

Trident Seafoods, Inc. and District Lodge 160, International Association of Machinists and Aerospace Workers, AFL-CIO and Inlandboatmen's Union of the Pacific, Region 37, ILWU, AFL-CIO and Alaska Fishermen's Union, Seafarers International Union, AFL-CIO. Cases 19-CA-22196, 19-CA-22219, and 19-CA-22287

August 25, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

On January 27, 1995, Administrative Law Judge David G. Heilbrun issued the attached decision. The General Counsel filed exceptions and a supporting brief; the Respondent filed exceptions, a supporting brief, and an answering brief; and Alaska Fishermen's Union, Seafarers International Union, AFL-CIO filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

The Respondent processes seafood at its facilities in Washington and Alaska. In May 1992, the Respondent purchased the assets of Farwest Fisheries, Inc. (Farwest), including the salmon canning facilities at North Naknek (Naknek) and Ketchikan, Alaska. After the purchase, the Respondent's operation of the Naknek and Ketchikan facilities was virtually indistinguishable from Farwest's operation of the business.

Salmon, caught by independent harvesters, are transferred to the Respondent's tender boats, which take the salmon to the canning facilities. The fish are processed at the canning facilities, then shipped to Seattle, Washington, for distribution.

Farwest had collective-bargaining contracts with District Lodge 160, International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) covering machinists and cannery operation mechanics at both facilities; Inlandboatmen's Union of the Pacific, Region 37, ILWU, AFL-CIO (IBU) covering processing employees at Ketchikan who are hired in Seattle rather than locally; and Alaska Fishermen's

Union, Seafarers International Union, AFL-CIO (AFU) covering tendermen, beach gang, and culinary employees at Naknek. In June and July 1992, each Union requested recognition from the Respondent based on the fact that a majority of employees the Respondent hired in each unit previously had been employed by Farwest.² The Respondent declined to recognize the unions.

The complaint alleges that the three historical units are appropriate and that the Respondent's refusal to bargain with the three Unions violated Section 8(a)(5) and (1) of the Act.

The judge found that the IAM unit was not appropriate because the two facilities were geographically remote from each other, that the IBU unit was not appropriate because it excluded locally hired employees who performed the same duties, and that the AFU unit was appropriate. We agree with the latter finding, but reverse the findings that the IAM and IBU units are inappropriate.

I. GENERAL PRINCIPLES

We agree with the judge that there was substantial continuity between Farwest and the Respondent within the meaning of *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987), and *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). Critical to a successorship finding is whether the bargaining unit of the predecessor employer remains appropriate for the successor employer.

Regarding the appropriateness of historical units, the Board's longstanding policy is that "a mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness." *Indianapolis Mack Sales*, 288 NLRB 1123 fn. 5 (1988). The party challenging a historical unit bears the burden of showing that the unit is no longer appropriate. *Id.* The evidentiary burden is a heavy one. See, e.g., *Children's Hospital*, 312 NLRB 920, 929 (1993) ("'compelling circumstances' are required to overcome the significance of bargaining history"); *P. J. Dick Contracting*, 290 NLRB 150, 151 (1988) ("units with extensive bargaining history remain intact unless repugnant to Board policy").

In *Fall River* the Supreme Court, quoting *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184 (1973), emphasized that in reviewing the facts pertaining to a successorship situation "the Board keeps in mind the question whether 'those employees who have been retained will understandably view their job situations as

¹The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²Farwest had several other collective-bargaining relationships which are not at issue here because the Unions involved did not claim that the Respondent hired a majority of employees they represented.

essentially unaltered.” By requiring the party challenging a historical unit to show the unit is no longer appropriate, the Board recognizes the importance *Fall River* places on the employees’ perspective in a successorship analysis.

II. THE AFU UNIT

For over 20 years the AFU has represented the tendermen, beach gang, and culinary employees employed by Farwest and its predecessors. Applying the above principles, we find, in agreement with the judge’s conclusion,³ that the Respondent failed to show that the historical unit was no longer an appropriate unit.

The Respondent argues that the tendermen, beach gang, and culinary employees do not comprise a separate identifiable unit. In addition to discredited testimony, the Respondent relies on *Trident Seafoods*, Case 19–RC–12019 (1989) (not included in bound volumes), in which the Regional Director rejected a union’s proposed mechanics unit, finding that the proposed unit did not have identifiable interests separate from other employees. In the *Trident Seafoods* case, however, the Regional Director found no evidence of bargaining history. In contrast, and consistent with the above principles, in the instant case we are concerned with the continuing appropriateness of an historical unit, not with the appropriateness of a previously unrepresented unit.

