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No. 87-1387

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

October Term, 1988

WARDS COVE PACKING COMPANY, INC.,
CASTLE & COOKE, INC.,

Petitioners,

v.

FRANK ATONIO, *et al.*,

Respondents.

JOINT APPENDIX

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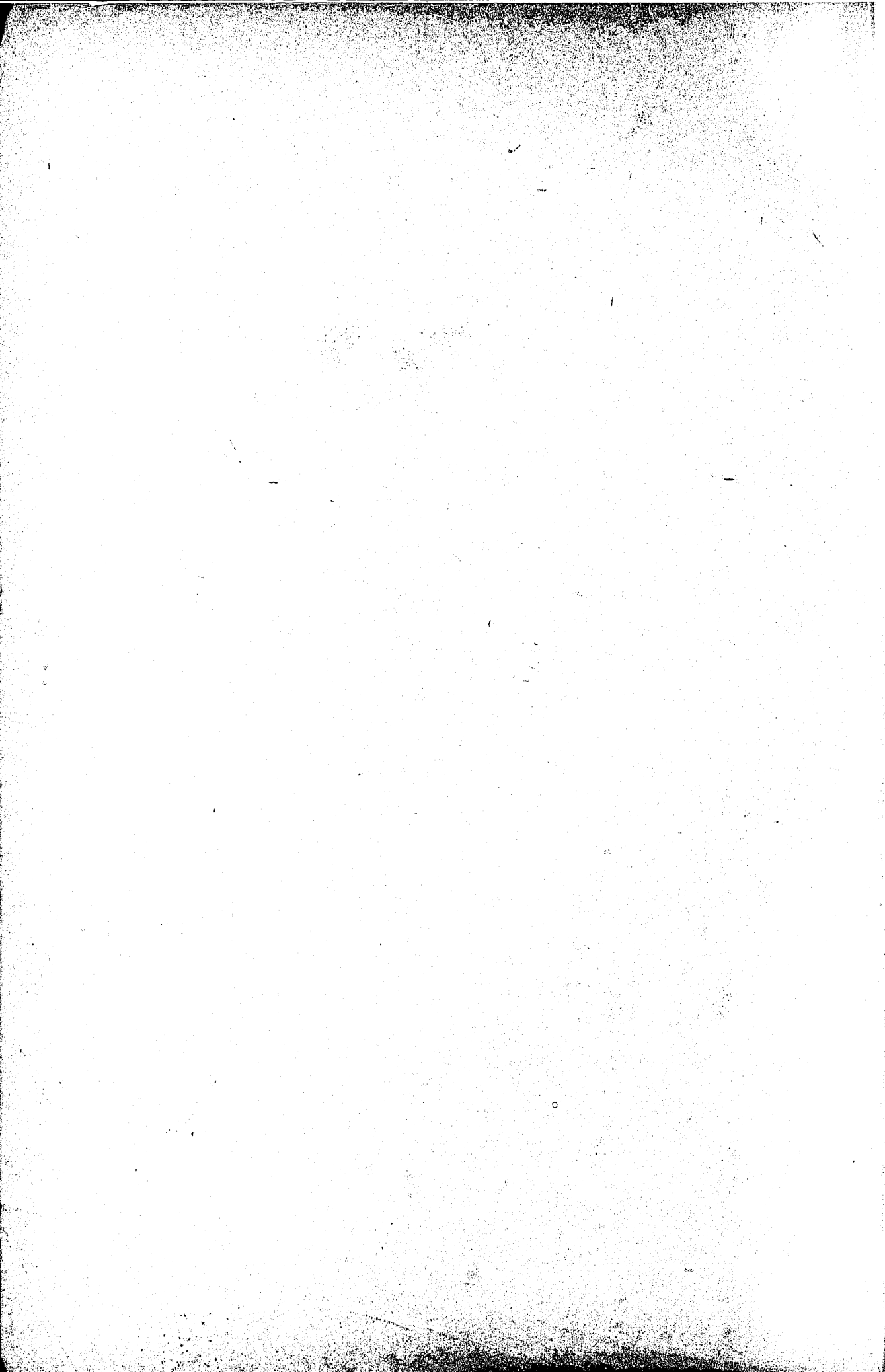


