

ballots shall be in conformity with the Board's Rules and Regulations." As discussed above, the Board's Rules and Regulations require the use in a runoff election of the eligibility date used for the first election. Accordingly, and in the absence of any amendment of the stipulation by the parties thereto, we find that the parties were bound by the provisions of the stipulation and in turn the Board's Rules and Regulations with respect to the runoff election eligibility date.⁴ We therefore adopt the Regional Director's recommendation that objection 2 be overruled.

As we have sustained 57 of the 58 challenges and the 58th challenge can no longer affect the results of the runoff election, as we have overruled the objections to the runoff election, and as CWA has received a majority of the valid votes cast in the runoff election, we shall certify CWA as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified Communications Workers of America, AFL-CIO, as the designated collective-bargaining representative of the employees in the appropriate unit.]

⁴As indicated by the Regional Director, even an agreement by the parties might not permit the setting of a different eligibility date for the runoff election. See *Cone Brothers Contracting Co.*, 109 NLRB 483, where the Board in similar circumstances held that a material deviation from Section 102.62 of the Rules and Regulations was not warranted and would not be consistent with good administration of the Act.

Alaska Salmon Industry, Inc. and Peter Patrick Mendelsohn.
Case No. 19-CA-1362. November 27, 1957

DECISION AND ORDER

On April 2, 1957, Trial Examiner Howard Myers 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 he cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report, together with a supporting brief.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board had delegated its powers in connection with this case to a three-member panel [Members Murdock, Rodgers, and Bean].

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 Inter-

mediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications noted below.

We find merit in the following exceptions of the General Counsel: (1) to the Trial Examiner's finding in his conclusions of law of the Intermediate Report that the Respondent violated Section 8 (a) (3) rather than Section 8 (a) (4) of the Act; (2) to the Trial Examiner's failure to find in his conclusions of law that such conduct was also violative of Section 8 (a) (1) of the Act; (3) to the Trial Examiner's failure to recommend a remedial order respecting such 8 (a) (1) violation of the Act, as contemplated in the section of the Intermediate Report entitled "The Remedy"; (4) to the Trial Examiner's failure to recommend that the Respondent be ordered to select Mendelsohn for hiring in the next season on the basis of his seniority and preferential employment rights in the 1956 season under the terms of the Respondent's contract with the International Longshoremen's and Warehousemen's Union, Local #37; (5) to the Trial Examiner's incorrect finding that Mendelsohn was hired by the Respondent during the 1955 season as a reform feeder rather than a cooler loader. The Trial Examiner's findings of fact and conclusions of law, adopted herein, are modified in accordance with the foregoing exceptions. We find that such additions and corrections are necessary to effectuate the purposes of the Act.

We find it unnecessary to pass upon a further exception by the General Counsel to the effect that the Respondent should be required to induce its members to accept Mendelsohn for employment when he is eligible therefor. The directives of our order, including those concerned with the reemployment rights of Mendelsohn, apply to both the Respondent *and* its members.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Alaska Salmon Industry, Inc., Seattle, Washington, its officers, agents, successors, members, and assigns, shall

1. Cease and desist from:

(a) Discharging, refusing to hire, or otherwise discriminating against any employee or prospective employee of its members because he filed charges under the Act.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Longshoremen's and Warehousemen's Union, Local #37, or any other labor organiza-

tion, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to select Peter Patrick Mendelsohn for employment in the next season on the basis of his seniority and preferential employment rights in the 1956 season under the terms of the Respondent's contract with International Longshoremen's and Warehousemen's Union, Local #37.

(b) Make whole Peter Patrick Mendelsohn for any loss of pay suffered as a result of the Respondent's discrimination against him during the period extending from June 14, 1956, to the time the Respondent makes an offer of selection for employment to Mendelsohn.

(c) Preserve and make available to the National Labor Relations Board or its agents upon request, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the rights of employment under the terms of this Order.

(d) Post at its offices in Seattle, Washington, copies of the notice attached hereto and marked "Appendix,"¹ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent's duly authorized representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify, in writing, all its members and all other firms for whom it acts as dispatching or hiring agent that it does not object to the employment of Peter Patrick Mendelsohn.

(f) Notify Peter Patrick Mendelsohn, in writing, that it has so advised its members and the other employers for whom it acts as dispatching or hiring agent.