The Respondent also claims that captains of tender vessels are statutory supervisors and must be excluded from any unit found appropriate. “It is well established that the burden of proving supervisory status rests on the party asserting that such status exists.” *Billows Electric Supply*, 311 NLRB 878, 879 (1993). The Respondent did not introduce any evidence to support the claim. We find, therefore, that tender captains are not supervisors and are properly included in the tendermen, beach gang, and culinary employees unit.⁴

The Respondent argues that the AFU bargaining demand was defective because it inaccurately referred to a unit of “resident” tendermen, beach gang, and culinary employees. We find this exception without merit. It is clear from the record that when the Respondent received the demand, it understood that the unit sought was the historical unit. Further, the complaint references the historical unit, and there was no confusion at the hearing concerning the unit over which the parties were litigating. Finally, even assuming there was

³The judge rejected the Respondent’s argument that the skills, functions, and terms and conditions of employment of the AFU unit employees were indistinguishable from other employees and therefore only a plantwide unit was appropriate.

⁴In sec. II.D, par. 2 of his decision, the judge stated, apparently by inadvertence, that “all parties” recognize that the tender captains are statutory supervisors. This statement is not supported by the record, and we do not adopt it.

some reason for confusion about the unit in which bargaining was demanded, it was the Respondent’s obligation to seek clarification, which it did not do. See *Hydrolines, Inc.*, 305 NLRB 416, 420 (1991).

Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with the AFU.

III. THE IAM UNIT

Since at least 1970, the IAM has represented a combined unit of machinists and cannery operation mechanics at Naknek and Ketchikan. The judge found that some traditional factors—the unit employees at both facilities perform work different from other employees, and their wages and working conditions are different from other employees—favored a combined unit, while other factors—they are separately supervised, there is no employee interchange, and the salmon seasons are different—did not. He concluded from this evidence that the employees at the two locations do not share a community of interest. The judge also found that the geographic separation of the facilities—they are 750 miles apart—militated against a finding that the combined unit was appropriate.

Essentially, the judge analyzed factors relevant to the issue of whether a previously unrepresented unit would be appropriate. The judge has misapprehended the Board’s policy regarding historical units. As the general principles discussion makes clear, the issue in a successorship situation is not whether a previously unrepresented unit is appropriate, but whether a historically recognized unit is no longer appropriate.⁵

The judge concluded that the traditional factors for determining unit appropriateness compel a finding that the two locations are not an appropriate unit. Yet, it is clear from his discussion that the unit employees at each location perform the same jobs supporting the same production process and enjoy similar working conditions. It is also clear from the record that the jobs and working conditions do not differ from the jobs and working conditions in existence before the purchase—in other words, the Respondent made no changes after the takeover.⁶ From the absence of changes in these factors, we conclude that the Respondent failed to show that “‘compelling circumstances’ [have] overcome the significance of bargaining history.” *Children’s Hospital*, supra. Nor do we believe that the

⁵The judge erred in stating that the Board accords less weight to the factor of bargaining history if the historical unit was never certified by the Board. See, e.g., *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549 (1965).

⁶Member Stephens notes that the absence of any significant changes in operations distinguishes this case from *Banknote Corp. of America*, 315 NLRB 1041, 1045 (1994), a successorship case in which he dissented in part on the ground that, in his view, changes in production processes and the organization of the work force rendered certain bargaining units no longer appropriate.

record warrants a finding that this unit is repugnant to Board policy.

The judge placed heavy emphasis on the distance between the facilities. Even when addressing whether an unrepresented multilocation unit is appropriate, however, the Board has found that substantial geographic separation is not a determinative factor.⁷ Thus, when our focus is whether there are compelling circumstances overriding the multilocation bargaining history or whether the single unit is contrary to Board policy, we cannot conclude simply from the distance between Naknek and Ketchikan that the Respondent has shown the combined unit is no longer appropriate.

In sum, we are persuaded that the factors on which the judge relied do not overcome the significance of the long and established bargaining history in the combined unit. Accordingly, we find that the record supports the conclusion that this unit continues to be an appropriate unit. Therefore, we conclude that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with the IAM.

IV. THE IBU UNIT

The IBU has represented a unit of processing employees hired in Seattle rather than locally (nonresident processing unit) at the Ketchikan facility for at least as long as the IAM unit has existed. Another union represented the resident processing employees. The judge, attacking resident and nonresident separate representation as “a severe incongruity,” concluded that “the processing employees at Ketchikan cannot be segregated by bargaining unit based on residency alone.”

Again, the judge has focused on factors relevant to whether a previously unrepresented nonresident processing employees unit would be appropriate. As stated above, we must decide whether a unit that has enjoyed a history of collective bargaining is no longer appropriate.

That the nonresident processing employees constitute a rather unique unit is not tantamount to a finding that it is no longer appropriate. Such units have a long history in the industry. *Alaska Salmon Industry*, 82 NLRB 1395 (1949); *Alaska Salmon Industry*, 61 NLRB 1508 (1945); and *Alaska Packers Assn.*, 7 NLRB 141 (1938). The record contains no evidence that would warrant finding that this long-recognized unit is repugnant to Board policy.⁸

Like the employees in the IAM unit, the employees in the IBU unit continue to perform the same work and enjoy the same benefits as they did before the change in ownership. Thus, the Respondent has failed to show

any significant changes from conditions in existence before the purchase.

