

In the Matter of CURTIS BAY TOWING COMPANY *and* MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 5

Case No. R-365

In the Matter of ATLANTIC TRANSPORT COMPANY *and* MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 5

Case No. R-366

In the Matter of CHESAPEAKE LIGHTERAGE COMPANY *and* MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 5

Case No. R-367

In the Matter of COTTMAN COMPANY *and* MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 5

Case No. R-368

In the Matter of A. J. HARPER *and* MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 5

Case No. R-369

In the Matter of BAKER-WHITELEY COAL COMPANY *and* MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 5

Case No. R-370

In the Matter of DONALDSON TOWING AND LIGHTERAGE COMPANY *and* MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 5

Case No. R-371

In the Matter of BAKER-WHITELEY COAL COMPANY *and* MASTERS, MATES AND PILOTS, LOCAL No. 14

Case No. R-372

In the Matter of CURTIS BAY TOWING COMPANY *and* MASTERS, MATES AND PILOTS, LOCAL No. 14

Case No. R-373

In the Matter of CHESAPEAKE LIGHTERAGE COMPANY *and* MASTERS,
MATES AND PILOTS, LOCAL No. 14

Case No. R-374

In the Matter of ATLANTIC TRANSPORT COMPANY *and* MASTERS, MATES
AND PILOTS, LOCAL No. 14

Case No. R-375

In the Matter of COTTMAN COMPANY *and* MASTERS, MATES AND PILOTS,
LOCAL No. 14

Case No. R-376

In the Matter of A. J. HARPER *and* MASTERS, MATES AND PILOTS,
LOCAL No. 14

Case No. R-377

Shipping Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; controversy as to appropriate bargaining unit—*Unit Appropriate for Collective Bargaining:* licensed marine engineers, excluding deck officers; history of collective bargaining relations with employer; history of collective bargaining relations in industry; occupational differences; skill—*Jurisdictional Dispute:* between two unions affiliated with same parent body; petition for investigation of such dispute dismissed—*Labor Organization:* Board will not interfere in internal affairs of—*Elections Ordered—Certification of Representatives—Petition Dismissed:* no representative chosen by majority of employees of one company.

Mr. Jacob Blum and Mr. Samuel M. Spencer, for the Board.

Mr. L. Vernon Miller, of Baltimore, Md., for Curtis Bay Towing Company and Donaldson Towing and Lighterage Company.

Mr. I. Duke Avnet, of Baltimore, Md., for M. E. B. A. and M. M. P.

Mr. Charles Jackson, of Baltimore, Md., and *Mr. O. L. Bonifay,* for I. L. A.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

December 3, 1937

STATEMENT OF THE CASE

On September 29, 1937, Marine Engineers' Beneficial Association No. 5, herein called M. E. B. A., filed six petitions with the Regional Director for the Fifth Region (Baltimore, Maryland) alleging that

questions affecting commerce had arisen concerning the representation of the licensed marine engineers employed by Curtis Bay Towing Company, Atlantic Transport Company, Chesapeake Lighterage Company, Cottman Company, A. J. Harper and Baker-Whiteley Coal Company,¹ all of Baltimore, Maryland. On October 6, 1937, M. E. B. A. filed a similar petition concerning the representation of the engineers employed by Donaldson Towing and Lighterage Company, Baltimore, Maryland. On October 9, 1937, Masters, Mates and Pilots, Local No. 14, herein called M. M. P., filed six petitions with the Regional Director for the Fifth Region concerning the representation of the licensed deck officers employed by the same companies, concerning which petitions had been filed September 29, 1937, by M. E. B. A. All of the petitions requested 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 October 12, 1937, 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 investigations and authorized the Regional Director to conduct them and to provide for appropriate hearings 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.

On October 18, 1937, the Regional Director issued notice of a hearing to be held in Baltimore, Maryland, on October 26, 1937. Copies of the notice of hearing were duly served upon the companies mentioned above, M. E. B. A. and M. M. P.

