

In the Matter of VIRGINIA FERRY CORPORATION<sup>1</sup> and MASTERS, MATES  
AND PILOTS OF AMERICA, No. 9

In the Matter of VIRGINIA FERRY CORPORATION<sup>1</sup> and INTERNATIONAL  
SEAMEN'S UNION

Cases Nos. C-346 and C-348, respectively.—Decided August 1, 1938

*Water Transportation Industry—Interference, Restraint, and Coercion:* expressed opposition to labor organization—*Company-Dominated Union:* domination of and interference with formation and administration; support; disestablished, as agency for collective bargaining—*Discrimination:* discharges; for union membership and activity; charges of, not sustained.

Mr. Charles Y. Latimer, for the Board.

Lewis, Wolff & Gourlay, by Mr. Otto Wolff, Jr., of Philadelphia, Pa., for the respondent.

Mr. George Rose, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

On August 14, 1937, International Seamen's Union,<sup>2</sup> herein called the I. S. U., filed charges with the Regional Director for the Fifth Region (Baltimore, Maryland), alleging that Virginia Ferry Corporation, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On September 7, 1937, Masters, Mates and Pilots of America No. 9, herein called the M. M. P., also filed charges with the Regional Director, alleging that the respondent had

<sup>1</sup>The Virginia Ferry Corporation was designated in the complaint as the Virginia Ferries Company. Counsel for the Board moved at the close of the hearing to amend the complaint to conform to the evidence, and the correction of the name of the respondent was specifically noted at that time.

<sup>2</sup>We take judicial notice that since the hearing in this case the I. S. U. has been reorganized and that the American Federation of Labor has granted exclusive jurisdiction to American Federation of Labor Seamen's Union No. 21420, to replace jurisdiction formerly vested in and now surrendered by the Atlantic and Gulf Districts of International Seamen's Union of America *Matter of American France Line, et al* and *International Seamen's Union of America*, 7 N. L. R. B. 439

engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) of the Act.

On September 20, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a consolidation of the two cases for the purpose of hearing.

Upon the charges filed by both unions, the Board, by the Regional Director, issued a complaint, dated November 12, 1937, against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent, the I. S. U., and the M. M. P.

The complaint alleged in substance that the respondent dominated the formation of a labor organization of its employees, known as the Committee, dominated and interfered with the administration of its affairs, and contributed support to it; that the respondent discriminated in regard to the hire and tenure of employment of three persons named in the complaint; that the respondent refused to bargain collectively (1) with the I. S. U. as the exclusive representative of the respondent's unlicensed personnel; and (2) with the M. M. P. as the exclusive representative of the respondent's licensed deck officers; and that by these and other acts and conduct the respondent interfered with, restrained, and coerced its employees in the exercise of their right to self-organization and to engage in concerted activities for their mutual aid and protection.

On November 18, 1937, the respondent filed an answer, denying that it was "engaged in the actual operation of instrumentalities in interstate commerce," denying that it had committed the alleged unfair labor practices, and setting forth certain affirmative matter.

Pursuant to notice, a hearing of the consolidated cases was held in Norfolk, Virginia, from November 22 to 26, 1937, before Madison Hill, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the hearing counsel for the Board moved to dismiss the paragraphs of the complaint which set forth unfair labor practices within the meaning of Section 8 (5) of the Act. At the close of the hearing, counsel for the Board moved to amend the complaint to conform to the evidence.<sup>3</sup> Both motions were granted. The rulings are hereby af-

<sup>3</sup> See footnote 1, *supra*.

firmed. During the course of the hearing the Trial Examiner made numerous other rulings on motions and on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The parties did not avail themselves of the opportunity to file briefs afforded them at the close of the hearing by the Trial Examiner.

On December 22, 1937, the Trial Examiner filed his Intermediate Report, copies of which were duly served upon all parties, finding that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist therefrom, and, affirmatively, withdraw recognition from and disestablish the Committee which the respondent had recognized as the bargaining agency of the crews of the two vessels involved in this case. Exceptions to the above portion of the Intermediate Report were thereafter filed by the respondent. The Trial Examiner found further that the allegations of the complaint that Wm. L. Somers, Floyd B. Hefner, and C. B. Hudgins were discriminatorily discharged were not sustained by the evidence and recommended the dismissal of those allegations. No exceptions to that portion of the Intermediate Report were filed by either the M. M. P. or the I. S. U. On February 19, 1938, oral argument on the respondent's exceptions to the Intermediate Report and on the record was held before the Board in Washington, D. C. The respondent and the I. S. U. participated in the oral argument.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent is a Virginia corporation and maintains its principal place of business at Norfolk, Virginia. One half of the controlling stock of the respondent is owned by the Pennsylvania Railroad, and the other half by the Delaware and New Jersey Ferry Company. The respondent is engaged in the transportation of persons and vehicles in ferryboats across the Chesapeake Bay between Cape Charles and Little Creek, both in the State of Virginia. It operates two large ferryboats, the *Princess Anne* and the *Del-Mar-Va* and several floats. The *Princess Anne* has a capacity for transporting several hundred automobiles and 1,200 passengers per trip. The *Del-Mar-Va* is a somewhat smaller boat and has a lesser capacity. Each ship has a full complement of officers, engine-room crew, stewards, and a deck force of 12 seamen. The vessels of the respondent are subject to the regulations of the United States Department of

Commerce and are inspected by the Bureau of Marine Inspection and Navigation of the Federal Government.