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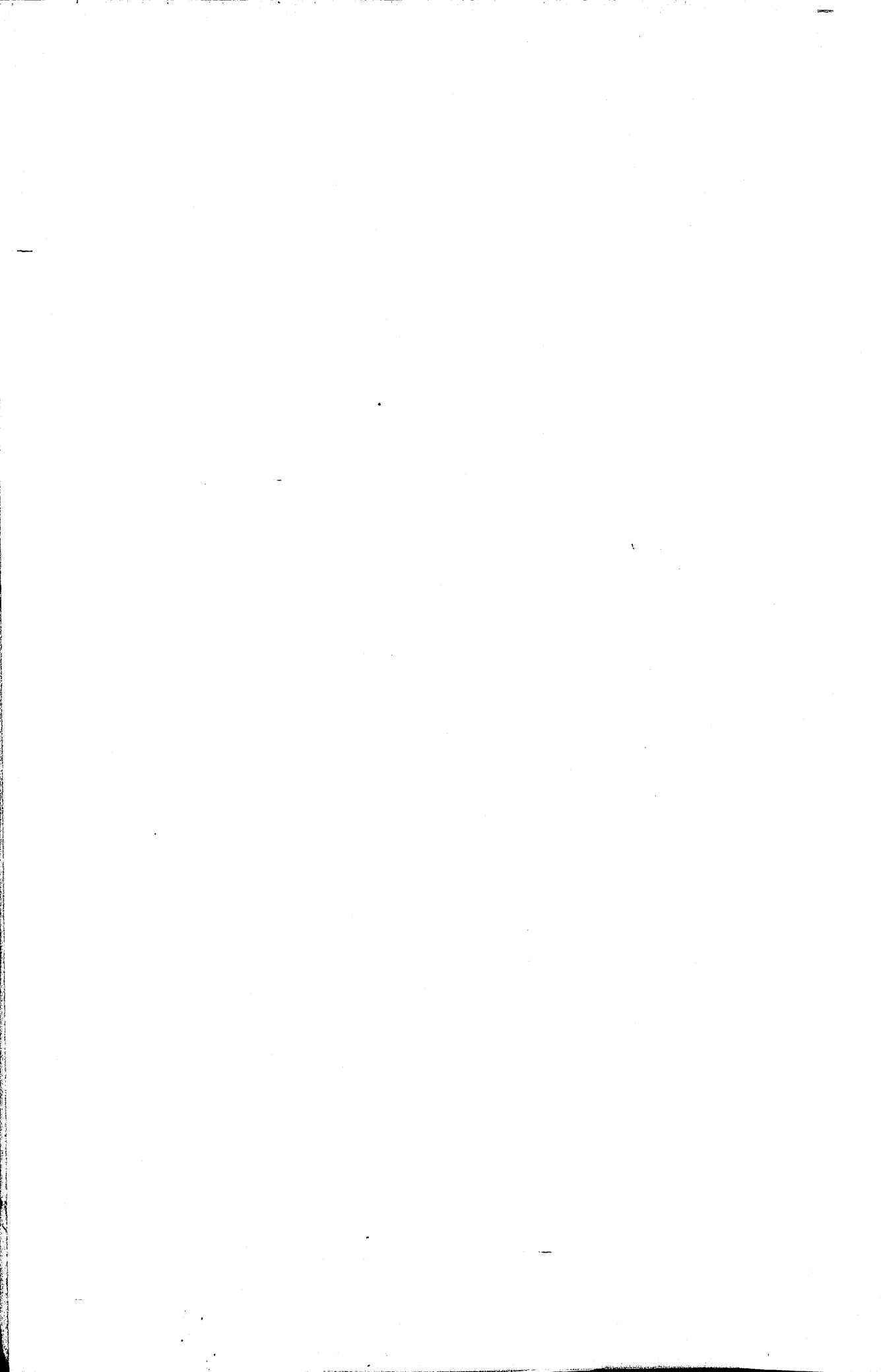
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RELEVANT DOCKET ENTRIES

3/20/74 Complaint filed.

5/5/82 Revised Pretrial Order entered.

5/3/82-
5/17/82 Trial conducted.

10/31/83 United States District Court for the Western District of Washington opinion entered.

12/6/83 Order correcting opinion following nonjury trial and directing correction of judgment entered.

8/16/85 Opinion in the Court of Appeals affirming the judgment entered.

11/18/85 Order withdrawing the Court of Appeals opinion and ordering rehearing en banc entered.

9/2/87 Second opinion of the original panel of the Court of Appeals on remand from the en banc court entered.

11/12/87 Order clarifying the opinion entered.

11/12/87 Petition for rehearing denied.

12/23/87 Opinion of the en banc Court of Appeals entered.

IN THE SUPREME COURT
OF THE UNITED STATES

October Term 1988

WARDS COVE PACKING COMPANY, INC.,
CASTLE & COOKE, INC.,

Petitioners,

vs.

FRANK ATONIO, et al,

Respondents.

BRIEF OF PETITIONERS
APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FRANK ATONIO,)
et al.,)
)
Plaintiffs,)
) NO. C 74-145 S
vs.)
)
WARDS COVE PACKING) REVISED
COMPANY, INC.,) PRETRIAL ORDER
et al.,)
)
Defendants.)
)
_____)

* * *

[PTO, p. 2]

ADMITTED FACTS

(2) The following facts are
admitted by the parties. . . .

* * *

[PTO, pp. 10, 14]

80. The majority of non-resident
cannery workers are lined up by the
cannery worker foremen after management
has estimated the number that will be
needed.

[PTO, p. 16]

93. At least during 1970 through 1975, Bumble Bee has not advertised in media for applicants for any jobs, Nor [sic] has it posted vacancies at the cannery.

94. Non-resident cannery workers are those whose off-season residence is in the Lower 48. Some have been hired directly by Bumble Bee in Astoria.

95. At least since 1970 Bumble Bee has on occasion recruited resident cannery workers from Alaska Native villages through bush pilots. (Resident cannery workers are those whose off-season residence is Alaska.)

96. At least since 1970 some non-resident cannery workers have been hired directly by Bumble Bee in Astoria. The majority of non-resident cannery workers

dispatched to Bumble Bee through Local 37, ILWU have been Filipino.

