

In the Matter of ALASKA PACKERS ASSOCIATION *and* ALASKA CANNERY WORKERS UNION LOCAL NO. 5, COMMITTEE FOR INDUSTRIAL ORGANIZATION

In the Matter of ALASKA SALMON CO. *and* ALASKA CANNERY WORKERS UNION LOCAL NO. 5, COMMITTEE FOR INDUSTRIAL ORGANIZATION

In the Matter of RED SALMON CANNING COMPANY *and* ALASKA CANNERY WORKERS UNION LOCAL NO. 5, COMMITTEE FOR INDUSTRIAL ORGANIZATION

Cases Nos. R-716, R-717, and R-718, respectively.—Decided May 11, 1938

Salmon Canning Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to recognize union as sole bargaining representative; rival organizations—*Employee:* seasonal employment: employer-employee relationship held to exist between companies and group of workers who return season after season—*Units Appropriate for Collective Bargaining:* stipulated categories of cannery workers hired by each company in San Francisco, California, held to constitute separate units; distinct identity of each company; history of collective bargaining relations with employers—*Representatives:* eligibility to participate in choice: determined by employee status with individual company during previous season; proof of choice: comparison of pay rolls and union membership cards; stipulation as to majority—*Certification of Representatives:* upon proof of majority representation.

Mr. John P. Jennings, for the Board.

Pillsbury, Madison & Sutro, by Mr. Marshall P. Madison and Mr. Everett D. Matthews, of San Francisco, Calif., for Alaska Packers Association.

Earl & Hall & Gerdes, by Mr. Chaffee Hall and Mr. Robert H. Gerdes, of San Francisco, Calif., for Alaska Salmon Co.

McCutchen, Olney, Mannon & Greene, by Mr. Edwin S. Pillsbury and Mr. Gerald H. Trautman, of San Francisco, Calif., for Red Salmon Canning Company.

Mr. George R. Andersen, of San Francisco, Calif., and Gladstein, Grossman and Margolis, by Mr. Richard Gladstein, of San Francisco, Calif., for Local No. 5.

Mr. Byron Coleman, of San Francisco, Calif., for A. F. of L. No. 21161.

Mr. Edward D. Mabson, of San Francisco, Calif., for Alaska Filipino Union.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION
AND
CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On March 11, 1938, Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization, herein called Local No. 5, filed with the Regional Director for the Twentieth Region (San Francisco, California) three separate petitions, each alleging that a question affecting commerce had arisen concerning the representation of employees, respectively, of Alaska Packers Association, Alaska Salmon Co.,¹ and Red Salmon Canning Company, herein collectively called the Companies, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On April 5, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On April 11, 1938, the Board, acting pursuant to said Rules and Regulations, further ordered that the cases be consolidated for the purpose of hearing.²

On April 15, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon each of the Companies, upon Local No. 5, upon Alaska Fish Cannery Workers Union, Local 21161, American Federation of Labor, herein called A. F. of L. No. 21161, and upon Alaska Filipino Cannery Workers Union, Inc., herein called the Alaska Filipino Union, the latter two Unions being labor organizations claiming to represent employees directly affected by the investigation. A notice of postponement of hearing was thereafter issued, pursuant to which a hearing was held on April 22, 23, and 25, 1938, at San Francisco, California, before Martin Raphael, the Trial Examiner duly designated by the Board. The Board, each of the Companies, Local No. 5, A. F. of L. No. 21161, and Alaska Filipino Union were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues. At the beginning of the hearing, the Companies, A. F. of L. No. 21161, and Alaska Filipino Union joined in a

¹ Incorrectly designated in the petition as Alaska Salmon Company.

