

In the Matter of ALASKA SALMON INDUSTRY, INC. (COOK INLET AREA),
EMPLOYER and UNITED FISHERMEN OF COOK INLET, AFL, PETI-
TIONER

Case No. 19-RC-115.—Decided April 12, 1949

DECISION
AND
ORDER

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel.*

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

1. Alaska Salmon Industry, Inc., named as Employer in the petition and hereinafter called ASI, is engaged in commerce within the meaning of the Act.¹

2. The Petitioner, affiliated with Seafarers' International Union, AFL, and Alaska Fishermen's Union, CIO, hereinafter called the Intervenor, are labor organizations claiming to represent employees of ASI.

3. The Petitioner seeks a unit of fishermen² engaged in fishing in the Cook Inlet area of Alaska for the member companies of ASI. The Intervenor contends that fishermen are independent contractors and not employees within the meaning of the Act, and that there is no appropriate unit within the scope of the petition. ASI took no position as to the status of fishermen.

ASI, a Delaware corporation, has its main office in Seattle, Washington. It was organized for the purpose of determining labor policies

*Chairman Herzog and Members Houston and Gray.

¹ The organization of ASI was discussed in *Matter of Alaska Salmon Industry, Inc.*, 61 N. L. R. B. 1508; Cf. *Matter of Alaska Salmon Industry, Inc.*, 81 N. L. R. B. 1335.

² Fishermen include all seine and gill net fishermen, including set, stake or drift net fishermen, and beach seiners.

82 N. L. R. B., No 133.

and acting for its member companies in labor relations matters. Most of the companies engaged in the canning of fish and located in the Cook Inlet area are members of ASI.³ There is an existing contract between ASI and the Intervenor covering cannery workers and fishermen residing in this area.

The member companies of ASI purchase salmon, can it, and ship it to the States for sale. The fishing season varies in the area, but runs from about May to September, and is governed by the regulations of Fish and Wildlife Service of the Department of Interior. The member companies are located along the coast of the Cook Inlet area. Before the beginning of each fishing season, the member companies contract with individual fishermen to purchase from him his catch for the coming season. The fisherman, in turn, agrees to supply the member company with his catch. Each fisherman is the captain of his boat and hires his own crew. The member company deals only with the fisherman and not with his crew. Although fishermen are free to contract with any company they may desire for each fishing season, they usually fish for the same company year after year, due to residency, fishing locations, and other factors. The majority of the fishing boats in the Cook Inlet area are owned by fishermen, who usually purchase their boats and fishing equipment on credit and at cost from the member company for which they fish. In this manner, a member company attempts to ensure that the fisherman will fish for it, although no formal agreement may be made to this effect. In the industry, fishermen operating their own boats are referred to as "independent" fishermen, to distinguish them from those operating company-owned boats, who are called "company" fishermen. Member companies also extend credit to all their fishermen for food and necessities.⁴

When the fishing season opens, fishermen, both company and independent, take their crews and go to the area in which they are going to fish. Each fisherman is licensed and has his own fishing locality which is considered his exclusive property right, subject to sale or transfer by him. Each fisherman determines where, when, and how he will fish without instructions from the member company with which

³ The Petitioner lists the eight following companies operating in Cook Inlet as members of ASI: Alaska Seldovia Packers, Cook Inlet Packing Company, Fidalgo Island Packing Company, Snug Harbor Packing Company, Libby, McNeill & Libby, Emard Packing Company, Alaska Year-Around Canneries, and The General Fish Company. Snug Harbor Packing Company moved to dismiss the petition with respect to its operations, alleging that it has withdrawn from membership in ASI, and that it is not properly joined as a member company in this proceeding. The Petitioner and Intervenor take exception to this position. Due to the dismissal of the instant case on other grounds, it is unnecessary to rule upon this motion.

⁴ Two member companies, Alaska Year-Around Cannery, Inc., and The General Fish Company, have some fishing supplies and gear for sale to fisherman, but maintain no food commissaries. They are located where food and necessities may be easily obtained.

he has a contract. Fish caught are picked up at regular intervals by a tender of the member company, a tally of the catch is made, and the fish are transported by the tenders to the cannery.

The fish price to be paid by the member company to its fishermen is negotiated by the Petitioner and/or the Intervenor with ASI before the beginning of the season, and varies according to the type of fish caught. A record of the season's catch for each fisherman is kept by the member company. The price paid per fish to an independent fisherman is a little more than that paid to a company fisherman, to compensate the former for the wear and tear upon his boat and equipment. At the end of the season, the member company determines the amount due each fisherman by deducting from the price of the fish caught the amount of credit extended for food and fishing equipment to himself and his crew. The fisherman then apportions the money among his crew members according to their agreement with him.⁵ The member company withholds no deductions for income tax or social security.

Upon the above facts and the entire record in the case, and for reasons more fully set forth in *Alaska Salmon Industry, Inc.*,⁶ we find that the fishermen herein sought are independent contractors, and not employees, within the meaning of the amended act. Accordingly, we find that no question affecting commerce exists concerning the representation of employees of the member companies within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, and we must therefore dismiss the petition.

ORDER

Upon the basis of the entire record in this case, the National Labor Relations Board hereby orders that the petition, as amended, in the instant matter be, and it hereby is, dismissed.

⁵ When Alaska Seldovia Co. contracts with a fisherman, the latter gives the former the names of his crew members. The company then extends credit for food and necessities to each individual crew member so long as he is working for that fisherman. At the end of the season, the fisherman informs the company's bookkeeper how to apportion the money due among the fisherman and his individual crew members, and the bookkeeper makes out the checks for each person less his respective charges. The fisherman, and not the company, determines the percentage each crew member receives.

⁶ *Matter of Alaska Salmon Industry, Inc.*, 81 N. L. R. B. 1335, *supra*. Because we are dismissing the petition as amended for the reasons stated, we find it necessary to pass upon other issues raised by the parties.