In sum, we find that the factors on which the judge relied do not overcome the significance of the bargaining history in the nonresident processing employees unit. Accordingly, we find that the record supports the conclusion that this unit continues to be an appropriate unit. Therefore, we conclude that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with the IBU.

ORDER

The National Labor Relations Board orders that the Respondent, Trident Seafoods, Inc., Ketchikan and North Naknek, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Alaska Fishermen’s Union, Seafarers International Union, AFL–CIO as the exclusive collective-bargaining representative of employees in the following unit:

All tendermen, beach bosses, beach gang, beach gang helper/general labor, and members of the Culinary Department classified as cooks, bakers, dishwashers, waiters and bullcooks employed at the Respondent’s North Naknek, Alaska facility, excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees.

(b) Refusing to bargain with District Lodge 160, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive collective-bargaining representative of employees in the following unit:

All employees engaged in or about the Employer’s Ketchikan and Naknek, Alaska facilities performing work in the installation, erection and construction, dismantling, repair or maintenance of all machinery, mechanical and electrical equipment, except radio equipment, including but not limited to filers, weighing machines, clinchers, seamers, reformers, flangers, iron chinks, indexers, scrubbing machines, fish elevators and fish conveyors, all refrigeration equipment, labeling and/or casing lines and all the mechanical equipment on boats, lighters, vessels, power scows, pile-drivers, pile-pullers, mooring scows, gear scows and all other floating equipment in or about the facility; the operation of machine tools and welding and/or burning equipment in the shop; the operation of all equipment in the fire-room; the operation of all pumps; and the servicing of all jitneys or other transportation equipment and bright stacking equipment.

⁷ E.g., *Capital Coors Co.*, 309 NLRB 322 (1992).

⁸ The judge hints that the ethnic origin of the nonresident processing employees may be the basis for the separate unit. None of the parties make this claim; nor do we believe that the record supports the judge’s suggestion.

(c) Refusing to bargain with Inlandboatmen's Union of the Pacific, Region 37, ILWU, AFL-CIO as the exclusive collective-bargaining representative of employees in the following unit:

All employees involved in the processing operations at the Employer's Ketchikan, Alaska facility, including the canning, freezing, processing and handling of seafood or seafood products from the time the produce is unloaded at the facility dock through the several operations until the product is processed, labeled, packed in cartons or cases and stowed in the warehouse, truck, van or delivered to the dock or stowed aboard a vessel. This includes making cans, boxes and cartons, operating, feeding and cleaning, but not the installation, upkeep or maintenance of machines and all other work performed by any other recognized union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Alaska Fishermen's Union, the Inlandboatmen's Union, and the Machinists Union as the exclusive representatives of employees in the above-appropriate respective units concerning terms and conditions of employment and, if an understanding is reached with any of the Unions, embody the understanding in a signed agreement.

(b) Post at its facilities in North Naknek and Ketchikan, Alaska, and at Ewing Street, Seattle, Washington, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with the Alaska Fishermen's Union, Seafarers International Union, AFL-CIO as the exclusive collective-bargaining representative of employees in the unit of tendermen, beach gang, and culinary workers described in the collective-bargaining agreement that expired February 1, 1994.

WE WILL NOT fail and refuse to bargain with District Lodge 160, International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive collective-bargaining representative of employees in the unit of machinists and cannery operation mechanics described in the collective-bargaining agreement that expired February 1, 1994.

WE WILL NOT fail and refuse to bargain with Inlandboatmen's Union of the Pacific, Region 37, ILWU, AFL-CIO as the exclusive collective-bargaining representative of employees in the unit of non-resident processing employees described in the collective-bargaining agreement that expired April 30, 1992.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Alaska Fisherman's Union, the Inlandboatmen's Union and the Machinists Union, as the exclusive representative of the employees in the above appropriate respective units, and put in writing and sign any agreement reached on terms and conditions of employment for our employees.

TRIDENT SEAFOODS, INC.

Daniel R. Sanders Esq., for the General Counsel.

William T. Grimm (Davis, Grimm & Payne), of Seattle, Washington, for the Respondent.

Ted Neima, Oakland, of California, for District Lodge 160, IAM.

Lawrence Schwerin (Schwerin, Burns, Campbell & French), of Seattle, Washington, for Inlandboatmen's Union of the Pacific, Region 37.

Robert H. Gibbs (Gibbs, Houston & Pauw), of Seattle, Washington, for the Alaska Fishermen's Union.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. These consolidated cases were heard in Seattle, Washington, on October 7 and 8, 1993. Originating charges were filed on July 24, August 6, and September 17, 1992, by District Lodge 160, International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), Inlandboatmen's Union of the Pacific, Region 37, ILWU, AFL-CIO (IBU), and Alaska Fishermen's Union, Seafarers International Union, AFL-CIO (AFU), respectively. After original issuance of a complaint on the IAM charge only, a consolidated complaint was issued October 30, 1992. The primary issues of this matter are whether Trident Seafoods, Inc. (Respondent) is a successor employer, if so whether three historical units of employees are in any instance appropriate, and if that also is so whether Respondent's refusal to bargain with the respective Charging Parties is in violation of Section 8(a)(1) and (5) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of witnesses, and after considering briefs filed by the General Counsel, AFU, and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a State of Washington corporation with offices and places of business in Washington and Alaska, where it is engaged in seafood processing. In the course and conduct of such business operations, Respondent has annually had gross sales valued in excess of \$500,000, while selling and shipping goods and providing services from its facilities within the State of Washington to customers outside that State, or sold and shipped goods or provided services to customers within Washington, which customers were themselves engaged in interstate commerce by other than indirect means, all such of a total aggregate annual value in excess of \$50,000. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and, as is further admitted by Respondent, that IAM, IBU, and AFU are each, and have been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Industry*

