

IN the Matter of WATERMAN STEAMSHIP CORPORATION *and* NATIONAL MARITIME UNION OF AMERICA, ENGINE DIVISION, MOBILE BRANCH, MOBILE, ALABAMA

Case No. C-375.—Decided May 18, 1938

Water Transportation Industry—Interference, Restraint, and Coercion: refusal to issue passes to representatives of one union while granting them to representatives of another union—*Discrimination:* discharges: to discourage membership in union; for exercise of rights incident to union membership; lay-offs: to discourage membership in union; refusal to reinstate—*Employee Status:* history of, in industry—*Remedial Orders:* grant of passes, in equal numbers and under same conditions, to rival organizations—*Reinstatement Ordered:* discharged employees; employees discriminatorily laid off and refused reinstatement—*Back Pay:* awarded; to include reasonable value of maintenance on shipboard from time ships sailed after discharge or lay-off.

Mr. Joseph A. Hoskins and *Mr. Berdon M. Bell*, for the Board.

Stevens, McCorvey, McLeod, Goode & Turner, by *Mr. Gessner T. McCorvey* and *Mr. C. A. L. Johnstone, Jr.*, of Mobile, Ala., for respondent.

Mr. William L. Standard, of New York City, by *Mr. Max Lustig*, for the N. M. U.

Mr. Alex Howard, of Mobile, Ala., for the S. R. C.

Mr. Daniel J. Harrington, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by the National Maritime Union of America, herein called the N. M. U., the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana) issued its complaint dated October 9, 1937, and an amended complaint dated October 20, 1937, against Waterman Steamship Corporation, Mobile, Alabama, herein called the respondent. The complaint, amended complaint, and notices of hearing thereon were duly served upon the respondent and the N. M. U. The complaint, as amended, alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sec-

tion 8 (1) and (3), and Section 2 (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices the complaint, as amended, alleged in substance that the respondent had discharged 47 employees and refused to reinstate them because of their membership and activities in the N. M. U. and that the respondent had at all times refused to grant to the duly authorized representatives of the N. M. U. passes, permitting such representatives to board ships of the respondent for the purpose of soliciting membership for the N. M. U., while said ships were docked at Mobile, Alabama, and at other ports.

On October 26, 1937, the respondent filed an answer to the amended complaint, stating in substance that the crews of the *Bienville* and the *Fairland* were employed to make a particular voyage; that when the *Bienville* arrived in Mobile all the members of the crew were laid off as it laid up for repairs; that when the *Fairland* arrived in Mobile it went on drydock and the members of the crew were discharged; that the contract of employment terminated, as is usual and customary in such cases, when the said vessels were laid up for repairs or went on drydock; that the respondent has in no manner refused to reinstate the said employees, except in conforming with the terms of its preferential shop contract with the International Seamen's Union of America; that C. J. O'Connor voluntarily left the vessel of his own accord at the termination of the voyage; that John R. Roberts and Joseph R. McCoy were not employed by the respondent; that the respondent refused and still refuses to grant passes to duly authorized representatives of the N. M. U. permitting such representatives to board its ships; that the respondent insists on its right to determine who shall and who shall not enter on its privately owned property so long as no laws are violated; and that under its contract with the International Seamen's Union of America the respondent permits authorized representatives of that union to board its ships subject to regulations prescribed by the respondent. Thereafter the respondent filed an amendment to its answer correcting minor typographical errors.

Pursuant to notice, a hearing was held in Mobile, Alabama, on November 1, 2, 3, 4, and 5, 1937, before William Seagle, the Trial Examiner duly designated by the Board. The Board, the respondent, the N. M. U., and the Seaman's Reorganization Committee of the American Federation of Labor, herein called the S. R. C., were represented by counsel and participated in the hearing. The S. R. C. was permitted to intervene on issues raised by the existence of the contract between the respondent and the International Seamen's

Union of America, herein called the I. S. U. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

During the course of the hearing the complaint was dismissed as to John R. Roberts, Joseph R. McCoy, and Reese Bryars, and was amended to state that C. J. O'Connor was discharged for joining and assisting a labor organization known as the Marine Engineers Beneficial Association, herein called the M. E. B. A. The respondent's answer was amended to meet the allegations of the complaint, as amended.

