

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

MORAN TOWING OF MARYLAND DIVISION  
Employer

and  
KENNETH MORGAN HUDGINS  
Petitioner

and  
SEAFARERS INTERNATIONAL UNION OF NORTH  
AMERICA, ATLANTIC, GULF, LAKES AND INLAND  
WATERS DISTRICT/NMU, AFL-CIO  
Union

Cases 5-RD-1299  
5-RM-995

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. Moran Towing of Maryland Division ("Moran Towing of Maryland") and Moran Towing Corporation Pennsylvania Division ("Moran Towing of Pennsylvania") are each a division of Moran Towing Corporation, a Delaware corporation (Employer). Each division is separately engaged in interstate

marine towing and transportation. The principal place of business of Moran Towing of Maryland is 1715 Thames Street, Baltimore, Maryland. The principal place of business of Moran Towing of Pennsylvania is Philadelphia Naval Business Center, Building 25, Philadelphia, Pennsylvania. During the past 12 months, a representative period, each division separately performed services valued in excess of \$50,000 directly to customers located out of the State of Maryland and Pennsylvania, respectively. The parties stipulate, and I find, that the Employer is engaged in commerce within the meaning of the Act.

Kenneth Morgan Hudgins (Petitioner), an employee of Moran Towing of Maryland, filed a petition, amended at the hearing, seeking to decertify the Seafarers International Union of North America, Atlantic, Gulf Lakes and Inland Waters District/NMU, AFL-CIO (the Union or SIU) as the collective-bargaining representative of employees of Moran Towing of Maryland working in the Port of Baltimore. One day later, the Employer filed a petition, amended at the hearing, seeking an election of all non-supervisory tugboat and shop employees employed by Moran Towing of Maryland at the Port of Baltimore including electricians, machinists, handymen, and helpers, excluding supervisory, office and clerical employees. At the hearing, the Petitioner and the Employer agreed that there are 15 employees in the appropriate unit, and that the appropriate unit includes only employees of Moran Towing of Maryland. The Union contends that there are 33 employees in the appropriate unit, arguing that the existing contractual unit includes employees both of Moran Towing of Maryland and Moran Towing of Pennsylvania, and therefore, the only appropriate unit for a decertification election is a combined unit of Baltimore and Philadelphia employees.

The parties stipulated that Vince Arroyo, Reid Sprague, Wayne Browning, Al Watts, Tony Romain in the Maryland Division and Milt Hall, Charlie O'Brien, Charles Romain, Pat Cross, Gary Biggs, Joe O'Toole, Herman Rhoerman, and Wesley Southworth in the Pennsylvania Division exercise all, or some, of the following indicia of supervisory status: effectively recommend discipline, grant time off, hire, fire, transfer, suspend, lay off, recall, promote, assign work, reward or discipline employees or responsibly direct them or effectively recommend such actions. The parties stipulated, and I find that Vince Arroyo, Reid Sprague, Wayne Browning, Al Watts and Tony Romain are supervisors as defined by Section 2(11) of the Act and are excluded from the petitioned-for unit.<sup>1</sup>

The Union presented as its witnesses Davis Heindel, Secretary-Treasurer of the Union; Dennis Metz, Port Agent in Baltimore; and Joseph Soresi, Vice-President of the

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<sup>1</sup> It is not necessary for purposes of this decision to determine if Milt Hall, Charlie O'Brien, Charles Romain, Pat Cross, Gary Biggs, Joe O'Toole, Herman Rhoerman and Wesley Southworth are supervisors as defined by Section 2(11) of the Act.

SIU Mid-Atlantic Region. The Employer presented as its witnesses Edmond J. Moran, Jr., Senior Vice-President of Moran Towing Corporation; Paul P. Swensen, Vice-President and General Manager of Moran Towing of Maryland; Walter Naef, Operating Manager of Moran Towing of Maryland; and Kenneth Hudgins, employee of Moran Towing of Maryland as well as the Petitioner in this matter.

## **ISSUE**

Whether the petitioned-for unit of employees at Moran Towing of Maryland is an appropriate unit for purposes of a representation election.

