With respect to the manner and timing of the distribution of the letter, the Regional Director found that it was sent to each eligible employee, either by use of the office mailboxes, or through personal delivery by the secretary of the vice president. The mailboxes were approximately 85 feet from, and not within view of, the polling area. The letter was placed in the boxes around 1 p. m. , or delivered by hand about 1:15 p. m. with one exception.[2] The election was held between 4 and 5 p. m. the same afternoon. The Regional Director was of the opinion that the manner and timing of the distribution did not interfere with a free choice of representatives. We agree. The Board has held under similar circumstances that such a distribution of material does not substantially interfere with the conduct of the election.[3] We find, therefore, that there was no substantial interference with the conduct of the election. Accordingly, we overrule the Petitioner's objections.

As the Petitioner failed to secure a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for American Federation of Television and Radio Artists, AFL, and that the said labor organization is not the exclusive representative of the employees of the Employer.]

[2] The Regional Director found that one employee did not report for work until 4:30 p. m. At that time he discovered the letter in his mailbox, which had been placed there at 1 p. m., and while reading it, was approached by the secretary and told that there was a letter for him in his box. The employee obviously could not have received the letter prior to reporting for work, and was already reading it when approached by the secretary. Moreover, as stated earlier, the letter contained no coercive comment, or material which would constitute interference with a free choice of the ballot. We find this objection without merit. Emerson Electric Company, 106 NLRB No. 28; Allen-Morrison Sign Company, Inc., 104 NLRB 1063; Moyer & Pratt, Inc., 100 NLRB 1147.

[3] Meyer & Welch, Inc., 85 NLRB 706; South Bend White Swan Laundry, 106 NLRB 179.

NEW YORK SHIPPING ASSOCIATION AND ITS MEMBERS, AS FOLLOWS: 1. STEAMSHIP LINES AND AGENTS: ALCOA STEAMSHIP COMPANY, INC., AMERICAN EXPORT LINES, INC., AMERICAN-HAWAIIAN STEAMSHIP COMPANY, AMERICAN-ISRAELI SHIPPING CO., INC., AMERICAN PRESIDENT LINES, LTD., AMERICAN-WEST AFRICAN LINE, INC., ANCHOR LINE, LTD., ARGENTINE STATE LINE, ATLANTIC OVERSEAS CORPORATION, BERCOVICI NAVIGATION AGENCY, INC., BARBER STEAMSHIP LINES, INC., BLACK DIAMOND STEAMSHIP CORP., BOISE-GRIFFIN STEAMSHIP CO., INC., BOOTH AMERICAN SHIPPING CORPORATION, BOYD, WEIR & SEWELL, INC., BRISTOL CITY LINE OR STEAMSHIPS, LTD., BULL-INSULAR LINE, INC., CHILEAN LINE, COSMOPOLITAN SHIPPING COMPANY, INC., CUNARD STEAMSHIP COMPANY, LTD., DICHMANN, WRIGHT & PUGH, INC.,