At the close of the hearing counsel for the Board moved that the pleadings be conformed to the proof. All parties made the same motion which was granted as to all the parties. Counsel for the respondent moved that the complaint be dismissed on the grounds that the evidence failed to show any violation of the Act by the respondent. The motion was denied. Counsel for the intervenor moved that the "matter" be dismissed as beyond the jurisdiction of the Board to impair the obligations of an existing contract under which the intervenor's rights had been fairly and legally established. The motion was denied.

Thereafter the Trial Examiner filed his Intermediate Report dated January 17, 1938, in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the Act. Both the respondent and the intervenor filed exceptions to the Intermediate Report.

On March 8, 1938, oral argument was had before the Board in Washington, District of Columbia, and a brief was submitted in support of respondent's exceptions to the Intermediate Report. The Board, the respondent, the S. R. C., and the N. M. U. were represented by counsel and participated in the oral hearing.

Counsel for the respondent submitted at the hearing and again at the oral argument before the Board affidavits, signed by 13 members of the crews of the *Bienville* and the *Fairland*, stating the affiants' reasons for leaving the I. S. U. At the hearing the Trial Examiner ruled that the affidavits were inadmissible, since the seamen's reasons for leaving the I. S. U. were not in issue in the case.

The Board has reviewed the rulings made by the Trial Examiner on motions and objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the exceptions to the Trial Examiner's ruling and Intermediate Report and finds them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Waterman Steamship Corporation, is a corporation organized on June 10, 1919, under the laws of the State of Alabama. It has its principal office and place of business in Mobile, Alabama, and is engaged in the transportation of passengers and freight by steamship between foreign countries and the United States.

II. THE UNIONS

National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership the unlicensed personnel of the respondent's ships.

International Seamen's Union of America is a labor organization affiliated with the American Federation of Labor, admitting to membership all seamen in deck, engine, and steward's departments who are not required by the United States Bureau of Marine Inspection and Navigation to hold licenses.

Seamen's Reorganization Committee of the American Federation of Labor is the successor to the International Seamen's Union of America. It is a labor organization, admitting to membership the same classes of persons who are eligible to membership in the I. S. U.

The Marine Engineers Beneficial Association is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership the licensed personnel of the respondent's ships.

III. THE UNFAIR LABOR PRACTICES

A. *Refusal to issue passes*

The respondent admits that it has refused to issue passes to authorized representatives of the N. M. U. to enable them to board its ships and states that it will continue to do so. The respondent, however, issues passes to I. S. U. representatives under the terms of a contract between the I. S. U. and various steamship companies, including the respondent. Article II, Section 3, of the contract states that "authorized representatives of the Union shall have the right to go on board ships covered by this agreement, subject to regulations prescribed by the Owners, for the purpose of consulting with seamen employed thereon." Article II, Section 4, provides in substance that the I. S. U. shall take out insurance to protect the steamship owner against any claim for loss of life or injury occurring to a union representative

while on board the ships and shall furnish satisfactory evidence of such insurance.

On July 12 and 13, 1937, respectively, the respondent notified the I. S. U. delegate at Mobile, Alabama, and the masters of its vessels that, in view of the fact that the Board was holding an election to determine whether the I. S. U. or the N. M. U. should represent the unlicensed personnel of its ships, representatives of neither union would be permitted on the ships for the purpose of soliciting membership. The I. S. U. delegate replied that passes issued to I. S. U. delegates had not been used for the purpose of soliciting membership and I. S. U. delegates continued to visit the respondent's ships. The evidence does not show that the respondent ever made any attempt to ascertain whether or not the I. S. U. was observing its instructions against solicitation.

On August 16, 1937, in an Amendment¹ to the Decision and Supplemental Decision in the *Matter of American France Line, et al.*,² the Board ordered that no preference should be shown to either of the unions involved by granting passes to representatives of one union while denying them to the other or by allowing representatives of either union to board vessels without passes. Thereafter, on September 24 or 25, 1937, an agent for the N. M. U. requested passes to go on board the respondent's ships from Nicholson, the respondent's executive vice president. Nicholson refused to accede to the request, basing his refusal on the contract with the I. S. U. and the fact that it would cause trouble on the respondent's ships. The N. M. U. protested this action to the Board's Regional Director for the Fifteenth Region, who requested the respondent to issue passes to N. M. U. agents and delegates in accordance with the Board's order. The respondent refused and still refuses to issue passes to the N. M. U. and states that even if the N. M. U. took out insurance on its representatives it would not issue them passes.