## **POSITIONS OF THE PARTIES**

The Employer and the Petitioner contend that the appropriate unit consists only of the mates, deckhands and engineers working for Moran Towing of Maryland. The Employer acknowledges that in 1996, it and the Union agreed to combine the separate contracts covering employees of Moran Towing of Maryland and Moran Towing of Pennsylvania, but denies that in doing so, it agreed to merge the two bargaining units into one overall unit. Rather, the Employer argues that in 1996, the parties simply created a master agreement for ease of contract administration and, therefore, the employees of Moran Towing of Maryland still constitute an appropriate unit.

The Union contends that the only appropriate unit is one that encompasses the mates, engineers and deckhands employed by Moran Towing of Maryland Division as well as the mates, deckhands and some machinists employed by Moran Towing of Pennsylvania. According to the Union, the parties' 1996 contract effectively merged the two units into one overall unit making that unit the only appropriate unit for an election.

Based on the record as a whole and careful consideration of the arguments of the parties at the hearing, the Employer's brief and the Union's brief, I find that the appropriate unit consists of the mates, deckhands and engineers working for Moran Towing of Maryland.

## **THE EMPLOYER'S OPERATION AND THE PARTIES' BARGAINING HISTORY**

The Employer is a towing corporation involved in ship docking and marine transportation. It has eleven separate divisions located along the eastern seaboard of the United States. Two of those divisions are at issue in this case – the Maryland division and the Pennsylvania division. The Maryland division, Moran Towing of Maryland, operates exclusively out of the Port of Baltimore servicing barges in the Chesapeake Bay and Baltimore Harbor. It has its own vice president, general manager, operations department, operating manager, dispatchers, accounting department, shop, and port engineer. The Pennsylvania division, Moran Towing of Pennsylvania, works exclusively out of the Port of Philadelphia servicing its customers in the Delaware Bay and the Delaware River. It too has its own vice president, general manager, operations

department, operating manager, dispatchers, accounting department, shop, and port engineer. The Union represents the mates, deckhands and engineers working out of the Port of Baltimore, and the mates and deckhands working out of the Port of Philadelphia.

There is an extensive history of collective bargaining between the parties dating back to 1957 for the employees in Baltimore and 1960 for the employees in Philadelphia. At the time of initial recognition for both units, the Employer was known in Baltimore as Curtis Bay Towing Inc. and in Philadelphia as Curtis Bay Towing of Pennsylvania, Inc. In approximately 1987, Moran Towing Corporation acquired Curtis Bay Towing Inc. and Curtis Bay Towing of Pennsylvania, Inc. and changed their names to Moran Towing of Maryland and Moran Towing of Pennsylvania, respectively.<sup>2</sup> In 1994, these entities became divisions of Moran Mid-Atlantic Corporation. In 1997, Moran Mid-Atlantic merged into Moran Towing Corporation. As a result, Moran Towing of Maryland became Moran Towing Corporation Maryland Division and Moran Towing of Pennsylvania became Moran Towing Corporation Pennsylvania Division. Throughout all of these corporate changes and until 1996, the Employer bargained with the Union for two separate contracts – one for the unit in Baltimore and one for the unit in Philadelphia. In 1996, rather than create two separate contracts, the parties agreed to merge the two into one master agreement retaining separate appendices for each location’s unique working conditions. It is this creation of a master agreement that the Union claims transformed the two bargaining units into one unit encompassing employees from Baltimore and Philadelphia.

## ANALYSIS

It is well settled that two bargaining units can merge into one overall bargaining unit if there is “unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized or certified units.” *Utility Workers Union of America, AFL-CIO and its Locals Nos. 111, 116, 138, 159, 264, 361, 426, 468, 478, and 492 (Ohio Power Company)*, 203 NLRB 230, 239 (1973). See also *General Electric Co.*, 180 NLRB 1094, 1095 (1970) and *Sears, Roebuck and Co.*, 253 NLRB 211 (1980). Where there is such an agreement, the merged unit is the only appropriate unit for purposes of a representation election. *Wisconsin Bell, Inc.*, 283 NLRB 1165 (1987). In *Sears, Roebuck and Co.*, for example, the Board found that the parties had not intended to merge two bargaining units despite the creation of one collective-bargaining agreement covering the two units. The Board relied heavily on the fact that the two stores at issue remained self-contained units with no operational interchange between them. There was no evidence of interstore transfers, seniority, job bidding, layoffs or grievance handling and each store retained independent authority regarding personnel matters. Further, the recognition clause in the merged collective-bargaining agreement did not state that the contract covered one unit, but rather identified each of the units covered by the contract. For these reasons, the Board concluded that there was not “unmistakable evidence” that

