

In the Matter of ALASKA SALMON INDUSTRY, INC., EMPLOYER *and*
SEAFOOD WORKERS UNION, PETITIONER

In the Matter of ALASKA SALMON INDUSTRY, INC., EMPLOYER AND
PETITIONER *and* SEAFOOD WORKERS UNION

*Cases Nos. 19-RC-2 and 19-RM-2, respectively.—Decided July 12,
1948*

DECISION
AND
ORDER

Upon two petitions duly filed,¹ a consolidated hearing in these cases was held before a hearing officer of the National Labor Relations Board. At the hearing, Cannery Workers and Farm Laborers Union, Local No. 7, Food, Tobacco, Agricultural and Allied Workers of America, CIO, herein called FTA, was allowed to intervene. It appears that FTA has not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act, as amended, and that the most recent contract between FTA and the Employer expired on December 31, 1947, after both parties had served timely written notices of their desire to terminate the contract in accordance with its terms. However, FTA contended that it should be permitted to intervene in this proceeding because at the time of the hearing it was acting as the representative of its members for the purpose of recovering certain financial claims arising out of the last contract between FTA and the Employer. The record shows that pursuant to the terms of this contract the employees authorized the Employer to deduct from their wages the amounts due FTA for fees, dues, and assessments. While the Employer made the deductions, it has not surrendered the money to FTA. The employees from whose pay money has been withheld by the Employer have authorized FTA to act as their representative to recover that money.

We have heretofore held that we will grant intervention to a non-complying union which is a party to an existing contract with the Employer. In the instant case, FTA does not have a contract; it is

¹ These cases were ordered consolidated by the Board on March 17, 1948.

merely a party to a dispute which arose out of the contract, the settlement of which is still pending. The existence of that dispute clearly does not continue in force the terms of the contract. In view of these circumstances, we find that the hearing officer's ruling permitting intervention was error and it is hereby reversed.² Other rulings made by the hearing officer are free from prejudicial error and are hereby affirmed.

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

1. The Employer³ and its members are each engaged in commerce within the meaning of the National Labor Relations Act.

2. No question of representation exists concerning the representation of employees of the Employer-Members within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act for the following reasons:

The Employer-Members of ASI operate salmon canneries throughout the Territory of Alaska. The canneries are dependent upon salmon-fishing activity and are in operation only from 40 to 60 days each year. Operations commence in the various areas during the period from May 15 to August 1, and end between July 5 and September 30. About one-half of the workers in the industry are non-resident persons who are recruited from migratory agricultural workers in the States of Washington, Oregon, and California. These are the employees whom the petitioning union, Seafood Workers Union, herein called the S. W. U., here seeks to represent. The record shows that most of these workers return from year to year for reemployment with the Employer-Members; an estimated number of between 80 and 85 percent of those employed during the 1947 season will return this season. When the canning season closes, the non-resident employees disperse throughout the Western States to resume their employment in agricultural pursuits.

From 1938 to December 1948, when its last contract with the Employer expired, FTA had been the recognized bargaining agent of the non-resident workers.⁴ The bargaining unit also included cannery worker foremen who, admittedly, are supervisors within the meaning of the Act as amended.⁵ The S. W. U. excludes cannery worker fore-

² *Matter of Campbell Soup Company*, 76 N. L. R. B. 950

³ The Alaska Salmon Industry, Inc., herein called ASI, is a non-profit corporation composed of Employer-Members who operate salmon canneries in the Territory of Alaska. ASI admits and we find, that it is an employer within the meaning of Section 2 (2) of the Act.

⁴ In 1945, following a Board-directed election, the Board certified FTA as the exclusive bargaining representative of the non-resident workers of the Employer-Members. *Matter of Alaska Salmon Industry, Inc.*, 61 N. L. R. B. 1508

⁵ In its earlier decision, the Board found that cannery worker foremen and second foremen in the salmon canning industry had been traditionally included in bargaining units with production workers. In this decision, the Board made the following findings with respect to the cannery worker foremen "[He] acts as liaison between the cannery workers and the

men from its proposed unit in this case. As we have heretofore found, the employer-employee relationship between the Employer-Members and the non-resident cannery workers as a group continues to exist during the non-operating season.⁶ It therefore follows, and we find, that insofar as we are here concerned, the supervisory relationship between cannery worker foremen and the rank-and-file employees continues during the off-season.

In the latter part of September, various members of FTA, including several cannery worker foremen, became dissatisfied with representation by FTA and decided to form the S. W. U. On September 24, 1947, the S. W. U. adopted a constitution and bylaws and, about the same time, elected officers. Four of its elected officers are persons who worked as cannery worker foremen for the Employer-Members during the 1947 season. These are the business agent, one of the two vice presidents, one of the three trustees, and one of the six executive board members. The offices of the S. W. U. are located in Seattle, Washington, as is the hiring place of the Employer-Members.

Shortly after its formation, the S. W. U. launched a membership campaign among the employees who had worked for the Employer-Members in previous seasons. Since the drive was conducted during an off-season in the industry, many of the workers were at that time employed in California. A group of the S. W. U.'s representatives spent about a week in California soliciting memberships. The S. W. U.'s business agent and several other persons who had worked as cannery worker foremen during the 1947 season participated in this membership drive. The record shows that it is a well-established custom in the salmon canning industry for cannery worker foremen to take field trips at the commencement of each season to recruit new workers because there is always a need for replacements.⁷ During their trip to California, the S. W. U.'s representatives also attempted to enroll as members new recruits to the industry. Their campaign efforts met with considerable success. According to the testimony of its president, one of the individuals who went to California to solicit memberships, the S. W. U.'s membership now exceeds 2000. Of this number, 90 percent are persons who were on the pay roll of the Employer-Members during the 1947 season, while the balance are new recruits to the industry.

general foremen. His services in this regard are required, especially respecting the non-residents, by the fact that most of the employees have as their native tongue languages other than English and possess other racial characteristics with which he is familiar."

⁶ See *Matter of Alaska Salmon Industry, Inc., et al.*, 61 N. L. R. B. 1508; *Matter of Alaska Packers Association, et al.*, 7 N. L. R. B. 141.

⁷ The record shows that in previous seasons, the Employer-Members frequently had one of their own representatives accompany the cannery worker foremen on these field trips and that the companies paid all expenses.

In view of the foregoing, we are of the opinion that the S. W. U. is incapable of serving as the bargaining representative of the employees involved herein. From the time it was conceived, persons who occupy supervisory positions with the Employer-Members have taken a prominent part in its affairs. Cannery worker foremen were not only among those who were responsible for the formation of the S. W. U., but they also serve as officers in posts which normally influence a union's policies and practices. Furthermore, its membership drive was conducted with direct and open assistance of cannery worker foremen. We have frequently stated that we will not accord a place on the ballot in an election conducted by the Board to a labor organization whose memberships are solicited by supervisors,⁸ or which is in any other way not free of managerial control.⁹ We find that the cannery worker foremen, by their activities on behalf of the S. W. U., have rendered the S. W. U. incapable of serving as the bargaining representative of the employees of the Employer-Members. We shall, therefore, dismiss the petitions.

ORDER

Upon the basis of the entire record in this case, the National Labor Relations Board hereby orders that the petitions filed in Case No. 19-RC-2 and Case No. 19-RM-2 be, and they hereby are, dismissed.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

⁸ *Matter of Toledo Stamping & Manufacturing Company*, 55 N. L. R. B. 865; cf. *Matter of Wells, Inc.*, 68 N. L. R. B. 545.

⁹ *Matter of Rochester and Pittsburgh Coal Company*, 56 N. L. R. B. 1760.