

In the Matter of GOWANUS TOWING CO., INC. and ASSOCIATED MARINE
WORKERS

Case No. R-634.—Decided August 5, 1938

Towing Industry—Investigation of Representatives: controversy concerning representation of employees—*Contract:* No bar to investigation, where period to terminate by giving notice is almost at hand—*Unit Appropriate for Collective Bargaining:* history of collective bargaining relations with employer; eligibility to membership in both of rival organizations; no controversy as to—*Election Ordered—Certification of Representatives*

Mr. Richard J. Hickey, for the Board.

Burlingham, Veeder, Clark & Hupper, by *Mr. A. Howard Neely* and *Mr. B. H. White*, of New York City, for the Company.

Phillips, Mahoney & Fielding, by *Mr. William Goldman* and *Mr. John A. Bell, Jr.*, of New York City, for I. L. A.

Mr. Herbert J. De Varco and *Mr. Max Lustig*, of New York City, for I. B. U.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On January 17, 1938, Associated Marine Workers, Local No. 1, Inland Boatmen's Union, herein called 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 the employees on propelled towboats and self-propelled lighters operated by Gowanus Towing Co., Brooklyn, New York, 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 February 15, 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.

On March 8, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, I. B. U., Harbor Towboatmen's Union, Local No. 933-3, International Longshoremen's Association, herein called Local 933-3, and Local No. 333, International Longshoremen's Association, herein called Local 333.¹ Pursuant to the notice, a hearing was begun on March 14, 1938, before Paul Davier, the Trial Examiner duly designated by the Board, but was then adjourned to and completed on March 15, 1938. The Board, the Company, I. B. U., and International Longshoremen's Association, herein called I. L. A., were represented by counsel and 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 granted a motion to amend the name of the Company as it appeared in the pleadings to Gowanus Towing Co., Inc. Twice during the course of the hearing, counsel for I. L. A. moved to dismiss the petition, counsel for the Company joining in the motions, on the ground the Board was without jurisdiction. The Trial Examiner reserved decision on both motions. For the reason hereinafter stated, the motions are hereby denied. The Trial Examiner likewise reserved decision on a motion by counsel for I. L. A. that the petition be dismissed on the ground that there was no proof that I. B. U. was a labor organization. This motion is likewise denied. Various rulings on motions and on objections to the introduction of evidence were made by the Trial Examiner during the course of the hearing. The Board has reviewed the rulings 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

A stipulation signed by the Company, I. B. U., and I. L. A., which was made part of the record in the case, provides in part:

1. Gowanus Towing Company, Inc., was incorporated under the laws of the State of New York on April 18, 1916, and maintains an office at the foot of Smith Street, Brooklyn, N. Y., and is engaged solely in the towing business. . . .

2. The Company owns eight (8) tugs, of which, at the present time five (5) are operated, . . .

¹The interests of Local 933-3 and Local 333 in the proceeding are discussed hereafter.

3. Gowanus Towing Company, Inc., in the course of its towing business, tows boats and barges owned by other companies from piers on the New Jersey and New York shores to destinations in Gowanus Canal, Brooklyn, N. Y. At least 70% of the cargoes carried by said boats and barges originate without the State of New York and are loaded on said boats and barges in the State of New Jersey for delivery in New York. The balance of the cargoes (about 30%) originate within the State of New York.

We find that the Company is engaged in traffic, transportation, and commerce among the several States.

II. THE LABOR ORGANIZATIONS INVOLVED

Associated Marine Workers, Local No. 1, Inland Boatmen's Union, is a labor organization, affiliated with the Committee for Industrial Organization.

Local No. 333, International Longshoremen's Association, is a labor organization, affiliated with the American Federation of Labor.

The jurisdiction of I. B. U. and Local 333 are apparently coextensive, their membership consisting of both licensed and unlicensed seamen employed on self-propelled towboats and lighters in the port of New York.

III. THE QUESTION CONCERNING REPRESENTATION

The Associated Marine Workers, admitting to membership masters, mates, pilots, marine engineers, oilers, firemen, deckhands, cooks, floatmen, and all barge men employed on self-propelled towboats and lighters in the port of New York, was formed in 1922. During 1937, Associated Marine Workers affiliated with I. L. A., which in turn was affiliated with the American Federation of Labor. In November 1937, the Associated Marine Workers severed their affiliation with I. L. A. and affiliated with the Inland Boatmen's Union, an affiliate of the Committee for Industrial Organization.