(g) Mail to the Regional Director copies of the said notice attached hereto as Appendix for posting by International Longshore-

¹ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

men's and Warehousemen's Union, Local #37, it being willing, in places where notices to members are customarily posted. Copies of such notice are to be furnished by the Regional Director.

(h) Notify the Regional Director in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

APPENDIX

NOTICE TO ALL OUR EMPLOYEES AND TO ALL EMPLOYEES AND PROSPECTIVE EMPLOYEES OF OUR MEMBERS

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discharge or refuse to select for hiring by any member of our organization or by any firm or individual for whom we act as dispatching or hiring agent any employee or prospective employee because he filed charges under the National Labor Relations Act.

WE WILL offer to select Peter Patrick Mendelsohn for employment in the next season on the basis of his seniority and preferential employment rights in the 1956 season under the terms of our contract with International Longshoremen's and Warehousemen's Union, Local #37.

WE WILL make Peter Patrick Mendelsohn whole for any loss of pay suffered as a result of our discrimination against him.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Longshoremen's and Warehousemen's Union, Local #37, or any other labor organization, to bargain collectively through a representative of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

ALASKA SALMON INDUSTRY, INC.,
Employer.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge duly filed on June 25, 1956, by Peter Patrick Mendelsohn, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel¹ and the Board, issued a complaint, dated January 4, 1957, against Alaska Salmon Industry, Inc., herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (4) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

More specifically, the complaint alleged that since on or about June 14, 1956, Respondent has discriminatorily refused to select Mendelsohn as an employee for one of its members for hire because he had filed a charge under the Act against Pacific American Fisheries, Inc., a Respondent member.

On January 9, 1957, Respondent duly filed an answer denying the commission of the unfair labor practices alleged.

Pursuant to due notice, a hearing was held on January 22 and 23, 1957, before the duly designated Trial Examiner. The General Counsel and Respondent were represented by counsel. Full opportunity was given all parties to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, and to file briefs within 20 days of the close of the hearing.² No briefs were received.

During the course of the deposition of Sharpe, the General Counsel objected to certain questions propounded by Respondent's counsel and the General Counsel also moved to strike certain answers. The objection appearing on page 11 of the deposition and the two objections appearing on page 16 are sustained;³ the objection appearing on page 13 is overruled; and the motions appearing on pages 10 and 27 are granted.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. RESPONDENT'S OPERATIONS

Alaska Salmon Industry, Inc., a Delaware nonprofit corporation, has its principal offices in Seattle, Washington. Respondent is composed of companies engaged in the catching and canning of salmon in Alaska. Respondent exists for the purpose, among others, to serve as the collective-bargaining representative for its members and to maintain and supervise a hiring hall used for the selection of persons to be seasonally employed by its members.

The member companies of Respondent annually sell and ship salmon valued in excess of \$10,000,000 from Alaska to points located throughout the United States.

Upon the above-undened facts, the Trial Examiner finds that, during all times material herein, Respondent has been, and now is, engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act for the Board to assert jurisdiction in this proceeding.

II. THE LABOR ORGANIZATION INVOLVED

International Longshoremen's and Warehousemen's Union, Local #37, is a labor organization admitting to membership employees of the company-members of Respondent.

III. THE UNFAIR LABOR PRACTICES

The sole question here to be resolved is whether Respondent refused to select Mendelsohn for employment by any of its members for the 1956 Alaska salmon season because he had filed a charge with the Board alleging that Pacific American Fisheries, Inc., a Respondent member, had discriminatorily refused to hire him

¹ This term specifically includes counsel for the General Counsel appearing at the hearing.

² The hearing was formally closed on February 18, 1957, on which day the deposition of Walter P. Sharpe, which was taken on February 13, pursuant to stipulation by and between the General Counsel and Respondent, was filed with the Trial Examiner.

³ The answers given over the objections of counsel naturally fall when objections are sustained.

and had blacklisted two other named persons. The credible evidence,⁴ as epitomized below leads to the inescapable conclusion that the question must be resolved against the Respondent.

Since the 1952 Alaska salmon season⁵ Mendelsohn has obtained employment through International Longshoremen's and Warehousemen's Union Local #37, herein called Local 37, which for many years prior to 1956, has had collective-bargaining agreements with Respondent covering certain employees and prospective employees of Respondent's employer-members.