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<sup>2</sup> Curtis Bay Towing also had a division in Norfolk, Virginia. Moran Towing Corporation acquired this division at the same time that it acquired the other division of Curtis Bay Towing. This division, however, is not at issue in this case.

the parties mutually intended to create a merged bargaining unit and found the employees of one of the units was appropriate for purposes of collective bargaining.

As the Board found in *Sears, Roebuck and Co.*, I find here that there is not unmistakable evidence sufficient to demonstrate that the parties mutually agreed to extinguish the separateness of the Baltimore and Philadelphia bargaining units. Like the parties in *Sears, Roebuck and Co.*, the parties here created a master agreement that did not alter the working conditions for employees in either unit. Each division has remained entirely independent of the other. The two divisions do not share seniority lists, personnel policies, supervision or employees, and they do not work together to process grievances, hire, layoff or discipline employees. The master agreement has extensive appendices for each division demonstrating the autonomy retained by each despite the common governing contract. Moreover, each unit separately voted on and ratified the new contract.

However, unlike in *Sears, Roebuck and Co.*, the recognition clause in the master agreement at issue in this case is unclear as to whether the collective-bargaining agreement covers one unit or two units. Rather, the recognition clause states that “[t]his Agreement applies to non-supervisory employees, including all mates, engineers, deckhands, tankerman, electricians, handymen, helpers and machinist, excluding engineers and engineer/machinist in the port of Philadelphia, (hereinafter called employees), when employed on tugboats, barges and shoreside facilities of the Company. Excluding all office, clerical and supervisory employees. This recognition shall not apply to bareboat charters, to other operators nor to crew of vessels of subsidiary or affiliated companies.” The testimony detailing the parties’ arrival at this language supports the conclusion that the parties did not reach mutual agreement to create a single unit. First, the Union’s proposal of the new recognition language was prefaced by a statement that through the proposed language, the Union wished to “[c]reate a three year Agreement merging Moran Towing of Pennsylvania, Division and Moran Towing of Maryland, Division into one Master Agreement.” Second, Mr. Heindel, chief negotiator for the Union in 1996, admitted that based on this proposal, the parties had “agreed, in essence, that we would create one agreement.” Finally, Edmond J. Moran, Jr., chief negotiator for the Employer in 1996, stated that his recollection was that the Union proposed merging the agreements for administrative purposes only. He further stated that he did not recall ever discussing the possibility of merging the units into one unit nor did he recall the Union ever making such a proposal. The Union presented no testimony to contradict that of Moran; indeed, none of its witnesses suggested that any agreement was reached to merge the two separate units into a single, combined unit. Contrary to the Union’s assertions, I find the foregoing fails to establish unmistakable evidence that by entering into this master agreement, the parties intended to create one overall bargaining unit.

Based on the above outlined testimony and the evidence that the two divisions have retained separate, autonomous operations, I find that a merger of the bargaining units has not occurred, and that the appropriate unit for purposes of a representation election includes only those employees working for Moran Towing of Maryland.

## **CONCLUSION**

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing, I find the following employees of the Employer to constitute a unit appropriate for purposes of a representation election:

All non-supervisory tugboat and shop employees employed by Moran Towing of Maryland in connection with its towing and related activities in the Port of Baltimore and all employees at the Moran Towing of Maryland's shop located at Recreation Pier, Thames Street, Baltimore, Maryland, including electricians, mechanics, handymen and helpers, excluding all office, clerical and supervisory employees.

## **DIRECTION OF ELECTION**

An Election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES AND INLAND WATERS DISTRICT/NMU, AFL-CIO.

## **LIST OF VOTERS**

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **July 17, 2002**.

Dated July 3, 2002

at Baltimore, Maryland

/s/WAYNE R. GOLD  
Regional Director, Region 5



420-2360