² On April 14, 1938, Local No. 5 filed three amended petitions, each substantially the same as the corresponding original petition.

motion to dismiss the proceeding on the ground that none of the Companies, either at the time the petitions were filed or at the time of the hearing, had any employees who might be subject to an investigation and certification of representatives. This motion was denied by the Trial Examiner whose ruling is hereby affirmed. The Board has also reviewed the other rulings made by the Trial Examiner during the course of the hearing on motions and on objections to the admission of evidence, and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Alaska Packers Association, a California corporation with its principal office in San Francisco, California, operates nine salmon canneries in the Territory of Alaska where it engages in salmon fishing, preparation, and canning. The Company also maintains a fleet of vessels for the transportation to Alaska of most of its employees, equipment, and materials used in its canneries and cannery operations, and for the transportation to California of its employees, canned salmon, and certain equipment at the close of the canning season. The principal materials used by it consist of canning materials (lumber, machinery, tin plate, can ends, box shooks, fiber boxes, salt, labels, pig tin, and pig lead), fishing equipment (linen netting, cotton netting, and piles), and provisions. During 1937, the Company's purchases of such materials amounted to \$1,558,000, almost all of which were shipped from the United States to Alaska. During the same year, it packed 772,659 cases of salmon, of which 547,325 cases were shipped outside California to other States and foreign countries, and 37,500 cases were shipped to points within the State. The canning season of this Company lasts from April to October of each year.

Alaska Salmon Co., a California corporation with its principal office in San Francisco, California, was organized in December 1937 by a merger of Northern Fisheries, Inc., Union Fish Company, Alaska Salmon Company, and Bristol Bay Packing Co. We are here concerned only with the salmon canning operations of Alaska Salmon Co. which were carried on prior to December 1937 by Alaska Salmon Company and Bristol Bay Packing Co. For such activities, which are similar to the activities of Alaska Packers Association, described above, the Company operates two canneries in Alaska and two vessels. In 1937 Alaska Salmon Company and Bristol Bay Packing Co. purchased materials substantially similar to those used by Alaska Packers Association and amounting to \$767,000, most of which were shipped to

Alaska from the United States. In the same year these Companies packed 225,157 cases of salmon of which about 90 per cent were shipped to points outside California. The salmon canning season of Alaska Salmon Co. is from about May 15 to August 15 of each year.

Red Salmon Canning Co., a California corporation with its principal office in San Francisco, California, owns three canneries in Alaska and two vessels which it operates in substantially the same manner and with the use of substantially the same kinds of materials and equipment as described above. In 1937 such purchases amounted to \$225,000, practically all of which were shipped to Alaska from the United States. In the same year it packed 110,000 cases of salmon, and its sales amounted to \$655,807.75, of which \$593,983 represented shipments to points outside California. The canning season of this Company is from about May 15 to August 15 of each year.

II. THE ORGANIZATIONS INVOLVED

Alaska Cannery Workers Union Local No. 5 is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all the cannery workers employed by the Companies in their Alaska canneries, except fishermen, machinists, electricians, pipefitters, welders, boilermakers, blacksmiths, carpenters, diesel engineers, radio operators, beach men, and related crafts. Local No. 5 was first organized in 1936 as Alaska Cannery Workers Union 20195, an American Federation of Labor affiliate. In July 1937, Local No. 5 was chartered by the Committee for Industrial Organization after an overwhelming majority of the members of Alaska Cannery Workers Union 20195 voted to withdraw their affiliation from the American Federation of Labor and to affiliate with the Committee for Industrial Organization.

Alaska Fish Cannery Workers Union No. 21161 is a labor organization affiliated with the American Federation of Labor. Its eligibility requirements for membership are the same as those of Local No. 5. The record shows that A. F. of L. No. 21161 was organized by approximately 350 members of Alaska Cannery Workers Union No. 20195 who withdrew from that Union in July 1937 when it changed its name and affiliation. The American Federation of Labor revoked the charter of this latter organization in the summer of 1937, and chartered A. F. of L. No. 21161 as a federal labor union in September of the same year.

Alaska Filipino Cannery Workers Union, Incorporated, is an unaffiliated labor organization, admitting to membership any person "who can qualify as an Alaska cannery worker."

III. THE QUESTION CONCERNING REPRESENTATION

For the 1936 and 1937 seasons each of the Companies had entered into separate contracts with Alaska Cannery Workers Union 20195 whereby each Company agreed to recognize this Union "as the authorized representative of all salmon cannery workers who come under the jurisdiction of the [Union]." Under these agreements the Companies secured their employees, except residents and natives of Alaska, through this Union at its hiring hall in San Francisco, and all employees who were thus hired signed contracts of employment for the ensuing season.