The hiring provisions of the 1956 contract pertinent to the issues raised by the pleadings herein read as follows:

SECTION 2—HIRING PROCEDURE

(a) To insure against discrimination or coercion by any party in the employment of persons covered by the scope of this agreement and to insure each person a fair chance of employment, it is agreed that all employees shall be employed in accordance with the following procedure:

(b) All employees except foremen and second foremen shall be employed and dispatched from a central employment office designated by and under the supervision and control of the Alaska Salmon Industry, Inc., which shall designate one of its employees to act as supervisor thereof. The supervisor shall be present at all times when employment and dispatching is in progress. Employment shall be in accordance with the following preferences and rules:

Preferences

FIRST: To any employee who worked under the terms of the 1955 contract in the bargaining unit and who has not terminated as provided in the 1955 agreement and who is available for employment shall be given first preference at the cannery where he was employed in 1955; provided, further, that fill-ins and additions at the operating plant in a consolidation are to be selected from the 1955 employees of the plant closed due to the consolidated operation or from 1955 employees of other closed plants of the companies participating in the consolidation, who are eligible under terms of the agreement for a first preference in canneries in which employed in 1955 but which are closed in 1956.

First preference to apply to those canneries closed in 1954 and 1955 but reopened in 1956.

First preference shall be given to those employees not terminated as provided in the contract, who worked at a cannery in 1953 but which was closed in 1954 and 1955 and is to be reopened in 1956.

If the operating plant is operating in consolidation with another plant which was closed in 1954-1955 and is not reopening in 1956, the 1953 employees of the closed plant in the consolidation shall have first chance for fill-ins at the operating plant.

SECOND: To any employee who worked under the terms of the 1955 contract in the bargaining unit who has the necessary skill, experience, and qualifications to fill the job and who is available for employment shall be given preference of employment in any other cannery.

THIRD: Any employee who worked under the terms of the 1953 and/or 1954 agreements in the bargaining unit who has the necessary skill, experience and qualifications to fill the job and who is available for employment shall be given third preference of employment.

⁴ The evidence found to be credible is based mainly on the testimony, most of which is undented, of Mendelsohn, Chris Mensalvas, president of Local #37, and of Gene Navarro, business agent of Local #37. The Trial Examiner has accepted as substantially correct the testimony of the aforesaid three persons and has rejected Sharpe's version of the events in question mainly on (1) his observation of the conduct and deportment at the hearing of Mendelsohn, Mensalvas, and Navarro; (2) a careful scrutiny of the record, including Sharpe's deposition, all of which has carefully been read, and parts of which have been reread and rechecked several times; (3) the mutual corroboration, on many important matters, of the testimony of Mendelsohn, Mensalvas, and Navarro; (4) the candor with which Mendelsohn, Mensalvas, and Navarro admitted that they could not be certain as to the dates or the exact words used by Sharpe and others; and (5) Mendelsohn, Mensalvas, and Navarro each impressed the Trial Examiner as being a person who is meticulous in not enlarging his testimony beyond his actual memory of what occurred.

⁵ Each season is of 2 months' duration.

FOURTH: Other persons satisfactory to the company, including but not limited to members of the Union or men recruited for employment in the Alaska canneries by the union; provided, however, that previous employees in the industry shall be given first consideration in this class.

During the 1955 season Mendelsohn was hired as a reformer for Pacific American Fisheries, Inc., herein called PAF, at its Port Moller cannery.⁶ By letter, dated September 1, 1955, PAF notified Local 37 that it would not rehire Mendelsohn and two other named persons for the 1956 season because they had "fomented and agitated among the crew." Upon being advised by Local 37 of said notification, Mendelsohn requested Local 37 to protest the dismissal and process the matter through the then current contract grievance procedure. Local 37 sent the requested protest to PAF, and there, as far as the record discloses, the matter ended.

On June 4, 1956,⁷ Mendelsohn went to Local 37's headquarters and there registered for employment. After his membership status had been approved he was informed by the secretary of Local 37 that since he was not returning to the cannery at which he had worked the previous season he would have to fill out, sign, and file a form stating, among other things, the name of his last cannery employer and the job he last held. Upon completing and filing the necessary form, Mendelsohn received a clearance.