The Pennsylvania Greyhound busses operating between Norfolk, Virginia, and New York City are among the many vehicles transported across Chesapeake Bay in the respondent's ferryboats. During November 1936, 3,997 of the 8,352 vehicles carried by the respondent's ferryboats were cars registered in Virginia, and the remaining vehicles were registered in States other than Virginia. During March 1937, 3,167 of 8,162 vehicles carried by the ferryboats were cars and trucks of Virginia registry; and the remaining vehicles were registered in States other than Virginia. During June 1937, 4,174 of 10,215 vehicles were cars and trucks of Virginia registry and during August 1937, 4,524 of 11,752 vehicles were cars and trucks of Virginia registry; and the remaining vehicles were registered in States other than Virginia.

## II. THE ORGANIZATIONS INVOLVED

Masters, Mates, and Pilots of America No. 9 is a labor organization affiliated with the American Federation of Labor, admitting to its membership licensed masters, mates, and pilots of steam or sail vessels.

International Seamen's Union<sup>4</sup> is a labor organization affiliated with the American Federation of Labor, admitting to membership all unlicensed seamen.

## III. UNFAIR LABOR PRACTICES

### A. *Domination of and interference with the formation and administration of the Committee*

During the early part of 1937 the respondent experienced difficulty in retaining the crews of the two ferryboats in its employ. The seamen were dissatisfied with their \$50 monthly wage and many of them frequently voiced their dissatisfaction to Edward F. Railsback, the respondent's general superintendent, and to Captain Thomas J. Stone, the senior captain of the line. Captain Stone, who was also master of the *Princess Anne*, testified that as a result:

There was so much confusion going to Mr. Railsback, I thought that I, being head of the boat, that I should intercede about this affair; so I talked to Captain Daniels about men running up to the office and I, seeing it was our place to go, suggested that we form a committee to negotiate with the management of the company, and we talked it over with the officers and crew in general.

<sup>4</sup> See footnote 2, supra

According to the testimony of Captain Daniels, master of the *Del-Mar-Va*, the two captains discussed the situation and decided:

What we thought the men would be satisfied with, and we stated that we thought with \$65 a month they would be satisfied. So I went back to my boat and told the men I thought that if the men met and had representatives, that we would put the case up to the company.

Then in the words of Captain Stone:

It seemed to be agreeable to everyone, so we called Mr. Railsback in—and gave him our proposal and talked it over with him—We said we would like to form this committee to wait on him with regard to the wages and working conditions and any other matter that might arise.

Captains Stone and Daniels took four other officers with them to this meeting with the general superintendent. Several days later Railsback, after discussing the proposal with Captain Garrison, the respondent's general manager, notified Captain Stone and his associates that it was agreeable to the management for them to form the proposed committee. A ballot was drawn up by this group, listing as candidates only the licensed officers, grouped in accordance with their three respective departments, namely, the deck crew, the engine-room crew, and the pursers' department. According to Captain Daniels, there were to be three members selected for each boat, one man for each department. This method of proceeding indicates that it was probably the intention of Captains Stone and Daniels to restrict the membership of the committee to the licensed personnel.

The ballots were distributed to all the employees on both boats. Each employee was to vote for a man to represent his department, then place the ballot in an envelope, seal it, and take it to the purser's office. Captain Stone testified that each man was told that "if he did not like the names of the men on the ballot, he could write someone's else name in." Daniels testified that at the bottom of the ballots there was a line typed as follows: "You can insert any name you wish," and that he called the men to quarters and told them that they could vote for anyone else they wished in place of those named on the ballot. On the other hand, Phillip Halstead, an employee of the respondent at the time of the hearing, testified that he received no instructions about writing in the name of any other candidate on the ballot, and that there were "only names on the ballots." Halstead's testimony is confirmed by two other witnesses who are still employed by the respondent.

The ballots were counted by the purser and it was determined that Captain Stone, Chief Engineer James, and Purser Nelson had been

elected to represent the deck crew, the engine-room crew, and the purser's department of the *Princess Anne* respectively; and that Captain Daniels, Chief Engineer Chandler, and Purser Morgan had been elected respectively to represent the same three departments of the *Del-Mar-Va*. Thereupon a paper addressed to Railsback with the names of the three Committee members for the respective boats, who "had been duly elected to negotiate for us with the management in matters such as wages, working conditions, and any other matter which may arise," was sent around to be signed by the men on each boat, indicating their acceptance of their representatives. The employees on each boat signed this paper.

