

In the Matter of AMERICAN-WEST AFRICAN LINE, INC. and NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

Case No. R-280.—Decided January 20, 1938

Water Transportation Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; conflicting claims of rival organizations—*Closed Shop Contract:* executed with rival union on day following filing of petition by petitioning union; no bar to an election in absence of clear proof that union obtaining contract represented majority at time of execution of contract—*Unit Appropriate for Collective Bargaining:* all licensed engineers employed as licensed engineers on Company's vessels; no controversy as to—*Election Ordered*

Mr. John T. McCann, for the Board.

Mr. Herman Goldman, by *Mr. H. G. Liese*, of New York City, for the Company.

Mr. Edward Patrick Trainer, for M. E. B. A.

Mr. O. L. Bonifay, *Mr. Bert L. Todd*, and *Mr. Herbert J. De Varco*, of New York City, for U. L. O.

Mr. Henry W. Lehmann, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 22, 1937, National Marine Engineers' Beneficial Association, herein called M. E. B. A., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of American-West African Line, Inc., New York City, 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 July 30, 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 July 31, 1937, the Regional Director issued a notice and on August 3, 1937, an amended notice of hearing, copies of both of which

were duly served upon the Company, upon M. E. B. A., and upon the United Licensed Officers of the United States of America, herein called U. L. O., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice and the amended notice, a hearing was held on August 5, 1937, in New York City, before Herman A. Gray, the Trial Examiner duly designated by the Board. On September 23, 1937, the Board, having found the evidence introduced at the first hearing to be inadequate, decided to reopen the case for the purpose of receiving further evidence. On October 11, 1937, the Regional Director issued a notice of such further hearing to be held in New York City on October 14, 1937. Copies of the notice of hearing were duly served upon all the parties to the proceeding. Pursuant to the notice, a hearing was held on October 14, 1937, in New York City, before the same Trial Examiner. At both hearings, the Board and the Company were represented by counsel, and M. E. B. A. by one of its officers. At the first hearing, U. L. O. was represented by one of its officers, and at the second hearing by its general secretary and by counsel. All parties participated in both hearings. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the hearing both M. E. B. A. and U. L. O. moved to be certified on the basis of the evidence introduced. These motions are hereby denied for reasons hereinafter set forth. 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

American-West African Line, Inc., a New York Corporation, is engaged in the business of transporting freight and a limited number of passengers on ships sailing from New York City, Boston, Baltimore, Norfolk, New Orleans, Port Arthur, and other ports on the Gulf and the east coast of the United States to ports in Africa. The ships also make calls at ports in the Azores and the Canary Islands. New York City is the home port for the vessels and the Company's offices are there located.

The Company operates eight vessels in its service. Chief engineers, first assistant engineers, second assistant engineers, and third assistant engineers are employed by the Company on each of these ships. Some of the ships also carry one or more additional assistant engineers.

II. THE ORGANIZATIONS INVOLVED

National Marine Engineers' Beneficial Association is a labor organization, admitting to its membership licensed marine engineers employed by the Company.

United Licensed Officers of the United States of America is a labor organization affiliated with the American Federation of Labor. It admits to its membership both licensed marine engineers and licensed deck officers.

III. THE QUESTION CONCERNING REPRESENTATION

The testimony is not entirely clear, but it appears that on or about July 10, 1937, E. P. Trainer, a district deputy for M. E. B. A., informed Charles Barthold, vice-president of the Company, that M. E. B. A. represented a majority of the licensed engineers, and asked that the Company enter into a signed contract with M. E. B. A. Barthold suggested that Trainer leave with him for examination a copy of the proposed contract which Trainer had brought with him. About ten minutes later on the same day, Bert Todd, general secretary of U. L. O., called upon Barthold and requested him to sign an agreement with U. L. O. covering both the licensed engineers and the licensed deck officers employed by the Company. Trainer, in his conference with Barthold, indicated the possibility of a strike on one of the Company's vessels, the *West Irmo*, if the Company did not sign the agreement proffered by M. E. B. A. Todd indicated the same possibility if the Company did not sign an agreement with U. L. O. In fact on July 12, 1937, a strike did take place on the *West Irmo*, at least among the engineers, and a few days later the men on the *West Lashaway*, another of the Company's vessels, also went on strike. The record does not disclose what classes of employees participated in the strike, but it is clear that both vessels were unable to move for several weeks.