* * *

[PTO, p. 17]

102. At least since 1970 Red Salmon has on occasion recruited some resident cannery workers from Alaska Native villages. The recruitment has been through village leaders and bush pilots, among others.

* * *

[PTO, p. 18]

104. The machinist foremen at Wards Cove have on occasion recommended people for machinist jobs, among other jobs.

105. Wards Cove has not advertised in the media for jobs at least since 1970. Nor has it posted vacancies at the cannery at least from 1970 through 1977. Wards Cove has called the Alaska State Employment Service in recruiting resident

cannery workers, but hasn't done any media advertising.

106. At least since 1970 resident cannery workers at Wards Cove have generally been hired for only portions of the season, during intense periods of canning.

107. At least since 1977 Wards Cove has hired some non-resident cannery workers directly at 88 East Hamlin, Seattle, Washington.

108. The majority of non-resident cannery workers dispatched to Wards Cove through Local 37, ILWU have been Filipino.

* * *

[PTO, p. 19]

116. It has not generally been defendants' practice at any time since 1970 to post written notice at Bumble Bee, Red Salmon, Wards Cove or Ekuk canneries

of job vacancies which develop during the season. . .

* * *

[PTO, p. 20]

118. A company fisherman captain's job can be learned through prior experience as a company fisherman's partner.

* * *

DISTRICT COURT

DEPOSITION OF HAROLD BRINDLE

[Dep., p. 2]

HAROLD BRINDLE, being first duly sworn by the Notary Public to tell the whole truth, deposed and said as follows:

* * *

[Dep., p. 33]

Q. Did you ever discuss with him the necessity of housing crews together?

A. No, but there are various specific advantages for doing so.

Q. Is that for call out time?

A. Basically.

Q. That's the crux of the advantage of housing crews together?

A. Yes.

Q. Sorters would ordinarily get called out earlier than other cannery workers; isn't that correct? The fish

come in and have to be sorted into the bins before they are processed?

A. Basically.

* * *

[Dep., p. 34]

Q. And they would get called out earlier than the other cannery workers; right?

A. On occasion.

* * *

[Dep., pp. 35-38]

Q. When you refer to call-out time or call-out time as you understand the usage of the term refers to that time of the day when the employees are told to go to work; is that correct?

A. Basically.

Q. If the tender comes in with a lot of fish and it's early in the morning, the sorters would get called out to start the fish first; right?

A. Along with the beach gang to unload the fish.

Q. And then later in the day, perhaps, once it's in the bins, the cannery workers would get called out; is that correct?

A. Yes.

Q. And the machinists who are assigned to particular departments would get called out with them; is that correct?

A. Yes.

Q. At the same time, in other words?

A. Yes.

Q. Port engineers might get called out much earlier in the day if a fishing vessel had repairs that were needed; is that right?

A. Right.

Q. On the whole the office staff works regular hours, say, 9:00 to 5:00?

A. No.

Q. What are their hours?

A. Normally from 8:00 in the morning through 9:00 in the evening.

Q. But on the whole they are not subject to call out depending on when the tenders come in; is that correct?

A. Most normally not.

Q. They have their regular hours duties to do; correct?

A. Right.

Q. Quality control, when do they do their work?

A. During the time of canning.

Q. They would get called out at the same time as the machinists assigned to departments and the cannery workers and the sorters; is that correct?

A. That's right.

Q. Would the call-out time for all the culinary crew members be the same?

A. No.

Q. Who would get called out first?

A. The first cook.

Q. And then?

A. Probably the baker.

Q. And after that?

A. Everyone else.

Q. Would the waiters get called out before the dishwashers?

A. No.

Q. Supervisors such as the beach boss and the first machinist and the cannery crew foreman, would they have their own call-out times or would they be called out at the same time as their crews?

A. That's pretty hard to answer.

Q. Well, as a general rule?

A. Most normally if there's an early call-out, they would be first.

* * *

DISTRICT COURT

DEPOSITION OF MERVIN W. LESSLEY

[Dep., p. 2]

MERVIN W. LESSLEY, being first duly sworn by the Notary Public to tell the whole truth, deposed and said as follows:

* * *

[Dep., pp. 4-5]

Q. What did you start out as?

A. Machinist.

Q. What was the first year you worked at Red Salmon?

A. 1960.

Q. Have you worked there continuously since 1960?

A. For the canning season, yes.

Q. That's what I meant. And during the off season have you worked at Lake Union Terminal each season since 1960?

A. Yes.

* * *

[Dep., p. 6]

Q. When did you become a machinist foreman at Red Salmon?

A. 1972.

* * *

[Dep., p. 6]

Q. From the 1972 season onward did you have any responsibility in hiring machinists for Red Salmon?

A. Well, somewhat.

Q. Who else had a role in hiring machinists?

A. Mr. A. W. Brindle.

Q. Would you recommend machinists to him?

A. Yes.

* * *

[Dep., p. 7]

Q. If there was an opening would Brindle ask you if you knew somebody that could fill the job?

A. Yes.

Q. And if you knew someone, would you recommend the person?

A. Yes. If I thought they were qualified I would, yes.

Q. If you didn't know someone, would you ask around your friends?

A. Yes.

Q. Would you do anything else to find prospective machinists?

A. Well, there would be people come in from off the street, you know.

Q. For the most part was it a question of asking around among the people you knew?

A. Well, no, I wouldn't say so.

Q. About half and half?

A. Maybe 60-40.

Q. Which is the 60?

A. Trying to find qualified people on your own and taking people who came in and applied. They would make out an

application. We would investigate their background and their qualifications.