On October 22, 1937, Licensed Tugmen Protective Association, Local No. 1510, International Longshoremen's Association, herein called I. L. A., filed a petition requesting permission to intervene. On October 25, 1937, the Regional Director granted the request of I. L. A. permitting it to intervene in the proceedings.

Pursuant to the notice, a hearing was held in Baltimore, Maryland, on October 26, 1937, before Leo J. Kriz, the Trial Examiner duly designated by the Board. The Board, Curtis Bay Towing Company, Donaldson Towing and Lighterage Company, M. E. B. A., M. M. P., and I. L. A. were represented and participated in the hearing. A representative of each of the other companies testified as a witness at the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing,

¹ The Trial Examiner granted motions made at the hearing to amend the notice of hearing from A. J. Harper Company to A. J. Harper, and to amend the notice of hearing from Baker Whiteley Company to Baker-Whiteley Coal Company

counsel for I. L. A. moved to dismiss the petition concerning Donaldson Towing and Lighterage Company. Decision was reserved by the Trial Examiner. The motion is hereby granted, for the reasons hereinafter set forth. Other motions and objections to the introduction of certain evidence were made by representatives of the various parties during the course of the hearing. The Board has reviewed the rulings of the Trial Examiner on such motions and objections 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 COMPANIES

A. *Curtis Bay Towing Company* and

Donaldson Towing and Lighterage Company

Curtis Bay Towing Company is a Maryland corporation engaged in the operation of tugboats in the harbor in Baltimore, Maryland. Three of the nine tugboats which it operates are owned by the company; the remaining six are chartered by Curtis Bay Towing Company on bare boat charters from Donaldson Towing and Lighterage Company, a Delaware corporation.

The tugboats operated by Curtis Bay Towing Company are engaged in assisting the movement of vessels engaged in interstate and foreign commerce from dock to dock in the harbor and in towing barges carrying freight. Freight carried on the barges is in part taken from railroad terminals to ocean-going vessels in the harbor. Barges carrying freight are also taken to railroad terminals by tugboats owned by the company and loaded freight cars are towed from one railroad terminal to another. Eight of the tugboats operated by the company are licensed to tow outside the State of Maryland, and occasional trips are made by the company to ports in Pennsylvania, Virginia, or the District of Columbia.

Donaldson Towing and Lighterage Company, with the exception of the tugboats which it charters to Curtis Bay Towing Company, is otherwise not engaged in any operations in the harbor of Baltimore, Maryland. Under a bare boat charter, the crews employed in the operation of the chartered boats are employees of the lessee, Curtis Bay Towing Company.

B. *Atlantic Transport Company*

Atlantic Transport Company, a West Virginia corporation, and a subsidiary of International Mercantile Marine Company, New York

City, is engaged in the operation of tugboats and lighters in the harbor of Baltimore. The company tows lighters carrying cargo to and from railroad terminals from and to vessels engaged in interstate and foreign commerce; also from railroad terminals to various plants and factories within the harbor. None of the five tugs operated by Atlantic Transport Company does any towing outside the State of Maryland.

C. Chesapeake Lighterage Company

Chesapeake Lighterage Company is a Maryland corporation engaged in the general towing and lighterage business in the Baltimore harbor. Tugs of the company tow lighters carrying freight to and from railroad terminals from and to ocean-going vessels. The tugs also tow loaded barges and lighters to factories situated on the harbor. The four tugs operated by the company in these activities are licensed to operate throughout Chesapeake Bay, in addition to the Baltimore harbor, but have not been used outside the harbor for some years.

