

In the Matter of CLYDE-MALLORY LINES and COMMERCIAL TELEGRAPHERS UNION, MARINE DIVISION—A. F. OF L.

Case No. R-550.—Decided February 19, 1938

Water Transportation Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* radio telegraphers; no controversy as to; eligibility for membership in both rival organizations—*Election Ordered*

Mr. John T. McCann, for the Board.

Mr. Burton H. White, of New York City, for the Company.

Mr. Charlton Ogburn and *Mr. Arthur E. Reyman*, of New York City, for the C. T. U.

Mr. Mort Borow, of New York City, for the A. R. T. A.

Mr. Spurgeon Avakian, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 16, 1937, Commercial Telegraphers Union, Marine Division, A. F. of L., herein called the C. T. U., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question has arisen concerning the representation of employees of Clyde-Mallory Lines, New York City, 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 December 4, 1937, the National Labor Relations Board, herein called 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, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On January 4, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the C. T. U., and upon American Radio Telegraphists' Association, Marine Local No. 2, herein called the A. R. T. A., a labor organization purporting to represent employees directly affected by the investiga-

tion. Pursuant to the notice, a hearing was held on January 11 and 12, 1938, at New York City, before Mapes Davidson, the Trial Examiner duly designated by the Board. The Board, the Company, and the C. T. U. were represented by Counsel, and the A. R. T. A. by its secretary, and all participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner 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 COMPANY

During the hearing counsel for the Board read into the record a stipulation entered into by and between the Company and the Board concerning the business of the Company, which shows that Agwilines, Inc., is a corporation organized and existing under the laws of the State of Maine, and Clyde-Mallory Lines is a trade name under which Agwilines, Inc., as one of its activities, operates vessels for the transportation of freight and passengers in a coastwise service between ports on the eastern and southern coasts of the United States. Sixteen vessels, five carrying passengers and eleven carrying freight, are engaged in this service. Some of the ports touched by these ships are New York City; Charleston, South Carolina; Jacksonville, Miami, Key West, and Tampa, Florida; New Orleans, Louisiana; and Galveston, Texas. In addition, some of the ships occasionally call at the ports of Nassau, Bahama Islands; Havana, Cuba; and San Juan, Porto Rico. All of the sixteen vessels are registered out of the port of New York, and their activities and operations are directed from the office of Agwilines, Inc., in New York City. Branch offices are maintained in numerous cities throughout the country.

II. THE ORGANIZATIONS INVOLVED

Commercial Telegraphers Union, Marine Division, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all radio telegraphers employed by the Company.

The American Radio Telegraphists' Association, Marine Local No. 2, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all radio telegraphers employed by the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Both labor organizations claim to represent a majority of the radio telegraphers employed by the Company, and have submitted documentary evidence hereinafter described in support of their respective claims.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON 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, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The C. T. U. in its petition claimed that all radio telegraphers employed by the Company constitute a unit appropriate for the purposes of collective bargaining. The A. R. T. A. representative at the hearing agreed to this proposed unit, and the Company has raised no objection to it. As stated in Section II above, both labor organizations have the same rules of eligibility to membership in so far as they are material here. The evidence shows that the radio telegraphers employed by the Company differ from the other employees with regard to type of work, wages and hours, rank, and other matters.

We find that all the radio telegraphers employed by the Company constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The Company employs 26 radio telegraphers. At the hearing the agent of the C. T. U. testified that 22 employees had designated the C. T. U. as their representative for the purposes of collective bargaining with the Company, and substantiated his testimony by placing in evidence applications for membership in the C. T. U., letters to the Regional Director for the Second Region, and letters to the C. T. U. These documents were dated at various times from March 18, 1937 to December 6, 1937.

On the other hand, the agent of the A. R. T. A. testified that 17 radio telegraphers employed by the Company had designated the A. R. T. A. as their representative for the purposes of collective bargaining with the Company, and substantiated this testimony by placing in evidence applications for membership in the A. R. T. A. and receipts for dues paid issued by the A. R. T. A. to some of the employees involved. The dates on these documents varied from August 15, 1935 to January 10, 1938.

The evidence shows that 14 of the employees involved had, during the few months preceding the hearing, designated both the C. T. U. and the A. R. T. A. as their representatives. The latest preference of 13 of these men, as shown by the dates on the various documents, was the A. R. T. A. We find that the conflicting evidence produced at the hearing makes an election by secret ballot necessary to resolve the question concerning representation.

In view of the fact that a small number of employees are involved, and the fact that there have been several changes of personnel since the petition was filed on November 16, 1937, we find that the employees in the appropriate unit who were employed by the Company in the pay-roll period immediately preceding the date of the hearing herein, January 11, 1938, excluding those who have since quit or been discharged for cause, shall be eligible to vote, subject to the qualifications stated below.

On January 4, 1938, the C. T. U. filed with the Regional Director for the Second Region (New York City) a charge alleging that Mitchell Gittleston and John Gillespie were discharged by the Company on December 22, 1937, because of their affiliation with the C. T. U., in violation of Section 8 (3) of the Act. If the charge filed by the C. T. U. is sustained, Gittleston and Gillespie were discharged as the result of an unfair labor practice, and are entitled to participate in the election ordered herein. We therefore hold that in the election held pursuant to this decision Mitchell Gittleston and John Gillespie shall be entitled to vote, and their ballots shall be segregated and marked as Group A. The ballots of the two men who were added to the Company's pay roll in place of Gittleston and Gillespie shall be segregated and marked as Group B. If the ballots in Group A and Group B are material to the final result, they shall be withheld by the Regional Director pending the outcome of the charge filed by the C. T. U. on January 4, 1938. If that charge is upheld by the Board, the ballots in Group A shall then be tabulated in determining the final result; but if the charge is withdrawn or dismissed, the ballots in Group B shall be tabulated in determining the final result.

On the basis of the above findings of fact and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Clyde-Mallory Lines, New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The radio telegraphers employed by the 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 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 hereby

DIRECTED that, as a part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Clyde-Mallory Lines, New York City, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, 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 radio telegraphers employed by the Clyde-Mallory Lines during the pay-roll period next preceding January 11, 1938, excluding those who have since quit or been discharged for cause, but including Mitchell Gittleson and John Gillespie, with their ballots and those of the two men who replaced them on the pay roll of the Company to be segregated into Group A and Group B, respectively, and withheld pending the outcome of the charge that Gittleson and Gillespie were discharged by the Company as the result of an unfair labor practice, to determine whether they desire to be represented by Commercial Telegraphers Union, Marine Division, affiliated with the American Federation of Labor, or American Radio Telegraphists' Association, affiliated with the Committee for Industrial Organization, or by neither.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

February 25, 1938

On February 19, 1938, the National Labor Relations Board, herein called the Board, issued a Direction of Election in the above-

entitled proceeding, the election to be held within fifteen (15) days from the date of Direction, under the direction and supervision of the Regional Director for the Second Region (New York City). The Board, having been advised that a longer period is necessary, hereby amends the Direction of Election issued on February 19, 1938, by striking therefrom, wherever they occur, the words, "within fifteen (15) days from the date of this Direction," and substituting therefor the words, "as soon as convenient and beginning as promptly as is practicable after the date of this Direction."