This matter arises out of the salmon canning business, as here carried out in facilities at North Naknek (Naknek) and Ketchikan, Alaska. These two points are separated by approximately 750 air miles as measured across the Bay of Alaska or North Pacific Ocean.

During an annual salmon run, fish are caught and loaded onto the boats of an independently operated harvesting fleet. With the boats of this fleet as a source, tender boats of seafood processing companies purchase and load fish which are then transported to shore facilities. The shore receiving capacity is such that great quantities of fish pass through during the annual run, and even more unusual surges in tender deliveries can be handled by drawing on other employees of

the facility. After shore delivery and other operational steps, fish are processed through a cannery. The resultant product is palletized for volume shipment out of Alaska, mainly into Seattle, Washington, as the later principal distribution center.

B. *Background*

Until May 1992, the two facilities involved were operated by Farwest Fisheries, Inc. The canneries themselves however had been operated for many years under owners predecessor to Farwest. In May 1992, the substantially complete assets of Farwest were purchased by Respondent. This permitted Respondent the time to undertake preseason activity necessary to make the cannery and related facilities operational following an Alaskan winter. Respondent is itself a multifacility enterprise of this seafood industry, and its acquisition of Farwest assets included a Seattle area location termed the Ewing Street facility.

C. *Pertinent Labor Contracts*

This consolidated complaint picks up from several historical collective-bargaining relationships of the industry. At the point of asset sale Farwest was party to various labor contracts. The one involving IAM was a multiemployer contract, in which, however, the IAM had independent party status with Farwest because its bargaining had been coordinated with the multiemployer association but was separate and distinct in nature. This resulted in a collective-bargaining agreement for a comprehensively described unit of machinists, cannery operation mechanics, and related occupations which was effective with Farwest from 1991 to 1994. By its terms and administration the contract covered both locations.

The IBU contract at issue was a multiunion one with an employer bargaining group, covering the processing employees at Ketchikan. It was understood to apply to nonresident processors, meaning those hired out of the lower 48 states without recent or current incidents of domicile in Alaska. This contract with Farwest ran from 1989 to 1992.

The AFU contract was one that had been in force with Farwest in all areas of Alaska for the fish purchase, initial shore receiving employees, and stated special occupations. It was a multiemployer contract having a duration from 1991 into 1994, and while fundamentally stated to cover tendermen, a related appendix drew the other employees into the recognized unit. In operational terms and settled practices of the industry the collective-bargaining unit covered by this contract was basically for beach gang, culinary employees of the facility, and tendermen. The latter occupation referred to the approximate five-member crew of each tender boat that shuttled between shore and fishing fleet in the constant movement of fish during the brief summer salmon run each year.

These several labor contracts also created other units of Farwest that were effective at these two facilities. When the full scope of these contracts is looked to, a complete coverage of other than administrative and office employees is seen in terms of cannery operations and the respectively described bargaining units. None of these further contractual relationships however are at issue in this proceeding, because no labor organization claims that on commencement of its own operations Respondent hired a majority of unit employ-

ees from groups previously having been employed by Farwest.

As pre-season de-winterizing progressed newly under Respondent, and then converted into full-fledged cannery processing of the fish run, each Charging Party made written demand for recognition from Respondent. These were dated June 18 and July 23 and 29, 1992, on the part of IAM, AFU, and IBU, respectively. As of the date of each respective demand, a majority of employees in the unit for which recognition was claimed by reasonably clear description had been hired by Respondent from those having worked the previous season for Farwest, and in numerous instances at these facilities for some to many years still prior. For machinists at Naknek, the numbers were 12 out of 14, for the machinists at Ketchikan 12 out of 13, for nonresident processors at Ketchikan 27 out of 45, and for beach gang, culinary, and tendermen at Naknek 34 out of 64. In each case, Respondent declined to recognize the respective union for the units sought.

D. Operations

Respondent was successful in operating during the complete salmon run of 1992, and relatedly in times thereafter. At Naknek the season ran for about a month from mid-June to mid-July. A longer season existed at Ketchikan, here running from about early July to early September.

Respondent had continued the management structure at both locations as existing from at least the 1991 season. At Naknek the plant superintendent was carried over from his recent employment with Farwest. This individual is Jon Heins, and his cannery foreman, Jim Kilborn, was also a carryover from Farwest. The former Farwest plant superintendent hired by Respondent to start into its 1992 season at Ketchikan was Bruce Eckfeldt, and the carryover cannery foreman here was Dennis Johns. It is recognized by all parties that captains of the tender boats are also supervisors within the meaning of the Act.