D. Cottman Company

Cottman Company, a Maryland corporation, is engaged in three sorts of business, as follows, stevedoring, acting as steamship agent for foreign operators, and operating tugboats and lighters. As steamship agent, the company makes arrangements for arrival of foreign vessels, sees that vessels are handled with dispatch, keeps the owners informed of vessels' positions, and charters freight for carriage on such vessels. The tugboat operations, which are carried on separate and apart from the company's activities as steamship agent, consist in the docking and undocking of ocean-going vessels, and in towing barges carrying freight. The tugs of the company are regularly used to transport freight to Richmond and Norfolk, Virginia, and to Philadelphia, Pennsylvania, in addition to their operations in the Baltimore harbor.

E. A. J. Harper

A. J. Harper, Baltimore, Maryland, owns two tugs which are employed in the towing of barges carrying freight from various railroad terminals at Baltimore harbor to other points in the harbor. The freight so towed consists almost entirely of iron ore and coal, which are towed from such railroad terminals to the plant of the Bethlehem Steel Company located at Sparrows Point, Maryland. Iron ore and coal consigned and so towed by A. J. Harper to the Bethlehem Steel Company come from points outside the State of Maryland.

F. Baker-Whiteley Coal Company

Baker-Whiteley Coal Company is a West Virginia corporation engaged in the operation of coal mines in Pennsylvania and of tug-boats in the harbor at Baltimore, Maryland. The four tugs operated by the company in the Baltimore harbor are engaged almost exclusively in the docking and undocking of ocean-going vessels in the harbor and in moving such vessels to various points within the harbor. On rare occasions these tugs are also used to tow barges within the harbor. While all tugs operated by the company are licensed to operate throughout Chesapeake Bay and its tributaries, the tugs have not been operated outside of the Baltimore harbor for some years.

In *Foster et al. v. Davenport et al.*,² the Supreme Court of the United States held that steamers engaged in lightering goods from steamers in a bay to a wharf and in towing vessels in and out of a harbor are engaged in interstate commerce. The Court said:

The character of the navigation and business in which it was employed cannot be distinguished from that in which the vessels it towed or unloaded were engaged. The lightering or towing was but the prolongation of the voyage of the vessels assisted to their port of destination.

As stated above, all of the companies herein involved with the exception of A. J. Harper are engaged in the towing and lightering of ocean-going vessels. A. J. Harper, however, is engaged in the completion of shipments of coal and iron ore from without the State of Maryland to Bethlehem Steel Company within the State of Maryland.

We find that Curtis Bay Towing Company, Atlantic Transport Company, Chesapeake Lighterage Company, Cottman Company, A. J. Harper, and Baker-Whiteley Coal Company, herein collectively called the Companies, are engaged in trade, traffic, transportation, and commerce among the several States, and that the licensed officers employed by the Companies are directly engaged in such trade, traffic, transportation, and commerce.

II. THE ORGANIZATIONS INVOLVED

M. E. B. A. is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership licensed marine engineers.

M. M. P. is a labor organization affiliated with the American Federation of Labor. It admits to membership licensed deck officers.

I. L. A. is likewise a labor organization affiliated with the American Federation of Labor. Local 1510 chartered by I. L. A. in

² 63 U. S. 244 (1859).

August, 1937, admits to membership licensed marine engineers and licensed deck officers.

III. THE PETITIONS OF M. M. P.

As just previously stated, M. M. P. and I. L. A. are both affiliated with the American Federation of Labor. The petitions filed by M. M. P. state that I. L. A. likewise seeks to represent the licensed deck officers employed by the Companies. This claim was also made by I. L. A. at the hearing. In conformity with our prior decisions³ refusing to exercise jurisdiction in cases where two unions, each affiliated with the same parent body, seek to represent the same employees, we will refuse to exercise jurisdiction in the dispute between M. M. P. and I. L. A., and will dismiss the petitions filed by M. M. P.