EAST ASIATIC COMPANY, INC., THOR ECKERT & COMPANY, INC., ELLERMAN'S WILSON LINE NEW YORK, INC., JAMES W. ELWELL & CO., INC., FARRELL LINES, INCORPORATED, FERN LINE, FLOMARCY COMPANY, INC., FRENCH LINE, FUNCH, EDYE & CO., INCORPORATED, FURNESS, WITHY & CO., LTD., GARCIA & DIAZ INCORPORATED, GRACE LINE INC., HELLENIC LINES, LTD., HOLLAND-AMERICA LINE, INTERNATIONAL FREIGHTING CORPORATION, INC., ISBRANDTSEN COMPANY, INC., ISTHMIAN STEAMSHIP COMPANY, KERR STEAMSHIP COMPANY, INC., LLOYD BRASILEIRO, LUCKENBACH STEAMSHIP COMPANY, INC., MARINE TRANSPORT LINES, INC., MOORE-MC CORMACK LINES, INC., MOLLER STEAMSHIP COMPANY, INC., NEWTEX STEAMSHIP CORPORATION, NEW YORK AND CUBA MAIL STEAMSHIP CO., NORTH ATLANTIC & GULF STEAMSHIP CO., INC., NORTON, LILLY & COMPANY, NORWEGIAN AMERICAN LINE AGENCY, INC., PANAMA CANAL COMPANY, POPE & TALBOT, INC., PRUDENTIAL STEAMSHIP CORPORATION, QUAKER LINE, INC., ROYAL NETHERLANDS STEAMSHIP COMPANY, SEAS SHIPPING COMPANY, INC., SEATRAIN LINES, INC., SOUTH ATLANTIC STEAMSHIP LINE, STATES MARINE CORPORATION, STEVENSON LINE, INC., STOCKARD & COMPANY, INC., TORM LINES, TRANSPORTADORA GRANCOLOMBIANA, LTDA., UNION SULPHUR & OIL CORPORATION, UNITED STATES LINES COMPANY, UNITED STATES NAVIGATION COMPANY, INC., WATERMAN STEAMSHIP CORPORATION, WESSEL, DUVAL & COMPANY, INC., WEST COAST LINE, INC.; 2. CONTRACTING STEVEDORE MEMBERS: ALLPORTS STEVEDORING CO., INC., AMERICAN STEVEDORES, INC., AMERICAN SUGAR REFINING COMPANY, ANCHOR STEVEDORING CO., INC., ASSOCIATED OPERATING CO., ATLANTIC STEVEDORING CO., INC., BAY RIDGE OPERATING CO., INC., JOHN T. CLARK & SON, CLEMENS CONSTRUCTION COMPANY, COHAN CO., INC., COLUMBIA STEVEDORING COMPANY, INC., COMMERCIAL STEVEDORING CO., INC., DANIELS & KENNEDY, INC., JOHN DOWD COMPANY, FEDERAL STEVEDORING CO., INC., T. HOGAN & SONS, INC., M. P. HOWLETT, INC., HURON STEVEDORING CORPORATION, J. K. HANSON CONTRACTING CO., INC., IMPARATO STEVEDORING CORP., INTERNATIONAL ELEVATING COMPANY, THE JARKA CORPORATION, ADAM ED. KLEIN STEVEDORING CORP., LOGUE STEVEDORING CORPORATION, LONE STAR STEVEDORING, INC., MAHER STEVEDORING CORP., MARRA BROS., INC., R. MARTORELLA & CO., INC., JOHN W. MC GRATH CORPORATION, MERSEY & HUDSON WHARFAGE CORPORATION, MORACE STEVEDORING CORPORATION, NICIREMA OPERATING CO., INC., ANTHONY O'BOYLE, INC., A. PELLEGRINO & SON, INC., PITTSTON STEVEDORING CORP., F. RINALDI & COMPANY, M. J.

RUDOLPH CO., INC., RYAN STEVEDORING COMPANY, INC., ROSAR SERVICE CORP., SEABOARD CONTRACTING COMPANY, INC., SEALAND DOCK & TERMINAL CORP., M. P. SMITH & SONS CO., INC., JULES S. SOTTNEK COMPANY, INC., STATES TERMINAL CORPORATION, STEVEDORING EQUIPMENT, INC., STEVENSON & YOUNG, INC., TERMINAL STEVEDORING CO., INC., TRANSOCEANIC TERMINAL CORPORATION, TRIBORO STEVEDORING CORP., TURNER & BLANCHARD, INC., UNITED STATES STEVEDORING CORP., UNIVERSAL TERMINAL & STEVEDORING CO., VIRGINIA STEVEDORING CORPORATION, WEEKS STEVEDORING CO., INC., WHITEHALL TERMINAL CORP.; 3. CONTRACTING CARGO REPAIRMEN: LYNCH, DONOHUE & DEE, INC.; 4. CONTRACTING CHECKER & CLERK MEMBERS: ALLIED MARITIME SERVICES, INC., ANCHOR TERMINAL SERVICE CO., INC., ATLANTIC PIERS CO., INC., BAYWAY TERMINAL CORPORATION, BEARD'S ERIE BASIN, INC., DADE BROTHERS, INC., DESPATCH TERMINAL CORPORATION, FIFTH STREET PIER CORPORATION, HICKEY STEVEDORING CO., INC., HAMILTON PIER CHECKERS, INC., PACKET SHIPPING CORPORATION, ROWLAND & LIESEGANG, INC., UNITED PORT SERVICE COMPANY; 5. CONTRACTING MAINTENANCE MEMBERS: O'KANE MARINE REPAIR COMPANY, KENT EQUIPMENT CORPORATION; 6. CONTRACTING MARINE CARPENTERS: ALPHA INDUSTRIES LIFE BOAT, INC., BRENACK, INC., SERAFIM A. CARVALHO, CHELSEA SHIP REPAIR CORPORATION, COURT CARPENTRY CONTRACTING COMPANY, DAYTON CONTRACTING CO., INC., DANIEL J. DEVANEY, INC., FORE & AFT CONTRACTING CO., INC., E. G. GRIFFITH COMPANY, INC., HAMILTON MARINE CONTRACTING CO., INC., FRANK J. HOLLERAN, HOOPER LUMBER CO., INC., KRIT LUMBER PRODUCTS, INC., LEE & PALMER, MARMARINE CONTRACTING COMPANY, MODERN MARINE SERVICE CO., QUIN LUMBER CO., INC., TIMMINS LUMBER CO., INC., WATERFRONT LUMBER CO., INC. (Various of the foregoing are also sometimes referred to as members of either the Deepwater Steamship Lines or as contracting stevedores of the Port of Greater New York and Vicinity) *and* AMERICAN FEDERATION OF LABOR INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,[1] Petitioner

