaining. However, as set forth below, I. S. U. contends that unlicensed seamen employed on harbor craft should not be included. For the reasons set forth in *Matter of American France Line et al. and International Seamen's Union of America*[4] we hold that wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, should not be included within this unit.

In order to insure to the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that the unlicensed seamen, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, employed by each of the Companies, respectively, constitute a unit appropriate for the purposes of collective bargaining in respect to

[4] Case No R-157, Decision and Direction of Elections issued July 16, 1937, *supra*, p 64.

rates of pay, wages, hours of employment, and other conditions of employment.

V. THE POSITION OF THE INTERVENOR

I. S. U. contends that unlicensed seamen employed on harbor craft owned by the Companies should not be included in the present elections. The reason stated by I. S. U. is that another labor organization affiliated with the American Federation of Labor, namely the International Longshoremen's Association, herein called I. L. A., has for many years had members among these employees. I. S. U., while admitting jurisdiction by its charter over these employees, states that it has acquiesced in the men employed on harbor craft being affiliated with I. L. A. N. M. U. claims that unlicensed seamen on all craft of whatever description owned by the Companies should be included in the present elections.

The intervener contends that the contracts offered in evidence, which are in effect between the various locals of I. L. A. and committees representing certain steamship owners and which pertain to wages and working conditions of seamen employed on certain types of harbor craft, prevent the Board from directing elections among these employees of the Companies. Counsel for the intervenor stated that the petition for intervention was made solely for the purpose of raising this question. In view of the present expressed intention of reorganizing I. S. U., in which reorganization Mr. Joseph P. Ryan, president of I. L. A. is participating,[5] in the near future it may not be necessary to decide this question. In addition, the record does not contain sufficient facts on which any decision could be made at this time. We will, therefore, direct that unlicensed seamen on all craft of whatever description operated by the Companies in or out of Atlantic and Gulf ports shall be allowed to vote, but that in any case where evidence is presented to the Regional Director for the Second Region that prior contracts covering seamen employed on harbor craft have been entered into by the Companies with some labor organization other than I. S. U. or N. M. U., the ballots of such unlicensed seamen shall be segregated. The Board will then determine upon further hearing or otherwise, as the then existing circumstances may warrant, whether such employees shall be included in the unit.

VI. THE PETITION CONCERNING NEW ENGLAND STEAMSHIP COMPANY

When I. S. U. learned that the only line presently operated by New England Steamship Company is the New Bedford, Martha's

[5] See *Matter of American France Line et al. and International Seamen's Union of America,* Case No. R–157, decision on petitioner's motion for further hearing and stay on elections pending such further hearing, issued September 11, 1937, *supra,* p. 64.

Vineyard and Nantucket Line, they requested permission to withdraw their petition concerning this company. The reasons stated for withdrawal of the petition were that the operation was purely intrastate and that I. S. U. had been chosen to represent the seamen employed on this line in a recent election.[6] N. M. U. protested against such permission being granted, stating that the election had not been conducted by the Board, that N. M. U. had not been notified of the election, and that I. S. U. alone had been placed on the ballot. N. M. U. also stated that in the event the Board granted I. S. U. permission to withdraw this petition, N. M. U. would file a petition with the Board concerning this line. In view of the intention expressed by N. M. U. to file another petition concerning this company, to allow I. S. U. to withdraw its petition would be a futile gesture. Permission to withdraw the petition is, therefore, denied.

VII. THE MATTER OF PASSES

In conformity with the Board's decisions in *Matter of American France Line et al. and International Seamen's Union of America*[7] we will direct that the Companies practice no discrimination in the issuance of passes, or allow access in any other way to vessels of the Companies for the purposes of organizational activities, either as between I. S. U. and N. M. U., or, in the aggregate, between organizations affiliated with the American Federation of Labor and organizations affiliated with the Committee for Industrial Organization.

VIII. CONDUCT OF THE ELECTIONS

We will direct that the elections 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.

Those eligible to vote will be the unlicensed seamen, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, who are employed on the craft when it is posted and who are still employed in such capacity when balloting is conducted.

In conformity with our prior decisions in *Matter of American France Line et al. and International Seamen's Union of America*,[8] we direct that a space be included on the ballot so that the employees may indicate they do not wish either I. S. U. or N. M. U. to represent them.

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[6] The record does not show who conducted this election. It was not conducted by the Board.

[7] Case No. R-157. See decisions of August 16 and September 11, 1937, *supra*, pp. 64.

[8] *Ibid.*

Also, in view of the proposed reorganization of I. S. U., we direct that I. S. U. shall be designated on the ballot as International Seamen's Union of America or its successor, affiliated with the American Federation of Labor, and N. M. U. shall be designated as National Maritime Union of America, affiliated with the Committee for Industrial Organization, unless the Board receives formal notification prior to September 18, 1937, of some other name to be substituted for International Seamen's Union of America or its successor, affiliated with the American Federation of Labor. In the event that the Board receives notification of such substitution prior to September 18, 1937, the substituted name will be used on the ballot in lieu of International Seamen's Union of America or its successor, affiliated with the American Federation of Labor.

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 seamen employed by the Companies, respectively, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The unlicensed seamen, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, employed by each of the Companies, 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 seamen, except wireless and radio operators,

chief electricians on electrically driven ships, and junior engineers who hold licenses, employed on all types of craft operating in or out of Atlantic and Gulf ports by American Range Lines, Inc., Ardmore Steamship Company, Inc., Boat Owning & Operating Company, Columbian Steamship Company, Inc., International Freighting Corporation, Inc., Lykes Brothers Steamship Company, Inc., C. D. Mallory Corporation, Malston Company, Inc., Mystic Steamship Company, New England & Southern Steamship Company, New England Steamship Company, Panama Mail Steamship Company, Pan-Atlantic Steamship Corporation, Peninsular & Occidental Steamship Company, Pocahontas Steamship Company, Roosevelt Steamship Company, Inc.,[9] Seminole Steamship Company, Inc., M. & J. Tracy, and United States Tank Ship Corporation, respectively, to determine whether they desire to be represented by International Seamen's Union of America or its successor, affiliated with the American Federation of Labor, or by National Maritime Union of America, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.

[9] On the American Pioneer Line.