IV. THE QUESTION CONCERNING REPRESENTATION

M. E. B. A. has for many years represented the licensed marine engineers in negotiating contracts with the Companies and still claims the right to represent them. Membership lists and signed authorization cards were submitted in evidence by M. E. B. A. at the hearing to substantiate this claim. I. L. A. likewise submitted in evidence cards signed by some of the licensed marine engineers employed by each of the Companies authorizing I. L. A. to represent them. Practically every card offered in evidence by I. L. A. was that of a person who had also signed a card within a recent period authorizing M. E. B. A. to represent him or was claimed by M. E. B. A. to be a member of that organization. It is obvious that under such circumstances a question exists as to which of these organizations a majority of the licensed marine engineers employed by each of the Companies desire to have represent them.

We find that a question has arisen concerning the representation of the licensed marine engineers employed by each of the Companies, respectively, and that such questions tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

M. E. B. A. contends that the licensed marine engineers employed by each of the Companies, respectively, constitute a unit appropriate for the purposes of collective bargaining. I. L. A. on the other hand, contends that all licensed officers, including deck officers, employed by each of the Companies, respectively, constitute a unit appropriate for the purposes of collective bargaining.

³ See *Matter of Aluminum Company of America and Aluminum Workers Union No. 19104*, 1 N. L. R. B. 530; *Matter of Axton-Fisher Tobacco Company and International Association of Machinists, Local No. 681*, and *Tobacco Workers' International Union, Local No. 16*, 1 N. L. R. B. 604.

The evidence shows that for many years the Companies have entered into a single yearly contract covering wages and working conditions of both licensed engineers and licensed deck officers. However, these contracts were negotiated and signed separately by M. E. B. A. representing the engineers and M. M. P. representing the deck officers. M. E. B. A. and I. L. A. each point to these contracts to prove its contention as to the appropriate unit, M. E. B. A. relying on the separate negotiations and signatures, and I. L. A. on the joint execution of the contract. I. L. A., in addition, states that certain working conditions such as hours of employment must be similar for both types of officers or there cannot be effective operation.

Representatives of the Companies stated that certain working conditions of the two groups must be comparable, but admit that the qualifications, training and duties of engineers differ greatly from those of deck officers.

We find no evidence in this record that convinces us that the reasons which led us to find that licensed engineers constitute a separate appropriate unit in ocean-going vessels are not equally applicable and decisive in the case of licensed engineers employed on tugboats.⁴

In order to insure to the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that the licensed marine engineers employed by each of the Companies, respectively, 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.

VI. THE DETERMINATION OF REPRESENTATIVES

As previously stated, M. E. B. A. and I. L. A. each submitted certain evidence at the hearing, including membership lists and authorization cards, to prove its claim to represent a majority of the licensed marine engineers employed by each of the Companies. Because many of these employees have signed cards in both of these organizations and because of the unsettled labor conditions which existed among these employees during the time these authorization cards were signed, we feel that these cards should not be used for the purposes of certification. We will accordingly direct that elections by secret ballot be held among these employees. Those eligible to vote will be the licensed marine engineers who were employed on September 28, 1937, the date on which the petitions were filed, by each of the Companies, respectively, except those who have resigned or have been discharged for cause since that date.

⁴ See *Matter of Panama Rail Road Company and Marine Engineers' Beneficial Association*, 2 N. L. R. B. 290.

CONCLUSIONS OF LAW

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 licensed marine engineers employed by each of the Companies, respectively, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The licensed marine engineers employed by each of the Companies, respectively, 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 investigations authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted within a period of fifteen (15) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Fifth 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 licensed marine engineers employed by Curtis Bay Towing Company, Atlantic Transport Company, Chesapeake Lighterage Company, Cottman Company, A. J. Harper and Baker-Whiteley Coal Company, respectively, on September 28, 1937, except those who have since quit or been discharged for cause, to determine whether they desire to be represented by Marine Engineers' Beneficial Association or by International Longshoremen's Association for the purposes of collective bargaining, or by neither.