* * *

[Dep., p. 12]

Q. You have heard the term: "Filipino bunkhouse," haven't you?

A. Yes.

Q. Have you heard it used at Red Salmon?

A. I suppose I have.

Q. So far as you can tell, was it commonly used at Red Salmon up until the time of the fire?

A. Well, that was one way of designating the different mess halls.

* * *

[Dep., p. 14]

Q. Is there a building that is still called the Filipino bunkhouse there?

A. Well, it was called that before. That's what it's called now, I guess.

Q. Is there a building that is called the Native bunkhouse there now?

A. It hasn't had a Native in it for years.

* * *

[Dep., pp. 14-15]

Q. So, it's not called the Native bunkhouse any more?

A. It's called Native bunkhouse but there is nobody there.

Q. Nobody lives there at all?

A. No.

Q. Have you used the term "Filipino bunkhouse"?

A. I have, yes.

Q. Have you used the term "Native Bunkhouse"?

A. Yes. When I went to send somebody over to do a job there. Like

with the plumbing and et cetera, et cetera, et cetera. They have to know where they are going and et cetera.

Q. Did A. W. Brindle use the term "Native bunkhouse"?

A. I guess he has.

* * *

[Dep., p. 30]

Q. When you asked around for machinists among your acquaintances, those that you turned up were all white; were they not?

A. Yes.

* * *

DISTRICT COURT

DEPOSITION OF RANDALL LEE MILHOLLAND

[Dep., p. 3]

RANDALL LEE MILHOLLAND, called as a witness by the plaintiffs, having been first duly sworn, testified as follows:

* * *

[Dep., pp. 3-5]

Q. Were you employed by Wards Cove Packing Company?

A. Yes, I was.

Q. In what job?

A. Two jobs, Cannery Store Keeper and Cannery Tenderman.

Q. What was the first year you worked there?

A. I was trying to figure that out last night.

Q. Was that 1970?

A. '69 or '70. Yeah, 1970.

Q. You were Store Keeper then?

A. Yes.

Q. And the next year you went up
was when?

A. '72.

Q. What was your job then?

A. Storekeeper.

Q. What was the next year you went
up?

A. '73.

Q. Were you a Tender Engineer
then?

A. A Tender Engineer.

Q. What was the next year you went
up?

A. '74.

Q. Were you a Tender Engineer
then?

A. Tender Engineer.

Q. What was the next year you went
up?

A. 1975.

Q. What was your job then?

A. Tender Engineer.

Q. Were those the only seasons you worked in Alaska?

A. Those were the only seasons.

Q. What is your date of birth?

A. September 10th, 1953.

Q. So, is it correct to say that you were sixteen when you first got the job of Store Keeper?

A. Yes.

Q. Did you work on more than one tender while you worked at Wards Cove?

A. Three different tenders.

Q. Do you remember their names?

A. Vanguard, which was Wards Cove-owned; the Puffin, which was Columbia Wards Cove; and these were in consecutive years; and the Petrel, I believe, which is Wards Cove-owned.

Whoops. Excuse me. Columbia Wards owned the Petrel, if that makes any difference.

* * *

[Dep., pp. 5-6]

Q. Did your father ever work for Wards Cove Packing Company?

A. He worked for Columbia Wards Fisheries.

Q. Had he worked for Columbia Wards Fishery before you were hired in 1970?

A. Yes.

Q. What was his job?

A. He was an accountant.

Q. Did he work in the Seattle office or in one of the Alaska fisheries?

A. The Seattle office.

* * *

[Dep., pp. 8-9]

Q. Prior to becoming the Tender Engineer your first season had you had any mechanical job experience?

A. No.

Q. Had you taken any courses in diesel mechanics?

A. No.

Q. Had you taken any mechanical courses?

A. No.

Q. Had you worked on your own car prior to that time?

A. Yes.

Q. Was that the only mechanical experience you had prior to becoming a Tender Engineer the first year?

A. Yes.

Q. Had you had any prior boating jobs? In other words, jobs on boats?

A. No.

Q. Had you had any courses in navigation?

A. No.

Q. Any other marine courses?

A. No.

* * *

[Dep., p. 42]

Q. That covers it. What kind of work, exactly, had you done on cars just prior to your first season as a Tender Engineer?

A. Just basic helping with maintenance, changing belts, checking--or preventative maintenance. Changing oil filters, greasing, other things with friends who had cars, like replacing starters, replacing brushes in starters--you know, just a number of things.

