

In the Matter of AMERICAN FRANCE LINE *et al.* (SHEPARD STEAMSHIP COMPANY) and INTERNATIONAL SEAMEN'S UNION OF AMERICA

Case No. R-157

Water Transportation Industry—Contract: held no bar to certification of another representative, in absence of proof that contracting union represented a majority either at time of inception or at time of renewal of contract, when petition for investigation had been filed prior to time of renewal.

Mr. David A. Moscovitz, for the Board.

Mr. H. R. Korey, of New York City, for Shepard Steamship Company.

Mr. William L. Standard, of New York City, for N. M. U.

Mary Lemon Schläifer, of counsel to the Board.

SUPPLEMENTAL DECISION

May 10, 1938

Pursuant to petitions filed with the National Labor Relations Board, herein called the Board, by International Seamen's Union of America, herein called I. S. U., requesting investigations and certifications of representatives of the unlicensed personnel employed on the vessels operated by 76 steamship companies, a hearing was held in New York City on June 21, 1937, before a Trial Examiner duly designated by the Board.

On July 16, 1937, the Board issued a Decision and Direction of Elections,¹ directing that elections by secret ballot be conducted among the unlicensed personnel, with certain exceptions, employed by 52 of the companies concerning which petitions had been filed, including Shepard Steamship Company, New York City.

Pursuant to the Direction of Elections, an election by secret ballot was conducted between October 4 and November 1, 1937, by the Regional Director for the Second Region (New York City) among the employees in the appropriate unit employed on the five vessels² operated by Shepard Steamship Company.

On December 14, 1937, the said Regional Director issued and duly served upon the parties an Intermediate Report on the results of

¹ 3 N. L. R. B. 64.

² These vessels are *Wind Rush*, *Timber Rush*, *Sage Brush*, *Sea Thrush*, and *Harpoon*.

the election among the employees of Shepard Steamship Company. As to the results of the election, the Regional Director reported as follows:

Total number eligible to vote.....	141
Total number of ballots cast.....	130
Total number of votes in favor of International Seamen's Union of America, or its successor, affiliated with the Amer- ican Federation of Labor.....	5
Total number of votes in favor of National Maritime Union of America, affiliated with the Committee for Industrial Organ- ization	112
Total number of votes in favor of neither organization.....	13
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of challenged ballots.....	0

No objections or exceptions having been filed to the Intermediate Report, the Board on January 10, 1938, certified National Maritime Union of America, herein called N. M. U., as the exclusive representative of the unlicensed personnel employed on the vessels operated by Shepard Steamship Company, for the purposes of collective bargaining.³

Subsequent to the certification of N. M. U., the Board was informed that numerous labor disputes were arising in connection with the operation of the vessels of Shepard Steamship Company. These disputes were alleged to have arisen by virtue of attempts by Sailors' Union of the Pacific, herein called S. U. P., to enforce a contract which it alleges was entered into by S. U. P. and the company prior to the election and which S. U. P. alleges is still a valid subsisting contract despite the subsequent certification of N. M. U. as representative for the purposes of collective bargaining. The Board, on its own motion, upon being informed of these facts, held another hearing in New York City on April 25, 1938.

The Board's knowledge as to which labor organizations have an interest in any representation proceeding is derived from the allegations of the petition as supplemented by facts called to the Board's attention by the interested parties. The petitions filed in these cases by I. S. U. named N. M. U. as the only other labor organization claiming to represent the unlicensed personnel employed by the 76 lines. The Board not having been informed prior to the first hearing that S. U. P. had any interest in the proceeding, S. U. P. was not served with notice of the hearing.

Shepard Steamship Company was represented at the first hearing by Otis N. Shepard, vice president of the company. Shepard testified that serious labor difficulties had been experienced by companies

³ 4 N. L. R. B. 766.

such as his which are engaged in intercoastal operations, but failed to inform the Board that Shepard Steamship Company had entered into a contract with S. U. P.

Since the Board was aware of the possibility that groups on the West Coast which were not represented at the hearing might have had an interest in the pending elections if all operations of the companies involved were included, the Direction of Elections issued July 16, 1937, expressly limited the elections to vessels of each of the companies which "operated out of Atlantic and Gulf ports." The term "operated out of" a particular port meant the port at which each voyage was commenced and ended, and from and to which articles are required to be signed by crews, according to law.⁴

On August 16, 1937, the Board issued an Amendment to Decision and Supplemental Decision,⁵ in which the Board directed that a space be provided on the ballot in which voters might indicate that they did not wish any of the named organizations to represent them. One of the effects of this provision was to protect any organization, which employees might wish to have represent them, and which had not been a party to the proceedings in New York City on June 21, 1937.

On October 14, 1937, approximately 3 months after the election was ordered and after three of the five vessels of the Shepard Steamship Company had been voted, the Board was for the first time informed, by a telegram to the Board signed "Sailors Union of the Pacific, Harry Lundeborg, Secretary-Treasurer," that a contract between Shepard Steamship Company and S. U. P. was claimed to exist. This telegram stated that S. U. P. had a contract with Shepard Steamship Company covering all vessels operated by the Company.

Upon receipt of this telegram the Board conducted further investigations concerning the operations of Shepard Steamship Company. On November 3, 1937, as part of such investigation, the Regional Director for the Second Region requested further information from Shepard Steamship Company as to which of its vessels were operated out of Atlantic and Gulf ports and which, if any, vessels of the company were being operated under agreements with West Coast organizations. On November 4, 1937, Otis N. Shepard replied, stating in part:

We do not know that we have any binding agreement with any of the Unions representing unlicensed personnel at the present time. We have had agreements with both the Union on the Pacific Coast and also with the Union on the Atlantic Coast. All

⁴ The term "home port" is used by the maritime industry with the same meaning.