The respondent contends that, inasmuch as it has refused to permit representatives of either union to solicit memberships on board its ships, it has treated both unions alike. The facts do not support the respondent's assertion that similar treatment has been accorded both unions. As we have indicated, the I. S. U. representatives had access to the respondent's ships, while this privilege was denied to the N. M. U. The respondent's issuance of passes to the I. S. U. while denying them to the N. M. U. is obviously a discrimination in favor of the I. S. U. as against the N. M. U., which has the necessary effect of impeding its employees in the free choice of representatives.

We find that the respondent, by issuing passes to representatives of the I. S. U. and refusing to grant such passes to representatives

¹ 3 N. L. R. B. 74.

² 3 N. L. R. B. 64.

of the N. M. U. for the same purpose and under the same conditions, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

B. *The discharges*

The *Bienville* and the *Fairland* were freight boats, which also carried passengers. The *Bienville*, with a crew of approximately 40, sailed between Mobile, Alabama, and various European ports, while the *Fairland*, with a crew of approximately 30, sailed between Mobile and West Indian ports. The unlicensed personnel of the *Bienville* unanimously decided in the course of a foreign voyage, which began in May of 1937, to change from the I. S. U. to the N. M. U. and were signed up in the N. M. U. by an N. M. U. organizer at Tampa, Florida, on July 2, 1937. The crew then sent the organizer to the *Fairland*, which had just arrived in Tampa. All but three members of the unlicensed personnel of the *Fairland* joined the N. M. U.

The *Fairland* arrived in Mobile on July 5, and the *Bienville* arrived shortly before midnight of the same day. The scheduled stops of the *Bienville* at Panama City, Pensacola, and Gulfport were canceled by the respondent. The crew of the *Fairland* signed off the articles on July 5, 1937, and the crew of the *Bienville* did so on July 6, 1937. When the crews signed off the articles, or shortly thereafter, the steam on the *Bienville* and the *Fairland* was killed and the entire crews were laid off.³

The *Bienville* was laid up for repairs from July 5 to August 1, 1937, while the *Fairland* was put in drydock for 30 hours, during which time it was inspected and its tail shaft was drawn in accordance with insurance and Bureau of Marine Inspection and Navigation regulations, respectively. It was then laid up in the shipyard for about 7 day for repairs. The respondent thereafter refused employment to those members of the crews who had joined and remained members of the N. M. U.

On July 8, 1937, some of the crews of the *Bienville* and the *Fairland* were put to work in the shore gang, comprising part of a gang of about 125 men, who were repairing the *Bienville*. The respondent's witnesses testified that since their shops were open shops they were able to employ the members of the crews there without violating the I. S. U. contract. In this respect it is significant to note that on July 7, 1937, the day before these men were recalled to work on the shore gang, the Board's Regional Director for the Fifteenth

³ There is conflicting testimony in the record as to whether the three members of the *Fairland* crew, who did not join the N. M. U., were laid off or quit of their own accord. In either case the sweeping character of the lay-off is not affected.

Region sent a telegram to Nicholson, requesting him to reinstate all men to their former status and without discrimination pending the election. To this telegram Nicholson admits that he probably replied that under the terms of the I. S. U. contract he could not work N. M. U. men. Although a majority of the men started working in the shore gang on July 8, Nicholson denied that they were given such employment as a result of the telegram. However, Ingram, the respondent's assistant port engineer, admitted that word was sent specially to the *Bienville* and *Fairland* crews that work was available for them in the shore gang. After working on the *Bienville* repairs for 3 or 4 days, 10 members of the crews of the *Bienville* and the *Fairland* were laid off. There is credible testimony that there was still work with the shore gang that these men could have done, but they were not retained. Two members of the crews, who were laid off from the shore gang, stated that Ingram told them that they would have to take off their N. M. U. buttons if they wanted to work for the respondent. Ingram's explanation is that he merely told them that they could not sail on the respondent's ships because of the contract with the I. S. U., but such an explanation obviously has no relation to their lay-off from the shore gang, since the latter work was admittedly not subject to the I. S. U. contract.