Q. Had you done a complete overhaul on a car?

A. No.

* * *

DISTRICT COURT

DEPOSITION OF RUSSELL J. ROHRER

[Dep., p. 2]

RUSSELL J. ROHRER, being first duly sworn by the Notary Public to tell the whole truth, deposed and said as follows:

* * *

[Dep., p. 3]

Q. How many seasons have you worked at Ekuk?

A. Since 1956 every season except one.

* * *

[Dep., pp. 3-4]

Q. Last season did you work as a cannery foreman?

A. Yes.

Q. That's also known as machinist foreman?

A. Yes.

Q. What was the first year that you worked as a cannery foreman?

A. 1959.

Q. And you have worked as a cannery foreman each season since then?

A. Right.

* * *

Q. Have you ever trained a reform machinist in one season?

A. No, I think not.

* * *

[Dep., p. 15]

Q. Have you ever trained a salmon cook in one season?

A. Yes.

Q. Who was that?

A. Tom Cattell.

* * *

[Dep., pp. 15-16]

Q. (By Mr. Arditi) How did Tom Cattell come to work for you?

A. He started as a cannery worker, I believe, in 1971.

Q. Mr. Cattell worked as a salmon cook in 1974 and '75; is that right?

A. I think that's right.

Q. Prior to that he was a cannery worker or a general worker?

A. Yes.

Q. Had he ever worked as a machinist before 1974?

A. In the cannery?

Q. Yes.

A. No.

Q. Did you promote him to salmon cook yourself?

A. Yes.

Q. How did you come to pick him?

A. His work was loading the retorts and he worked around where, with the salmon cook, and I think he worked it two or three years and he learned quite a bit about what had to be done and he

just . . . when we needed a salmon cook, why, we offered him the job.

Q. But the learning that he did for it was learning as a cannery worker or general worker; correct?

A. Yes.

* * *

[Dep., p. 17]

Q. Did he have any other qualifications for the job other than what he had learned working around the retorts?

A. He had gone to night school and taken machine shop courses and it was all to run a lathe and various machine shop tools.

* * *

[Dep., p. 17]

Q. So, machine shop work is not normally part of the salmon cook's duties; is it?

A. No, not necessarily.

* * *

[Dep., p. 18]

Q. So, is it correct to say that everything you need to know to work as a salmon cook can be learned on the job as a cannery worker or a general worker?

A. I think some people could learn it.

* * *

DISTRICT COURT

DEPOSITION OF MARVIN CLAY SNYDER

[Dep., p. 2]

MARVIN CLAY SNYDER, being first duly sworn by the Notary Public to tell the whole truth, deposed and said as follows:

* * *

[Dep., pp. 2-3]

Q. You were previously employed by Bumble Bee Sea Foods Division of Castle & Cook; weren't you?

A. Yes.

Q. When did you stop your employment with them?

A. Well, I still go North for them at Naknek cannery.

Q. So, your job is seasonal?

A. Yes.

Q. Your job is cannery foreman?

A. Yes.

Q. Is that also known as machinists foreman?

A. Yes.

Q. How long have you been in that capacity for Bumble Bee?

A. Since 1968.

* * *

[Dep., p. 10]

A. Well, that was "A" is what we used to refer to it.

Q. Have you heard the term "Native crew"?

A. Yes.

Q. Is that in reference to the crew that lived in Bunkhouse "A"?

A. Yes.

Q. And those would be the resident cannery workers?

A. Yes.

Q. Have you heard the term "White mess hall"?

* * *

[Dep., pp. 10-12]

Q. It appears to be. Have you used the term "Filipino bunkhouse"?

A. Do I use it?

Q. Have you used the term?

A. Oh, yes.

Q. How about "Filipino crew," have you used that term?

A. Yes.

Q. "Native bunkhouse"?

A. Yes.

Q. "Filipino mess hall"?

A. Yes.

Q. "Native crew"?

A. Yes.

Q. "White mess hall"?

A. ~~Yes.~~

Q. Have you heard other supervisory personnel at Bumble Bee use those terms?

A. Well, yes.

Q. Have you heard Mr. Leonardo use
"Filipino bunkhouse"?

A. Yes.

Q. I am sorry?

A. Yes.

Q. Have you heard him use
"Filipino crew"?

A. Yes.

Q. Have you heard him use
"Filipino mess hall"?

A. Yes.

Q. Have you heard him use "Native
bunkhouse"?

A. Yes.

Q. Have you hear him use "Native
crew"?

A. Yes.

Q. Have you heard him use "White
mess hall"?

A. Yes.

Q. Are those terms in common usage
around the Bumble Bee cannery?

A. Well, I suppose they are. It's years of that.

Q. When you say, "years of that," you mean that for years they have been called by those terms?

A. That I have been going North, yes.

* * *

[Dep., p. 17]

Q. But he was hired as a salmon cook?

A. A salmon cook, yes. It was a promotion.

Q. Briefly, what were his duties as a stockroom worker?

A. Just putting away the stock and dishing it out to people that come in and wanted it.

Q. When you stay "stock," do you mean machine parts?

A. Well, it was everything, machine parts mostly are in a different

department. That is for the canning machines. But this is a stockroom, a general stock they needed in the canneries for everything, for everybody down there.

Q. Like cans?

A. No, not cans. But bottles, nuts, screws, just lights and brooms and scrub brushes, anything, paint.

* * *

[Dep., p. 18]

Q. Is it pretty much like being a store clerk?

A. Well, it would be similar.

Q. In 1971 Mr. Frost was promoted to salmon cook?

A. Yes.

Q. Was he given any training as a salmon cook prior to the beginning of the season?

A. Oh, yes. We showed him how to operate the thing.

Q. Was this the only training or work as a salmon cook, the pre-season training that you gave him?

A. Well, then, of course, he was there the year before and, of course, the retorts are right alongside the stockroom. So, he is probably, was in there with the salmon cook in the year before and, so, more or less . . .