On June 6, several hundred persons seeking employment met at Local 37 where the selection of employees for the 1956 season commenced with Walter P. Sharpe and J. Steele Culbertson, Respondent's assistant managers, representing the employers and Local 37 was represented by its dispatcher and assistant dispatcher. The first to call for employees under the first preference category was PAF Port Moller Cannery. Because PAF had stated the previous fall that it would not rehire Mendelsohn his name was not called. However, just prior to the commencement of the PAF first preference call, Mendelsohn approached Delphinio Cordero, PAF's cannery foreman, who was seated at the hiring hall table with Sharpe and Culbertson. He was at that table because his duty was to pass upon the qualifications, among other things, of the persons tentatively selected for employment by Sharpe and Culbertson. According to Mendelsohn's uncontradicted and credible testimony, the following ensued during the conversation he had at that time with Cordero:

I asked him (Cordero) if he would give me a chance to go back, and he told me he had no objection to me working there, but he couldn't take me because if he hired me he would be fired. So I told him that there was a new superintendent at this plant now, and since the trouble was between the superintendent and me, and he knew it had nothing to do with my work, I couldn't see why he would be fired, why he couldn't hire me. But he said he couldn't take a chance. . . .

The following day, June 7, Mendelsohn attended the 10 a. m. PAF fill-in call but his name was not called.⁸ He was also present at 1 p. m. fill-in call for the Chignik cannery of the Alaska Packers Association, herein called APA. Since all the available jobs were filled by persons previously employed at this cannery, Mendelsohn's name was not called.

On June 8, Mendelsohn filed a charge with the Board's Seattle Regional Office (Case 19-CA-1357) alleging:

On or about June 7, 1956, it (Pacific America Fisheries Inc.) refused to employ Peter Mendelsohn because of his activities on behalf of International Longshoremen's and Warehousemen's Union, Local #37. It also blacklisted Jack Shishido and Fred Gonzales for the same reason.⁹

On June 13, Mendelsohn attended the first preference call for the APA Naknek cannery. Since he did not hold a first preference position with that cannery, his

⁶ During this employment, as well as during the 3 or 4 previous seasons he had worked for PAF, Mendelsohn also performed other jobs, such as cooler loader, machine operator, fish pusher, etc.

⁷ Unless otherwise noted, all events hereinafter mentioned refer to 1956.

⁸ At each call Sharpe was Respondent's representative. Culbertson also was present at each call, except the first few. Either Sharpe or Culbertson had charge of the calls and the representatives of Local 37 merely attended for the purpose of protecting the rights of the members of Local 37.

⁹ On November 1 the Regional Director dismissed the charge on the sole ground that it was not timely filed.

name was not called. However, he did ask Marcellis Devina, the Naknek cannery workers' foreman,¹⁰ for a job but received none.

On June 14 calls were had for first preference for four canneries and a fill-in call for the APA Naknek cannery. When the fill-in call for APA Naknek commenced, Mendelsohn was standing within a foot or so of the head of the hiring table where Sharpe was seated. When Mendelsohn observed that men were being selected for jobs who had less priority than he, he demanded to know of those at the hiring table why his name had not been called. Thereupon, according to Mendelsohn's undenied and credible testimony, the following ensued:

... And when I threw my [clearance] card [on] the table Mr. Devina immediately shouted, "I don't want this man, he was blackballed from Pacific-American Fisheries by Delfino (PAF's cannery workers' foreman). . . ." And I stated, "I was not blackballed because of my work, I was blackballed because of Union activity. . . ." Suddenly Mr. Sharpe says to me, he says, "I didn't call your name," he says, "get back and wait until I call you." And at the time when I threw my card in the dispatcher Ted Daddeo (the dispatcher) had said, "Yes, Mr. Mendelsohn should be called. . . ." Mr. Sharpe said, "You have got a bad record in Alaska. The F. B. I. and the Army Air Force [have] been bothering us continuously about you and giving us bad reports about you. They have bothered us, coming up, looking at our files and all we hear is nothing but bad about you." So I said to Mr. Sharpe, "What do you mean by bad?" I said, "Have you heard anything bad about my work . . . ?" I kept on arguing there and in the commotion he finally got mad and said, "I didn't call [your] name. Get back or you won't get no job."