Harbor Towboatmen's Union, Local 933-3, was, until sometime in 1937, a local of I. L. A., affiliated with the American Federation of Labor. According to a letter written on June 24, 1937, by Joseph P. Ryan, president of I. L. A., Local 933-3 had been united some time prior to that date with the Associated Marine Workers and Railroad Marine Workers, Local 933-5, I. L. A. The amalgamated union was designated by Ryan as International Longshoremen's United Marine Division.² At some later date, not fixed by the tes-

² At the hearing counsel for I. L. A. stated that this organization should be designated as United Marine Division of the International Longshoremen's Association. The difference between the two designations seems immaterial.

timony, International Longshoremen's United Marine Division, became Local No. 333, I. L. A.

During June and July 1937, a committee composed of seven members of the Associated Marine Workers (then affiliated with I. L. A.) and seven members of Harbor Towboatmen's Union, Local 933-3, I. L. A. negotiated with a committee selected by certain owners and operators of towboats and self-propelled lighters of the port of New York. The negotiations culminated in the signing of a written agreement on August 3, 1937, relating to wages and working conditions of employees on certain types of harbor equipment, including employees on tugs. The contract was signed by 14 persons designated as a "Committee Representing Owners and Operators of Tugboats and Self-propelled Lighters of the Port of New York and Vicinity" and by 15 persons designated as a "Committee Representing United Marine Division International Longshoremen's Association." The contract provides, inter alia, that members of United Marine Division International Longshoremen's Association, designated as the contracting party, shall be given preference in employment and that the agreement shall be effective from August 16, 1937, to September 30, 1938, and shall be automatically renewed from year to year thereafter, unless within 30 days before the expiration date designated or the expiration date of any renewal period, written notice of termination is given by registered mail by either party to the other. Although the contract makes no specific mention of Gowanus Towing Co., Inc., or of any other company, the stipulation previously mentioned as introduced in evidence, provides that the Company authorized the committee representing the owners and operators to sign the agreement on behalf of the Company and that the Company has adopted and acted under the contract and considers itself bound thereby.

One of the signers of the contract was William A. Maher, a member of the committee representing the employees. Maher is secretary-treasurer of the Associated Marine Workers. Maher testified at the hearing that on November 27, 1937, the Associated Marine Workers changed their affiliation from I. L. A. and the American Federation of Labor to affiliation with Inland Boatmen's Union, affiliated with the Committee for Industrial Organization. In addition, Maher introduced in evidence certain union records for the purpose of showing that the men employed on the tugs operated by the Company had authorized and acknowledged this change of affiliation. Although, as hereinafter stated, we do not believe these records are sufficient as a basis for certifying I. B. U. as the collective bargaining representative of the employees of the Company, the records coupled with Maher's testimony concerning the change of

affiliation, are sufficient to show that a question exists as to which of these organizations a majority of the employees of the Company wish to represent them.

We find that a question has arisen concerning the representation of employees of the Company, and that such question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE EXISTING CONTRACT

The Company and I. L. A. urge that the Board has no jurisdiction to investigate the question concerning representation and to certify a collective bargaining representative because of the existence of the contract now in effect between the Company and I. L. A. I. B. U., I. L. A. and the Company agreed at the hearing that a majority of the employees of the Company had designated I. L. A. to represent them at the time this contract was made. In this respect at least, the contract appears to have been valid at its inception. Without determining whether or not this contract would prevent the Board from certifying representatives other than those party to the contract during its existence,³ the Board's power to do so in this instance is clear. The termination date set by the contract is September 30, 1938. However, the written notice required to terminate the contract must be given within 30 days prior to that date. If a majority of the employees of the Company wish to be represented by I. B. U., this fact should be established by August 30, 1938, so that the right to terminate the contract, if desired, shall be established by that time. The right of free choice of representatives guaranteed by the Act must prevent, at least, the renewal of a contract, even though valid during its term, if a majority of the employees wish to be represented by another collective bargaining representative at the time such renewal might become effective.

V. THE APPROPRIATE UNIT

I. B. U. claims that all of the employees on the tugs operated by the Company, including both licensed and unlicensed personnel, constitute a unit appropriate for the purposes of collective bargaining. Neither the Company nor any person or labor organization denied that such a unit is appropriate.

