

Arbitration Award 03/07/1935

Arbitration Under Award of National Longshoremen's Board

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ARBITRATION UNDER AWARD OF NATIONAL LONGSHOREMEN'S BOARD

March 7, 1935

M. C. SLOSS

Arbitrator for Pacific Coast Ports
on Basic Questions
1300, One Eleven Sutter
San Francisco, California

In the Matter of)

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INTERPRETATION OF SECTION 10(b))
OF AWARD OF NATIONAL)
LONGSHOREMEN'S BOARD)

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RELATING TO REGISTRATION AND)
EMPLOYMENT OF LONGSHOREMEN.)

AWARD OF ARBITRATOR FOR PACIFIC COAST PORTS

M.C. Sloss

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INTERPRETATION OF SECTION 10(b))
OF AWARD OF NATIONAL)
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RELATING TO REGISTRATION AND)
EMPLOYMENT OF LONGSHOREMEN.)

I. QUESTIONS PRESENTED FOR DECISION

The employers have submitted, for the determination of the arbitrator, the following questions:

(1) "Does the award require the Labor Relations Committee to register all men, whether members of the I.L.A. or not, who during a period of three years immediately preceding May 9, 1934, derived their livelihood from the industry during not less than twelve months?"

(2) "Have the men, whether members of the I.L.A. or not, who are qualified for registration, the right to work up to the hourly limit set by the award, both before and after registration, and have the employers the right to select such men for employment?"

II. SCOPE OF PRESENT DECISION AND AWARD

The arbitrator has received several communications and complaints from, or on behalf of, a group of men at Seattle, who claim that, although fully qualified, the I.L.A. [sic] members of the Labor Relations Committee of the port of Seattle have refused to take or join in any action which would result in their registration or employment. The claim, further, is that the reason for such refusal is that the men in question are not members of the I.L.A.

Whether any individual man or group of men should be registered or employed in a particular port is not a "basic question", to be determined by the arbitrator for Pacific Coast ports. Determinations as to registration and employment of particular individuals at any port are matters of local concern, to be decided by the Labor Relations Committee of that port, or in the event that the Committee cannot agree, by the local arbitrator. In this award the general arbitrator is undertaking merely to interpret the award of the National Longshoremen's Board, and to lay down the general principles which should govern the Labor Relations Committees of the several ports and the local arbitrators in dealing with specific cases coming before them.

III. PROVISIONS OF THE AWARD OF THE NATIONAL LONGSHOREMEN'S BOARD

The award provides:

"Section 10. The duties of the Labor Relations Committee shall be:

* * * * *

(b) Within thirty days from the date of this award to prepare a list of the regular longshoremen of the port, and after such thirty days no longshoreman not on such list shall be dispatched from the hiring hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work. No one shall be registered as a longshoreman who did not, during a period of three years immediately preceding May 9, 1934, derive his livelihood from the industry during not less than any twelve months. Pending the preparation of these lists, no longshoreman who was a member of a gang or who was on any registered list or extra list between January 1, 1934, and May 9, 1934, shall be denied the opportunity of employment in the industry. The Labor Relations Committee, in registering longshoremen, may depart from this particular rule;"

Section 6 reads as follows:

"Section 6. All longshoremen shall be dispatched without favoritism or discrimination, regardless of union or non-union membership."

IV. DECISION AND AWARD

The arbitrator decides as follows:

Question 1 calls for an interpretation of Section 10(b) of the Award, with respect, particularly, to the obligation of the Labor Relations Committee to register any longshoremen who has the qualifications specified in the second sentence of that subdivision, i.e., who shall for three years immediately preceding May 9, 1934, have derived his livelihood from the industry during not less than any twelve months. The claim of the employers is that the Labor Relations Committee is bound to register any such man. The contention of the I.L.A. is that under the last sentence of subdivision (b) the Labor Relations Committee has discretion to grant or refuse registration, although the described qualifications may exist, and that, if the Labor Relations Committee fails to agree in any particular case, the difference shall be decided by the local arbitrator.