NEW YORK SHIPPING ASSOCIATION, et. al., Petitioners *and* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, and AMERICAN FEDERATION OF LABOR INTERNATIONAL LONGSHOREMEN'S ASSOCIATION[1]

[1] The New York Shipping Association and its members is hereinafter called the "Association;" the American Federation of Labor International Longshoremen's Association is hereinafter called the "AFL"; and the International Longshoremen's Association, Independent, is hereinafter called the "Independent."

NEW YORK SHIPPING ASSOCIATION, et. al. *and* CARGO REPAIRMEN, LOCAL 1171, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL,[1] Petitioner. Cases Nos. 2-RC-6282, 2-RM-556, and 2-RC-6392. December 16, 1953

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before I. L. Broadwin, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]

Upon the entire record in this case, the Board finds:

1. The Employers are engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employers.

3. A question affecting commerce exists concerning the representation of the employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Association, in Case No. 2-RM-556 seeks a unit, limited in scope to the Port of New York and vicinity, and comprising longshoremen, cargo repairmen, checkers, clerks and time-

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[1] The New York Shipping Association and its members is hereinafter called the "Association"; the American Federation of Labor International Longshoremen's Association is hereinafter called the "AFL"; and the International Longshoremen's Association, Independent, is hereinafter called the "Independent."

[2] At the hearing the AFL made an offer of proof in which it sought to adduce evidence that among the members of the Independent are individuals employed as hiring foremen, hiring bosses, and dock foremen by members of the Association; that supervisors occupy official positions in the Independent, and in that way participate in the formulation and execution of the policies of the Independent; that various officials of the Independent received money from members of the Association to influence them in their conduct of union affairs in violation of Section 8 (a) (2) of the Act and other statutes; that various officials and members of the Independent are public loaders who levy tribute on the docks; that many officials testified before the New York Crime Commission that they kept no records of finances and that the books of the locals disappeared or were lost, creating an inability to comply with Section 9 (f) of the Act; that Independent Watchmen's Association was a front created by the Independent to evade the Act; and that known criminals occupied positions of influence in the Independent. The hearing officer rejected the offer of proof. Some of the allegations, such as the presence of supervisors in the Independent and the receiving of sums of money from employers, are in effect evidence of unfair labor practices which the Board, as a general rule, does not litigate in representation proceedings. The exception to this rule is in cases where the evidence offered tends to show that supervisors formed the union and solicited members (Alaska Salmon Industry, 78 NLRB 185) or where there were more supervisors than nonsupervisors in the union (Rochester and Pittsburgh Coal Company, 56 NLRB 1760; New York City Omnibus Corporation, 105 NLRB 527). Neither type of allegation was made here. (See Jackson Daily News, 86 NLRB 729). Compliance with Section 9 (f) and (g) is determined by the Department of Labor. As no guards or watchmen are sought here, the allegations as to the Independent Watchmen's Association seem irrelevant With respect to the general allegations of wrongdoing on the part of the Independent, it is the Board's opinion that under the Act it is required to resolve a question of representation, if one exists, by directing an election, thus permitting the employees in the unit to express themselves rather than to arrogate to itself the power of passing judgment on the union.

keepers and their assistants, general maintenance, mechanical and miscellaneous workers, horse and cattle fitters, grain ceilers, and marine carpenters.