In defense to the alleged discriminatory discharge and refusal to reinstate the crews of the *Bienville* and the *Fairland*, the respondent contends that the discharges were not discriminatory, since the employment of the crews terminated normally at the conclusion of their respective voyages, and that the contract between the respondent and the I. S. U. prevented the reemployment of the crews when the ships sailed. An analysis of this contention reveals that it is without merit.

The respondent asserts that the whole contract between itself and its crews is embodied in the shipping articles under which the crews sail and that the crews are completely discharged and the employer-employee relationship terminated at the end of each particular voyage. This assertion is inconsistent with the terms of the respondent's contract with the I. S. U., Article II, Section 1 of which provides:

It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident.

The quoted provision, which is the clause relevant to the issues raised here, clearly contemplates a continued employer-employee relationship and protects employees against discrimination by the respondent because of non-membership in the I. S. U. The respondent's assertion is also inconsistent with actual maritime practice as disclosed in the testimony of numerous witnesses, including the respondent's own witnesses, who testified, in effect, that the mere expiration of the shipping articles does not terminate the seamen's employment. Thus Norville, captain of the *Fairland*, testified that unless a man resigns or is discharged, he is given an opportunity to sign on again and that this is the general custom in the industry and on the respondent's ships. Nicholson testified that, if a crew is satisfactory to the officers on the vessel and desires to ship again, it is reshipped. Reed, the respondent's port captain, testified that even after the crew signs off the men stand their watches unless they voluntarily quit or are discharged for cause, which indicates the continuity of the employment.

It is clear from the record that the termination of a voyage does not terminate the employment of the crew in the absence of other circumstances. The respondent urges that there were such other circumstances, namely, the necessary extensive lay-ups of both ships. While it is apparently true that repairs may have required that both ships be laid up, our consideration of the record convinces us that the dates and duration of the particular lay-ups were arranged for the purpose of making it possible to discharge the crews because they had joined the N. M. U.

In the first place, the reasons and dates advanced by the respondent's officials for laying up the *Bienville* are self-contradictory. Nicholson testified that the respondent purchased steel in May 1937, for repairing the ship and made plans to repair it when it returned from Europe on July 5. He further testified that he knew in May that the ship was to be repaired in July and that the repairs would take 3 weeks. When confronted with a stipulation, submitted by the respondent on June 22, 1937, in the *American France Line* hearing,⁴ which scheduled the *Bienville* to be in Mobile only from July 11 to July 15, 1937, Nicholson admitted that the steel might have been ordered for the *Azalea City*, a sister ship of the *Bienville*. In an attempted explanation of this discrepancy between his testimony and the stipulation, he stated that due to a mix-up in schedule, or because it was more economical, the *Bienville* might have been substituted for the *Azalea City*. Ingram testified that to the best of his knowledge it was decided to make the repairs, which had previously been contemplated, while the *Bienville* was on its return

⁴ 3 N. L. R. B. 64.

voyage from Europe some time in June. Reed, on the other hand, testified that as early as April 1937, the *Bienville* was scheduled to be laid up for repairs from July 7 to July 30. His information was based upon a sailing schedule entitled "Sailing Schedule April thru August 1937." Reed did not remember the other schedule set out in the afore-mentioned stipulation of June 22 and stated that if there had been a change in the April schedule he was sure that he would have been so advised. Thus three different responsible officials of the respondent, when called upon to explain the course of action which the respondent had followed, assigned conflicting dates for the lay-up of the *Bienville*.

Comparable contradictions and vagueness are disclosed by the record in the explanations offered for the lay-up of the *Fairland*. Insurance regulations required that the *Fairland* be drydocked every 9 months, while regulations of the Bureau of Marine Inspection and Navigation required that the tail shaft be drawn every 3 years for inspection. The respondent introduced in evidence a schedule entitled "Inspection-Drydocking-Surveys" showing that the *Fairland*, in accordance with these regulations, was due to have its tail shaft drawn on July 10, 1937, and to be drydocked for inspection on July 28, 1937. Reed testified that if the *Fairland* had gone on another trip after it docked at Mobile on July 5, 1937, it would not have returned in time to comply with the regulations. However, as we have indicated above, the *Fairland* was in drydock from July 5 for only 30 hours, during which period the tail shaft was drawn and the insurance inspection, apparently scheduled for July 28, was completed. In explanation of the 7-day lay-up for repairs following the 30-hour drydocking, Nicholson testified that the *Fairland* arrived in Mobile during the July 4 holidays and that the steam was "killed" and the crew laid off due to scarcity of business. Nicholson further testified that 3 or 4 months before the ship left Mobile on the voyage in question it was decided to clean and paint it. Ingram, on the other hand, stated that he did not have any plans to tie up the ship previous to the time it sailed in June and that he was not positive as to whether the plans were formulated before or after the ship left Tampa on July 2 for Mobile. Although no schedule was introduced, Nicholson stated that the ship was behind schedule and that it was decided to eliminate one trip in order to put it back on schedule. Reed admitted that it was very unusual to set a ship back a trip to straighten its schedule.