Mendelsohn further testified credibly and without contradiction that at the conclusion of the aforementioned call he asked Sharpe if he would be given a job; that Sharpe replied that the FBI and the Air Force did not want him to be employed in Alaska; that Sharpe had, to quote Mendelsohn's testimony, "insinuated that I was a subversive"; and that when he asked Sharpe for a minute of his time to explain why the FBI and the Air Force did not want him in Alaska, Sharpe replied, "No, I am going to lunch, I haven't got any time, and furthermore I don't care to know the reason."

During the luncheon period that day, June 14, Mendelsohn explained to Devina why the FBI and the Air Force were "bothering" him. The conversation concluded with Devina stating that he "had a couple of jobs" coming up the next day for people who hadn't passed their physical examinations and that he would consider Mendelsohn for one of those jobs.

About 9 a. m. on June 15, the fill-in call for the APA Egegik cannery commenced. After 9 men had been selected the call was interrupted and a call commenced for men to fill the jobs of those who had been selected the previous day for the APA Naknek cannery, but who were unable to pass the physical examination. During this latter call, Mendelsohn asked Sharpe, in the presence of Devina, whether he was going to be given a job at Naknek since Devina was willing to accept him. Sharpe replied, according to Mendelsohn's credible testimony, "No, I am not going to give you a job . . . I don't care what Devina said. You went to the Labor Board, you started with them, and you can finish with them." Despite Sharpe's statement that he would not be given a job, Mendelsohn remained near the hiring table for about an hour. He became convinced of the futility of waiting longer when he observed a person had been dispatched to the Egegik cannery who had been "blackballed" by PAF and who "had not gone to Alaska the year before."

Upon leaving the hiring table during the Egegik call, Mendelsohn walked over to Chris Mensalvas and Gene Navarro, the president and business agent respectively of Local 37, and again complained to them¹¹ about the fact that his name was not being called for any job. Navarro then went to Sharpe with Mendelsohn's complaint. Sharpe assured Navarro that Mendelsohn would be dispatched to a cannery located in a nonrestricted military area as soon as a job for which Mendelsohn was qualified became available. This information Navarro relayed to Mendelsohn.

¹⁰ Contrary to Respondent's contention, the Trial Examiner finds that cannery workers' foremen, such as Devina, during all times material, were supervisors within the meaning of Section 2 (11) of the Act.

¹¹ Mendelsohn had previously informed Mensalvas and Navarro that Sharpe had refused to dispatch him.

Mensalvas testified, and the Trial Examiner finds, that shortly after June 7, he first spoke to Sharpe about Mendelsohn's name not being called; that Sharpe stated that Mendelsohn could not be sent to Port Moller because Mendelsohn was *persona non grata* at that cannery; that on either June 15 or 16, he again discussed Mendelsohn with Sharpe who stated, "I don't think the Air Force would want him in these restricted areas, but we will see what we can do later on"; that on or about June 19, he had another conversation with Sharpe regarding Mendelsohn during which Sharpe said, in effect, that Mendelsohn "went to the N. L. R. B. and, as far as I am concerned, he can fight it out with the N. L. R. B. as far as his job is concerned," but if he "drops" the charge he filed with the Board "we may consider hiring him."

During the fill-in call for Naknek-Red Salmon cannery, which commenced about 1 p. m. on June 15, Paul Valdez was selected to fill a cooler loader job at that cannery, a job which Mendelsohn had performed at the Port Moller cannery the previous season, even though Mendelsohn was standing near the hiring table when the call was being made and despite the fact that Valdez had not worked in any Alaskan cannery since 1950.

At the conclusion of the Excursion Inlet cannery fill-in call, which took place during the morning of June 19, Mendelsohn again asked Navarro to ascertain why he was not being given a job. Since, as Navarro credibly testified, men were being dispatched to nonrestricted military areas, he asked Sharpe why Mendelsohn was not being given a job, to which Sharpe retorted, "Well, if he wants to be dispatched, he will either drop the case [against PAF] or tell him to come and talk with me." When Navarro reported to Mendelsohn Sharpe's above-quoted statement, Mendelsohn stated that he was not interested in any "deals" but he nevertheless consented to discuss the matter with Sharpe. Thereupon, Sharpe and Mendelsohn went into the dispatcher's office and there the following took place, according to Mendelsohn's credited testimony:

I went in there (dispatcher's office) waiting for him (Sharpe) to speak to me, and Mr. Sharpe never said a word and neither did I, evidently each one was waiting for the other to start, and the start didn't take place, and after a while he got up and walked out, and I walked out, too.