The AFL, in Case No. 2-RC-6282, seeks a unit confined to longshoremen, and like the Association, limits the scope of the unit to the Port of New York and vicinity. The AFL Cargo Repairmen's Local 1171, in Case No. 2-RC-6392, seeks a unit of cargo repairmen only, similarly limited in geographic scope.

The Independent contends, in substance, that the appropriate unit consists of the several classifications described in the Association's petition, but urges that the scope of the unit include, in addition to the Port of New York, the other ports on the Atlantic Coast from Portland, Maine, to Hampton Roads, Virginia.

The parties also disagree as to the inclusion of certain categories.

The Scope of the Unit

The record shows that the Association has not bargained for employers in any port other than the Port of New York; that the Association has had no authority to negotiate a contract for the Atlantic Coast District, and that it made that fact known to the Independent throughout the course of their negotiations. Bargaining in ports other than New York has been conducted by shipping associations that function in those areas; none of these is connected with the Association in this proceeding, nor was it a party to any of the negotiations between the Independent and the Association at any time in the past. Although the testimony at the hearing disclosed that local union representatives from the other ports attended bargaining sessions between the Association and the Independent, it seems reasonably clear that these representatives were there by courtesy rather than necessity, and were fully aware that their employer counterparts in the other ports were not involved in the negotiations. Indeed, after the New York bargaining was concluded, the Independent and the associations in the other ports engaged in collective bargaining of their own and executed agreements confined to the respective ports. That the wage scale arrived at in the New York negotiations set a pattern for those in the other ports cannot, in the light of the foregoing, alter the fact that bargaining between the Association and the Independent was conducted on a Port of New York basis only. Accordingly, we agree with the Association and the AFL that the unit should be confined to the Port of New York and vicinity.

The Composition of the Unit

The AFL contends that separate units of longshoremen and cargo repairmen are appropriate for collective bargaining. The

Association and the Independent contend that the six classifications of longshoremen, cargo repairmen, checkers, clerks and timekeepers, carpenters and related classifications, and miscellaneous workers constitute the only appropriate unit. To resolve this basic unit problem we shall consider the nature of the operations of the members of the Association, with specific reference to the loading and unloading of cargo, and the history and method of collective bargaining.

(a) The operations

The record shows that cargo intended for overseas shipment arrives at a pier generally by truck or lighter, sometimes by car float or barge. The truckdriver, or lighter, or barge captain presents papers at the head of the pier to a receiving clerk. Checkers tally and check the cargo as to size and weight. While the checking and clerking operation is going on, cargo repairmen are frequently called upon to repair containers that may have been damaged in transit. The next step is to load the cargo aboard the ship. This is done by the longshoremen. As the cargo is being loaded, shoring or securing is frequently required. To build bins or special containers in the vessel for that purpose, carpenters are put to work. During these operations, the miscellaneous workers perform a number of utility functions around the pier and terminal, checking equipment, operating elevators, sweeping, and cleaning. In inverse order, the unloading of cargo requires similar operations.

The longshoremen are engaged principally in the loading and unloading of cargo. They work in gangs of 20 men and a foreman. Of these, 8 work in the holds, 4 on the deck, and 8 on the dock. They use hooks, crowbars, rollers, and block and tackle to store the cargo which is carried in nets or on palettes from the dock to the hold or from the hold to the dock. Longshoremen who work on the deck load the boom and operate the winches; those on the dock use equipment such as fork lifts, hi-los, trucks, and tractors.

The cargo repairmen repair containers that are broken or torn as a result of handling. Wooden cases are nailed together, burlap bags are sewn by the use of a needle and twine, and metal containers are soldered. On occasion, they repair broken barrel staves, a type of cooperage work.

The checkers are required to examine the marks on the cargo for comparison with the dock receipt.

