

IN THE MATTER OF SEAS SHIPPING COMPANY, INC. and NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

Case No. C-223.—Decided January 4, 1938

Shipping Industry—Interference, Restraint, or Coercion: refusal to issue passes permitting union representatives to board the respondent's vessels for purposes of contacting members—*Collective Bargaining:* charges of refusal to bargain collectively dismissed; break-down of negotiations due to termination of conferences by union representatives.

Mr. John T. McCann, for the Board.

Mr. Frank V. Barns, of New York City, for the respondent.

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

Mr. S. G. Lippman, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On May 24, 1937, National Marine Engineers' Beneficial Association, Local No. 33, herein called the M. E. B. A., filed with the Regional Director for the Second Region (New York City) a charge that Seas Shipping Company, Inc., New York City, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 23, 1937, the National Labor Relations Board, herein called the Board, issued and duly served upon the respondent and the Union a complaint and notice of hearing signed by the Regional Director, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act.

In respect to the unfair labor practices, the complaint alleged in substance that the respondent had at all times refused to permit representatives of the M. E. B. A. to board vessels of the respondent on which were members of the M. E. B. A. but did permit representatives of unions who do not represent maritime engineers to visit the respondent's vessels, for the purpose of discouraging such membership in the M. E. B. A. The complaint further alleged that the

respondent had at all times refused to bargain collectively with the M. E. B. A. as the representative of their licensed and assistant engineers, in spite of the certification by the Board on December 4, 1936, of the M. E. B. A. as the exclusive bargaining agency of the above-mentioned employees.

On August 1, 1937, the respondent filed an answer to the complaint, admitting its refusal to issue passes to representatives of the M. E. B. A. for the purpose of boarding its vessels, but denying every other material allegation in the complaint.

Pursuant to the notice, a hearing was held in New York City on August 5, 1937, before Herman H. Gray, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the commencement of the hearing the respondent moved to dismiss the complaint on the grounds of the insufficiency of the charge, and the fact that the complaint did not contain a prayer for relief, nor a statement of the nature of the decision or order sought; in the alternative, the respondent moved to adjourn until such time as it was furnished a bill of particulars. The Trial Examiner denied these motions. At the conclusion of the hearing, the respondent moved for dismissal on the ground that the evidence adduced failed to sustain the allegations of the complaint. The Trial Examiner reserved his decision on this motion.

Subsequently the Trial Examiner filed his Intermediate Report and sustained the respondent's motion as to the refusal to bargain, but overruled the respondent's motion in all other respects. The Trial Examiner found that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1) of the Act as alleged in the complaint, and further found that the respondent had not committed unfair labor practices within the meaning of Section 8 (5) of the Act. Exceptions to the Intermediate Report were filed by the respondent contesting the Trial Examiner's finding in respect to Section 8 (1). No exception to the Intermediate Report was filed by the M. E. B. A.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has also considered the exceptions to the findings of the Intermediate Report and finds they are without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a corporation organized under the laws of the State of New York and has its principal office in New York City.

The respondent is engaged in the business of transporting freight and passengers by boat between States of the United States, and between the United States and ports in East and South Africa. The Company operates four vessels, the Robin Hood, Robin Adair, Robin Good Fellow, Robin Gray.

On December 4, 1936, the Board rendered a decision in which it concluded that the respondent was engaged in commerce within the meaning of the Act.¹ The respondent has not since changed the operation or scope of its business.

II. THE UNION .

National Marine Engineers' Beneficial Association, Local No. 33, affiliated with the Committee for Industrial Organization, is a labor organization whose membership is limited to licensed marine engineers.

III. THE UNFAIR LABOR PRACTICES

A. *Refusal to issue passes*

It was testified that the licensed chief and assistant engineers on the respondent's vessels are on duty for months at a time. During the period they are on duty they are necessarily out of touch with union representatives and union activities, are unaware of the activities of their fellow members, and therefore unable to give effective expression to their grievances or to their views on matters of union policy. Investigation reveals that overtime work is generally necessary while the vessels are in port,² making shore leave limited and uncertain. Seamen are ordinarily in port for a limited time and are anxious to seek relief from the monotony of living at sea. This minimizes the likelihood of Union contact and limits the Union's responsiveness to its membership. Unless representatives of the Union can be assured of a reasonable opportunity to meet with the men, the stability and permanency of maritime labor organizations will be affected and their effectiveness as collective bargaining agencies will be impaired. The only place where the Union can be reasonably certain of contacting its members is on board the vessels.