Although that afternoon, June 19, a fill-in call was had for Hawk Inlet cannery, Mendelsohn's name was not called despite the fact he was present nor was Mendelsohn's name called at the 11 a. m. June 19 fill-in call for the Chaltham-New England cannery, although he was in the union hall during the call.

Mendelsohn was present during the June 21 fill-in call for the Port Moller cannery but his name was not called. He was present during a portion of the June 25 first preference call for the APA Larsen Bay cannery but his name was not called. Nor was his name called during the June 26 fill-in call for the APA Larsen Bay cannery although he was present throughout the call.

On or about June 26, Mendelsohn's name was called for a job at the Parks Canning Company located at Nyak, Alaska, but the cannery workers' foreman refused to hire him so Mendelsohn did not get the job.

Although present during the June 27 fill-in calls for the Uganik San Juan cannery, Mendelsohn's name was not called; nor was it called during the June 28 fill-in calls for the Nakat, PAF Alitak, and Snug Harbor canneries, or during the June 29 fill-in call for the Nellie Juan cannery at Copper River; or during the July 3 fill-in calls for the Ketchikan-Fidalgo, Geo. Inlet-Libby, Port Bailey-Kadiak, and Ketchikan-Wards Cove canneries.

On July 6, Mendelsohn's name was called and he was dispatched to a job with the New England Fish Company at the Orka, Alaska, cannery.

Upon the entire record in the case, the Trial Examiner finds that Mendelsohn was not dispatched to any job prior to July 6, for the reasons alleged in the complaint and not for the reasons advanced by Respondent. By such action Respondent violated Section 8 (a) (4) of the Act and since such conduct necessarily interfered with, restrained, and coerced Mendelsohn in the exercise of the rights guaranteed in Section 7 of the Act, Respondent thereby violated Section 8 (a) (1) thereof.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent's members set forth in section III, above, occurring in connection with the operations of Respondent in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent had engaged in certain unfair labor practices violative of Section 8 (1) (A) and (4) of the Act, it will be recommended that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminatorily restrained Mendelsohn from being employed for a certain period commencing on June 14, 1956, the Trial Examiner recommends that Respondent make him whole for any loss of pay suffered by him as a result of its unlawful conduct, by payment to him of a sum of money equal to the amount he normally would have earned as wages from June 14, 1956, until he would have been laid off, absent unfair labor practices. In computing the amount of back pay due Mendelsohn, the customary formula of the Board set forth in *F. W. Woolworth Company*, 90 NLRB 289, shall be followed.

The unfair labor practices found to have been engaged in by the Respondent are of such a character and scope that in order to insure the employees and prospective employees of the members of Respondent their full rights guaranteed by the Act, it will be recommended that Respondent cease and desist from in any manner interfering with, restraining, and coercing said employees and prospective employees in their right to self-organization.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. International Longshoremen's and Warehousemen's Union, Local #37 is a labor organization within the meaning of Section 2 (5) of the Act.
2. Respondent and its employer-members are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
3. By discriminating in regard to the hire and tenure of employment of Peter Patrick Mendelsohn because he had filed with the Board a charge against a member of the Respondent, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
4. The unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

A. O. Smith Corporation, Kankakee Works and Local 311, Office Employees International Union, AFL-CIO, Petitioner. *Cases Nos. 13-RC-5554 and 13-RC-4201. November 27, 1957*

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Robert G. Mayberry, hearing officer.¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.
2. Local 311, Office Employees International Union, AFL-CIO, the Petitioner in Case No. 13-RC-5554, herein called Local 311, and Office Employees International Union, AFL-CIO,² the petitioner in Case No. 13-RC-4201, herein called the International, the labor or-

¹ For purposes of this Decision, Cases Nos. 13-RC-5554 and 13-RC-4201 are hereby consolidated.

² Affiliated only with AFL at the time the petition in Case No. 13-RC-4201 was filed.