The clerks are concerned with the receipt of papers and the making of appropriate notations for the cargo. The timekeepers keep a record of the working time of the longshoremen.

The carpenters perform work such as shoring and securing, erecting partitions, and the building of bins. All of this work is done in connection with the loading of cargo, as distinguished from other carpentry work aboard a ship, such as cabinet-

making, which is performed by carpenters not involved in this proceeding. Included among the carpenter classifications are grain ceilers who build bins aboard ships to receive grain for shipment, and horse and cattle fitters who build stalls for horses and cattle on the ships.

The miscellaneous workers are engaged in the day-to-day general utility tasks on the pier and terminal.

Although, as indicated above, a general delineation of duties exists, there was evidence at the hearing which indicated an interchange of work among the above classifications. Thus, longshoremen have performed the duties of checkers when the latter were unavailable, checkers have done the work of clerks, longshoremen have performed cargo repairmen's work such as sewing bags or repairing crates; on some piers, longshoremen have done maintenance work, operated elevetors, and even made pallets or skids, a function normally performed by the carpenters. While the extent of such interchange is not clearly established, it does appear from the record that a mutuality of interests exists among these employees, and that a degree of interdependence is present, apparently resulting from the fact that each of the classifications is engaged in the performance of a phase of the principal function of loading and unloading the cargo of a ship. It is reasonably clear also, that none of the classifications can be described as a craft. It is apparent from testimony in the record that these employees are not of the type that the Board has regarded as possessing distinctive work skills of a craft nature. Although the cargo repairmen do some cooperage work, the evidence disclosed that this was only a minor part of their work, and that the major portion of their duties are of a nonskilled type. The same conclusion must necessarily be reached with respect to the several carpenter classifications and the miscellaneous workers. Their functions are comparable to handymen rather than to craftsmen.

That differences exist in hours of work, in the nature of the work performed, and in the supervision and methods of hiring among the several classifications, does not detract from the appropriateness of the unit comprising the six major classifications. These differences are present in most representation proceedings where plantwide units including varied type of production workers and maintenance workers are nonetheless found appropriate.

(b) The history and methods of collective bargaining

The parties disagree as to the effect of the bargaining history on the unit determination. Ample evidence was adduced at the hearing to enable us to decide this question.

The first collective-bargaining agreement between the Port of New York Employers as a group and the Independent was signed in 1916. Since 1932 the majority of employers have

carried on their collective bargaining through the Association. Most of the activities of the Association have to do with the negotiation of agreements, the settlement of disputes that arise from time to time between members and the union, and the administration of welfare and other plans provided for under the agreements. In bargaining negotiations the Association acts through a conference committee which consists of 12 members representing steamship lines, supplemented by 3 contracting stevedores selected by the stevedoring industry. The conference committee has authority to negotiate agreements and to execute them for and on behalf of members of the Association, and has done so during the past.

The Independent has bargained through a wage scale committee with authority to negotiate collective-bargaining agreements with the Association. Demands and proposals are formulated by local unions at meetings conducted by them at the request of the International. Delegates are elected to the wage scale committee, which normally is composed of 120 members. That committee meets and discusses proposals before negotiations with the conference committee of the Association begin. During those meetings the proposals from the local unions are collected, collated, and a list of demands with respect to each of the 6 agreements is made for presentation to the conference committee of the Association. As the negotiations proceed the wage scale committee meets as a whole to consider the propositions to be presented for each of the 6 major classifications, and to vote on acceptance or rejection of employer counterproposals. During the bargaining sessions, the first agreement to be discussed was always the general cargo agreement which dealt with longshore work. This was followed by a consideration of the checkers' and clerks' agreements, and the agreement for cargo repairmen. The parties then took up the agreements covering the carpenter classifications and the miscellaneous workers. There were many changes in the number of wage scale committee representatives present, depending for the most part on the subject matter being discussed, with those immediately concerned taking a more active part. However, there was always a nucleus of 6 to 8 International officer who remained throughout the entire period, and participated in all the discussions, and on many occasions, for example, local union representatives of other classifications actively participated in the consideration of the longshore agreement. That the discussion pertaining to classifications other than longshoremen were relatively brief is explained by the testimony in the record that during the period devoted to the general cargo agreement the basic issues affecting wages and fringe benefits, germane to all classifications, had already been resolved.