Regarding pre-season preparatory activity, the pattern at both locations was for machinists, culinary workers, and a few beach gang members to constitute the initial group to revive equipment and facilities for the imminent season. As the time for start of a salmon season approached, this group would be progressively augmented by still more employees of the original classifications and finally even a few processing employees to better prepare actual cannery capability.

The start of a salmon season commences with arduous activity in terms of the flow and quantity of fish received at each facility, and the long hours of work required of employees during the crucial 1 to 2 months when canning could be done. Tendermen began their constant plying back and forth from the deep water fishing boats, and the beach gang worked to swiftly unload each delivery so as to maximize efficiency in terms of tidal sailing and the number of loads each tender could handle. The principal technique for unloading fish from tenders onto the dock was a fish pump. This large, hose-like apparatus literally pumped fish out of a boat hold and into holding tanks preliminary to elevator and conveyor transport into the hoppers of the cannery building.

The fresh salmon canning process begins within hours of fish arriving. The fish passed through an iron chink machine to remove head, tail, and fins, and an egg removal operation either machine or manual depending on how the line (one of

several at each location) was equipped. The fish belly is then split for gut and bloodline removal, plus certain machine brushing. There follows another major process at sliming tables, where groups of processing employees perform hand clean up on the fish bodies. The fish is then sliced and directed to can filler machines. A hand patching operation follows this, meant to assure that each can contains an equal weight of salmon. Cans are then topped off by seamer and clincher operations, and a check for vacuum seal, after which they are washed down in preparation for cooking.

This next process is rigorously separated from all fresh fish activity in the interests of avoiding contamination. The salmon cooking areas at each location, Naknek being somewhat smaller than Ketchikan, are operated by a qualified salmon cook with an assistant and further help as needed from processors in the loading and unloading of retorts. After a cooking sequence at prescribed temperatures, the now-canned salmon is cooled, again washed, stacked, and generally prepared for shipment out as finished product.

In terms of the overall operations, both plant superintendents and several employees testified as to their observations of, or participation in, the process. Heins and Eckfeldt each emphasized the extensive intertwining of duties as between the chief employee groups at all stages of the overall process. At the rank-and-file level Port Engineer Earl Neuser and Richard Tippie, both experienced in machinist work and both having been employed by Farwest at their respective Naknek and Ketchikan locations, testified as to their duties. Neuser works on vehicles and equipment requiring his motor and hydraulic capability, as well as the boats used by his employer. He works from a shop sited up the hill from the actual cannery at Naknek, but below the top of the hill where Respondent's office and administrative functions are located. His pre-season 6-day a week, workday of about 10 hours increases to 16 hours more or less as the cannery season gets underway. He does not work as an integral member of the beach gang, but does start up the fish pump and monitor its operation while running. Neuser performs no fish processing duties as such, and declared there was no significant difference between his work at Farwest and that with Respondent.

Tippie's duties are quite comparable to Neuser's. He termed himself a kind of deputy to the Ketchikan port engineer named Paul Buck, and emphasized how his work entailed the maintenance of power skiffs. This is a vessel used in the seining or net harvesting type of fishing. His pre-season and canning run hours of work were the typical 10-hour day and approximate 16-hour day, respectively, while he denied the performance of any processing-type work. When questioned about his relationship to the beach gang, Tippie described his role as working on the crane that they use at the dock and assuring that equipment needed for the tenders was in working order. Tippie denied that the advent of Respondent as his employer had resulted in any significant change in duties.

Two other machinists also testified. Jim Weygandt had worked for three seasons at Naknek, including the first year of operations by Farwest. His work station is at the butchering machine ("R & G" or iron chink), where he maintains, sharpens, or repairs saws, chains, and brushes. He is one of the early arrivals of the machinist category for pre-season work of about 2 months, and after canning gets underway is

assisted by counterpart chink machinist Al Perry. As to pre-season duties, his testimony was among the more detailed, in which he described starting up the heat in buildings, checking pipes for cracks, performing exterior plumbing work, and toward the end of this phase putting cannery machinery through trial runs. As with others, his pre-season workday is about 10 hours, increasing to roughly 18 hours when canning starts. Weygandt denied doing any processing work, except to occasionally slime fish if he was "bored" at work. However, he did signify to helping the beach gang more often by the driving of a forklift. He denied that employees of either of these other occupations ever performed his own machinist duties in return, or that his duties for Respondent had particularly changed from before.

Employee Richard Austin testified as the first machinist at Ketchikan, and a person who has worked the location for four seasons. He corroborated the description of duties by Weygandt, terming his work as the same sharpening and changing of saws and knives, plus maintaining chains, gears, and bearings. He also adjusts machine tolerance so as to maximize the amount of product recovered from each fish. Austin distinguished these duties from routine daily lubrication of machinery, a function carried out by the processor employees. He also made the point that his job involved access to the machine shop, in which traditional metal working tools such as lathe, mill, and drill press are located. In his own 6-to 8-week stint of pre-season work at Ketchikan, Austin generally tears down cannery machinery and rebuilds it in a manner sufficient to survive the near-constant and heavy usage of a summer salmon run. Austin saw no change in his duties because Respondent was now operating the cannery.