ORDER

The petitions filed by Masters, Mates and Pilots, Local No. 14, for investigation and certification of representatives of the licensed deck officers employed by Baker-Whiteley Coal Company, Curtis Bay Towing Company, Chesapeake Lighterage Company, Atlantic Transport Company, Cottman Company and A. J. Harper are hereby dismissed.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES
AND
ORDER

January 12, 1938

Pursuant to the Direction of Elections issued by the Board on December 3, 1937, the Regional Director for the Fifth Region (Baltimore, Maryland) conducted elections on December 11, 1937, among the licensed marine engineers employed by each of the above-named employers. On December 17, 1937, 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 each of the elections. No objections or exceptions to the Intermediate Reports have been filed by any of the parties.

As to the results of the balloting, the Regional Director reported as follows:

Curtis Bay Towing Company

Number eligible to vote.....	13
Number of ballots cast.....	12
Number of votes in favor of Marine Engineers' Beneficial Association.....	12
Number of votes in favor of International Longshoremen's Association.....	0
Number of votes in favor of neither organization.....	0
Number of blank ballots.....	0
Number of void ballots.....	0
Number of challenged ballots.....	0

Atlantic Transport Company

Number eligible to vote.....	6
Number of ballots cast.....	6
Number of votes in favor of Marine Engineers' Beneficial Association.....	5
Number of votes in favor of International Longshoremen's Association.....	1
Number of votes in favor of neither organization.....	0
Number of blank ballots.....	0
Number of void ballots.....	0
Number of challenged ballots.....	0

Chesapeake Lighterage Company

Number eligible to vote.....	4
Number of ballots cast.....	4
Number of votes in favor of Marine Engineers' Beneficial Association.....	2
Number of votes in favor of International Longshoremen's Association.....	2
Number of votes in favor of neither organization.....	0
Number of blank ballots.....	0
Number of void ballots.....	0
Number of challenged ballots.....	0

Cottman Company

Number eligible to vote.....	8
Number of ballots cast.....	8
Number of votes in favor of Marine Engineers' Beneficial Association.....	8
Number of votes in favor of International Longshoremen's Association.....	0
Number of votes in favor of neither organization.....	0
Number of blank ballots.....	0
Number of void ballots.....	0
Number of challenged ballots.....	0

A. J. Harper

Number eligible to vote.....	3
Number of ballots cast.....	3
Number of votes in favor of Marine Engineers' Beneficial Association.....	0
Number of votes in favor of International Longshoremen's Association.....	3
Number of votes in favor of neither organization.....	0
Number of blank ballots.....	0
Number of void ballots.....	0
Number of challenged ballots.....	0

Baker-Whiteley Coal Company

Number eligible to vote.....	6
Number of ballots cast.....	6
Number of votes in favor of Marine Engineers' Beneficial Association.....	0
Number of votes in favor of International Longshoremen's Association.....	6
Number of votes in favor of neither organization.....	0
Number of blank ballots.....	0
Number of void ballots.....	0
Number of challenged ballots.....	0

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, 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 Marine Engineers' Beneficial Association has been selected by a majority of the licensed marine engineers employed by Curtis Bay Towing Company, Atlantic Transport Company, and Cottman Company, respectively, all of Baltimore, Maryland, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, Marine Engineers' Beneficial Association is the exclusive representative of all such employees of each of said employers, respectively, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; and

IT IS HEREBY CERTIFIED that International Longshoremen's Association has been selected by a majority of the licensed marine engineers

employed by A. J. Harper and Baker-Whiteley Coal Company, respectively, both of Baltimore, Maryland, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, International Longshoremen's Association is the exclusive representative of all such employees of each of said employers, respectively, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

ORDER

Pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS ORDERED that the petition filed by Marine Engineers' Beneficial Association No. 5 for investigation and certification of representatives of the licensed marine engineers employed by Chesapeake Lightering Company, Baltimore, Maryland, be, and it hereby is, dismissed.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Certification of Representatives and Order.