Final offers by the Association on the major subjects of bargaining were recommended by the full wage scale committee for acceptance or rejection. Each representative took

the proposal back to his local. The locals, regardless of classifications, voted by secret ballot on an overall unit basis. The agreements were made between the Association for its members and the Independent for "its affiliated locals," in the case of the carpenters' and the cargo repairmen's agreements reference was made in the first paragraph to specific locals but the signatories for the Independent were the International officers who signed the other agreements.

Employee benefits have been applied equally. The vocation plan applies to all classifications, and the eligibility for 1 or 2 weeks' vacation depends on the number of hours--the same for all classifications--worked during a given year. Credit is given for hours worked in any combination of classifications. When the requirements were lowered, the reduction was applied to all classifications. The eligibility requirements for the welfare and pension plans similarly are uniform for all the employees, and hours worked in one classification are added to those worked in another in making the computation. Wage increases were made uniformly for all groups, with minor exceptions for certain categories within a classification. Grievance and arbitration provisions are similar for all classifications.

Essentially then, the record establishes that the same conference committee for the Association employers and the same wage scale committee for the Independent bargained over a substantial period of time for all classifications that the union proposals were presented to the Association negotiators, not by any segment of the Independent but by the wage scale committee as a whole; that internal differences were adjusted by the wage scale committee before meeting with the Association representatives, and decided by majority vote; that all classifications represented in the membership of the Independent's local unions voted on acceptance or rejection of the Association's offer on an overall basis; and that the various economic concessions were granted simultaneously to all classifications. That the Association and the Independent executed 6 agreements instead of 1 seems, in the light of the above considerations, to be distinction of form rather than substance.

Under the circumstances, we find that both the bargaining history and the mutuality of interests arising from a functional interrelationship militate in favor of a finding that the appropriate unit comprises the several classifications covered by the collective-bargaining agreements between the Association and the Independent, as sought in Case No. 2-RM-556. We find further that separate units limited to longshoremen and cargo repairmen, respectively, are inappropriate and, accordingly, we shall dismiss the petitions filed in Case No. 2-RC-6282 and Case No. 2-RC-6392.

(c) Other problems

In addition to the basic unit dispute, the parties also disagree as to the inclusion of several specific categories.

The Independent would include, and the Association and the AFL would exclude, public loaders and shenangoes.

Public loaders load trucks with cargo that is being transported from the pier to the consignee by truck. The record indicates that they are not employed by members of the Association; that the Association did not bargain with the Independent with respect to them, and that the responsibility of the steamship company ends when the cargo reaches "a place of rest" on the dock. Although the record shows that the public loaders were members of the Independent, that fact alone clearly does not warrant their inclusion in the unit. We note, too, that public loaders have been proscribed by State statute. For the foregoing reasons, we shall exclude them from the unit.

Shenangoes load or unload cargo from lighters, barges, or car floats. According to the record, they are not employees of members of the Association, and their contracts are therefore not negotiated by the Association. Under the circumstances, we shall exclude them from the unit.

The AFL would exclude as supervisors pier superintendents and hiring foremen or bosses, dock bosses, and chief clerks. In its brief, the AFL qualified its position with respect to dock bosses and chief clerks by stating that it would exclude them if in particular piers their duties are supervisory within the meaning of the Act. The Association would exclude the pier superintendents and hiring foremen or bosses. The Independent would exclude only the pier superintendents.

We find, in agreement with the parties, that the pier superintendents are supervisors within the meaning of the Act, and shall exclude them from the unit.

As the hiring foremen or bosses possess and exercise the authority to hire we shall also exclude them from the unit as supervisors within the meaning of the Act.

Dock bosses are in charge of the checkers and chief clerks are in charge of the clerks and timekeepers. Although the evidence in the record with respect to these two categories was not as clear-cut as that adduced with respect to the others, there was testimony that dock bosses and chief clerks hire men who work under them and direct their work. On this basis, we shall exclude them from the unit.

All the parties agreed that assistant foremen, carpenter-snappers, cooper foremen, shoregang foremen, and hatch foremen are working foremen, and not supervisors within the meaning of the Act, and should be included in the unit. We shall therefore include them.

