

In the Matter of INTERNATIONAL MERCANTILE MARINE COMPANY AND ITS SUBSIDIARIES AND AFFILIATES; AMERICAN MERCHANT LINE, PANAMA PACIFIC LINE AND UNITED STATES LINES *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3

Case No. R-24.—Decided March 21, 1936

Water Transportation Industry—Unit Appropriate for Collective Bargaining: community of interest; craft; history of collective bargaining relations; licensed personnel; occupational differences—*Election Ordered:* question affecting commerce: confusion and unrest among employees strike threatened—controversy concerning representation of employees: majority status disputed by employer; rival organizations; substantial doubt as to majority status—individual bargaining, place on ballot.

Mr. David A. Moscovitz for the Board.
Mr. A. V. Cherbournier for the Company.
Mr. Isaiah S. Dorfman, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 6, 1935, Local No. 3 of the International Union of Operating Engineers, hereinafter called local No. 3, filed with the Regional Director for the Second Region a petition alleging that a question affecting commerce had arisen concerning the representation of the marine and electrical engineers of the International Mercantile Marine Company, New York City, New York, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935. On November 12, 1935, the National Labor Relations Board, hereinafter called the Board, authorized the Regional Director for the Second Region to conduct an investigation and provide for an appropriate hearing upon due notice. On February 3, 1936, the Regional Director issued a notice setting the hearing for February 13, 1936. Notice of hearing was duly served on the International Mercantile Marine Company and its subsidiaries and affiliates, the American Merchant Line, Panama Pacific Line and United States Lines, hereinafter collectively called the company, local No. 3, the Marine Engineers' Beneficial Association, Local No. 3, hereinafter called the MEBA, and the United Licensed Officers of the United States of America, hereinafter called the United. Hearings were held in New York City, New York, on February 13, 14 and 18, 1936, before a Trial Examiner designated by

order of the Board dated February 10, 1936. All who were served with notice were represented by counsel and participated in the hearing. In the course of the hearing the Master Mates & Pilots of America, Local 88, hereinafter called Local 88, was given leave to intervene and was represented by counsel and participated in the hearing thereafter. Full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties who participated in the hearing. A brief was submitted on behalf of the company.

Upon the evidence adduced at the hearing and from the entire record before it, including the pleadings filed, the transcript of the hearing, exhibits introduced, and brief submitted, the Board makes the following:

FINDINGS OF FACT

1. International Mercantile Marine Company is and has been since June 6, 1893, a corporation organized and existing under the laws of the State of New Jersey, and is, and at all times since said date, has been engaged in the general cargo and passenger business. It has its general offices in New York City, New York.

2. International Mercantile Marine Company, through its above named subsidiaries and affiliates, owns and operates 14 vessels having a gross tonnage of about 182,946 tons. The company, which is one of the largest American companies in this business, owns the leases and operates piers 58 to 62, North River, New York, and a pier at San Pedro Port, Terminal Island, Los Angeles.

3. The vessels of the company carry freight, passengers and mail. Outgoing freight is normally brought by truck primarily from the eastern seaboard and nearby states, and is loaded onto the vessels by stevedores in the employ of the company. The vessels sail according to a fixed posted schedule from New York to Liverpool, Plymouth, Manchester, Le Havre, Hamburg, Havana, Cristobal, Balomar, San Diego, Los Angeles, and return. The ports on the west coast are reached by the vessels only after stops at foreign countries.

4. The company is engaged in traffic and commerce among the several States and between the United States and foreign countries, and the engineers employed by the company are directly engaged in such traffic and commerce.

° HAS A QUESTION CONCERNING THE REPRESENTATION OF EMPLOYEES
ARISEN ?

5. William Gallagher, President and business agent of local No. 3, petitioner in this matter, testified that local No. 3 is a labor organization which was organized in the fall of 1934 and that about 85 of

the total of approximately 120 engineers employed on the vessels of the above named subsidiaries of the International Mercantile Marine Company were members of local No. 3. In support of this statement he submitted for examination by the Trial Examiner and the Board only a number of cards alleged to have been signed by employees of the company authorizing local No. 3 to represent the signers for collective bargaining. The Trial Examiner denied the company the privilege of inspecting these cards. Although the company did not at the hearing object to the introduction of the cards in evidence, it does in its brief complain of the ruling of the Trial Examiner in denying it the privilege of inspecting the said cards. As the cards and Mr. Gallagher's testimony are used merely for the purpose of showing that a question concerning representation has arisen, we do not think that the company's contention is well founded. We therefore sustain the ruling of the Trial Examiner in this regard.