Early in 1938, Local No. 5 communicated with the Companies and requested each to negotiate a contract for the 1938 season, which would recognize Local No. 5 as the successor to Alaska Cannery Workers Union 20195 and as the exclusive bargaining representative for all cannery workers to be hired for the season. Alaska Packers Association and Red Salmon Canning Company agreed to negotiate with Local No. 5, but refused to enter into closed-shop agreements with it. Alaska Salmon Co. failed to respond to Local No. 5's request.

A. F. of L. No. 21161 likewise requested each of the Companies to negotiate with it for the coming season. The record shows that Alaska Filipino Union also made similar requests upon the Companies.

We find that a question has arisen concerning representation of employees of each of the Companies.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find as to each of the Companies in this proceeding that the question concerning representation which has arisen, occurring in connection with its operations described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

A. *The jurisdictional question*

The Companies, A. F. of L. No. 21161, and Alaska Filipino Union all claim that the Board is without jurisdiction to conduct an investigation or to certify representatives herein for the reason that at the time the petitions were filed and at the time of the hearing none of the Companies had any employees for whom Local No. 5 requested

such investigation and certification of representatives. Their claim is based upon the contention that the employment of the workers involved herein terminates at the end of each season.

The evidence is clear, however, that an employer-employee relationship exists between these cannery workers as a group and the Companies. The record shows that the great majority of these workers return season after season to work for one or another of these Companies. The fact that, as individuals, they may not work for the same Company season after season, does not in any way deprive them of the relationship which they have with all three Companies as a group. In this respect, their status is comparable to that of longshoremen whose employment shifts from day to day among a small group of employers. We have consistently held that longshoremen are employees within the meaning of the Act and it follows that these cannery workers are nonetheless employees entitled to all the benefits accorded employees under the Act. Nor can it be argued that because these cannery workers engage in other occupations in off-season periods, their relationship with the Companies is altered. The record indicates that they constitute a clearly defined group of men to whom the Companies turn year after year for their requirements.

Their present rights as cannery workers who were employed by the Companies in 1937 are demonstrated by the practical construction placed on their status during the past 2 years by the Companies themselves. During the 1936 and 1937 seasons, the Companies hired virtually all of their cannery workers through Alaska Cannery Workers Union 20195, pursuant to the contracts described above. Under the 1936 contracts, the Companies did not select any of its cannery workers; instead they requested the Union to furnish the required number, relying upon the judgment of the Union with respect to the efficiency and other qualifications of the men chosen by it. Under the 1937 contracts the Companies recognized the Union as the representative of its members, and again vested in the Union the discretion of selecting the individual workers. In effect, the Union members constituted a reservoir of employees from year to year for the three Companies.

Our conclusion is buttressed by the clause in the 1937 contracts which contemplated negotiations with the Union for the adoption of a new contract for the following season. Although this clause does not require the Companies to conclude contracts for the 1938 season, nevertheless it reflects the intention of the Companies to accord to those who had worked the previous year a status which was not that of new and prospective employees.

In view of the foregoing facts it clearly appears that each person who was employed in 1937 by any of the three Companies has an interest with respect to employment in all the Companies for the 1938 season. It would be obviously improper, however, to permit any particular worker to assert such interest in more than one of the Companies. Consequently we shall associate the employee status of the individual at the present time with that company which employed him in 1937. We shall, therefore, in determining the representatives herein, consider the desires of the cannery workers in connection with the individual companies which employed them during the 1937 season.³

B. The classification of the employees

All parties stipulated that the following classification of workers who were covered by the contracts described above, should be included within the unit or units found to be appropriate for the purposes of collective bargaining: First and second foremen, first and second cooks, first and second bakers, waiters, dishwashers, pot washers, vegetable men, kitchen helpers, butchers and hand butchers, fish washers, slimers, sorters, fish hookers, hopper and fish bin workers, relief men, knife operators, pew men, cooler men, transfer men, can pilers, fillers, filling reformers, testers, washing machine men, can catchers, retort men, label machine operators and labeling men, elevator men, box wirers, strappers, stitchers, box makers, top men, salt men, solderers, hand packers, can lofters, janitors, and others engaged in cannery work.

