

In the Matter of SOUTHGATE-NELSON CORPORATION and AMERICAN
RADIO TELEGRAPHISTS' ASSOCIATION

Case No. R-312.—Decided December 2, 1937

Shipping Industry—Investigation of Representatives: controversy concerning representation of employees; refusal by employer to recognize union as exclusive representative until certified by the Board—*Unit Appropriate for Collective Bargaining:* radio operators; stipulation, no controversy as to—*Representatives:* proof of choice: union assignment slips assigning union members to vessels; applications for membership in union; receipts for dues paid to union—*Certification of Representatives:* upon proof of majority representation.

Mr. Reeves R. Hilton, for the Board.

Mr. W. F. Taylor, of Norfolk, Va., for the Company.

Mr. I. Duke Avnet and *Mr. Edward W. Oja,* of Baltimore, Md., for the A. R. T. A.

Mr. Warren L. Sharfman, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On May 15, 1937, American Radio Telegraphists' Association, herein called the A. R. T. A., filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Southgate-Nelson Corporation, Norfolk, Virginia, 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 September 13, 1937, 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, directed an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On the same day the Board, acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, ordered this case to be consolidated for purposes of hearing with two other pending cases involving the Company.

On October 1, 1937, the Regional Director issued a notice of hearing to be held at Baltimore, Maryland, on October 11, 1937, copies

of which were duly served upon the Company and the A. R. T. A. Pursuant to the notice, a hearing was held on October 11, 1937, at Baltimore, Maryland, before Robert M. Gates, the Trial Examiner duly designated by the Board. The Board, the A. R. T. A., and the Company participated in the hearing, the first two being represented by counsel and the latter by its president. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. During the course of the hearing the Trial Examiner made several rulings 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

At the hearing, counsel for the Board referred to the testimony of the president of the Company in previous cases¹ which dealt with the business of the Company. The parties all agreed to incorporate by reference the relevant testimony in the previous cases as a part of the record in this case.

Upon the basis of that evidence we found, and we hereby find, as follows:

The Company, a Virginia corporation having its principal office and place of business in Norfolk, Virginia, is engaged in the management and operation of vessels for the transportation of freight² between Atlantic ports, the ports of the British Isles, and Hamburg, Germany. Its ships also call at Halifax, Nova Scotia. The Company, which is privately owned and controlled, operates nine vessels, all of which are owned by the United States Government, under an operating agreement with the United States Government.³

¹ *Matter of Southgate-Nelson Corporation and National Marine Engineers' Beneficial Association; Matter of Southgate-Nelson Corporation and American Radio Telegraphists' Association, Baltimore Local No. 4 and David R. Crawford*, Cases Nos. C-182 and C-185, 3 N. L. R. B. 535, decided September 1, 1937.

² The ships formerly carried an occasional passenger, but have now discontinued that practice.

³ The agreement considered in the previous cases is no longer in effect. The present agreement which is in evidence as Board's Exhibit No. 3 is with the United States Maritime Commission. It was entered into on June 29, 1937, and remains in effect through December 31, 1937. Mr. W. F. Taylor, president of the Company, on examination by the Trial Examiner, testified as follows:

Q. How have your practices changed with respect to paying the men and with respect to hiring and firing, if they have changed?

A. Under the new agreement I don't know of any change in the method of hiring or discharging or paying as compared with the previous agreement. There is one notable distinction between the two in that the Southgate-Nelson Corporation, under this agreement, does not act for hire or profit as under the previous agreement.

The Company operates as a common carrier transporting freight which is paid for at regular ocean transportation freight rates and is engaged in no other business than the operations mentioned above.

A chief and three assistant engineers are employed on each of the nine vessels. Each vessel carries at least one radio operator.⁴

We find that the Company is engaged in traffic, commerce and transportation between the United States and foreign countries, and that the radio operators employed on the vessels are directly engaged in such traffic, commerce, and transportation.

II. THE ORGANIZATION INVOLVED

American Radio Telegraphists' Association is a labor organization which admits to membership marine radio operators employed by the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Early in April 1937, the A. R. T. A. requested recognition as the exclusive representative of the radio operators employed by the Company on its vessels. On April 19, the Company received a similar request from the Commercial Telegraphers' Union, Marine Division. The Company replied to the latter request in a letter dated April 29, which stated that the Company had already received such a request from another organization, but that it would be glad to confer if the Commercial Telegraphers' Union, Marine Division, could show that it represented a majority of the radio operators on the Company's boats. No answer to this letter was received. On May 8, the Company entered into a temporary agreement with the A. R. T. A., agreeing to recognize it as the exclusive representative of the radio operators employed on the vessels of the Company upon proper certification by the Board.

We find that a question has arisen concerning the representation of employees of Southgate-Nelson Corporation, and that this question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE APPROPRIATE UNIT

The parties stipulated, and we find that, in order to insure to the Company's employees the full benefit of the right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, the radio operators employed on the Company's vessels constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

⁴ The testimony at the present hearing disclosed that each vessel carries *only* one radio operator.

V. THE DETERMINATION OF REPRESENTATIVES

The Company employs one radio operator on each of its nine vessels. It failed to submit a pay roll list showing the names of the radio operators it employed, although the president of the Company agreed to do so. However, the acting secretary of the A. R. T. A. named nine individuals, who he said were employed as radio operators by the Company and whom the A. R. T. A. claims to represent. The president of the Company stipulated that five of the men so named were employed as radio operators by the Company. The A. R. T. A. introduced in evidence official A. R. T. A. assignment slips for seven of the nine named individuals showing that they had been permanently assigned to work on vessels of the Company. Three of these assignment slips covered radio operators who were not named as employees in the stipulation of the president. The authenticity of these slips was not questioned. We therefore find that eight of the nine radio operators whom the A. R. T. A. claims to represent for purposes of collective bargaining are employed by the Company.

As evidence of its authority to represent the radio operators employed by the Company, the A. R. T. A. introduced, in addition to the assignment slips, four applications for membership in the A. R. T. A., and an authorization from an operator to act in his behalf on all labor questions. This evidence covers five of the eight radio operators whose employment by the Company is established as indicated above. The Company stipulated that a sixth operator also was represented by the A. R. T. A. Finally, the A. R. T. A. introduced a series of receipts for the payment of dues to it by seven of the operators.

We find that the A. R. T. A. has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Southgate-Nelson Corporation, Norfolk, Virginia, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The radio operators employed by Southgate-Nelson Corporation constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

3. American Radio Telegraphists' Association is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 CERTIFIED that American Radio Telegraphists' Association has been designated and selected by a majority of the radio operators employed by Southgate-Nelson Corporation, Norfolk, Virginia, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of the Act, American Radio Telegraphists' Association 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.