Q. (Interposing) So, he could watch?

A. So, he found out more or less what the operation was, you see.

Q. The cannery workers who have jobs with the retorts or in the lye wash or as inverters also work around the salmon cook; don't they?

A. Yes, they are working on the retorts, yes.

Q. So, they would have the same opportunity to observe as the stockroom man; is that right?

A. Any of them could, yes.

* * *

[Dep., p. 20]

Q. If you are fairly smart, you could learn it as quickly as Mr. Frost did?

A. I suppose you could.

* * *

DISTRICT COURT

TESTIMONY OF CLARKE KIDO

CLARKE KIDO, being first sworn,
states:

[p. 35]

1. I live at 1381 Jefferson, Idaho Falls, Idaho 83402. I am employed by EG&G as a senior engineer to do structural analysis on nuclear test reactor facilities. Prior to that, I worked for the Boeing Company as a structural design engineer. I received my B.S. from the University of Washington in aeronautical engineering in December, 1972. I am a plaintiff in this case. I worked for Wards Cove Packing Company, Inc. at its Ketchikan cannery in 1970, 1972 and 1973. I worked for Bumble Bee Seafoods at its South Naknek cannery in 1971.

* * *

[p. 36]

3. When I arrived at Wards Cove in 1970, the cannery worker foreman, Salvador del Fierro, pointed out the bunkhouse our crew was to occupy. . . .

4. The bunkhouse was a two-storey [sic] wood frame building. We were housed three to four apiece in rooms which were approximately eight or ten feet by twelve feet. On the bottom floor of the bunkhouse was our messhall, kitchen and three or four rooms which our culinary workers used. Our bunkhouse is marked Building 1 on Exhibit 163. It was commonly called the "Filipino bunkhouse" just as the messhall was called the "Filipino messhall" around the cannery. . . .

[p. 37]

5. Most of the white employees who lived at the cannery stayed in what is marked Building 5 on Exhibit 163. . . .

* * *

[p. 38]

8. . . . The smell attracted flies, which came through the window. Moreover, heat from the stove rose upstairs, making it uncomfortable to stay in the bunkhouse. . . .

* * *

[p. 40]

15. I spoke to a person at 88 East Hamlin named Parrish. I was looking for a job of a sort that I could not find at Local 37, I.L.W.U.: namely, a job other than cannery worker. I then down to the office with Lester Kuramoto with whom I had previously worked at Wards Cove. Mr. Parrish gave each of us an application blank. I told Mr. Parrish that I was interested in a job outside of Local 37, I.L.W.U. On the application blank I wrote down that I wanted a carpenter or assistant carpenter position or a machinist or mechanic helper or

trainee position. I told him I would be willing to go to any cannery.

16. Mr. Parrish suggested that Mr. Kuramoto and I go to Local 37, I.L.W.U. for a job. From my experience at Wards Cove in 1970 I knew that Local 37, I.L.W.U. jobs were the ones which were filled primarily by nonwhites. Mr. Parrish also cut the conversation short by saying that there were no openings in any jobs. He said this before looking at my application. He did not check a list or consult with anyone in the office before saying this. Among other jobs I was interested in at the time were quality control, storekeeper and beach gang. I was available for work in Alaska in mid-May that year.

17. Since I was unsuccessful in obtaining a noncannery worker job through 88 East Hamlin, I contacted my old cannery worker foreman, Salvador del Fierro. I

asked him what other jobs I could find outside of cannery worker jobs. He said that as a cannery worker I would have to stay a cannery worker.

[p. 41]

18. Finally, I went down to Local 37, I.L.W.U. for a cannery worker job since no other options were open to me. I was dispatched to the Bumble Bee cannery, in South Naknek.

19. Prior to my application in 1971, I had some carpentry experience with my uncle as well as my father. My uncle owns an apartment building on which I did some roofing, repairs, plumbing and electrical work. I also put in windows and wall partitions. Prior to my 1971 application I had also done some carpentry work with my father around our home. This involved remodeling, putting up sheetrock, laying down floors, putting up wall partitions, doing roof repairs, a

little electrical work, putting up fences, a small amount of framing and some household plumbing.

* * *

[p. 41]

21. At Bumble Bee the male Local 37, I.L.W.U. crew was housed in one bunkhouse. The cannery worker foreman told us which bunkhouse our crew would live in and which messhall we would eat in. The bunkhouse is marked Building B on Exhibit 161. The occupants were 100% non-white. The vast majority of them were of Filipino descent. The remaining ones were of Asian descent. The Alaska Native cannery workers were housed separately in what is marked Building A on Exhibit 161. There were a number of women cannery workers almost all of whom were white. They lived in what is marked Building J on Exhibit 161. Other white crews were housed in other bunkhouses.

22. Our bunkhouse was a two-storey [sic] building with rooms about 10' x 12'. We were housed four per room. Each room had two bunkbeds. The walls were of shiplap type construction. Since there was very little insulation I could feel the wind come from one side of the building right through the walls. In our room there was one bare overhead light. Since we had no closet we had to store our clothes in trunks or suitcases underneath the lower bunks or hang them on the walls. Finally, we had a small table as well as one chair.