Local No. 5, in its petitions, claims to represent cannery workers "hired or shipped out of San Francisco." The record does not disclose, however, whether any of the Unions desire to include in the unit a small number of workers in the above category who were hired in Alaska, although such workers were included in the 1936 and 1937 contracts, which provided that they were to join Alaska Cannery Workers Union 20195 within 15 days after they started to work. It would appear moreover, that workers hired in Alaska are, for the most part, casual employees. Since the numerous terms of these contracts apply in great measure only to those employees who were hired in San Francisco, and since the Companies were not required by the contracts to hire Alaska residents and natives through union hiring halls, we shall exclude them from the unit.

³ A F. of L No 21161 contends that if these workers are considered to have a continuing employee status, then those who have been employed by any of the Companies for the past decade should be considered employees. The evidence, however, does not justify our reversion to any season prior to 1937 for the establishment of the employee status

Local No. 5 urges that the above-classified employees of the three Companies should together constitute a single unit for the purposes of collective bargaining. In support of its position, Local No. 5 contends that these Companies are the only three canners who hire their employees in San Francisco; that in 1936 and 1937 the contracts with each were identical; that Red Salmon Canning Company and Alaska Salmon Co. generally adopt in their agreements the terms first secured by Alaska Packers Association; and in general, that the three Companies constitute an economic aggregate. It appears, however, from the evidence that the Companies are separate and distinct business organizations. Furthermore, collective bargaining negotiations have always proceeded separately with each Company, and as we have indicated above, have culminated in the past 2 years in separate agreements.

We find that all the first and second foremen, first and second cooks, first and second bakers, waiters, dishwashers, pot washers, vegetable men, kitchen helpers, butchers and hand butchers, fish washers, slimers, sorters, fish hookers, hopper and fish bin workers, relief men, knife operators, pew men, cooler men, transfer men, can pilers, fillers, filling reformers, testers, washing machine men, can catchers, retort men, label machine operators and labeling men, elevator men, box wirers, strappers, stitchers, box makers, top men, salt men, solderers, hand packers, can lofters, janitors, and others engaged in cannery work, employed by each Company, respectively, constitute a unit appropriate for the purposes of collective bargaining with such Company in respect to rates of pay, wages, hours of employment, and other conditions of employment, and that said unit will insure to employees of such Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The record discloses that in 1937, the Companies employed 1,542 workers of the classifications described above; Alaska Packing Association employed 1,088 in the appropriate unit; Alaska Salmon Co. employed 276 in the appropriate unit;⁴ and Red Salmon Canning Company employed 178 in the appropriate unit.

A. F. of L. No. 21161 claims among its membership 327 workers who were employed by the Companies in 1936 or 1937 in the appropriate units. Alaska Filipino Union claims among its membership approximately 200 workers who were employed by the Companies in 1937 in such units. Local No. 5, claiming a membership of 1,700

⁴ Combined pay roll of Alaska Salmon Company and Bristol Bay Packing Co.

workers, alleged that it furnished 1,426 members to the Companies in such units in 1937, and introduced into evidence some 1,700 cards designating Local No. 5 as the representative of the signers for the purposes of collective bargaining with the Companies. All the parties stipulated that a comparison of the 1937 pay rolls of each of the Companies with the above-described cards would disclose that a substantial majority of the names appearing on the pay rolls also appear on the cards.

As we have indicated above, Local No. 5's predecessor, Alaska Cannery Workers Union 20195, had closed-shop agreements with the Companies in 1937, whereby its members comprised almost the entire pay roll of each Company in the appropriate unit. The vast majority of these members later joined Local No. 5 and during the early months of 1938 signed the cards designating the latter Union as their collective bargaining representative. The signatures on these cards were witnessed by officials of Local No. 5 who testified thereto, or whose testimony to that effect was covered by stipulation of all parties at the hearing. Even assuming the validity of the claims made by A. F. of L. No. 21161 and Alaska Filipino Union, with respect to the numbers of their members who were employed in 1937, it is apparent that Local No. 5 has a clear and overwhelming majority of such employees.

