

In the Matter of A. A. FAGEN, ET AL., EMPLOYERS and EAST COAST
FISHERMEN'S ASSOCIATION, INC., PETITIONER

Cases Nos. 10-R-2410; 10-R-2411; 10-R-2413; 10-R-(2416-2419);
10-R-2421, 10-R-2422; 10-R-(2424-2428).—Decided April 29,
1947

Mr. Amedeo A. Meitin, of St. Augustine, Fla., for the Employers.
Dunham & Dunham, by Mr. Donald Dunham, of St. Augustine,
Fla., for the Petitioner.

Miss Irene R. Shriber, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

Upon separate petitions¹ duly filed, the National Labor Relations Board on January 29, 1947, conducted separate prehearing elections among employees of the Employers in the units alleged to be appropriate to determine whether or not they desired to be represented by the Petitioner for the purposes of collective bargaining.

At the close of the elections, Tallies of Ballots were furnished the parties. The election results as revealed in the Tallies are listed in Appendix A, herein.

Thereafter, a hearing was held at St. Augustine, Florida, on February 26, 1947, before Alba B. Martin, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

Each of the Employers² does business in St. Augustine, Florida, as an individual owner or a partnership and is engaged in catching shrimp and other seafood in the Atlantic Ocean and the Gulf of Mexico.

¹ These cases were ordered consolidated by the Board on February 17, 1947.

² The names of the individual Employers are listed in Appendix A.

Annually, each Employer sells more than \$15,000 worth of seafood, 75 percent of which is shipped to points outside the State of Florida.

All the Employers herein admit, and we find, that each of them is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

East Coast Fishermen's Association, Inc., is an unaffiliated labor organization, claiming to represent employees of each of the Employers.³

III. THE QUESTION CONCERNING REPRESENTATION

Each of the Employers refuses to recognize the Petitioner as the exclusive bargaining representative of its employees until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce has arisen concerning the representation of the employees of each of the Employers herein, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

We find, in accordance with a stipulation of the parties, that all the fishermen who operate and work on the boats of each of the Employers, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

The following issues were raised at the hearing relative to the afore-mentioned elections:

Employers Sam Ursino in Case No. 10-R-2418 and T. O. Taylor in Case No. 10-R-2413 contend that a majority of their respective employees did not vote for the Petitioner and that the election results are inconclusive. The record shows that at the time of the elections there were five eligible voters in Ursino's employ, two of whom cast ballots, both of which were for the Petitioner; and that there were four eligible voters in Taylor's employ, two of whom cast ballots, both

³ At the hearing, the Employers contended that the Petitioner, a Florida corporation, is not a labor organization within the meaning of the Act because it has no authority under its charter to negotiate and enter into contracts with employers on behalf of its members. This contention is lacking in merit. The Petitioner is given "full power to contract, sue and be sued" under its charter and has been designated by employees to represent them for the purposes of collective bargaining. It is, therefore, a labor organization within the meaning of Section 2 (5) of the Act.

of which were for the Petitioner. The Board and the courts have consistently held that "majority" means a majority of the valid votes cast in the election, subject to the qualification that the results of the balloting be representative.⁴ We find that a representative vote was had among the employees of Employers Sam Ursino and of T. O. Taylor and that the Petitioner was selected by a majority of the employees in the appropriate units.

In Case No. 10-R-2416, the Employer Salvadore Fazio claims that he had no eligible voters in his employ at the time of the election. The record shows that Fazio has one boat operated by two of his sons, aged 16 and 18, respectively. The father pays the sons no regular wages, but furnishes them with pocket money. Neither of these two sons voted in the election. Fazio, however, has a third son, Frankie, who is the owner of a boat. Since April 1946, Frankie has been serving with the Army in the Pacific area. Before his departure, Frankie instructed his father to put Harry Brown in charge of his boat. Brown has been operating Frankie's boat since that time with the assistance of a helper, Joe, whom Brown hired. Fazio pays Brown and Joe for their work. Brown and Joe turn over their catch to Fazio who in turn sells the fish. Fazio does not keep records to distinguish between the fish caught in Frankie's boat and that caught in his own boat. Instead, he commingles the fish from both boats, sells them, and deposits the proceeds therefrom in his own bank account, without any accounting to Frankie. We agree with Fazio's contention that his two sons who operate his boat are not his employees within the meaning of the Act.⁵ We do find, however, that Fazio controls the employment of Brown and Joe and that both these fishermen are Fazio's employees. It thus appears, and we find, that Fazio had two eligible voters in his employ at the time of the election.

In Case No. 10-R-2424, involving the Lopes Shrimp Company, the record shows that seven of the Employer's eight employees cast ballots in the election, three of which were for the Petitioner, three against the Petitioner, and one ballot was challenged. The challenged ballot was that of Michael Johnson and the reason for the challenge was that his name did not appear on the eligible voting list. All parties agreed at the hearing that this omission was inadvertent and that Johnson was, in fact, an eligible voter. The parties further agreed to open and count the ballot of Johnson at the hearing. The record shows that the ballot was for the Petitioner, thereby giving the Petitioner

⁴ *Matter of Steifel Construction Corp.*, 65 N. L. R. B. 925; *Matter of The Central Dispensary and Emergency Hospital*, 46 N. L. R. B. 437; enforced 145 F. (2d) 852; *N. L. R. B. v. Standard Lime and Stone Company*, 149 F. (2d) 435, enforcing 56 N. L. R. B. 522.

⁵ Section 2 (3) of the Act.

a majority of the votes cast by the employees of Lopes Shrimp Company.

The results of the elections held before the hearing among the employees of the Employers show that the Petitioner has secured a majority of the valid votes cast in each case. We shall, therefore, certify the Petitioner as the collective bargaining representative of the employees in the appropriate units.

CERTIFICATION OF REPRESENTATIVES

IT IS HEREBY CERTIFIED that the East Coast Fisherman's Association, Inc., has been designated and selected by a majority of the employees in the units described in Section IV, above, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the aforesaid organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

APPENDIX A

Name of employers ¹	Approximate number of eligible voters	Number of votes cast	Number of votes cast for petitioner	Number of votes cast against petitioner	Number of challenged ballots
A. A. Fagen.....	10	8	6	2	0
A. J. Costello, Jr.....	7	7	4	0	3
T. O. Taylor.....	2	2	2	0	0
Salvadore Fazio.....	2	2	2	0	0
John Fazio.....	6	5	5	0	0
Sam Ursino.....	2	2	2	0	0
Sam Jordan.....	4	4	4	0	0
Frank Recupero and Charles DeShosha d/b/a Quality Sea Food Co.....	13	10	10	0	0
Angelo Militello.....	5	5	5	0	0
Jack Lopes d/b/a Lopes Shrimp Co.....	8	7	3	3	1
C. Tringali.....	3	2	2	0	0
S. Daniele, F. Daniele, and C. Daniele d/b/a St. Augustine Fisheries.....	3	3	3	0	0
Felix Salvadore and John R. Salvadore d/b/a S. Salvadore Sons.....	10	7	6	0	1
N. Poll.....	5	3	3	0	0

¹ The business of all the Employers is located in St. Augustine, Florida.