On April 19, 1937, after the election, the Committee met on the *Del-Mar-Va*. A wage scale and a few changes as to working conditions were drafted to be presented to Railsback, with the request that he meet with the Committee. Railsback was notified by the Committee and a conference was arranged for April 26. At this second conference the wage scale and working conditions for both officers and unlicensed seamen were discussed. The matter of granting oilers, firemen, and water tenders half time off was not approved by Railsback. He also commented on the wages as being a little high, but did not discuss them at any great length. A few days later an increase of wages to \$57.50 was granted to the seamen. Shortly after this conference the I. S. U. started to organize the men. At this time Railsback and Captain Stone indicated their hostility to an outside union, such as the I. S. U., as described below. At the meeting of the Committee on May 11, the respondent offered a proposed wage scale, which the Committee examined. The deck and engineer departments declared it to be reasonable, except as to the seamen. The pursers' department was not satisfied with the proffered wages. Relief on account of the heat was asked for the oilers, water tenders, and firemen. About this time there was talk of a strike. Captain Stone asked the men to take no action until the following Monday. In the meantime he conferred with Railsback and "the company said they would give us \$65." At a conference held on May 13, the respondent granted the seamen \$65 a month.

McMann, employed as a seaman by the respondent, testified that none of the men on the boat were ever asked "what particular propositions" the men desired to have discussed with the respondent.

It is undisputed that (1) the notion of forming the Committee originated with Captain Stone, master of the *Princess Anne*, (2) that Captain Stone interested and secured the assistance of Captain Daniels, master of the *Del-Mar-Va*, and a number of other officers in perfecting this notion, and (3) that these men formed the Committee only after securing the approval of the respondent's general superintendent. Since the Committee was to represent the stewards and the

unlicensed seamen as well as the officers, there can be no doubt that Captains Stone and Daniels were acting as supervisory employees and as agents of the respondent. When the I. S. U. began organizing the employees Stone joined with the respondent's general superintendent in discouraging membership in the I. S. U. by making anti-union statements as found below.

We find that the respondent dominated and interfered with the formation and administration of the Committee, a labor organization, and contributed support to it, and interfered with, coerced, and restrained its employees in the exercise of the rights guaranteed by Section 7 of the Act.

### *B. Interference, restraint, and coercion*

On May 8, 1937, most of the deck men joined the I. S. U. Prior to this time there had been no genuine union activity among the respondent's employees, although several of the officers had belonged to the M. M. P. for a number of years. The rapid enlistment of the unlicensed personnel in the I. S. U. soon after its appearance is an indication of their dissatisfaction with the Committee and with its efforts toward improving the conditions of employment.

Floyd Hefner and C. B. Hudgins, who were discharged by the respondent, and five men still employed by the respondent testified that Captain Stone called the men on deck and told them "that he would not work a union crew, before he would do that he would pack his bag and get off." Two of the respondent's present employees testified Railsback called the men on deck and told them, "Don't be fooled by the outsiders, we have treated you right and are still going to treat you right."

We find that the respondent, by the anti-union speeches of its general superintendent and senior captain, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### *C. The alleged discharges*

The complaint alleged that Wm. L. Somers, a licensed officer, Floyd B. Hefner, and C. B. Hudgins, two of the unlicensed personnel, were discriminatorily discharged by the respondent. We find that the evidence does not sustain the allegations of the complaint in this respect and we concur in the Trial Examiner's recommendation that they be dismissed. Since neither the M. M. P. nor the I. S. U. filed exceptions to the Intermediate Report, we will not discuss the alleged discharges in detail.

We find that the respondent, in discharging Wm. L. Somers, Floyd B. Hefner, and C. B. Hudgins, did not discriminate in regard to

their hire and tenure of employment to discourage membership in the Unions.

#### 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 described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, and transportation among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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. International Seamen's Union;<sup>5</sup> Masters, Mates and Pilots of America No. 9; and the Committee are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by dominating and interfering with the formation and administration of the Committee and contributing support thereto, has engaged in and is engaging in an unfair labor practice, within the meaning of Section 8 (2) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the 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.

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

5. The respondent, by discharging William L. Somers, Floyd B. Hefner, and C. B. Hudgins, has not engaged in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

#### ORDER

Upon the basis of the above findings of fact and the 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, Virginia Ferry Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of the Committee or with the formation or administra-

<sup>5</sup> See footnote 2, *supra*.

tion of any other labor organization of its employees and from contributing any support to the Committee or any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the right 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 purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Withdraw all recognition from the Committee as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and completely disestablish the Committee as such representative;

(b) Post immediately notices to its employees in conspicuous places on its boats and docks stating (1) that the respondent will cease and desist as in the manner set forth in paragraphs (a) and (b) of this order; and (2) that the respondent withdraws and will refrain from all recognition of the Committee as a representative of its employees, and completely disestablishes the Committee as such representative;

(c) Maintain such notices for a period of at least thirty (30) consecutive days from the date of the posting;

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

And it is further ordered that the allegations in the complaint that the respondent has engaged in an unfair labor practice within the meaning of Section 8 (3) of the Act by discharging William L. Somers, Floyd B. Hefner, and C. B. Hudgins be, and they hereby are, dismissed.

[SAME TITLE]

## AMENDMENT TO DECISION

*August 22, 1938*

On August 1, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Order in the above-entitled proceeding. The Board hereby amends said Decision by striking out footnote 2.