

In the Matter of NORTH RIVER COAL AND WHARF COMPANY and  
INLAND BOATMEN'S UNION OF THE ATLANTIC AND GULF

*Case No. R-724.—Decided July 7, 1938*

*Water Transportation Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; employer willing to accept any decision by Board—*Unit Appropriate for Collective Bargaining:* pocket men, top men, and trimmers, excluding bosses and foremen; stipulation as to—*Election Ordered—Certification of Representatives.*

*Mr. Albert Ornstein,* for the Board.

*Mr. Alex E. Mettlach* and *Mr. Francis X. Lee,* of New York City, for the Company.

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

*Mr. Chris Porto,* of New York City, for the I. L. A.

*Mr. Arnold R. Cutler,* of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On January 24, 1938, Inland Boatmen's Union of the Atlantic and Gulf, herein called the I. B. U., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of North River Coal and Wharf Company, Jersey City, New Jersey, 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 March 4, 1938, 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.

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On April 11, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the I. B. U., and upon the International Longshoremen's Association, Marine Freight Handlers & Warehousemen, Local 976, herein called the I. L. A., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to notice, a hearing was held on May 2, 1938, at New York City, before William Seagle, the Trial Examiner duly designated by the Board. The Board and the I. B. U. were represented by counsel, the Company and the I. L. A. by representatives. All parties participated in the hearing. Full opportunity to be heard, to examine and 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

North River Coal and Wharf Company is a New Jersey corporation with its principal office in New York City. It is the lessee of a wharf at Jersey City, New Jersey, on the Hudson River, where it is engaged in the reshipping, selling, and delivering of coal:

All the coal which the Company handles comes from the States of Pennsylvania and Maryland. The coal arrives at the wharf by railroad and is loaded by the Company into vessels. Most of the coal is reshipped in these vessels to the State of New York, the rest being sold or delivered to tugs and other harbor craft. In 1937 the Company disposed of 561,433 tons of coal, of which approximately 90,000 tons were sold and delivered as above-described and the remainder was reshipped to the State of New York.

#### II. THE ORGANIZATIONS INVOLVED

Inland Boatman's Union of the Atlantic and Gulf is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership pocket men, top men, and trimmers, except bosses and foremen.

International Longshoremen's Association, Marine Freight Handlers & Warehousemen, Local 976, is a labor organization affiliated with the American Federation of Labor, admitting to its membership pocket men, top men, and trimmers, except bosses and foremen.

## III. THE QUESTION CONCERNING REPRESENTATION

During the early part of March 1937, the pocket men, top men, and trimmers were organized for the first time by the I. L. A. and many of them became members thereof. Shortly thereafter, the representatives of the I. L. A. engaged in conferences with the officers of the Company. On March 24, 1937, the Company sent the I. L. A. a letter stating that it was willing that its employees be represented by the I. L. A. if that was their desire. On March 29, 1937, the Company sent a further letter to the I. L. A. in which it set forth what it was willing to do regarding wages, hours, and working conditions. Thereupon the I. L. A. assured the Company that its suggested arrangement was satisfactory. On March 31, 1937, the Company advised the I. L. A. that it would put such arrangement into effect on April 1, 1937, for a trial period until April 10, 1937, with the understanding that if it worked satisfactorily, the matter of continuing the same would be considered, but if it proved unsatisfactory, the arrangement would then be terminated. This arrangement proved satisfactory, and was continued, no definite period being fixed as to the time in which it was to continue in effect.

About July 12, 1937, Inland Boatmen's Division, herein referred to as the I. B. D., was formed as a division of the National Maritime Union of America. Thereupon the I. B. D. commenced a membership drive among the employees of the Company. During the month of August 1937, a number of the employees of the Company joined the I. B. D. Many of these, who were at that time members of the I. L. A., surrendered their I. L. A. dues books to the I. B. D. and received new dues books in return. Representatives of the I. B. D. then engaged in conferences with the officers of the Company who, after receiving evidence that more than a majority of the employees in the appropriate unit were then members of the I. B. D., agreed that the arrangement which was begun with the I. L. A. would be continued with I. B. D. About September 12, 1937, the I. B. D. became affiliated with the Committee for Industrial Organization and was chartered by it as the Inland Boatmen's Union of the Atlantic and Gulf.

The Company has at all times been willing to treat with the representatives of the employees and states that it will accept any decision of the Board.