After July 10, 1937, a series of conferences between Barthold and Trainer, and between Barthold and Todd, took place. In support of his claim that U. L. O. represented a majority of the licensed engineers and a majority of the licensed deck officers, Todd, during the course of his conferences with Barthold, furnished a list of the licensed engineers and licensed deck officers¹ who were stated to be members of U. L. O. and offered to furnish for examination signed applications and receipts for dues.

On July 23, 1937, the day following the filing of the petition in this proceeding by M. E. B. A., the negotiations between Barthold and Todd culminated in a signed agreement² which, among other

¹ Respondent's Exhibit No. 1.

² Intervenor's Exhibit C

provisions, contains a closed-shop clause.³ The contract also provides for recognition by the Company of U. L. O. as the representative of both the licensed engineers and the licensed deck officers employed by the Company for the purposes of collective bargaining. By its terms the contract is to continue in effect for one year from the date of execution.

The strikes on the Company's vessels do not appear to have ended immediately as a result of the agreement between the Company and U. L. O. At some time after the signing of the agreement, however, a verbal understanding seems to have been reached between the Company and M. E. B. A. which enabled the Company to move the ships which had been affected by the strikes.⁴ Barthold testified that the Company communicated with U. L. O. from which it received consent for the arrangement it was making with M. E. B. A.

The agreement signed by the Company and U. L. O. has no effect upon the determination of the issues in this proceeding. Clearly, the closed-shop contract is not a bar to an election if U. L. O. did not represent a majority of the licensed engineers⁵ of the Company⁶ at the time the contract was executed. There is no clear showing that U. L. O. in fact represented such a majority at that time. It appears from the record that approximately 36 licensed engineers, including nine on the two ships affected by the strikes, were employed by the Company on July 23, 1937, the date on which the contract was signed. As evidence that a majority of the licensed engineers desired U. L. O. to represent them on that date, U. L. O. introduced dues receipts issued to 22 licensed engineers for payment of dues and also applications signed by 13 of the same men. Todd testified that the receipts in the case of each man were the first and last dues receipts issued to these men by U. L. O. The dates on the receipts show that only three of the engineers had paid dues for a period up to or beyond July 23, 1937. Eight men were paid up until July 1, 1937; one until June 1, 1937; five until May 1, 1937; two until March 1, 1937; one until January 15, 1937; one until September 1, 1936; and the card of another did not indicate the date to which he was paid up, although the date upon which he made his last payment of dues was noted on the receipt as April 4, 1937. Although the cessation of payment

³ This provision of the contract reads:

It is agreed that all licensed deck and engineer officers serving in positions as such on board vessels of the Company shall be members of the Association; provided, however, that refusal by the Association to accept for membership any man shall not act as a bar to his appointment in a position as licensed officer in the Company's employ.

⁴ The articles of the *West Irmo* were opened on August 10, 1937, and the articles of the *West Lashaway* on August 17, 1937.

⁵ As set forth hereinafter in Section IV, we have found that the licensed engineers employed by the Company constitute an appropriate unit.

⁶ In the *Matter of Southern Chemical Company and Textile Workers Organizing Committee*, 3 N. L. R. B. 839.

of dues by a person to a labor organization does not necessarily signify that such a person no longer desires to be represented by that labor organization, it is a factor to be considered. This is particularly true in the instant case since applications for membership in M. E. B. A. and cards designating M. E. B. A., as their representative for purposes of collective bargaining were signed by a considerable number of licensed engineers after they ceased paying dues to U. L. O.

The M. E. B. A. introduced as evidence of its authority to represent the licensed engineers post cards signed by 20 of them and addressed to offices of M. E. B. A., stating that they authorized M. E. B. A. to represent them in negotiating as to wage scales and working conditions. The M. E. B. A. also introduced applications signed by 11 licensed engineers including 10 of those who had also signed the post cards.⁷ On most of the post cards no date appears except that of the postmark. The cards and applications show that 21 engineers had signed either applications or cards or both by July 23, 1937. Thirteen of these men were among those who had paid dues to U. L. O. Of the 13 men, 11 had signed M. E. B. A. applications or cards, or both, after they ceased paying dues to U. L. O. and two signed prior to the date up to which their dues in U. L. O. were paid.