David Titterness, the salmon cook at Naknek, also testified, and provided elaboration on the description of duties made above, as well as noting that he performs certain plumbing duties. He has worked in this occupation at the Naknek location for several seasons while Farwest was the operator, and stated that his duties remained the same with Respondent as they had been at Farwest. Titterness is certified for retort operation, and works an estimated 20 hours per day. This begins with an early morning start and work through until around 3 a.m. after a night cleanup crew closes down the cooking room. He also appears for about a 2-month pre-season period to carry out plumbing functions in terms of water supply and heat. During this period he estimates his workday at only 10 hours, but perhaps for 7 days a week.

There is also a regular and recurring postseason period of activity, in which the reverse of the de-winterizing takes place and by much the same group of employees. Here, the facilities are winterized and generally closed down in a manner best suitable for startup in a following season. Just as a buildup of employees occurs pre-season, the post-season activities are a build-down in terms of a decreasing number of individuals utilized for what there is to be done.

The actual winter time months are also a period in which various activities take place in the Seattle area at the Ewing Street location. This is a shipyard and maintenance center at which boats and cannery equipment undergo maintenance work by persons seasonably employed at the canneries as machinists, beach gang members, and tendermen.

In comparing operations under Respondent versus those carried out by Farwest, a number of differences were testi-

fied about. At Naknek a different type of tendering took place, in that Respondent's style was to share tenders with other shore locations, including their own adjoining one at South Naknek. An accounting change was also implemented by Respondent, whereby tender purchasing was acted on at a central Seattle office rather than the Naknek location. Heins described "new [and] upgraded" equipment as a change at Naknek, but when pressed for details limited this to machine inspection for vacuum seal rather than manual micrometer readings. He also testified that during the 1992 season at Naknek Respondent briefly processed fresh fish by a sequence of hand butchering, boxing, and shipping. This resulted however in only about 10,000 pounds of product out of total seasonal salmon canning of over 6 million pounds. At Ketchikan Respondent dispensed with a "tent city" on company premises that had been used in past years as housing by some of the Farwest employees. In its place Respondent outfitted and provided a housing barge, which augmented the dormitory housing that had also existed before. Eckfeldt testified to the adding of equipment at Ketchikan, and rearranging the production flow for greater efficiency. He specified too that after the takeover Respondent discontinued certain types of roe production. Respondent also experimented with the canning of frozen fish, an undertaking that created burdensome production adjustments but very little impact on cannery output. This activity at Naknek resulted in less than 1 percent of overall production, while at Ketchikan the experiment was discontinued after only 1 day out of the season's 40-odd days of production.

As applicable to both locations, the employees hired by Respondent were required to sign an individual agreement of employment and to undergo drug testing. A point of hire physical examination was also initiated by Respondent, apparently first being done for the 1993 season.

E. Successorship Issue

The consolidated complaint alleges that Respondent has continued the employing entity of Farwest as a successor, by operating in basically unchanged form, while employing a majority of previous Farwest employees in the several assertedly appropriate units that are also at issue.

In *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the court found a successor status, noting the applicability of all factors such as continuation of the same types of product lines, departmental organization, employee identity, and job functions. This focus on "substantial continuity" was augmented by the opinion in *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), in which the factors to be examined were itemized as whether the business of both employers is essentially the same, whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors, and whether the new entity has the same production process, produces the same products, and basically has the same body of customers. See also *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987).

Here the applicable factors are amply met. Even a cursory review of this record shows the business at both locations to be indistinguishable in any significant regard. Not only were the same jobs utilized from tender boat purchase through preparation for shipment of canned salmon in distribution quantities by the same customers as before, but in major regard the same persons were performing these functions for

Respondent as had been done for Farwest and with no change in key supervision. Cannery locations, processes, and equipment were continued without appreciable change. The fleet deployment, minor equipment changes, as with a new "dud detector" at Naknek, accounting, hiring procedure, employee housing arrangements, and the like are but insignificant refinements to an overall situation in which a true continuity resulted from the 1991 season into the 1992 season and beyond as a matter of business and employment reality. The tightly drawn employment agreement and Respondent's employee handbook which were each entered into evidence have been considered, but these documents are fundamentally routine and have no effect on the question of whether any true differences have severed the substantial continuity of business activity. For these reasons, I hold that the General Counsel's allegation of successorship status attaching to Respondent is adequately supported by the proofs of this case.

F. Appropriateness of Units

I. THE IAM UNIT

The General Counsel contends as to this issue that a combination of both locations, one that has existed for many years, constitutes a history of bargaining that becomes the dominant factor in determining appropriateness. The General Counsel however also argues that industry practice, certain commonalities between the two locations, and the randomly marshaled machinists doing winter work at Ewing Street are significant matters to consider.