6. Captain John Milliken, Treasurer of the United testified that the United was the result of a union in 1934 of two well established labor organizations, the Neptune Association and the Ocean Association of Marine Engineers, and that he believes that a majority of the engineers employed by the company are members of the United.

7. William S. Brown, President of the National Marine Engineers' Beneficial Association, testified that the National Marine Engineers' Beneficial Association is a labor organization which is in the sixty-second year of its existence. Joseph F. Lahey, business manager of the MEBA, testified that in August, 1935, about 82 per cent of the engineers of the company were members of the MEBA; that a good many employees signed authorizations for representation by two unions, local No. 3 and the MEBA; and that he stopped soliciting authorizations in August or September, 1935, when the company asked its engineers to sign a pledge which read as follows: "I hereby pledge my loyalty to the company and renounce all previous pledges made heretofore," for fear that employees who signed union authorizations thereafter would be discharged.

8. The question of representation was definitely raised by the company when it was on separate occasions approached by representatives of local No. 3 and the MEBA for the purpose of negotiating an agreement covering wages, hours and working conditions of the engineers of the company. The company, through its Vice-President, in July, 1935, informed the representative of the MEBA that the company would not enter into an agreement with that organization because "it didn't represent the men at the time." On July 12 1935, the same officer of the company in reply to a request for an agreement from local No. 3, replied that he was not familiar with the union, but if he were shown that the employees authorized local No. 3

to represent them he would take the matter up further. On August 13, 1935, Mr. Gallagher offered to show the Vice-President of the company authorizations signed by a number of engineers, but he was nevertheless met with an expression of doubt regarding the authority of local No. 3 to represent the engineers employed by the company.

9. Throughout the hearing and in its brief the company emphasized its willingness to bargain with any organization which could demonstrate that it represented its employees. In the circumstances of this case we believe that an election by secret ballot is the only feasible method by which to ascertain said representatives.

10. We find, therefore, that a question concerning the representation of the engineers employed by the company has arisen.

WHETHER THE QUESTION CONCERNING REPRESENTATION WHICH HAS
ARISEN IS A QUESTION AFFECTING COMMERCE?

11. The question concerning their representation has created a state of confusion, uncertainty and unrest among the engineers. The failure of the company to enter into an agreement with any of the unions purporting to represent the engineers, and the circulation among them of the authorization cards of the respective unions and the pledge of loyalty to the company, as described in paragraph No. 7 hereof, has aggravated the situation. Hovering over this atmosphere of uncertainty and tension is the possibility of a strike expressed by William Gallagher as follows:

“Some of the important vessels of this company are one hundred per cent organized and the engineers employed thereon have been demanding action for more than four months. With the example of the Radio Telegraphers in this line before them, they feel that if they were to walk off the vessel immediately prior to sailing, the same results we are attempting to receive through the Regional Labor Board would be obtained within 24 hours.”

12. The company in its brief asserts that the only controversy here is between the respective labor organizations and cannot be construed to involve a question affecting commerce. It is manifest, however, that should the unrest described above result in a strike it would most certainly impair the efficiency, safety and operation of the vessels, instrumentalities of foreign and interstate commerce, and materially restrain the flow of goods in the channels of commerce.

13. We conclude that the question concerning representation which has arisen is a question in commerce, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE APPROPRIATE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING AND
EMPLOYEES ELIGIBLE TO PARTICIPATE IN ELECTION

14. The petition filed in this matter sets forth that the unit should consist of approximately 120 marine engineers and 50 electrical engineers employed on vessels of the company operating in and out of the port of New York. At the hearing William Gallagher, on behalf of the petitioner, local No. 3, stated that the electrical engineers had since the filing of the petition formed their own union, and themselves requested that they be not included in the unit. Neither the company nor any of the unions represented objected to this. We hold therefore that electrical engineers shall not be included in the unit in question here.

