

In the Matter of STANDARD OIL COMPANY OF NEW JERSEY *and* UNITED
LICENSED OFFICERS OF THE U. S. A.

In the Matter of STANDARD OIL CO. OF NEW JERSEY, MARINE DEPART-
MENT *and* JERSEY STANDARD TANKER OFFICERS ASSOCIATION

In the Matter of STANDARD OIL COMPANY OF NEW JERSEY *and* MARINE
ENGINEERS' BENEFICIAL ASSOCIATION

Cases Nos. R-825, R-826, R-827, and R-832

Decided August 16, 1938

Water Transportation Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize any union as exclusive representative of employees—*Units Appropriate for Collective Bargaining:* (1) licensed engineers of all the vessels owned and operated by the Company; no controversy as to; (2) licensed deck officers, including the masters, of all the vessels owned and operated by the Company; no substantial controversy as to—*Elections Ordered*

Mr. Albert Ornstein, for the Board.

Mr. William A. Daugherty, of New York City, for the Company.

Boudin, Cohn & Glickstein, by *Mr. Leonard Boudin*, of New York City, for the I. U. M. S.

Capt. E. T. Pinchin, of New York City, for the M. M. P.

Mr. John J. Collins, of New York City, for the J. S. T. O.

Mr. E. P. Trainer, of New York City, for the M. E. B. A.

Mr. P. L. Todd and *Mr. Herbert J. De Varco*, of New York City, for the U. L. O.

Mr. P. Heregthy, of New York City, for the I. L. A.

Mr. A. George Koplów, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On November 16, 1937, United Licensed Officers of the U. S. A., herein called the U. L. O., filed with the Regional Director for the Second Region (New York City) two petitions alleging that questions affecting commerce had arisen concerning the representation of

8 N. L. R. B., No 115.

employees of Standard Oil Company of New Jersey, New York City, herein called the Company, and requesting the National Labor Relations Board, herein called the Board, to conduct investigations and to certify representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 23, 1937, Industrial Union of Marine & Shipbuilding Workers of America, Local No. 22, herein called the I. U. M. S., on March 18, 1938, Jersey Standard Tanker Officers Association, herein called the J. S. T. O., and on April 12, 1938, Marine Engineers Beneficial Association, herein called the M[☉]E. B. A., each filed a similar petition with the same Regional Director.¹

With regard to each petition except that filed by the I. U. M. S., the Board, on April 22, 1938, 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, and acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that the cases be consolidated for the purposes of hearing. With regard to the petition filed by the I. U. M. S., the Board, on May 3, 1938, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of said Rules and Regulations, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

The Regional Director issued notices of hearing and telegraphic notices of postponement of hearing on all of the petitions, copies of which were duly served upon the Company, the U. L. O., the J. S. T. O., the M. E. B. A., and the I. U. M. S., and upon International Union of Operating Engineers, herein called the I. U. O. E., National Organization of Masters, Mates & Pilots, herein called the M. M. P., and Local 1550, International Longshoremen's Association, herein called the I. L. A.,² the last three being labor organizations claiming to represent employees directly affected by the investigation.

Pursuant to the notices, a hearing was held in New York City on June 6, 1938, before Howard Myers, the Trial Examiner duly designated by the Board. All of the above-named unions, with the exception of the I. U. O. E., were represented by counsel or other representatives and participated in the hearing.³ Full opportunity to be

¹Two of the petitions added the words "Marine Department" after the name "Standard Oil Company of New Jersey." The record establishes that the same company is involved in all of the cases.

²Some of the notices of hearing and notices of postponement of hearing were not served upon the I. L. A. and the I. U. M. S., but the final notice of postponement of hearing was served upon them and both appeared at the hearing.

³At the hearing counsel for the I. U. M. S. moved for an indefinite postponement of the hearing on the petition of the I. U. M. S. The Trial Examiner reserved decision. The motion to postpone indefinitely is hereby granted.

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

Standard Oil Company of New Jersey is a Delaware corporation engaged, among other things, in the transportation of petroleum and petroleum products. It owns and operates through its marine department 70 American flag ocean-going tank vessels, or tankers, having a total tonnage of 572,543 gross tons. These vessels are engaged exclusively in the transportation of petroleum and petroleum products and carry approximately 125 million barrels annually. The majority of their voyages are between United States ports in the Gulf of Mexico and United States Atlantic Coast ports. At times some of these tankers transport cargo from Caribbean Sea loading ports to nearby inland ports, and they also trade between Caribbean Sea loading ports and United States, South American, northern European, and Mediterranean ports. Occasionally some of them are allocated to transport cargoes from California to United States east coast ports or northern European ports and from United States Gulf or South American loading ports to northern European ports.