³ At the time this contract was signed, the Board was investigating questions concerning the representation of the unlicensed personnel on all types of water craft, including tugboats, of some of the companies who became parties to this contract: See *Matter of International Freightling Corp., et al* and *International Seamen's Union of America*, 3 N. L. R. B. 692 and amendment thereto, 4 N. L. R. B. 111. Gowanus Towing Co., Inc., was not one of the companies involved. Cf. *Matter of Tennessee Electric Power Company and Brotherhood of Electrical Workers*, 7 N. L. R. B. 24

The record clearly establishes the fact that I. B. U. admits all such persons to membership. There is no direct evidence in the record concerning the jurisdiction of Local 333. However, since I. L. A. failed to deny that such a unit was appropriate and since the contract which expires September 30, 1938, contains provisions relating to all such classifications of employees, it is a reasonable inference that Local 333 likewise admits all such employees as members.

Since there was no objection to such a unit, since prior collective bargaining contracts concerning these employees included provisions for all such classifications, and since both labor organizations apparently admit all such persons as members, we will find the appropriate unit in accordance with the allegation of I. B. U.

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

VI. THE DETERMINATION OF REPRESENTATIVES

The records introduced by I. B. U. consisted of two sets of cards offered as union records. One set contained a record of the payments of dues by persons employed by the Company. Most of the cards show payments of dues by these persons from 1935 to March 1938. Maher explained this, by stating that the records of dues payments to the Associated Marine Workers had been made on the same cards after affiliation with Inland Boatmen's Union as had been used when the Associated Marine Workers had been affiliated with I. L. A. The cards themselves contain no name of any organization. It is apparent that these cards contain no proof of any change of affiliation of these employees.

The second set of cards are designated "Personal Description," and provide "I hereby subscribe to membership in the Inland Boatmen's Union, C. I. O., and designate it as my sole and exclusive collective bargaining agency." Although a card of this type was submitted for every employee included in the list of employees furnished by the Company, there was no proof of the authenticity of the signatures on these cards. Moreover, it is apparent that many of these cards have been written in the same handwriting. Under these circumstances the cards are insufficient proof on which to base a certification. We find that the question which has arisen concerning representation can best be resolved by the holding of an election by secret ballot.

Since the election to be held in this case is for the purpose of determining rights concerning negotiations for a contract to begin at the conclusion of the present contract, those eligible to vote will be the employees of the Company during the pay-roll period immediately preceding the date of this Direction of Election, except those who resign or are discharged for cause between the date of said pay-roll period and the date on which the election is held.

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 the employees on the tugs operated by Gowanus Towing Co., Inc., within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees on the tugs operated by Gowanus Towing Co., Inc., 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, 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 Gowanus Towing Co., Inc., Brooklyn, New York, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the employees on the tugs operated by Gowanus Towing Co., Inc., Brooklyn, New York, during the pay-roll period immediately preceding the date of this Direction, except those who resign or are discharged for cause between the date of said pay roll and the date on which the election is held, to determine whether they wish to be represented by Associated Marine Workers, Local No. 1, Inland Boatmen's Union or by Local No. 333, International Longshoremen's Association, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

September 12, 1938

On August 5, 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 be conducted within fifteen (15) days from the date of the Direction among the employees on the tugs operated by Gowanus Towing Co., Inc., Brooklyn, New York, during the pay-roll period immediately preceding the date of the Direction, except those who resigned or were discharged for cause between the date of said pay roll and the date of the election, to determine whether they desired to be represented by Associated Marine Workers, Local No. 1, Inland Boatman's Union or by Local No. 333, International Longshoremens's Association, for purposes of collective bargaining, or by neither.

Pursuant to the Direction, an election by secret ballot was conducted under the direction and supervision of Elinore Morehouse Herrick, the Regional Director for the Second Region (New York City), on August 19, 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. On August 22, 1938, 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 an 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.....	20
Total number of ballots cast.....	19
Total number of ballots counted.....	18
Total number of votes in favor of—	
Local No. 333, International Longshoremens's Association, affiliated with the A. F. of L.....	16
Associated Marine Workers, Local No. 1, Inland Boat- men's Union, affiliated with the C. I. O.....	1
Neither union.....	1
Total number of blank votes.....	0
Total number of void ballots.....	0
Total number of challenged votes.....	1

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 Local No. 333, International Longshoremen's Association, affiliated with the American Federation of Labor, has been selected by a majority of the employees on the tugs operated by Gowanus Towing Co., Inc., Brooklyn, New York, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, Local No. 333, International Longshoremen's Association, affiliated with the American Federation of Labor, 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.

MR. EDWIN S. SMITH took no part in the consideration of the above Certification of Representatives.

8 N. L. R. B., No. 99a.