(d) Unit determination

We find that the following employees of the members of the New York Shipping Association constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All longshore employees engaged in work pertaining to the rigging of ships, coaling of same, loading and unloading of cargoes, including mail, ships' stores and baggage, handling lines in connection with the docking and undocking of ships; cargo repairmen; checkers; clerks and timekeepers and their assistants; general maintenance, mechanical, and miscellaneous workers; horse and cattle fitters, grain ceilers, and marine carpenters, in the Port of Greater New York and Vicinity; excluding pier superintendents, hiring foremen, hiring bosses, dock foremen, dock bosses, chief clerks, and all supervisors as defined in the Act.[3]

5. Eligibility:

The Association and the AFL contend that only those employees who worked 700 or more hours during the year should be deemed eligible to vote. The Independent takes the position that 400 or more hours during the year should be adequate for voting eligibility purposes.

The Association and the AFL urge the 700 figure because it is used as an eligibility requirement in determining whether an employee is entitled to vacation pay and welfare benefits, and was arrived at in the collective bargaining process over the years. The testimony at the hearing indicated that those with less than 700 hours a year generally worked in other industries. Moreover, there is a public policy consideration made manifest by the Board of Inquiry of the State of New York in its report which shows a trend in favor of regularization of employment in this industry as a means of eliminating abuses. As the 700 hours a year figure is a reasonable one under the circumstances, the result of collective bargaining in determining whether employees should be considered part of the industry for purposes of employee benefits and in consonance with the expressed desire of those interested in regularizing employment as a means of achieving better waterfront conditions,[4] we shall use the 700 figure as a test of eligibility. Accordingly, we find that all those who worked less than 700 hours during the year ending September 30, 1953, shall be deemed ineligible to vote.

Pursuant to legislation passed by the States of New York and New Jersey, a Waterfront Commission has been established. That Commission has promulgated regulations requiring registration for some of the employees in the unit found appropriate. Accordingly, in establishing voting eligibility we shall take cognizance of the regulations of the Waterfront Commission

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[3] The AFL moved to dismiss the Association's petition on the ground that no labor organization seeks representation in the unit claimed in the Association petition to be appropriate. The cases relied on in support of this motion are not apposite In William Wood Bakery, 97 NLRB 122, the Union had demanded recognition in a unit which was smaller than the one petitioned for by the Employer The same was true in Coeur d'Alene Grocers Association, 88 NLRB 44 Ny-Lint Mfg. Co., 77 NLRB 642, dealt with a disclaimer. In the instant case, the unit found appropriate is the unit sought by the Association and is encompassed within the claim of the Independent, which unlike the Union in the cases on which the AFL relies, seeks a unit even broader in scope than the one petitioned for by the Association.

[4] Final report from the Board of Inquiry on Longshore Industry Work Stoppage, October-November 1951, Port of New York, pages 57-59

by establishing as a test of voting eligibility for those categories that are required to register, that only those employees who have registered in the manner required by the Waterfront Commission shall be deemed eligible to vote in the election directed in this Decision, Order, and Direction of Election.

6. The determination of representatives:

The AFL contends that the Board should not conduct an election in this proceeding until the unfair labor practice cases pending against the Independent and the Association have been terminated. In urging this position the AFL reiterates the matters alleged by it in its offer of proof, including the allegation that the Independent "has been totally corrupted by and rendered completely subservient to the employers."

We have given this situation very careful consideration, and are not unaware or unmindful of the seemingly logical and equitable position which the AFL adopts with regard to this problem. The AFL is correct when it states that it is the Board's normal practice to refrain from conducting an election in a representation case until all complaint cases have been terminated. However, this is not a routine or customary situation that confronts us and applying the normal practice to a state of facts that is far from normal may well have disastrous consequences insofar as the effect on the people of this country are concerned.

Immediately upon the expiration of the collective-bargaining agreement on September 30, 1953, the Independent struck all the employers along the Atlantic Coast. Declaring that such a situation created a "national emergency," the President of the United States under Title II of the Act created a three-man Board of Inquiry to report to him on the situation. This report was rendered on October 5, 1953. In it, the Board of Inquiry found that "the impact on the economy and on the public welfare of a complete strike at all the important ports along the Atlantic Coast line is extremely serious." On October 5 the Attorney General petitioned the United States District Court for the Southern District of New York for a temporary restraining order, which was granted the same day. Thereafter, the court extended the injunction "until further order of this Court." Under the Act, however, the injunction can remain in effect no longer than the statutory 80 days from October 5. It therefore expires at midnight of December 24.