[p. 42]

23. We use the hallways to store our rain gear, boots, hats and other working clothing. The fact that we worked with raw salmon all day gave our clothes a fishy odor. It drifted in from the hall to the sleeping rooms. Downstairs there was a small open area about 15' x 15'

which some crew members used for card games.

24. The bunkhouse the Alaska Natives lived in was approximately the same size as ours. Some of the windows were broken. They were not repaired during the time that I was at Bumble Bee. I could see dust on both sides of the windows. I could also see the paint peeling and cracking around the windows as well as on the outside of the building. The Alaska Natives also lived four to a room in bunkbeds.

25. In contrast, the women's bunkhouse was fairly new. It also had aluminum siding -- unlike our bunkhouse or the Alaska Native bunkhouse.

26. There were two messhalls at Bumble Bee cannery. One messhall served the Filipino crew and the Alaska Native crew. It is marked Building T on Exhibit 161. All of the people who ate there

regularly were non-white. The other messhall served everyone else at the cannery, including: the women cannery workers, the fishermen, the machinists, the carpenters and others. Nearly everyone who ate in that messhall was white.

27. Mugups, which are a kind of evening meal, were served in both messhalls at Bumble Bee. The people who regularly ate in our messhall were to have their mugups there. By the same token, those who ate their meals in the other messhall were to take their mugups there as well. Our messhall was commonly called the "Filipino messhall" while the other was usually called the "white messhall."

[p. 43]

28. In 1972-73 Wards Cove cannery operated again. Consequently I went back there for a second and third season. The bunkhouse had been painted, there were

fewer people in our rooms and the linen was changed somewhat more frequently. Other than that, conditions were essentially unchanged. We continued to sleep in the "Filipino bunkhouse," eat in the "Filipino messhall" and perform miscellaneous tasks our foreman assigned.

29. In 1973 our crew held a food strike to protest the quality of food served in the Filipino messhall. We had asked the cannery worker foreman Salvador del Fierro for more variety, fresh fruits and fresh vegetables. When we didn't receive them, we held a food strike. We showed up at the messhall at meal time but didn't eat. Instead, we bought food in town which we ate in our rooms. The food strike lasted about three days until we had a formal crew meeting. After that there was a slight improvement in the food.

30. In February, 1975, I was laid off from work at Boeing. When I first began looking I had trouble finding work in my field. Consequently, I took work as a laborer with Center Dozing for a short time in the spring of 1975. During that time I also worked as a survey chainman with my uncle who is a licensed surveyor. On and off I also worked as a delivery man for Product Development in the spring of 1975. Among work I was looking for was a position in the carpenter trade. In fact at about that time I took a test for admission to the apprenticeship program.

31. In the spring of 1975 I went down to 88 East Hamlin, Seattle, Washington once again to apply for an upper level position. . . .

* * *

[p. 48]

Q. (By Mr. Phillips) Lets [sic] talk about housing at Wards Cove for a

minute. You stayed in which bunkhouse at Wards Cove?

A. What is called the Filipino bunkhouse.

Q. Who gave it that name, by the way, do you know?

A. The foreman designated bunkhouse that we were staying at, and everyone referred to it as such.

Q. The foreman is Salvador del Fierro?

A. That is correct.

Q. And he is Filipino?

A. Yes.

Q. That particular bunkhouse housed male members of the Local 37 crew?

A. That's right.

Q. Most of them were Filipino?

A. That's right.

* * *

[p. 50]

Q. Let's talk about messing for a minute, Mr. Kido. You talk about the white messhall. Is that the name that you guys -- that's the name you guys gave to that messhall, isn't it, the main mess?

A. That is what the name that everyone seemed to give it. The women --

Q. Who else do you recall referring to it that way?

A. The non -- the white members of the cannery.

* * *

[p. 70]

THE COURT: Mr. Kido, your affidavit doesn't specify your nationality, unless I am mistaken.

THE WITNESS: That's right, it doesn't.

THE COURT: I think it is probably just an oversight. But for the records, what is your nationality?

THE WITNESS: I am Japanese-American.

THE COURT: And your parents' background?

THE WITNESS: The same. Japanese-American.

THE COURT: Are they both, as far as their blood, full-blooded Japanese?

THE WITNESS: Yes.

* * *

DISTRICT COURT

TESTIMONY OF FRANK PETERS

FRANK PETERS, being first duly sworn, states:

[p. 75]

1. I live at 1743 Summit Avenue, Apt. 207, Seattle, Washington 98122. I was born in American Samoa. I moved to the United States in 1970 to attend school. . . .

* * *

[p. 76]

3. I graduated from Cleveland High School in 1972. I spent the next school year at Highline Community College studying business and psychology. From there I went to Seattle Central Community College for a year. I received my B.S. from Portland State University in political science in 1978. I took one quarter of graduate work there in public

administration. I also had a quarter of graduate work in political science at the University of Washington. . . .

* * *

[p. 76]

5. I obtained my first job with Wards Cove Packing Company, Inc. through the cannery worker-foreman Salvador del Fierro. A Samoan friend had asked me whether I wanted to go to Alaska to work for the summer. He then took me to Mr. del Fierro's house. After I spoke with him, Mr. del Fierro wrote my name down on the list of people who were going to work for him. He told me, "This is a list of my crew." Mr. del Fierro the [sic] took me down to Local 37, I.L.W.U. During dispatch my name was called. I then joined the Union.

