

In the Matter of WILMINGTON TRANSPORTATION COMPANY and INLAND
BOATMEN'S UNION OF THE PACIFIC, SAN PEDRO DIVISION

Case No. R-399.—Decided December 31, 1937

Water Transportation Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; controversy as to appropriate bargaining units—*Unit Appropriate for Collective Bargaining:* rival unions each contend for different unit (1) employees on tugboats and barges, excluding masters, mates, and engineers; (2) employees on tugboats and barges and unlicensed personnel on passenger and freight ships; where other considerations determinative of appropriate unit are such that either of two contentions is valid, decisive factor is the desire of the employees involved; majority of employees express desire for unit (1)—*Representatives:* proof of choice: majority of employees indicate preference for representative—*Certification of Representatives.* upon proof of majority representation.

Mr. David Persinger, for the Board.

Gibson, Dunn & Crutcher, by Mr. J. Stuart Neary, of Los Angeles, Cal., for the Company.

Mr. H. Christoffersen, of San Pedro, Cal., for Sailors' Union.

Mr. Paul R. Benson and Mr. Paul Baker, of San Pedro, Cal., for Boatmen's Union.

Mr. Victor A. Pascal, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On September 11, 1937, Inland Boatmen's Union of the Pacific, San Pedro Division, herein called the Boatmen's Union, filed with the Regional Director for the Twenty-First Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Wilmington Transportation Company, of Wilmington, California, 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 October 12, 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,

ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 22, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Boatmen's Union, and upon the Sailors' Union of the Pacific, herein called the Sailor's Union, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on November 4, 1937, at Los Angeles, California, before George Rochester, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel and the Boatmen's Union and the Sailors' Union were both represented by their agents. All participated in 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 the Trial Examiner made several rulings on motions. 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

The Company, a California corporation, is a subsidiary of the Santa Catalina Island Company, likewise a California corporation, whose articles of incorporation were filed October 17, 1894. The Company has freight offices at Wilmington and Avalon. The business of the Company is divided into two parts, its passenger and freight business and its tugboat and barge business.

In connection with its passenger and freight business, the Company operates two ships between Wilmington and Avalon and one ship between Wilmington, the Isthmus and Avalon. No other company operates ships hauling freight and passengers between these points. The Company likewise owns four pleasure boats which are leased to the Santa Catalina Island Company.

The tugboats and barges operate mostly in the waters of the harbor of San Pedro, assisting the intercoastal or foreign ships to or from the wharves or piers. Occasionally a boat will go to Santa Barbara or San Diego.

II. THE ORGANIZATIONS INVOLVED

Inland Boatmen's Union of the Pacific, San Pedro Division, is a labor organization now affiliated with the Committee for Industrial Organization, admitting to its membership unlicensed personnel employed on the tugboats and barges of the Company.

Sailors' Union of the Pacific is a labor organization. The record in this case does not clearly show either its affiliation or who is eligible for membership in it.

III. THE QUESTION CONCERNING REPRESENTATION

The Boatmen's Union claims to represent the majority of the employees of the Company who are employed on its tugboats and barges, excluding masters, mates, and engineers.

The Sailors' Union claims that such employees of the Company form part of a larger unit which should include also the unlicensed deck personnel on the Company's passenger and freight ships and that it is the bargaining representative of this larger unit.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

In its petition, the Boatmen's Union alleges that the employees on the tugboats and barges of the Company, with the exception of masters, mates, and engineers, constitute the appropriate unit. It emphasizes that collective bargaining among such employees in the past has been upon the basis that they constitute a separate and distinct unit. It asserts that, from October 1, 1935, until September 30, 1937, it had agreements with the Company recognizing it as the bargaining representative of these employees. The last agreement, dated June 10, 1937, was for an indefinite term, subject to modification or termination as of September 30, 1937, or thereafter by either party giving thirty days' notice.

The Sailors' Union contends that the employees which the Boatmen's Union claims to represent and the unlicensed deck personnel on the Company's passenger and freight ships should jointly be considered as one unit for the purposes of collective bargaining. The Boatmen's Union asserts that the present contention of the Sailors' Union is inconsistent with the position previously taken by it, inasmuch as the Sailors' Union had established an Inland Division to organize those persons employed on tugboats and inland craft. The

Sailors' Union states that the reason this Inland Division was established was that those persons employed on the tugboats and inland craft were so loosely organized that it was necessary for them to go through a period of organization before they could be admitted to full membership in the Sailors' Union.

Under the circumstances we could find either the smaller or the larger unit to be appropriate for collective bargaining. In this situation we will be governed by the wishes of the employees themselves. As we shall see, the evidence in this case shows that the employees on the tugboats and barges (excluding masters, mates, and engineers) wish to be represented by the Boatmen's Union in a separate unit. We find, therefore, that the employees of the Company employed on its tugboats and barges, excluding masters, mates, and engineers, 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.

VI. THE DETERMINATION OF REPRESENTATIVES

At the direction of the Trial Examiner, the Company prepared a list of all employees on its tugboats and barges as of November 4, 1937. None of the parties raised any objection to the accuracy of this list, although given an opportunity to do so. This list shows that 22 men are employed as deckhands and extra deckhands. These men constitute all the employees in what we have found to be the appropriate unit.

At the hearing, 19 men testified that they desired the Boatmen's Union to represent them for the purposes of collective bargaining. Of these, 18 admittedly were included in the list of 22 which compose the appropriate unit and there is a question as to whether or not the nineteenth man was included in it. The Sailors' Union failed to introduce any evidence tending to prove that any of these 22 men desired it as their agent for the purposes of collective bargaining.

The Sailors' Union introduced into evidence an agreement between it and the Company dated October 23, 1937, which the Sailors' Union contends recognizes it as the exclusive bargaining representative of all the Company's unlicensed deck personnel, including the employees in the unit urged by the Boatmen's Union.

It is apparent from the record, however, that the parties to that agreement did not intend it to be applicable to employees on tugboats and barges. Even if construed as applicable to these employees, the agreement does not preclude the Board from designating the Boatmen's Union as the exclusive bargaining representative of the unit which we have found to be appropriate, especially since the agree-

ment was entered into subsequent to the time that the petition in this case was filed with the Regional Director and subsequent to the time when notice of hearing was served upon all parties.¹

We find that the Boatmen's Union 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 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 employees of Wilmington Transportation Company, Wilmington, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of the Company employed on the tugboats and barges, excluding masters, mates, and engineers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Inland Boatmen's Union of the Pacific, San Pedro Division, 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 Inland Boatmen's Union of the Pacific, San Pedro Division, has been designated and selected by a majority of the employees of Wilmington Transportation Company, Wilmington, California, employed on its tugboats and barges, excluding masters, mates, and engineers, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Inland Boatmen's Union of the Pacific, San Pedro Division, 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.

¹ See *Matter of Northop Corporation and United Automobile Workers, Local No 229*, Case No. R-185, decided October 6, 1937, 3 N L R. B. 228.