

tween the Employer and the Intervenor "on behalf" of Local 2816. It is significant that during this period, although the language used clearly indicated that the international was acting as the agent of Local 2816, it apparently was the practice for both international and Local 2816 officers to sign the contracts.

The contracts subsequent to 1948, including the one urged in bar in this case, changed the introductory language so as to make the agreement one between the Employer and "The United Steel Workers of America and its Local #2816." However, I cannot attach the significance to this modification that my colleagues apparently do. The change is unexplained and there is nothing in the record to suggest that after 1948 it was intended that the international should no longer be the primary contracting party for the Union, as its constitution continues to require, acting essentially as the agent of the local. Nothing in the contract specifies that it is not effective until signed both by international and local officers. Nor is the fact that provision is made for signature by local officers of any real significance; for, as I have pointed out above, similar provision was made during the period of time when the contract specifically indicated that the international was acting *on behalf* of the local.

The parties to the November 14, 1951, agreement considered that they had executed a binding, effective agreement. In view of the constitutional authority of the Intervenor, and in the absence of any provision in the agreement suspending its effectiveness until approved by the local, I would not go behind the intention of the parties and upset the stability that contract was designed to achieve. Such a view is, in my opinion, far more consistent with the position the Board has in the past taken in comparable cases⁶ than that adopted by my colleagues here.

MEMBER PETERSON took no part in the consideration of the above Decision and Direction of Election.

⁶ See *Montgomery Ward & Co. Inc.*, 68 NLRB 369; *Electro Metallurgical Company*, 72 NLRB 1396; *C. Hager & Sons Hinge Manufacturing Company*, 80 NLRB 163, footnote 3.

ALASKA SALMON INDUSTRY, INC. and BERING SEA FISHERMEN'S UNION,
PETITIONER. *Case No. 19-RC-746. April 17, 1952*

Supplemental Decision, Order, and Amended Direction of Election

On June 15, 1951, the Board issued a Decision and Direction of Election in this proceeding,¹ finding appropriate a unit of resident and nonresident fishermen, set netters, beachmen, net tenders, boat crews

¹ 94 NLRB 1211.

98 NLRB No. 179.

(including cooks on tenders and tally scows), mess house employees, tally men, and utility men employed by the Employer in the Bristol Bay area in Alaska, 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, thereby rejecting the Petitioner's primary claim that a unit restricted to resident workers in these categories was appropriate for bargaining purposes. Because of pending unfair labor practice charges, no election was held within the time provided. On July 12, 1951, the original direction of election was amended to provide that the election be conducted at a time in the discretion of the Regional Director when there was peak employment and no unfair labor practice charges pending.

On February 29, 1952, the Petitioner filed a motion for reconsideration of the unit, seeking to reopen the record for this purpose. The Employer and Alaska Fishermen's Union, the Intervenor herein, oppose the motion. For reasons which hereinafter appear, the Board has decided, on the basis of the instant record, to grant the motion in part and modify its decision on the unit issue. The request to reopen the record is therefore denied.

Upon the entire record in this case, the Board makes the following:

Supplemental Findings of Fact

As noted in the original decision, the Employer is a nonprofit corporation composed of member companies who are engaged in the catching and canning of salmon in Alaska. Since 1902 the Employer has bargained with the Intervenor and its predecessor for fishermen, set netters, beachmen, and net tenders operating in the Employer's 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 related categories 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 an earlier decision,² have traditionally bargained in separate units of resident and nonresident employees, respectively.

In view of this bargaining history for resident and nonresident fishermen and related categories in a single bargaining unit, the Board originally rejected the primary contention of the Petitioner for a separate unit of resident workers. On a reexamination of the record and the different working conditions which presently appear to obtain among these employees on the basis of their residence, we are inclined to modify our finding and set up a separate unit for resident fishermen if they so desire.