We find that a question has arisen concerning the 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

At the hearing, the Company, the I. B. U., and the I. L. A. all agreed and stipulated that the appropriate unit consisted of all the pocket men, top men, and trimmers, excluding the bosses and foremen.

We find that the pocket men, top men, and trimmers, excluding the bosses and foremen, 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

At the hearing the I. L. A. introduced 35 application cards, almost all of which are dated as of March 1937.<sup>1</sup> The I. B. U. introduced 38 personal history cards,<sup>2</sup> with varying dates, all of which, however, were signed in August 1937. At the hearing it was stipulated by all the parties that the pay roll of April 16 to April 30, 1938,<sup>3</sup> be used for comparison with the names on the cards submitted. This pay roll contains the names of 63 employees, of whom 41 are within the unit which we have found appropriate. The names of 21 of the said 41 employees appear on the cards both of the I. L. A. and the I. B. U., the names of 5 appear only on the cards of the I. L. A., and the names of 6 appear only on the cards of the I. B. U.

At the hearing it was further stipulated by the parties that the signatures on the cards be checked by an agent of the Board against the endorsements on the canceled pay checks of the employees. Accordingly, such a check was made by an agent of the Board. This check reveals that only 20 of the signatures on the cards of the I. L. A. and 19 of those on the cards of the I. B. U. checked with the endorsements on the canceled pay checks of the employees of the Company.

Under the circumstances, we find that the question which has arisen concerning the representation of employees can best be resolved by the holding of an election by secret ballot. At the hearing the parties stipulated that, if an election was held, the employees

<sup>1</sup> Local 976 Exhibit No. 1.

<sup>2</sup> Petitioner Exhibit No. 5.

<sup>3</sup> Petitioner Exhibit No. 3.

eligible to vote should be those within the appropriate unit who were employed during the pay-roll period from April 16 to April 30, 1938. In accordance with the stipulation, we shall adopt this eligibility date.

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

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of North River Coal and Wharf Company, Jersey City, New Jersey, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the pocket men, top men, and trimmers of the Company, excluding the bosses and foremen, 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 part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with North River Coal and Wharf Company, Jersey City, New Jersey, 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 all of the pocket men, top men, and trimmers employed by the Company during the pay-roll period from April 16 to April 30, 1938, excluding bosses and foremen, and excluding those employees who have since quit or been discharged for cause, to determine whether they desire to be represented by Inland Boatmen's Union of the Atlantic and Gulf, affiliated with the Committee for Industrial Organization, or by International Longshoremen's Association, Marine Freight Handlers & Warehousemen, Local 976, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

## CERTIFICATION OF REPRESENTATIVES

*August 13, 1938*

On July 7, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot shall be conducted within fifteen (15) days from the date of the Direction among all the pocket men, top men, and trimmers employed by North River Coal and Wharf Company, Jersey City, New Jersey, during the pay-roll period from April 16 to April 30, 1938, excluding bosses and foremen, and excluding those employees who had since quit or been discharged for cause, to determine whether they desired to be represented by Inland Boatmen's Union of the Atlantic and Gulf, affiliated with the Committee for Industrial Organization, or by International Longshoremen's Association, Marine Freight Handlers and Warehousemen, Local 976, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

Pursuant to this Direction of Election, an election by secret ballot was conducted under the direction and supervision of Elinore M. Herrick, the Regional Director for the Second Region (New York City), on July 20, 1938. Full opportunity was accorded to all the parties to this investigation to participate in the conduct of the secret ballot and to make challenges. Thereafter the said Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties her Intermediate Report on the election. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote-----	39
Total number of ballots cast-----	37
Total number of ballots counted-----	37
Total number of votes in favor of International Longshoremen's Association, Marine Coal Dumpers, Local 976-1, affiliated with the American Federation of Labor-----	0
Total number of votes in favor of Inland Boatmen's Union of the Atlantic and Gulf, affiliated with the Committee for Industrial Organization-----	36
Total number of votes in favor of neither organization-----	1
Total number of blank ballots-----	0
Total number of void ballots-----	0
Total number of challenged ballots-----	0

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, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Inland Boatmen's Union of the Atlantic and Gulf, affiliated with the Committee for Industrial Organization, has been designated and selected by a majority of the pocket men, top men, and trimmers, excluding bosses and foremen, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, Inland Boatmen's Union of the Atlantic and Gulf, affiliated with the Committee for Industrial Organization, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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