In conjunction with the divergent and conflicting explanations of the dates and duration of the lay-ups, it is significant to note that the respondent stated that both vessels were seaworthy at the time repairs were made on them.

The respondent denied that it knew of the change in the labor affiliation of the crews of the *Bienville* and the *Fairland* until after the crews were discharged. We cannot credit this denial because the respondent had at least constructive knowledge and we believe actual knowledge of the change when it occurred in Tampa. The captains of the respective vessels certainly knew of the occurrence immediately, while the boats were in Tampa. Norville, captain of the *Fairland*, denied that he had informed the respondent's higher officials of the occurrence before his boat reached Mobile. The captain of the *Bienville* did not testify. However, the cancellation of the scheduled stops of the *Bienville* between Tampa and Mobile, which was never explained by the respondent, indicates that the respondent knew immediately or shortly thereafter that the crews of the two ships had joined the N. M. U. in Tampa. The evidence establishes that, if not informed by its own officers, the respondent probably knew of the shift as soon as the ships reached Mobile through information received from I. S. U. officials. Ross, business agent of the I. S. U., testified that the I. S. U. agent in Tampa notified him by telephone that the crew of the *Bienville* had changed to the N. M. U. and that, when the ship arrived in Mobile, he sent a delegate down to it and at that time made representations to the respondent about the change. Ross was unable to remember whether or not the agent at Tampa had notified him of the *Fairland's* crew joining the N. M. U.

Moreover, the fact that the ships were laid up for repairs would not of itself involve discharging the crews. There is abundant testimony in the record that crews have remained on ships for several weeks while the ships were undergoing repairs. Lowry, who had worked in a shipyard off and on for 11 years, testified that he had seen approximately 600 ships in drydock and that the only ships he had seen come into drydock without crews are those which had come out of the laid-up fleet or had been laid up for an indefinite length of time and that they generally took on a crew while in drydock. The respondent's witnesses testified to the same effect. Thus Nicholson admitted that the respondent had kept a good part of the crew on when a ship was in for 7 days, and that it was not customary to lay off the entire crew. Norville testified that he had never heard of another case where the entire crew had been laid off. Although Nicholson stated that it was impossible to house the crew on the *Bienville* while it was being repaired, due to the type of repairs and the lack of steam, this condition would not have necessitated the discharge of the crew. When there is no work for members of a crew they customarily stand by the ship, that is, wait until it is ready to sail again and then sail on it.

Nicholson claimed that the major part of the repairs on the *Bienville* could not be made by the crew, but admitted that the crew could have done some of the work. Indeed, as a matter of fact, some members of the *Bienville* and *Fairland* crews did work on the ship as members of the shore gang. It will be recalled that the respondent's first act was to discharge both crews immediately and that work on the shore gang was obtained for them only after the intervention of the Board's Regional Director. Nicholson stated that a large number of men were put to work on the ship and the number cut gradually from day to day. As has been already noted, however, the members of the N. M. U. were laid off after only '3 or 4 days' work and while there was still work that they could have done. Although Ingram stated that the work on the *Fairland* could not be done by the crew, he admitted that there is always work on a ship that can be done by members of the crew.

The above facts indicate that, even though the drydocking or repairs occurred in the normal course of operation of the ships, advantage was taken of the situation to discharge the crews. When the ships sailed again, the respondent used its contract with the I. S. U. as a pretext for refusing to reshipe the crews.