It should also be observed that U. L. O. had notice on July 22, 1937, the day before the contract was signed, of the filing of the petition by M. E. B. A. An undated carbon copy of a telegram⁸ addressed to Todd at the offices of U. L. O., and bearing the subscription of the Regional Director was entered into the record without objection. The copy states that M. E. B. A. had filed its petition in this case and asked Todd whether he would consent to the holding of an immediate election. There was also entered into the record the original of a telegram,⁹ dated July 22, 1937, sent by U. L. O. to the Regional Director, in evident reply to the telegram above described, stating that there was no need for an election. When Todd was questioned at the hearing with respect to these telegrams, he admitted that the telegram addressed to the Regional Director had been sent from his office and that therefore U. L. O. had presumably received the telegram from the Regional Director and presumably knew that M. E. B. A. had filed its petition.

On the basis of these facts, and upon the whole record, we find that a question has arisen concerning the representation of licensed engineers of the American-West African Company, Inc., and that such question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

⁷ Board's Exhibit No. 3.

⁸ Board's Exhibit No. 6.

⁹ Board's Exhibit No. 7.

IV. THE APPROPRIATE UNIT

In its petition, M. E. B. A. alleges that the appropriate unit should be composed of approximately 34 licensed engineers employed on the vessels of the Company as licensed engineers. At the hearing, both the Company and U. L. O. conceded that the licensed chief and assistant engineers employed on the Company's vessels constitute an appropriate unit.

We find that all licensed engineers employed as licensed engineers on the vessels operated by the Company 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.

V. THE DETERMINATION OF REPRESENTATIVES

On the basis of the facts considered in Section III above, we are unable to find that U. L. O. represented a majority of the Company's licensed engineers on July 23, 1937, when the contract was executed, or thereafter. Nor does the evidence establish the claim of M. E. B. A. that it represents a majority of the licensed engineers. As pointed out in Section III above, M. E. B. A. introduced in evidence cards and applications showing that 21 licensed engineers had signed either cards or applications or both by July 23, 1937. Of the 21 licensed engineers, 13 were among the engineers who paid dues to U. L. O. Five of the 13 employees paid their dues for a period ending July 1, 1937; three paid dues for a period ending on May 1, 1937; one employee paid dues to U. L. O. on June 24, 1937, for a period ending September 1, 1937, although he had signed a M. E. B. A. application on March 3, 1937. In view of this evidence as to the instability of the employees' affiliations, we feel that their signing of the cards and applications of M. E. B. A. does not necessarily signify their desire to be represented by M. E. B. A.

We find that the question concerning representation which has arisen can only be resolved by means of an election by secret ballot.

We will direct this election to be held as soon as possible under the direction and supervision of the Regional Director for the Second Region. Notices of the election, a sample ballot, a list of the employees eligible to vote, and a notice of the time and place where balloting will be held, shall be posted in New York on each vessel of the Company, on the next trip, if possible, following the issuance of the Direction of Election in the case. In the direction of the said Regional Director, balloting shall be conducted either when the vessel returns to New York at the completion of the round trip voyage during which the vessel was so posted or at some subsequent port

of call in the United States, after the vessel has been posted in New York.

Every licensed engineer who has been employed as such by the Company at any time between July 22, 1937, the date of the filing of the original petition, and the date of the Direction of Election in this case, and who makes the round trip on which the vessel is posted and at the conclusion of which the election is held in the capacity of a licensed engineer, shall be eligible to vote.

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 American-West African Lines, Inc., New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The licensed chief and assistant engineers employed as licensed engineers on vessels operated by the Company, 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 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, 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 investigation authorized by the Board to ascertain representatives for collective bargaining with American-West African Lines, Inc., elections by secret ballot shall be conducted as soon as convenient, and beginning as promptly as practicable after the date of this Direction, in conformity with the rules set forth hereinabove for the conduct of the election, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the licensed chief and assistant engineers employed as licensed engineers on the vessels operated by American-West African Lines, Inc., to determine whether they desire to be represented by National Marine Engineers' Beneficial Association or United Licensed Officers of the United States of America for the purposes of collective bargaining, or by neither.