Boat fishermen traditionally work in pairs, and their work is hazardous. Nonresidents and residents are never paired in the same boats. They do not bunk together. Fishermen live on the boats during continuous fishing days. Residents are inclined to eat independently and not at the Employer's mess. A cleavage on a resident basis thus obtains in these essential living and working conditions. By law, all set netters, which comprise approximately 600 of the approximately 1,600 fishermen working in 1950, were all residents. Of the remaining boat fishermen in 1950, approximately 300 were residents, as against 600 nonresident fishermen. Residents are almost entirely dependent on the fishing season for their livelihood.³ Less than 5 percent of residents in any one year go "out," and most residents never go out of Alaska. Their entire interests center in developing homes, schools, and community services in the Bering Sea area. Nonresident fishermen, on the other hand, have opportunity to fish along the Pacific Coast from Washington down to South America, moving as the fishing season moves, or they easily find other varied employment. They live in the Alaska area only for about a month and entirely on company property. They have no essential interest in developing Alaska as a desirable place for a year-round living. In fact, their employment in the industry year after year is entirely dependent on the continuance of the shortage of labor supply in Alaska to meet the high demand for seasonal workers. At the present time, there are admittedly not enough resident fishermen to supply cannery needs. Only residents are primarily interested in local conditions.

Bargaining for fishermen began in 1902 when residents were natives of Alaska and at that time not skilled fishermen for cannery purposes. Before 1935, "residents" included, however, not only natives, but

² *Alaska Salmon Industry, Inc.*, 61 NLRB 1508.

³ There is no profitable trapping available in the Bering Sea area, and employment in logging camps has terminated. Because no money is available to start the operations of gold, silver, and tin mines, mining jobs are not available.

Scandinavians and others drawn to Alaska by depression and need. With opportunities, natives improved their skill and learned new methods. Based on their previous low averages, they were, however, granted poor fishing sites and allotted inferior boats and used nets by the Employer. They could not obtain a high catch of fish and improve their fishing averages with this equipment.

In 1935, to better their conditions, residents formed a local union, and for 2 years, from 1935 to 1937, negotiated with the Employer for resident workers, receiving to some extent the benefits which the Intervenor secured for its adherents under its formal written contracts with the Employer. Residents bought a hall for their union meetings, which they have since retained as a community hall. In 1937, on the promise of fair treatment, residents abandoned their local union and joined the Intervenor. From 1947 to date, bargaining has been on a single unit basis for resident and nonresident fishermen and conducted by the Intervenor at its headquarters in Seattle.

Resident and nonresident cannery workers have admittedly bargained on a resident basis for a number of years. Nonresident cannery workers, originally Chinese, insisted on separate sleeping accommodations and a separate mess. Chinese were later replaced by Japanese, and Japanese later by Filipinos. Of resident cannery workers, 95 percent are natives. Resident and nonresident cannery workers are now freely interchangeable and work under common supervision. Bargaining, however, has continued on a resident basis even though the original reason no longer exists. A greater divergence of living and work conditions apparently exists today between resident and nonresident boat fishermen than has existed in recent years among cannery workers.

Reviewing the entire record herein, we believe that the working interests of resident fishermen are sufficiently divergent from those of nonresident fishermen to justify a separate unit for resident fishermen and related categories if they so desire. We therefore find that all 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 in Alaska, 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 within the meaning of the Act, may constitute a unit appropriate for the purposes of collective bargaining within Section 9 (b) of the Act.

We shall direct an election among these employees to be held during the peak of the next fishing season at a time to be selected by the Regional Director, when there is peak employment and a representative number of persons in the proposed unit may be employed, subject to the limitations set forth in the amended direction of election. If a majority of those voting select the Petitioner, they will be taken to have expressed their desire to constitute a separate appropriate unit represented by the Petitioner. We will not direct that an election be held among nonresident fishermen and related workers in these categories inasmuch as the Petitioner does not seek to represent nonresidents apart from residents, and no question appears to exist concerning their separate representation at this time.

Order

IT IS HEREBY ORDERED that the Decision and Direction of Election in the instant proceeding, issued by the Board on June 15, 1951, and amended on July 12, 1951, be, and it hereby is, vacated and set aside insofar as it is inconsistent with this Supplemental Decision and Amended Direction of Election.

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

MAGNOLIA PETROLEUM COMPANY *and* OIL WORKERS INTERNATIONAL UNION, CIO. *Case No. 16-CA-348. April 21, 1952*

Decision and Order

On September 14, 1951, Trial Examiner Louis Plost 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 brief.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this proceeding to a three-member panel [Chairman Herzog and Members Murdock and Styles].