Nicholson defined the term "prompt reshipment" in the I. S. U. contract as meaning signing on a crew within 24 to 36 hours after they are paid off. He testified that he was very familiar with the term and that it was commonly used in maritime circles, but on cross-examination admitted that he was giving his own private interpretation of it and that this contract was the only one in which he had ever seen the term used. The testimony of numerous other witnesses reveals a similar confusion as to the meaning of the term. Ships are in the port of Mobile loading and unloading on an average of from 2 to 4 days and in some cases for as many as 6 days. At times the crew does not sign on again until the ship is ready to sail. In the light of these facts it is apparent that the respondent seized on Nicholson's interpretation of the term as a justification for its unprecedented conduct in discharging the crews of the two ships and refusing to reshipe them.

The circumstances surrounding the discharge of Edmund J. Pelletier confirm our opinion that the respondent decided to discharge the entire crews to discourage membership in the N. M. U. Pelletier first sailed for the respondent in 1934. He was chief steward and chief cook on the *Bienville* on the voyage in which the shift to the N. M. U. occurred and he joined the N. M. U. in Tampa with the rest of the crew. When the ship docked in Mobile on July 5, Fagan, the port steward, went aboard and asked Pelletier if he and his crew had joined the N. M. U. Pelletier answered in the affirmative. In the afternoon Fagan sent a new steward to the ship and later came

aboard himself and discharged Pelletier. Fagan testified that when the ship was ready to sail on the last voyage before Pelletier was discharged, Pelletier had asked for another mess boy, although he had previously assured Fagan that everything was satisfactory in the steward's department. Fagan also testified that, when he discharged Pelletier, he told him that he would have known that he lacked a mess boy, if he had had any discipline in his department. Fagan also claimed that Pelletier seemed unable to retain his men on another ship of the respondent's on which he was steward.

Pelletier's version of his discharge differs sharply from that of Fagan. He testified that on the morning of May 5, 1937, he asked Fagan for another mess boy in the presence of two I. S. U. delegates and that Fagan and one of the delegates asked one of the members of the steward's department to do the extra work. When the man offered to do so, Fagan asked Pelletier if that was satisfactory, to which Pelletier replied that it was "up to" the I. S. U. delegates. When the ship was ready to leave Mobile, the crew refused to sail until Ingram, who was present, promised to have another mess boy put aboard at Tampa, which was done. Pelletier stated that after his conversation with Fagan and the I. S. U. delegates, he never made another request for a mess boy.

As further proof of the incompetency of Pelletier, the respondent introduced in evidence a letter from the captain of the *Bienville* to Reed, port captain of the respondent, stating, in effect, that Pelletier was incompetent. The letter, however, also stated that, if much service were given to passengers, the overtime in the steward's department would be substantial. In his testimony Reed interpreted this letter to mean that the steward's department had just enough personnel to give a minimum amount of service. Furthermore, Fagan admitted that there is always a dissatisfaction in the steward's departments of ships and that he had received complaints about other ships on practically every trip. This is virtually the same condition that Pelletier faced. Fagan, however, did not discharge stewards on other ships because of such complaints.

Although the respondent contends that Pelletier was incompetent, he had received a promotion and an increase in pay, which went into effect at the time of his last voyage on the *Bienville*.

After his discharge, the respondent refused to pay Pelletier his overtime, contending that it was too high. Pelletier sued for it and obtained a judgment. In October 1937, he offered to drop his overtime suit if the respondent would reemploy him. He was told that he would have to be reinstated in the I. S. U. first. He has since rejoined the I. S. U. and at the time of the hearing was awaiting his turn to be called to work.

The discharge of Pelletier illustrates the discriminatory nature of all the discharges. The reason advanced for laying off the rest of the crews would not suffice in his case, inasmuch as it was necessary to keep a steward on the *Bienville* to act as a watchman, even though it was laid up for repairs. The very day that Pelletier was discharged, he was replaced by another steward. Since the respondent could not with good grace contend that he was laid off because the ship was being laid up for repairs; a reason for discharging him had to be sought. The reason given by the respondent cannot be credited in view of the facts set out above.

Some members of the *Bienville* and *Fairland* crews have renounced the N. M. U., rejoined the I. S. U., and have been given employment by the respondent. B. H. Ingram and W. Reynolds of the *Bienville* crew were employed on ships of the respondent at the time of the hearing, as were W. Gold, H. Bowen, F. Boddan, E. X. Rhone, and B. Baptiste, of the *Fairland* crew. J. E. Gilroy and M. E. Jones of the *Bienville* crew, and H. Hall of the *Fairland* crew, have secured employment elsewhere.