On December 4, 1953--only 12 days ago--the Board of Inquiry submitted another report to the President in which it stated:

> This dispute is unique in the history of emergency disputes since the statute was enacted in 1947, because the essential differences which seem to be leading to a renewed shutdown of the waterfront are not between the employers and their employees <u>but rather between the two labor organizations which are bitterly contesting the right to represent the employees.</u>

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> The issue of union representation overshadows all others . . . From testimony given to the Board, a December 24th strike should be expected, a strike that will defy solution by the most expert of mediators. (Emphasis added.)

Viewed thus, this is a situation that is uniquely within the province of the Boad's jurisdiction, for it is the Board, and the Board alone, that can invoke the kind of machinery that Congress designed specifically for the resolution of a rival union dispute such as we have here. It is a set of circumstances like those that make what ordinarily seem to be stereotyped language, i. e., the effectuation of the policies of the Act, take on real life and validity.

As the President has declared the situation which required the issuance of the Title II injunction a "national emergency," and as the President's Board of Inquiry has reported that the impact of a strike on the economy and the public welfare is "extremely serious," and as the crux of the entire problem is the unresolved representation question, we feel that an immediate election must be held. In directing an election we have complete confidence in the ability of the voters in the election to exercise their right under the Act as their wisdom dictates, knowing that they are voting in an American election and that the secrecy of their ballot will be safeguarded, and their choice known only to themselves.

The Board, like the top officials of the State of New York, and indeed the top officials of our nation, is concerned deeply over the situation revealed in the reports of the official bodies as to the conditions on the New York waterfront. But it feels that it cannot, and should not, take from the employees the right which genuinely is theirs, to select the labor organization they wish to represent them.

Although there is ample Board precedent for the step we are taking,[5] we wish to make it clear that we are not relying solely on precedent; we feel that the facts abundantly justify an immediate election under Board auspices and safeguards.

In directing an election, we do so without prejudice, and shall expressly condition any certification resulting from such election on the determination or determinations we may subsequently make in the pending unfair labor practice cases with respect to the status of the Independent, and shall take such action as may be deemed necessary to effectuate the policies of the Act with respect thereto.[6]

[The Board dismissed the petitions in Cases Nos. 2-RC-6282 and 2-RC-6392.]

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[5] Columbia Pictures Corporation, 81 NLRB 1313; West-Gate Sun Harbor Co., 93 NLRB 830; Michigan Bell Telephone Co., 63 NLRB 941.

[6] Michigan Bell Telephone Co., supra.

[Text of Direction of Election omitted from publication in this volume.]

Member Murdock took no part in the consideration of the above Decision, Order, and Direction of Election.

MIKE PERSIA CHEVROLET CO., INC. *and* GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL NO. 270, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL. Cases Nos. 15-CA-554 and 15-RC-822. December 17, 1953

DECISION AND ORDER

On July 13, 1953, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that these allegations be dismissed. Thereafter, the Respondent and the General Counsel each filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except to the extent that they are inconsistent herewith.

1. We agree with the Trial Examiner that the Respondent committed unfair labor practices in violation of Section 8 (a) (1) of the Act, as specified in the Intermediate Report. Unlike the Trial Examiner, however, we find within the privilege of Section 8 (c) and not violative of the Act, the statement in the Respondent's preelection letter sent to the salesmen, and also read to the salesmen by President Persia the day before the election, that "Whatever the Union has promised, it can get you nowhere until negotiations are completed and a contract signed with the Company" (emphasis in original).

2. We agree with the Trial Examiner that the Respondent did not violate Section 8 (a) (3) of the Act, either in discharging, or in refusing to rehire, complainants Garrett and Bynum. As more fully described in the Intermediate Report, both these individuals, employed by the Respondent as salesmen, admittedly were involved in the sale of a used car outside the Respondent's organization, in violation of the known company rule against "outside sales." They were discharged for