Respondent's chief contention is that the IAM unit is not the smallest appropriate one, in terms of an incomplete showing of distinct function and community of interest relative to production employees. Respondent particularly cites *Bellingham Cannery*, 223 NLRB 915 (1976), as a case of close application, and one in which the Board declined to find machinists at a seafood processing plant to be an identifiable group warranting separate representation.

I view the situation here as limited to whether the two locations may in combination constitute an appropriate unit. The principle here is that on a showing of successor status, the new enterprise is only required to bargain with respect to an appropriate unit. *Renaissance West Mental Health Center*, 276 NLRB 441 (1989).

With the detailed jurisdictional statement of its last contract as a basis for description, the IAM demand was clear as to functions claimed to be represented, and that the bargaining unit sought was to cover all such employees "engaged in or about the employer's Ketchikan and Naknek, Alaska facilities" It is satisfactorily shown that the machinists at each facility perform work distinguishingly different from other employees, and are so recognized in terms of wages and working conditions. Their hourly rate range is from \$7.50 for the single apprentice up to \$20 based on skill and length of service. This contrasts greatly with the wage range for processors, with whom machinists often work in close physical and operational proximity. This latter group has hourly rates running only from \$5 to \$11.25. The beach gang employees, with whom only specialized machinists such as Neuser work in occasional close proximity, have a wage range not all that dissimilar from processing employees of approximately \$5 to \$16. Machinists are also entitled to preference in regard to housing accommodations, as at

Naknek where they more spaciouly occupy that portion in which administrative and clerical employees also live.

The key focus however is whether similarities of unique status at each location permits and requires a finding of a single combined unit as the IAM has requested. The sheer distance apart militates against this. Both locations are firmly supervised by their respective plant superintendents and cannery foremen. There is a total absence of machinist classification interchange during the near round-the-clock operations of a salmon run. The two seasons are themselves not identical, meaning that machinists at Ketchikan are still involved in seasonal duties of the run, while those at Naknek have begun the winterizing activities. After the full off-season is in calendar effect, a few machinists from each location may end up together at the Seattle winter operation, but not in a manner as supports a community-of-interest showing. While engaged at Ewing Street, the several machinists perform a variety of maintenance tasks, and do not necessarily work for a similar duration during this off-season time. Tippie worked there the 1992-1992 winter program, but under the same supervisory duo of Buck and Johns as were in place at his regular Ketchikan job. A further instance of this off-season period is the explanation by Neuser of having worked at Ewing Street for Farwest in the 1991-1992 winter, but being employed by Respondent for their first winter season of 1992-1993 at Anacortes, Washington, a facility of Respondent's overall enterprise. While there he performed miscellaneous engine overhaul on machines, fishing equipment, and a crane, while supervised by Bob Deere, the chief machinist at Respondent's South Naknek cannery. Finally, Weygandt testified that he had not worked the winter season at all.

The preponderance of factors is such that a requested bargaining unit of machinists at both the Naknek and Ketchikan locations is not appropriate because of the vivid lack of any appreciable community of interests between the two groups. I so hold, emphasizing first that the factor of historical recognition is present, but weakened by the fact that the historical unit was never certified by the Board. In doing so, I accord attention to the dual contentions of the General Counsel that only an appropriate unit need be found, not a most appropriate one, and that a longstanding history of bargaining will not be disturbed unless clearly repugnant to the Act. While citing *P. J. Dick Contracting*, 290 NLRB 150 (1988), in support of the first point, I note in that case the Board considered "transfer of employees . . . among . . . other construction sites," and that the unit adopted was limited to 11 contiguous counties of western Pennsylvania. This geographic contrast is a strong instance of why two skilled production classifications separated both by extreme distance and normal accessibility should not be perpetuated as a bargaining unit of respectable appropriateness. In this sense, the General Counsel's reliance on cases such as *Marion Power Shovel Co.*, 230 NLRB 576 (1977), and *Continental Can Co.*, 217 NLRB 316 (1975), is insufficient to overcome the basic infirmity of claiming such a unit. Finally, *P. S. Elliott Services*, 300 NLRB 1161 (1990), cited by the General Counsel on the principle of whether a unit for which a successor should recognize its bargaining obligation must "reasonably well [conform] to other standards of appropriateness," illustrates a converse point that absence of common supervision over "frequent employee interchange" is a vital

factor in issues of multisite operation. This factor was also highlighted in *Dezcon, Inc.*, 295 NLRB 109 (1989), where some but a “not overwhelming” amount of employee interchange had occurred was found to be significant.

II. THE IBU UNIT

This issue involves the IBU’s interest in reasserting recognition by Respondent for a bargaining unit of processing employees at Ketchikan, which is distinguished only by the residency characteristics of its members. In conflict with this request is the established fact that such a distinction is utterly without significance in regard to how the processing employees of Respondent are hired, utilized, and phased out of employment at the end of each season (or postseason activities).