15. The company contends that for reasons of discipline the chief engineers should be in one unit, the assistant engineers in another and the junior engineers in a third, and not all grouped together in a single unit. No evidence was introduced in support of this view. On the other hand, the testimony was unanimous that in the labor relations of the shipping industry the chief, assistant, and junior engineers have for many years been considered a homogeneous group and treated as a unit. It is also worthy of note that all three unions admitting engineers to membership, claimed to have chief engineers among their members as well as assistant and junior engineers. Representatives of each of the three unions testified that whenever a contract is entered into between a shipping company, employing all three classes of engineers, and one of the said unions, the contract invariably covers wages and working conditions of the chief, assistants and junior engineers. An award, dated August 23, 1935, by a Board of Arbitration appointed by agreement between the MEBA and the American Mail Line and eighteen other shipping companies as a postlude to the Pacific Coast general strike of 1934, was introduced in evidence. It set wages, hours and other working conditions for chiefs, assistants and licensed junior engineers as a single class, although providing, of course, for differences in wage rates and some minor working conditions.

16. In terms of qualifications there is little distinction between the three classes of engineers. Only the chief and the first three assistant engineers are required by law to be licensed as such by the Steamboat Inspection Service of the United States Department of Commerce. However, it is plain that only licensed engineers are now hired for the position of junior engineer by this and other steamship companies, and that individuals capable of acting as chief engineers are often employed as assistant or junior engineers. Economic necessity has forced licensed engineers to accept junior positions. Counsel for the company stated at the hearing that practically everyone who now applies for a job as engineer does in fact have a

license, but that some "old timers" without licenses have been retained as junior engineers. There is testimony in the record that unlicensed engineers belong to the International Brotherhood of Firemen and Oilers. For that reason and also because an unlicensed junior may not be promoted to assistant or chief engineer, we are of the opinion that unlicensed junior engineers should not be included in the unit in question. Hereinafter, therefore, any reference to junior engineers will connote licensed junior engineers only.

17. The degree of authority and the duties of the three classes, of course, vary to a certain extent. The chief engineer is in charge of the entire engine department and is responsible to the master of the ship. The first assistant, except on the very largest vessels, stands watch or supervises the engine room during certain hours. The second and third assistant and junior engineers also stand watch during other hours, but in addition have certain special duties to perform. On large ships where engines are located in several parts of the vessel, the junior is very likely to be in complete charge of one division very much like the first assistant.

18. From the viewpoint of economic interest all three classes are vitally interdependent and realistically one. All engineers must sign new articles of agreement for every round trip voyage. The company recognizes no seniority rights. A chief engineer on one voyage may be an assistant, a junior or even unemployed on the following voyage. Similarly, an engineer employed as a junior on one occasion may be an assistant or a chief when next he signs ships' articles. This condition is enhanced by the transfer of men among the various vessels of the company. Since the status of the engineer is subject to change upon such short notice within the range of all three classes, it is patent that each of the engineers has an economic interest in the wage rate and working conditions of all who are employed as engineers regardless of rank.

19. The United requested that the Board define the appropriate unit for collective bargaining so as to include licensed deck officers of the company as well as engineers. Since the petition herein filed and the notice of hearing issued referred only to marine and electrical engineers, it was moved that the notice of hearing be amended to include licensed deck officers in the suggested unit. The Trial Examiner allowed evidence to be introduced on the motion and reserved judgment.

20. In support of its motion the United introduced testimony to the effect that both licensed engineers and licensed deck officers must pass certain examinations as a prerequisite to the obtaining of licenses; that licensed deck officers below the grade of master and licensed engineers below the grade of chief generally receive about equivalent salaries for comparable grades; that the period of service

for both groups is about the same; and that members of the United at one time voted 8 to 1 in favor of admitting to membership engineers as well as deck officers.

21. Captain Edward P. Pinchin, business manager of local 88 testified that local 88 admitted only deck officers to membership; that it represents about 75 per cent of the deck officers employed by the company; and that it desires to protest against the inclusion of deck officers and engineers in a single unit:

22. It appears that while both licensed deck officers and licensed engineers must pass examinations given by the Steamboat Inspection Service, the substance of the examinations and experience required differs greatly due to the difference in respective duties.¹ Deck officers navigate the ship, stand deck watches and check cargo in and out of the vessel. As was indicated above, engineers confine their activities to the engine department. The chief engineer is subordinate to and takes orders from the master, and receives a lower wage rate than the master. We find, therefore, that the qualifications, responsibilities and duties of the licensed engineers differ in kind from those of licensed deck officers.²

23. In passing upon this motion we also take into consideration the fact that there are already in this field two well established labor organizations, the MEBA and local No. 3, whose membership is limited to engineers, and a third established labor organization, the Masters, Mates & Pilots, restricted to deck officers. In the light of this situation; in the absence of proof of a present desire on the part of engineers and deck officers to combine in one unit; and in view of the marked difference in qualifications, responsibilities and duties between the engineers and deck officers, we are of the opinion that the policy of the Act would be best served here by not requiring that deck officers and engineers be combined in one unit for purposes of collective bargaining. We therefore deny the motion of the United Licensed Officers.