To summarize, the haste with which the *Bienville* was hurried from Tampa to Mobile immediately after the crew's shift from the I. S. U. to the N. M. U., the almost simultaneous discharge of the crews and laying up of both ships after their arrival at Mobile, the failure to retain the crews on other work in accordance with custom, the reluctant and brief assignment of a few members of the crews to the shore gang, and, finally, the interpretation of the, at best, ambiguous I. S. U. contract against the interest of the employees in question, evidence the respondent's obvious desire to get rid of the employees who had become members of the N. M. U.

Under all the circumstances we find that, by laying off and refusing to reinstate the employees whose names are listed in appendix A, being members of the crew of the *Bienville*, and the employees whose names are listed in appendix B, being members of the crew of the *Fairland*, the respondent has discriminated against them with respect to hire and tenure of employment, has discouraged membership in the N. M. U., and has thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

C. J. O'Connor was second-assistant engineer on the *Azalea City*, and had sailed for the respondent since 1929. During his last voyage on the *Azalea City*, the engineers were required to work a substantial amount of overtime. O'Connor worked this overtime under protest and had also protested while the ship was at sea for the other engineers at their request. The engineers regarded the overtime as a violation of the terms of the contract between the respondent and the M. E. B. A., of which they were members. The

chief engineer of the ship told O'Connor that he would straighten out the overtime when the ship reached Mobile.

When the ship arrived in Gulfport, Ingram, the respondent's assistant port engineer, boarded the ship, and without request from O'Connor, told O'Connor to take a vacation when the ship docked at Mobile, and that he would straighten out his overtime and transfer him to a coastal ship as O'Connor had previously requested. O'Connor was not entitled to a vacation, but did not know this and left the ship at Mobile. Ingram testified that at the time he thought that O'Connor was entitled to a vacation. Although Ingram discovered within a few days that O'Connor was not entitled to a vacation, he made no effort to apprise him of that fact. Ingram stated that when a man is on a vacation he notifies the respondent when he is ready to resume work, and that O'Connor had not done this. However, the evidence discloses that the respondent was well aware of the fact that O'Connor was ready to resume work. O'Connor testified that he had met Ingram on the street one day after he had left the ship and had asked him if he thought that the respondent would give him employment. Ingram did not consider this request formal enough, and indeed, testified that he thought that O'Connor was joking when he made the request. Moreover, it was customary for the respondent to notify an engineer when his services were wanted, and in the past O'Connor had been so notified on numerous occasions. However, O'Connor was never notified or recalled after leaving the *Azalea City*, although there were vacancies in the engineering departments of the respondent's ships.

The respondent alleges that O'Connor was not discharged but voluntarily left the vessel of his own accord at the termination of the voyage. The record clearly shows that O'Connor left the vessel on an approved vacation and was ready to resume work, which fact was known to the respondent. It is clear that the respondent resented O'Connor's activity in making the collective protest and did not recall him for that reason. The contract between the respondent and the M. E. B. A. offered no bar to the type of protest which O'Connor made while the ship was at sea. Although the contract provided a method for adjudication of disputes,⁵ there is no indication that the provision was intended to preclude a collective protest, especially when the procedure for the amicable adjustment of grievances provided in the contract was not immediately available while the men were at sea. In fact, the respondent does not contend that there was any impropriety in O'Connor's action. Moreover, the respondent does

⁵ Board Exhibit No 11, Sec 2: "All disputes * * * shall be determined by a Licensed Personnel Board consisting of two persons appointed by the Party of the First Part and two persons appointed by the Party of the Second Part."

not claim that O'Connor's services were either unsatisfactory or unnecessary.

We find that the respondent discharged and refused to reinstate O'Connor because of his participation in the collective action described above. We further find that by this act the respondent discouraged membership in the M. E. B. A., by discrimination against a union member for his active exercise of the rights incident to such membership, and thereby interfered with, restrained, and coerced its employees in the exercises of their rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

We have found that the respondent, by refusing to grant passes to the authorized representatives of the N. M. U., for the same purpose and under the same conditions as it grants passes to representatives of the I. S. U., has interfered with, restrained, and coerced its employees. In order to remedy this unlawful conduct we shall order the respondent to issue passes in equal numbers to representatives of both the N. M. U. and the I. S. U., or its successor, under the same conditions.