As above indicated, I conclude that whether any particular man should be registered or not is to be decided by the local Labor Relations Committee, or, in the event of its inability to agree, by the local arbitrator. In deciding such questions the Labor Relations Committee is governed by the provisions of the Award of the National Longshoremen's Board.

The opening words of Section 10 ("the duties of the Labor Relations Committee shall be") impose upon the Labor Relations Committee the obligation to perform the acts specified in the various subdivisions of that section except where those acts, by their nature, or by the express provisions of a particular subdivision, authorize the exercise of discretion.

Under the first sentence of subdivision (b), it is the duty of the Labor Relations Committee to prepare a list (also referred to as a "registered list") of the "regular longshoremen of the port". This sentence contains no definition of "regular longshoremen". In my opinion, that definition is found in the second sentence, which provides that no one shall be registered as a longshoreman who did not, during three years preceding May 9, 1934, derive his livelihood from the industry during twelve months. While the provision is negative in form, the necessary implication is that one who does meet these conditions is entitled to be registered as a "regular longshoreman", unless, in the proper exercise of the discretionary power given by the last sentence of subdivision (b), such registration is denied.

The third sentence of subdivision (b) makes provision for employment of longshoremen during the interval preceding the preparation of the register lists. Under that provision a qualification of prior employment, differing from that prescribed in the second sentence, is established.

The fourth and last sentence of subdivision (b) authorizes the Labor Relations Committee, in registering longshoremen, to "depart from this particular rule". I conclude that this provision is a limitation or qualification upon the general declaration in the first two sentences, as hereinabove interpreted, making it the duty of the Labor Relations Committee to register all men having the qualifications of regular longshoremen of the port. In other words, the fourth sentence vests in the Labor Relations Committee (or, in case of failure of that Committee to agree, in the local arbitrator) a discretion to refuse registration to a man who has during the prescribed three-year period derived his livelihood from the industry during twelve months, or, perhaps, if future conditions should justify such action, to add to the registered list men who could not show the history of past employment

specified in the second sentence. I do not undertake to specify the various conditions which might justify the exercise of this discretion in granting or denying registration. The discretion is, however, not arbitrary or unlimited. It should be based upon a ground having relation to the underlying principles of the Award, and not in conflict with the specific provisions of the Award. Under the provision of Section 6, it is clear to me that any refusal of registration based upon the union or non-union affiliation of any man would not be a proper basis for the exercise of such discretion.

My conclusion is that where men apply for registration in any port, their right to be registered should be determined by the Labor Relations Committee of that port in accordance with the foregoing principles, i.e., that the Labor Relations Committee shall decide in each case whether the man has, during a period of three years immediately preceding May 9, 1934, derived his livelihood from the industry in that port during not less than twelve months. If he has this qualification, he should be registered unless there is some reasonable ground for excluding him from registration. The fact that he is or is not affiliated with a union is not a proper ground for consideration with respect to his right to be registered. If the Labor Relations Committee fails or refuses to register the applicant, the question should be submitted to the local arbitrator, who should then determine it on the basis above indicated.

Question 2, quoted above, is stated in very broad terms. As I understand from the argument of the employers, the real point presented is whether, pending the completion of the registered list, men who have the qualifications specified in the third sentence of subdivision (b) of Section 10 are entitled to be employed. While the Award is not entirely clear in this respect, I think the fair interpretation of subdivision (b) is that the last sentence, authorizing the Labor Relations Committee to depart from the rule, qualifies the right of employment under the third sentence of subdivision (b) as well as the right to be placed on the registered list under the first and second sentences. My ruling therefore is that a longshoreman "who was a member of a gang or who was on any registered list or extra list between January 1, 1934 and May 9, 1934" is entitled to be employed pending the preparation of the registered lists, subject to the discretion of the Labor Relations Committee to provide otherwise in particular cases. The grounds upon which this discretion may be exercised have been discussed in connection with the right to be registered. For the reasons already stated, it is clear that membership or non-membership in a union is not a proper basis for discrimination against any man in regard to his employment in the industry. If the Labor Relations Committee fails to agree in any case, the right of the man to employment is to be determined by the local arbitrator.

(SIGNED) M. C. SLOSS

Arbitrator for Pacific Coast Ports

DATED:

March 7, 1935.