24. We find that all chiefs, assistants and licensed junior engineers employed as engineers on the vessels of the company operating out of the port of New York, constitute a unit appropriate for the purposes of collective bargaining.

THE ELECTION AND THE BALLOT

25. The company in its brief contends that if the Board should order an election, the voters should be given the privilege of ex-

¹ As to qualifications for service as a licensed deck officer see R. S. § 4131; U. S. C. Title 46 § 221; R. S. § 4439; U. S. C. Title 46 § 226; R. S. § 4440; U. S. C. Title 46 § 228. Minimum requirements for licensed engineers are cited in R. S. § 4441; U. S. C. Title 46 § 229.

² For a similar previous ruling by the Board see *In the Matter of Delaware-New Jersey Ferry Co. and M. E. B. A. No. 13*—decided December 30, 1935.

pressing on the ballot a preference for individual bargaining. Section 7 of the Act provides in part that employees shall have the right to bargain collectively through representatives of their own choosing. Section 9 (a) provides that, "Representatives designated or selected for the purposes of collective bargaining by the majority of employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . ." Thus both Section 7 and 9 (a) unmistakably indicate that it is for the purposes of collective bargaining that the Act gives employees the right to designate or select representatives. The secret ballot provided for in Section 9 (c) is merely one of the devices which this Board is authorized to employ in ascertaining such representatives for purposes of collective bargaining. It is not our function to hold elections in order to determine whether employees desire individual rather than collective bargaining with their employer. Employees who desire individual bargaining may either refrain from voting or cast a blank ballot. The ballot to be used in this election will therefore not provide for a place in which a preference for individual bargaining may be expressed. It will contain the names of the three labor organizations which claim to represent the engineers of the company.

26. In holding this election we must take into consideration that the various vessels of the company have different sailing dates; that new ships' articles are signed for every round trip voyage; that employees normally sign said articles 2 days before sailing, but in some instances not until the day of sailing, making it impossible to know the names of the personnel of a given vessel sufficiently in advance of sailing time to permit a well ordered election; that a round trip of a vessel may take as long as 2 or 3 months; and that between sailings the employees may be in port only 2 or 3 days.

27. In view of these circumstances and in accordance with the suggestions concurred in by all parties at the hearing, notice of the election will be posted as soon as is convenient on each vessel of the company before it leaves the port of New York on the first trip, if possible, next following the date of the issuance of this decision, and remain in view until the election is held. Such notice of election will be accompanied by a sample ballot and list of engineers eligible to vote in the election. The ballots will be cast in the presence of a representative of this Board upon the return of each vessel to the port of New York at the time and place that the engineers are paid by the company.

28. Due to the peculiar circumstances of this case we find it necessary to limit the right to vote to those engineers within the unit above described who were employed as engineers on any vessel operated by the company at any time between November 7, 1935, the date of the

filing of the petition, and the date of the direction of election in this matter and who also make the round trip voyage on the respective vessels of the company from New York and return at the conclusion of which the election is to be held.

CONCLUSIONS OF LAW

Upon the basis of the above findings, the following conclusions of law are made by the Board:

1. The chief engineers, assistants and licensed junior engineers employed as engineers on the vessels of the company operating out of the port of New York constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of chief engineers, assistants and licensed junior engineers employed on the vessels of the International Mercantile Marine Company and its subsidiaries and affiliates, the United States Lines, the American Merchant Line and the Panama Pacific Line, within the meaning of Section 9 (c) of the 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, approved July 5, 1935, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, it is

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the International Mercantile Marine Company and its subsidiaries and affiliates, the United States Lines, the American Merchant Line and the Panama Pacific Line, New York City, New York, an election by secret ballot shall be conducted as soon as convenient, and beginning as promptly as is practicable after the date of this decision, based on sailing dates of vessels, subject to the suggestions for the administration of this election contained hereinabove, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the chief engineers, assistant engineers and licensed junior engineers employed as engineers on the vessels of the said United States Lines, American Merchant Line and Panama Pacific Line operating out of the port of New York, to determine whether they desire to be represented by the International Union of Operating Engineers, local No. 3, or by the Marine Engineers Beneficial Association, local No. 3, or by the United Licensed Officers of the United States of America.