At least 90 per cent of the voyages are for the purpose of transporting cargo for account of the Standard Oil Company or the affiliated or associated companies from which it purchases the crude oil and refined products transported between these various ports.

The Company admits that in the operation of these vessels it is engaged in interstate and foreign commerce. It also admits that the employees involved herein are engaged directly in interstate commerce or do work which has a direct relation to, or effect upon, interstate commerce. We find that Standard Oil Company of New Jersey is engaged in trade, traffic, transportation, and commerce among the several States and between the United States and foreign countries, and that the licensed personnel employed by said Company is directly engaged in such trade, traffic, transportation, and commerce.

II. THE ORGANIZATIONS INVOLVED

Local 1550, International Longshoremen's Association, is a labor organization affiliated with the American Federation of Labor. It

admits to its membership all licensed deck officers and all licensed engineers on ocean-going tankers.

Jersey Standard Tanker Officers Association is an independent labor organization not affiliated with any other body. It admits to its membership "all licensed deck and engineer officers who have been employed as such by the Standard Oil Company of New Jersey for at least six months."

Marine Engineers Beneficial Association is a labor organization affiliated with the Committee for Industrial Organization. It admits to its membership all licensed engineers on ocean-going tankers.

National Organization of Masters, Mates & Pilots is a labor organization affiliated with the American Federation of Labor. It admits to its membership all licensed deck officers on ocean-going tankers.

United Licensed Officers' Association is an independent labor organization not affiliated with any other body. It admits to its membership all licensed deck officers and all licensed engineers on ocean-going tankers.

III. THE QUESTION CONCERNING REPRESENTATION

The U. L. O. and the M. E. B. A. each alleges in its petition that it represents a majority of the licensed engineers involved, but that the Company has refused to bargain collectively with it, although requested to do so. The U. L. O. makes the same allegations with respect to the licensed deck officers. At the hearing, the J. S. T. O. claimed to represent a majority of both licensed deck officers and licensed engineers. The M. M. P. made the same claim with respect to the licensed officers. The I. L. A. alleged that there were licensed deck officers and engineers employed by the Company who desired the I. L. A. to represent them.

The Company has refused and still refuses to recognize any of the above-mentioned organizations as the sole collective bargaining agency for its licensed personnel, but it has been and is willing to negotiate on the matter of wages, hours, and conditions of employment with any organization for its own members.

We find that questions have arisen concerning the representation of employees of the Company because of the conflicting claims of the various labor organizations and that such questions tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE APPROPRIATE UNIT

At the hearing it was stipulated and agreed by and between counsel for the Company, the J. S. T. O., the M. E. B. A., the M. M. P.,

and the U. L. O., that two separate units are appropriate; namely, one unit consisting of the licensed engineers of all the vessels owned and operated by the Company, and another unit consisting of the licensed deck officers of all the vessels owned and operated by the Company. The I. L. A. maintained that the licensed engineers and licensed deck officers together constitute one unit.

The question of inclusion of licensed deck officers and licensed engineers in one appropriate unit has been raised and carefully considered by the Board in a number of other cases.⁴ For the reasons stated in those decisions, the licensed personnel in the instant case will be separated into two appropriate units as stipulated above, one consisting of licensed engineers and the other consisting of licensed deck officers.

The parties did not agree with respect to the inclusion of masters in the appropriate unit with licensed deck officers. The I. L. A., the J. S. T. O., and the U. L. O. urged that masters be included. The M. E. B. A. stated no preference, since it claimed to represent only the engineers. The M. M. P. agreed that masters be included within the appropriate unit consisting of licensed deck officers, but maintained that masters are the representatives of employers, and are not crew members, and that therefore, masters should not be permitted to vote with the licensed officers. The M. M. P., however, as its name implies, admits masters to membership. In effect, therefore, the M. M. P.'s position would impose a collective bargaining representative on a group of employees without according them the privilege of participating in the choice of such representative. Such a position is untenable. The masters will therefore be included in the appropriate unit with the licensed deck officers.

We find that the licensed engineers of all the vessels owned and operated by Standard Oil Company of New Jersey 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. We further find that the licensed deck officers, including the masters, of all the vessels owned and operated by Standard Oil Company of New Jersey, 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.

