

ALASKA SALMON INDUSTRY, INC. *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL 77, CIO, PETITIONER

ALASKA SALMON INDUSTRY, INC. *and* ALASKA FISH CANNERY WORKERS UNION OF THE PACIFIC COAST, CHARTERED BY SEAFARERS INTERNATIONAL UNION, AFL, PETITIONERS. *Cases Nos. 19-RC-453 and 19-RC-517. April 23, 1951*

Supplemental Decision and Certification of Representatives

Pursuant to a Decision and Direction of Election,¹ issued on June 8, 1950, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Nineteenth Region during the months of July, August, and September 1950, among employees in the appropriate unit. On February 1, 1951, a tally of ballots was issued and served upon the parties. The tally showed that of approximately 2,060 eligible voters, 1,203 cast valid ballots, of which 167 were for United Packinghouse Workers of America, Local 77, CIO, herein called UPWA; 964 were for Cannery Workers Union, Local 7-C, International Longshoremen's & Warehousemen's Union, herein called ILWU; 66 were for Alaska Fish Cannery Workers Union of the Pacific Coast, Chartered by Seafarers International Union, AFL, herein called SIU; and 6 were for no union. There were 158 challenged and 21 void ballots.

On February 6, 1951, the SIU filed timely objections to the election. On February 8, 1951, the UPWA likewise filed timely objections to the election. Thereupon, in accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation, and issued and caused to be served upon the parties a report on all objections, dated February 20, 1951, wherein he found that said objections raised no substantial or material issues, and recommended that the objections be overruled. On February 24, 1951, the SIU, and on March 2, 1951, the UPWA, filed exceptions to the Regional Director's report.

In their objections and exceptions, the SIU and UPWA contend that the Board should set aside the election in this case for substantially the following reasons: (1) The ILWU engaged in secondary boycott action for the purpose of forcing the Employer to recognize it as the exclusive bargaining agent of its employees during the period while the petitions in the instant case were pending before the Board, and for the alternative purpose of impressing upon the prospective employees of the Employer the fact that they would have to join the ILWU to secure employment; and (2) the ILWU and the Employer not only executed a contract which on its face

¹ 90 NLRB 168.

accorded preferential treatment to members of the ILWU, but also administered the contract in such a manner that employees who were not members of the ILWU were, in fact, subjected to discrimination with respect to the hire and tenure of employment.

With respect to the first contention of the SIU and UPWA, the Board's records show that the gravamen of this contention was the basis of charges filed by those Unions in Cases Nos. 19-CC-28 and 29. Both the SIU and UPWA filed waivers with the Board prior to the election in this case, whereby they agreed to forego their rights to rely upon any activity of the ILWU alleged as violative of the Act in Cases Nos. 19-CC-28 and 29 as reasons for objecting to the conduct of said election. Hence, although the Board found in those cases that the ILWU had engaged in secondary boycott activity within the meaning of Section 8 (b) (4) (A) and (B) of the Act, the SIU and UPWA are estopped from urging this activity as an objection to the election. Accordingly, without passing upon the question of whether or not the activity complained of in Cases Nos. 19-CC-28 and 29, and raised here, would, absent the filing of waivers, provide sufficient grounds for setting the election aside, we find no merit to the first contention of the SIU and UPWA.

The contract, which is the subject matter of the second contention of the SIU and UPWA, was entered into between the Employer and the ILWU pursuant to a Board-approved stipulation providing for a Board order and a consent decree in Case No. 19-CA-301. Claims that this contract on its face accords preferential treatment to members of the ILWU, and that the contract has been discriminatorily administered were the subject matter of charges filed by both the SIU and the UPWA.² The Regional Director refused to issue complaints in these cases. On appeal, the refusal to issue complaints was affirmed by the General Counsel. With respect to the claim of discrimination, such a finding may be made only in unfair labor practice proceedings; hence, as such proceedings are not before us, and as it is well established that the Board may not review the General Counsel's administrative dismissals of unfair labor practice charges,³ we find, for purposes of this proceeding, no merit to the contention that the contract was discriminatorily administered.

With respect to the claim that the contract accords preferential treatment, similar contentions were made by the SIU and UPWA as long ago as June 1950 when they sought to withdraw the petitions herein. On June 29, 1950, and again on July 13, 1950, the Board denied the requests to withdraw the petitions, as it was satisfied that the contract was executed pursuant to the afore-mentioned stipulation, that identical contracts were offered by the Employer to the SIU and

² Cases Nos. 19-CA-336 and 337, and 19-CB-361.

³ *Times Square Stores Corporation*, 79 NLRB 361.

UPWA, but that such contracts had been refused by these Unions, and that the contract in question contained a permissible recognition clause limited to "members only" of the ILWU. Now, as then, we do not believe that the execution of the contract between the Employer and ILWU could, under the circumstances of this case, constitute interference with a free choice of a bargaining representative at the polls.

On the basis of the foregoing, we find that the objections and exceptions of the SIU and UPWA raise no substantial or material issue with respect to the conduct of the election in this case.

Inasmuch as the tally of ballots shows that a majority of all ballots cast were for the ILWU, and that the challenged ballots are insufficient to affect the results of the election, we shall certify the ILWU as the collective bargaining representative of the employees in the appropriate unit.

Certification of Representatives

IT IS HEREBY CERTIFIED that Local 7-C, International Longshoremen's and Warehousemen's Union, CIO, has been designated and selected by a majority of the employees of the following employer-members of Alaska Salmon Industry, Inc., Territory of Alaska, namely, P. E. Harris Co.; Pacific American Fisheries; Peninsula Packers; Western Fisheries; San Juan Fishing & Packing; Alaska Packers Association; Kodiak Fisheries; Chignik Fisheries, Inc.; Alaska Year Round Canneries; General Fish Co.; Cook Inlet Packing Co.; Seldovia Bay Packers; Emard Packing Company; Ellamar Packing Co.; Cooper River Packing Co.; Port Aslton Packing Co.-San Juan-New England Fish Co.; L. G. Wingard Co.; Red Salmon Co. Columbia River Packers; Superior Packing Co.; Wards Cove Pkg. Co.; Sabastian-Stuart; Libby, McNeill & Libby; Farwest Wrangell Co.; Todd Packing Co.; Nakat Packing Corp.; New England Fish Co. from Orca; and Fidalgo Island Packing Co., in the unit heretofore found by the Board to be appropriate, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

MEMBERS HOUSTON and STYLES took no part in the consideration of the above Supplemental Decision and Certification of Representatives.