

situation, there were no employees within the amended unit either at the time that the original petition was filed, or at the time of the hearing, when the Petitioner amended its proposed unit. Under these circumstances, we find that no question concerning representation of employees of the Employer exists within the meaning of Section 9 (c) (1) of the Act.

We shall, therefore, dismiss the petition without prejudice to the filing of a new petition when the Petitioner may and does make a substantial showing of interest among employees sought.

Order

Upon the basis of the foregoing facts, it is hereby ordered that the petition for investigation and certification of representatives filed in the instant case be, and it is hereby, dismissed without prejudice.

ALASKA SALMON INDUSTRY, INC. *and* BERING SEA FISHERMEN'S UNION,
PETITIONER. *Case No. 19-RC-746. June 15, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Howard A. McIntyre, hearing officer. 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

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

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The Petitioner seeks a unit of resident fishermen, set netters, beachmen, net tenders, boat crews (including cooks on tenders and tally scows), mess house employees, tally men, and utility men employed by the Employer in the Bristol Bay area, excluding office clerical employees, machinists, carpenters, radio operators, doctors and nurses, timekeepers, storekeepers, resident and nonresident inside can-

nery workers, mess house employees serving nonresident inside cannery workers, guards, other employees, and supervisors. The Employer and Alaska Fishermen's Union, herein called the Intervenor, contend that the proposed unit limited to resident employees is inappropriate for bargaining purposes. They further contend that boat crews, mess house employees, tally men, and utility men should be included in a separate bargaining unit, alleging a separate bargaining history for employees in these categories.

The Employer is a nonprofit corporation composed of member companies who are engaged in the catching and canning of salmon in Alaska.¹ Since 1902 the Employer has bargained with the Intervenor and its predecessor for fishermen, set netters, beachmen, and net tenders operating in the Bristol Bay area. In 1937 the Employer recognized the Intervenor as bargaining representative for its boat crews, mess house employees, tally men, and utility men employed in the same area. The Employer and the Intervenor thereupon entered into a supplemental agreement setting up scales for wage payments covering these new categories and making the master contract covering fishermen and other categories both applicable to the new categories and an integral part of the supplemental contract. Since that time the parties have continued to make their master contract applicable to employees in all categories represented by the Intervenor and have continued to set forth in a separately executed document, expressly incorporating the master agreement, provisions for the compensation of boat crews, mess house employees, tally men, and utility men.

All these contracts have covered employees in the categories named without regard to residence. Cannery workers of the Employer, on the other hand, for reasons set forth in the earlier decision cited above, have traditionally bargained in separate units of resident and nonresident employees, respectively. The considerations which prompted the Board to separate for purposes of collective bargaining, resident and nonresident cannery workers do not obtain in the matter of fishermen and the related categories herein concerned.

In view of the long bargaining history for resident and nonresident fishermen and related categories in a single bargaining unit, and the absence of any showing that essentially different working conditions now obtained among these employees on the basis of their residence, we reject the primary contention of the Petitioner for a

¹The business of the Employer and its members is set forth in an earlier decision. *Alaska Salmon Industry, Inc., et al.*, 61 NLRB 1508.

In accordance with the agreement of the parties, we find that the Employer's fishermen in the Bristol Bay area, unlike Alaskan fishermen in other areas, are employees of the Employer and not independent contractors. See *Alaska Salmon Industry, Inc.*, 81 NLRB 1335; 82 NLRB 1056.

separate unit of resident workers.² We likewise reject the contention of the Employer and the Intervenor that past bargaining history justifies a separate bargaining unit for boat crews, mess house employees, tally men, and utility men, as set forth above. It is true that employees in these categories were first included in the bargaining negotiations between the Employer and the Intervenor more than 30 years after negotiations had first been had for fishermen, and that wage agreements for the added group were set forth in a separate document. The fact, however, that the master contract and the supplemental contract were executed on the same day and the master contract was expressly made part of the supplemental contract precludes our finding that the later added employees were regarded as a separate bargaining unit by the contracting parties. Moreover, the common working conditions of all employees in the work categories sought by the Petitioner reflect their common interests and indicate they properly form a single bargaining unit.

On the basis of the above facts, and the entire record in this case, we find that all resident and nonresident fishermen, set netters, beachmen, net tenders, boat crews (including cooks on tenders and tally scows), mess house employees, tally men, and utility men employed by the Employer in the Bristol Bay area, excluding office clerical employees, machinists, carpenters, radio operators, doctors and nurses, timekeepers, storekeepers, resident and nonresident inside cannery workers, mess house employees serving nonresident inside cannery workers, guards, other employees, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The salmon industry is highly seasonal. Fish and Wild Life Service of the Department of the Interior determines the extent of the open fishing season for salmon in the Bristol Bay area and designates the specific days during this period when fishing may be done. The open season runs approximately from June 25 to July 25. Seventeen possible fishing days are anticipated during the 1951 season. The Employer's superintendent may, however, stop the delivery of fish to the Employer before the close of the salmon fishing season determined by the Government. Payment for services performed during the season by employees in the appropriate unit is computed at the close of the season.

We shall direct the Regional Director to hold an election at such time in the discretion of the Regional Director as there is peak employment and there are no unfair labor practice charges present,

² The Board has consistently refused to establish units based upon special considerations unrelated to work interests and functions. See *U. S. Bedding Company*, 52 NLRB 382; *The Colorado Fuel & Iron Corporation*, 67 NLRB 100. The instant record does not show special considerations related to work interests for residents and nonresidents, respectively.

among employees in the appropriate unit who are employed on a day to be selected by the Regional Director when a representative number of such persons may be employed, subject to the limitations set forth in the Direction of Election.

[Text of Direction of Election omitted from publication in this volume.]

THE JACOBS MANUFACTURING COMPANY *and* LOCAL 379, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO. *Case No. 1-CA-513. June 18, 1951*

Decision and Order

On June 28, 1950, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case. It hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent that they are consistent with the additions and modifications hereinafter set forth.

1. In July 1948, the Respondent and the Union executed a 2-year bargaining contract which, by its terms, could be reopened 1 year after its execution date for discussion of "wage rates."¹ In July 1949 the Union invoked the reopening clause of the 1948 contract, and thereafter gave the Respondent written notice of its "wage demands." In addition to a request for a wage increase, these demands included a request that the Respondent undertake the entire cost of an existing group insurance program, and another request for the establishment of a pension plan for the Respondent's employees. When the parties met thereafter to consider the Union's demands, the Respondent refused to discuss the Union's pension and insurance requests on the

¹ Article XIX, section 5, of the 1948 contract stated: "After the expiration of one year from the date hereof either party may request a meeting after fifteen days' written notice, the purpose of which shall be to discuss wage rates of employees covered by this agreement . . ."