We find that Local No. 5 has been designated and selected by a majority of the employees in the appropriate unit of each company as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in each unit for the purposes of collective bargaining, and we will so certify.

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

CONCLUSIONS OF LAW

1. Questions affecting commerce have arisen concerning the representation of employees of Alaska Packers Association, Alaska Salmon Co., and Red Salmon Canning Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. All the first and second foremen, first and second cooks, first and second bakers, waiters, dishwashers, pot washers, vegetable men, kitchen helpers, butchers and hand butchers, fish washers, slimers, sorters, fish hookers, hopper and fish bin workers, relief men, knife operators, pew men, cooler men, transfer men, can pilers, fillers and filling reformers, testers, washing machine men, can catchers, retort men, label machine operators and labeling men, elevator men, box wirers, strappers, stitchers, box makers, top men, salt men, solderers, hand packers, can lofters, janitors, and others engaged in cannery

work employed by Alaska Packers Association constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. All the first and second foremen, first and second cooks, first and second bakers, waiters, dishwashers, pot washers, vegetable men, kitchen helpers, butchers and hand butchers, fish washers, slimers, sorters, fish hookers, hopper and fish bin workers, relief men, knife operators, pew men, cooler men, transfer men, can pilers, fillers and filling reformers, testers, washing machine men, can catchers, retort men, label machine operators and labeling men, elevator men, box wirers, strappers, stitchers, box makers, top men, salt men, solderers, hand packers, can lofters, janitors, and others engaged in cannery work, employed by Alaska Salmon Co. constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. All the first and second foremen, first and second cooks, first and second bakers, waiters, dishwashers, pot washers, vegetable men, kitchen helpers, butchers and hand butchers, fish washers, slimers, sorters, fish hookers, hopper and fish bin workers, relief men, knife operators, pew men, cooler men, transfer men, can pilers, fillers and filling reformers, testers, washing machine men, can catchers, retort men, label machine operators and labeling men, elevator men, box wirers, strappers, stitchers, box makers, top men, salt men, solderers, hand packers, can lofters, janitors, and others engaged in cannery work employed by Red Salmon Canning Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization, is the exclusive representative of all the employees in each of such units for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization, has been designated and selected by a majority of the first and second foremen, first and second cooks, first and second bakers, waiters, dishwashers, pot washers, vegetable men, kitchen helpers, butchers and hand butchers, fish washers, slimers, sorters, fish hookers, hopper and fish bin workers, relief men, knife operators, pew men, cooler men, transfer men,

can pilers, fillers and filling reformers, testers, washing machine men, can catchers, retort men, label machine operators and labeling men, elevator men, box wirers, strappers, stitchers, box makers, top men, salt men, solderers, hand packers, can lofters, janitors, and others engaged in cannery work employed by Alaska Packers Association, San Francisco, California, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

IT IS HEREBY CERTIFIED that Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization, has been designated and selected by a majority of the first and second foremen, first and second cooks, first and second bakers, waiters, dishwashers, pot washers, vegetable men, kitchen helpers, butchers and hand butchers, fish washers, slimers, sorters, fish hookers, hopper and fish bin workers, relief men, knife operators, pew men, cooler men, transfer men, can pilers, fillers and filling reformers, testers, washing machine men, can catchers, retort men, label machine operators and labeling men, elevator men, box wirers, strappers, stitchers, box makers, top men, salt men, solderers, hand packers, can lofters, janitors, and others engaged in cannery work employed by Alaska Salmon Co., San Francisco, California, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

IT IS HEREBY CERTIFIED that Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization, has been designated and selected by a majority of the first and second foremen, first and second cooks, first and second bakers, waiters, dishwashers, pot washers, vegetable men, kitchen helpers, butchers and hand butchers, fish washers, slimers, sorters, fish hookers, hopper and fish bin workers, relief men, knife operators, pew men, cooler men, transfer men, can pilers, fillers and filling reformers, testers, washing machine men, can catchers, retort men, label machine operators and labeling men, elevator men, box wirers, strappers, stitchers, box makers, top men, salt men, solderers, hand packers, can lofters, janitors, and others engaged in cannery work employed by Red Salmon Canning Company, San Francisco, California, as their representative for the

purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.