The employees who were discriminatorily laid off are entitled to reinstatement with back pay. We shall order their reinstatement to their former positions with the back pay they would normally have earned, less any amounts earned by any of them respectively in the meantime. In determining the amount of back pay to be awarded to each employee, we shall order that the reasonable value of his maintenance on shipboard, from the time that the ship he was employed on sailed again after his discharge or lay-off, be added to the amount of his monetary compensation from the respondent.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama; Seamen's Reorganization Committee of the American Federation of Labor; International Seamen's Union of America; and Marine Engineers Beneficial Association are labor organizations within the meaning of Section 2 (5), of the Act.

2. The respondent by interfering with, restraining, and coercing its employees in their exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), of the Act.

3. By discriminating in regard to the hire and tenure of employment of the employees listed in appendices A and B, and C. J. O'Connor, and thereby discouraging membership in National Maritime Union of America and Marine Engineers Beneficial Association, respectively, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Waterman Steamship Corporation, Mobile, Alabama, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From refusing to issue passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America or its successor;

(b) From discouraging membership in National Maritime Union of America, Marine Engineers Beneficial Association, or any other labor organization of its employees, by laying off, discharging, or refusing to reinstate any of its employees, or in any manner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment;

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Grant passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America or its successor;

(b) Offer to the persons listed in appendices A and B and to C. J. O'Connor immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(c) Make whole the persons listed in appendices A and B and C. J. O'Connor for any loss of pay they have suffered by the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which each would normally have earned as wages—including therein the reasonable value of his maintenance on shipboard from the time that the ship he was employed on sailed again after his discharge or lay-off—during the period from the date of such discrimination against each of them to the date of the offer of reinstatement; less any amount each has earned during that period;

(d) Post immediately notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner aforesaid;

(e) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

APPENDIX A

Basil Brown ¹	Edmund J. Pelletier ¹
M. J. Burgess	W. Reynolds
James Gilroy ¹	William Rodner ¹
Kenneth E. Graham ¹	R. F. Schuettner ¹
J. P. Hamilton ¹	C. W. (Jerry) Turner
Wesley Howard	Earl Wilkerson ¹
B. H. Ingram	C. W. Wilson
James M. Jeffries ¹	Dudley Beuk ¹
Marlyn E. Jones ¹	Herman Zilberman ¹
A. C. King	R. Reynolds
Herman Lee ¹	F. Gordy ¹
Archie McWiggen ²	—— Lopez ¹
J. B. Morrow ¹	Lewis Jones ³

¹ Spelled in the shipping articles as B H. Brown, J. E. Gilroy, Kenneth Graham, J. B. Hamilton, J. M. Jefferies, M. E. Jones, H. E. Lee, Jos B. Monow, E. J. Pelletier, Wm. Rodin, Richard Schuettner, E. Wilkerson, D. H. Benk, H. Zilberman, Fred Gordy, Pedro G. Lopez

² Listed in complaint as Bosun on the *Bienville*; name does not appear in shipping articles, but name of A. McGregor, Bosun, does appear there. Evidently the same individual

³ Name does not appear on shipping articles; listed in complaint as member of crew of *Fauland*, but appears on Respondent Exhibit No. 21 as member of crew of *Bienville*; since motion to conform the pleadings to the proof was granted as to all parties we have included Lewis Jones in the crew of the *Bienville*.

APPENDIX B

Columbus Anderson	Raymond S. Kettewell ⁴
Andrew Benron ⁴	Otto K. Ortleb
Fulbert A. Bodden ⁴	Charles Perkins
Howard Bowen ⁴	Edward X. Rhone ⁴
Eric Butcher	Jesse J. Scott
Robert Crawford ⁴	C. E. Smith ⁴
James Dobbs ⁴	James C. Stewart
W. Gold ⁴	Bennett Bapiste ⁴
Herbert Hall ⁴	

⁴Spelled in the shipping articles as Andrew Benion, F Bodden, H. Bowen, R. Crawford, M. James Dobbs, W. R. Gold, H. Hall, R. S. Kettlewell, E. X. Rhone, Claude Smith, Bennette Baptiste.