Experience in collective bargaining under the prevailing conditions of the maritime industry has resulted in the practice of issuing passes to Union representatives evidencing permission to board the vessels. It was testified that at the present time 95 per cent of the maritime industry conformed to the practice of issuing passes. The M. E. B. A. has obtained such passes from shipping companies since 1881.

¹ *Matter of Seas Shipping Company and National Marine Engineers' Beneficial Association, Local No. 33*, 2 N. L. R. B. 398.

² Federal Coordinator of Transportation, Hours, Wages and Working Conditions in Domestic Water Transportation, 1936.

The respondent itself, in the past, has conformed to such practice while under contract with the International Seamen's Union, and more recently it has issued passes to representatives of the International Seamen's Union and the National Maritime Union preparatory to an election authorized by the Board. Thus the respondent indicated that it was not averse to the issuance of passes. The respondent gives no convincing reason for its refusal to issue passes to representatives of the M. E. B. A. We are convinced that the reason for the respondent's refusal is based on its desire to impede the processes of collective bargaining.

B. The alleged failure to bargain collectively

In its previous Decision of December 4, 1936, the Board found that the licensed chief and assistant engineers employed by the respondent constituted a unit appropriate for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and certified that the M. E. B. A., by virtue of its representation of a majority in such unit, constituted the exclusive bargaining agency of all the employees in the unit. On February 5, 1937, Edward P. Trainer, business manager of the M. E. B. A., submitted to the respondent a proposed contract on behalf of the respondent's employees. The negotiations that followed ultimately led to the charge by the M. E. B. A. that the respondent had engaged in unfair labor practices under Section 8 (5) of the Act by failing to bargain in good faith.

Bargaining meetings occurred on about six occasions over a period of approximately three months. At the first two meetings respondent was represented by Carrol C. Pendleton, its executive vice-president. Edward P. Trainer represented the M. E. B. A. At the other meetings Frank V. Barns, an officer and counsel for the respondent, was also present.

The contract submitted by Mr. Trainer was the standard form of contract adopted generally by the M. E. B. A. The respondent refused to agree upon clauses providing for a preferential shop and the giving of passes, and wanted to reduce the number of holidays from six to four. In addition the respondent took the position that the duration of the contract should be six months rather than a year. The respondent also requested modification of the clause dealing with breaking watch and asked that the "without option on overtime" clause be altered to read "with option".³

³ The respondent wished to have the option of converting overtime to shore leave or of making overtime payments. The M. E. B. A., however, insisted that the respondent be required to make payments for overtime work and refused to give the respondent any option in the matter.

On May 5, 1937, the respondent offered a counter proposal in writing which purported to embody the terms of the contract acceptable to it. This proposal agreed to the M. E. B. A.'s position on the overtime clause. When the parties were ready to sign this counter proposition the respondent decided it wished to change the "without option" on overtime and reverted to its previous position in the matter. At this point Trainer walked out of the conference.

Though the respondent stated, in the course of the negotiations, that the law did not require a signed contract, it did submit a counter proposal in writing. The break-down of the negotiations may be traced to differences over real and substantial issues, and the termination of the final conference was not due to the respondent, but to the hasty departure of the representative of the M. E. B. A.

We are unable to find that the respondent failed to bargain with the M. E. B. A. within the meaning of Section 8 (5) of the Act. The allegations of the complaint to this effect will, therefore, be dismissed.

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

CONCLUSIONS OF LAW

1. National Marine Engineers' Beneficial Association, Local No. 33, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The respondent did not refuse to bargain collectively with National Marine Engineers' Beneficial Association, Local No. 33, as the exclusive representative of the licensed chief engineer and assistant engineers in the respondent's employ and did not engage in unfair labor practices within the meaning of Section 8 (5) of the Act.

3. The respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The unfair labor practices referred to in paragraph 3 above are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the

respondent, Seas Shipping Company, Inc., and its officers, agents, successors and assigns, shall:

1. Cease and desist from refusing to issue passes to representatives of National Marine Engineers' Beneficial Association, Local No. 33.

2. Cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining, and other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

3. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Grant to the duly authorized representatives of the National Marine Engineers' Beneficial Association, Local No. 33, passes which will permit such representatives to go aboard its vessels while in port at all reasonable hours in order to meet with the licensed engineers;

b. Post immediately notices to its employees in conspicuous places on its vessels stating that the respondent will cease and desist in the manner aforesaid, and keep such notices posted for a period of at least thirty (30) consecutive days from the date of posting;

c. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

And it is further ordered that the allegations of the complaint with respect to the respondent's refusal to bargain collectively with National Marine Engineers' Beneficial Association, Local No. 33, be and they hereby are dismissed.