⁵ 3 N. L. R. B. 74.

these agreements however, have expired and we are now operating on verbal understandings with both of the Unions.

The letter also contained detailed information concerning the operation of the five vessels of the company. The Board, in reliance on the statement of Shepard that no contract was then in existence between the company and S. U. P., and believing that the mode of operation stated to be in existence by the company constituted operation of all five vessels out of Atlantic and Gulf ports, directed the Regional Director to proceed with balloting on all five vessels of the line.

On November 9, 1937, the Secretary of the Board, at its direction, wrote Harry Lundeborg, stating that it had delayed replying to the telegram pending receipt of a report from the Regional Director of the Second Region. This letter also stated:

The other company referred to in your telegram is the Shepard Steamship Company. There again the Board had applied the same rule that an election should be held on boats whose home ports are located on the East Coast or the Gulf. In most instances the Board must depend on the companies for information regarding the location of the home ports of the ships. If you think that in any specific case the Board has posted and voted a ship whose home port is on the Pacific Coast I would suggest you communicate with Mrs. Herrick, the Director of our regional office in New York, regarding that particular case.

No further communication has ever been received by the Board from S. U. P.

On April 23, 1938, the Board on its own motion and for the reasons hereinbefore indicated, served notice upon N. M. U., S. U. P., and Shepard Steamship Company that a hearing would be held in New York City before a Trial Examiner on April 25, 1938, to hear argument on the question of whether the record in this matter should be reopened. Representatives of N. M. U. and the company appeared and participated in the hearing. Although the New York representative of S. U. P. was served with notice, S. U. P. failed to appear at the hearing. Shepard Steamship Company put in evidence both its contract with S. U. P. and brief details of the circumstances surrounding its inception.

Pertinent provisions of the contract provide that the company agrees to recognize S. U. P. as the representative of their unlicensed personnel for the purposes of collective bargaining; that the contract is applicable to all vessels operated by the company; that the company will give preference in employment of unlicensed deck personnel to members of S. U. P.; that there will be no strikes, lock-outs, or stoppages of work during the period of the agreement for any cause; that

the company agrees to sign articles to pay on and off on the West Coast for all its vessels; and that the agreement shall be effective from April 28, 1937, to September 30, 1937, and be thereafter renewed from year to year unless either of the parties gives written notice of termination within 30 days of the expiration period in any year. No written notice of termination of the contract was given by either S. U. P. or Shepard Steamship Company prior to September 30, 1937.

On the basis of the record in this proceeding, it appears that the contract is clearly invalid. Although the contract establishes conditions of employment for only unlicensed deck personnel, it provides for recognition of S. U. P. for all unlicensed personnel and consequently must be construed as a contract with S. U. P. as the representative of the entire unlicensed personnel. However, there has been no showing that S. U. P. had been designated by a majority of the unlicensed personnel and so was entitled to act as their representative for the purposes of collective bargaining. In fact what evidence there is as to S. U. P.'s position indicates that it was the representative of only a small minority of such employees.

In the first place, S. U. P. admits to membership only unlicensed deck personnel.⁶ Even if every employee of the company in this classification had been a member at the time the contract was made, its membership would have comprised only about one-third of the entire unlicensed personnel. In the absence of proof we cannot assume that any persons but members, or at least applicants for membership, have designated a labor organization as their representative.

Actually, however, it seems clear that S. U. P.'s membership among employees of the company was practically confined to the crews of two of its five vessels, *Wind Rush* and *Harpoon*. While, according to the company, S. U. P. managed to force it to open West Coast articles on these vessels early in 1937, it continued to operate as an East Coast operator, securing only occasional replacements from S. U. P. on the West Coast, for the other three vessels of the line. It is clear, therefore, that the contract was invalid at its inception on April 28, 1937.

In addition, at the time the contract was renewed on September 30, 1937, by virtue of the failure of either party to give notice of its termination, not only had a petition been filed to investigate the representative of the unlicensed personnel of Shepard Steamship Company but the Board had already directed that an election be held among the employees of this company to determine such representative. There was also no showing that S. U. P. had been designated

⁶ See *Matters of Pacific Steamship Company, et al. and Sailors' Union of the Pacific* 2 N. L. R. B. 214.

as collective bargaining representative by a majority of the unlicensed personnel of Shepard Steamship Company at the time the contract was renewed.⁷ In the absence of proof that S. U. P. had a majority in the appropriate unit at the time its contract with the company was renewed, since it was renewed after a petition for investigation of representatives had been filed with this Board, the contract will not be considered a bar to investigation and possible certification of another representative.⁸

On all the evidence, we see no reason for reopening the record in this case nor for any amendment to our Certification of January 10, 1938, in which we certified N. M. U. as the exclusive representative of the unlicensed personnel employed on the vessels operated out of Atlantic and Gulf ports by Shepard Steamship Company.

⁷ The results of the election conducted by the Board, at this time, as previously set forth, show an overwhelming majority for N. M. U. The 13 ballots on which employees indicated they did not wish either N. M. U. or I. S. U. to represent them are apparently the total number of employees who may have wished representation by S. U. P.

⁸ See *Matter of Tennessee Electric Power Company and International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24.