The General Counsel engages in some speculation as to the relative stability of the groups, their cultural incidents, and the greater likelihood that the nonresidents might have a higher rate of return or consecutive periods of employment. These factors are insufficient to overcome the significance of employees who work side by side during the long and arduous hours of a salmon run canning season being viewed as without the self-evident community of interest in such a scenario. *Volt Technical Corp.*, 232 NLRB 321 (1977), provides a useful analogy here. In that case employees hired out of a labor pool on a day-to-day basis by the employer’s customers are seen as a homogeneous group by skill and wages earned. The resultant analogy is to consider that if miscellaneous individuals appearing from a labor pool are grouped together, so too should individuals performing the same functions as others with whom they differ only as to the personal attribute of residency. It is also significant that another union represents the resident processing employees at Ketchikan. This causes a severe incongruity to the prospect that the nonresident workers should have separate representation, particularly where the production processes in which they engage are so closely focused and repetitive. Cf. *Davis Supermarkets v. NLRB*, 2 F.3d 1162, 1171–1172 (D.C. Cir. 1993). The General Counsel has cited no authority of reasonably recent vintage that would tend to show the Board as sympathetic to a unit of a character sought by the IBU. Illustratively, when viewed in the eyes of the General Counsel witness Weygandt, the processing employees at his Naknek location (not at issue) were termed those “Filipinos that come up from California.” I believe that proofs bearing on this issue are such that the processing employees at Ketchikan cannot be segregated by bargaining unit based on residency alone. I therefore hold the IBU request as relating to a not appropriate unit.

III. THE AFU UNIT

Here, the beach gang, culinary, and tendermen have also enjoyed historical, noncertified recognition by Farwest and its predecessors for over 20 years. Of this group the most unconnected to shore operations is the tendermen. They have little or no involvement with machinists, and none of significance with processors. Even the machinists who perform work which benefits and supports the tendermen function, does not ordinarily involve close interplay between the occupations. The beach gang is a group having different characteristics. They interrelate during the fish unloading process with the port engineer, and even some processor employees

as necessary. Most of their work however is the initial shore and outdoor function of moving fish to or at the verge of the cannery building for handling in that interior space. There is little evidence regarding the culinary employees, except to note that they are necessarily early preseason arrivals to support the necessary employee feeding at remote locales, and have a settled tradition of inclusion within this unit. Respondent did not call witnesses from any classification of this group to aid in meeting its burden of proof that the historically recognized unit was not an appropriate one.

As AFU has persuasively contended, the skills of machinists and basically unskilled nature of processor work distinguishes both of these classifications from the beach gang. As to comparability, the tendermen are paid on a daily rate basis, fundamentally therefore different from other hourly employees. Hours of work by the beach gang are dictated not by repetitive production processes, but by the happenstance nature of tender arrivals, complicated still further by impact of the daily tides. As to the key aspect of medical benefits, Eckfeldt testified that for beach gang and tendermen their benefits were uniquely “designated by management.”

Respondent does, however, advance several contentions in resisting a finding that the claimed AFU unit is appropriate. I first of all distinguish its reliance on *Joint Employers at the Port*, 175 NLRB 502 (1969). There is no showing that the supervisory authority recited in that case for occupations of first mates, chief engineers, and pilots is at all present here. Respondent also asserts that a considerable amount of cross-assistance is rendered the beach gang by both mechanics and processors. This assertion, however, is based largely on the thrust of testimony by Heins. I discount Heins’ testimony, in the nature of a credibility assessment, because he manifested as overstating the true operational facts and susceptible to both prompting of his answers and indirectness. I note particularly that he termed certain claimed beach gang work of Joe Berens was utilized as he “flipped back and forth” between his machinist classification and duties traditionally viewed as those of a beach gang member. Such imprecise description does little to counteract the more credible evidence that interrelating of this kind is for the most part infrequent. I acknowledge that the record made as to exact circumstances off preseason activity at Naknek is sparse on this issue, but consider that preseason activity should not in the last analysis be of great weight in contrast to what is done after the season begins. Finally, I am not convinced otherwise by Respondent’s observation that the General Counsel called no beach gang member as a witness, for the burden of proof impressed on Respondent here was not sufficiently met from its reliance on Heins’ suspect testimony alone.

I believe the historical bargaining unit of AFU, as plainly enough described in its request for recognition, constitutes an appropriate unit under the Act, and the allegation of Respondent having unlawfully failed and refused to recognize this union is supported by credible proofs of the case.

CONCLUSIONS OF LAW

1. Trident Seafoods, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The IAM, IBU, and AFU are each a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to bargain collectively with the AFU as exclusive collective-bargaining representative of em-

employees in the tendermen, beach gang and culinary unit, Respondent has violated Section 8(a)(1) and (5) of the Act.

4. Respondent has not violated the Act in any other respect.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to

effectuate the policies of the Act. I shall therefore order it to bargain with the AFU, on request, as exclusive collective-bargaining representative of employees in the tendermen, beach gang, and culinary unit concerning terms and conditions of employment, and, if an understanding is reached, embody that understanding in a signed agreement. I shall also order Respondent to post an appropriate notice to employees.

[Recommended Order omitted from publication.]