⁴ See *Matter of Grace Line, Inc., and Panama Mail Steamship Company* and *National Marine Engineers' Beneficial Association, Local No 33*, 2 N. L. R. B. 369, at page 375. and cases there cited.

V. THE DETERMINATION OF REPRESENTATIVES

The Company employs approximately 325 licensed deck officers and approximately 325 licensed engineers. The J. S. T. O. introduced into evidence 422 membership application cards, 225 allegedly signed by licensed deck officers and 197 allegedly signed by licensed engineers employed by the Company. The genuineness of the signatures was not checked at the hearing, nor were the names on the cards compared with those on the pay-roll records of the Company. Objection to the introduction of the cards in evidence was made on the ground that they did not bear dates, and the J. S. T. O. did not press its claim for certification further.

The other organizations involved in the case made conflicting claims of membership and authorization and asked that elections be held to determine which group did represent the majority of the eligible employees in each unit. We find that the questions which have arisen concerning the representation of employees can best be resolved by the holding of elections by secret ballot. We will accordingly direct that elections by secret ballot be held among these employees.

All the parties present during the discussion concerning eligibility, agreed that the pay roll of November 16, 1937, the date the U. L. O. filed its petitions in the case, should be used in the determination of eligibility to vote if elections were ordered. Evidence also establishes that men who may not be assigned to a ship on a specified date but instead may be in the "relieving staff," "standby," "leave of absence," "vacation," and "night relieving staff" categories are considered regular employees of the Company and should be included within the appropriate unit. The pay roll of June 3, 1938, the pay-roll date immediately preceding the date of the hearing, is also in evidence. No reason appears in the record why a date later than November 16, 1937, should not be used. We feel that the date suggested by the parties is too remote to furnish a proper standard for determining eligibility to vote. Use of a later date would enable persons who had become part of the licensed personnel in the 6 months preceding the hearing to participate in the choice of their bargaining representative. We will accordingly direct that those eligible to vote in each election will be the licensed engineers and deck officers respectively who were employed in such capacity on June 3, 1938, except those who since have quit or have been discharged for cause.

The M. E. B. A., the M. M. P., and the U. L. O. urged that the name of the J. S. T. O. be omitted from the ballots on the ground that the latter is a company-dominated union. The proper manner to raise an issue of this nature is to file a charge that the respondent has committed unfair labor practices within the meaning of Section

8 (2) of the Act. No charge of this kind being before the Board in the instant case, we will not consider evidence bearing upon such collateral issue.

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. Questions affecting commerce have arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The licensed engineers of all the vessels owned and operated by the Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. The licensed deck officers, including the masters, of all the vessels owned and operated by the Company 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 ELECTIONS

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 Standard Oil Company of New Jersey, New York City, elections by secret ballot shall be conducted as soon as convenient and beginning as promptly as is practicable after the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Second Region, acting in the matter as agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the licensed engineers of all the vessels owned and operated by Standard Oil Company of New Jersey employed in such capacity by said Company on June 3, 1938, except those who since have quit or have been discharged for cause, to determine whether they desire to be represented by Local 1550, International Longshoremen's Association, or by Jersey Standard Tanker Officers Association, or by Marine Engineers Beneficial Association, or by United Licensed Officers of the U. S. A., or by none of them, for the purposes of collective bargaining, and

among the licensed deck officers, including the masters, of all the vessels owned and operated by Standard Oil Company of New Jersey employed in such capacity by said Company on June 3, 1938, except those who since have quit or have been discharged for cause, to determine whether they desire to be represented by Local 1550, International Longshoremen's Association, or by Jersey Standard Tanker Officers Association, or by National Organization of Masters, Mates & Pilots, or by United Licensed Officers of the U. S. A., or by none of them, for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTIONS

September 15, 1938

On August 17, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections in the above-entitled proceedings. The Direction of Elections provided for elections by secret ballot among the licensed engineers and among the licensed deck officers of the company respectively to determine in each instance whether they desired to be represented by Local 1550, International Longshoremen's Association or by one of several other organizations or by none of them for the purposes of collective bargaining.

On August 29, 1938, the international president of the International Longshoremen's Association requested the removal of that organization's name from the ballots. Upon the basis of this request the Board will remove the name of said local from the ballots in the above-ordered elections.

The Board hereby amends the Direction of Elections issued on August 17, 1938, by striking therefrom wherever they appear in said Direction of Elections, the following words, "by Local 1550, International Longshoremen's Association, or".

MR. EDWIN S. SMITH took no part in the consideration of the above Amendment to Direction of Election.

8 N. L. R. B., No. 115a.