[p. 77]

6. The company flew our crew to Ketchikan on a charter plane. When we

arrived at the cannery Mr. del Fierro pointed out two bunkhouses -- telling us that they were for our crew. Those bunkhouses are marked Buildings 1 and 2 on Exhibit 163. They were commonly called the "Filipino bunkhouses" around the cannery. For example, I heard the cannery superintendent Joe Brindle, the head machinist Ray Landry_ and the cannery worker foreman Salvador del Fierro all use the term "Filipino bunkhouse." Other such terms were also used around Wards Cove. For example, our crew was commonly called the "Filipino Crew." I heard Joe Brindle, Ray Landry and Joe Brindle's daughter all use this term. There were two messhalls at Wards Cove. One, which was located in Building 1, was for the male non-resident cannery workers. The other, which was located in Building 5, was for the other company employees who lived at the cannery. Our messhall was

commonly called the "Filipino messhall." Members of our crew often called the other one the "white messhall." I knew which messhall to eat in since Mr. del Fierro told us in a crew meeting when we first arrived that the Filipino messhall was where our crew was to eat.

* * *

[p. 78]

9. Bunkhouse 1 was 100% non-white in 1972 through 1975. One white lived in Bunkhouse 2 in 1972-3. He ate in the white messhall rather than our messhall. The white crews lived in what are marked Buildings 3, 4 and 5 on Exhibit 163. Each year during 1972-75 about 8-10 people--all of whom were white--lived in Bunkhouse 5. Each year during 1972-75 the bookkeeper Jerry Steele--who is white--lived in Building 4. The cannery superintendent lived in what is marked H.A.B. House on Exhibit 163. Each year

during 1972-75 about six women cannery workers lived in Building 3. They were all from the Lower 48. They were all white. Japanese National egg technicians lived there too, but they were not employees of Wards Cove Packing Company, Inc. Also, the watchman lived in what is marked Watchman's House.

* * *

[pp. 81-82]

18. In 1973 I asked the head machinist Ray Landry if I could become a machinist's helper. The conversation took place after church on a Sunday. He responded by asking, "What's wrong with being on the Filipino crew?" I pointed out to him that I needed more money to continue in school. He told me I needed experience in order to become a machinist helper. I asked him if there were courses I should take, but he did not answer.

Instead, he shook his head and walked away.

19. Toward the end of the 1973 season I also asked the cannery superintendent Joe Brindle what the possibility of my getting a job on a tender was. I also asked him for a machinist or carpenter job. He told me to talk to my foreman Arsenio Eleccion who was second cannery worker foreman. I did not bring this up with Mr. Eleccion since he only supervised cannery workers rather than employees in the jobs I was seeking.

20. Shortly after I returned from Alaska in 1973 I asked Jerry Steele for a clerical job or a job on a tender. Mr. Steele was the bookkeeper at Wards Cove. He told me to give him a call later on. Consequently, I contacted him a second time, but he didn't give me a definite answer. At one point he said, "We'll see." I asked him if he wanted me to call

him back yet again. He said yes, so I called a third time but could not get hold [sic] of him. I left a message but he never called back.

21. When I talked to Ray Landry, Joe Brindle and Jerry Steele in 1973, I was not told to file a written application. They did not ask me my qualifications or give me a chance to state them.

* * *

[pp. 83-84]

26. Prior to my application for a carpenter job in 1973 I had worked with my father in American Samoa. He worked as a carpenter building houses, cabinet and repairing ships. I started working with him when I was 13 or 14 through the time I left when I was 20. During school I worked 10 to 20 hours per week. I also worked some Sunday [sic] as well as vacations. My work with him entailed

painting, sharpening tools, making cabinets, laying foundations, putting up house frames, laying partitions, doing roofing and helping repair boats. Also, in Hawaii during 1968-69 I worked as a cabinet maker's helper for about a year.

* * *

28. Before going to Alaska in 1972 I had boating experience with my grandfather in Samoa. He is a fisherman with his own boat which is about 20 feet in length. I worked for him 2-3 times per week for about three years. Also, while I worked as a bin man I also learned to identify the various species of salmon.

* * *

[p. 116]

THE COURT: Mr. Peters, for the record, your affidavit says you were born in American Samoa. Are you of Samoan descent?

THE WITNESS: Yes.

* * *

DISTRICT COURT

TESTIMONY OF STEPHEN NOEL BIRD

[pp. 121-122]

STEPHEN NOEL BIRD, being first sworn, states:

1. I live at 4302 - 79th N.W., Marysville, WA 98270. I am currently employed as a shipwright by the Boatyard, Inc. in Seattle, I worked for Wards Cove Packing Company, Inc. as a tender engineer during the 1974 season. . . .

2. . . . I worked as a sailmaker for two months. Then in February or March, 1974 I was hired by Columbia Wards Fisheries at Lake Union Terminals as clean-up and helper. I was generally a go-fer, carried wood and helped put in planks for a few months. During that time I learned that the company had facilities which it operated in Alaska during the summer months which I hadn't known when I

first started. After I learned this I asked Ray Landry who was the head machinist if I could work on a tender.

3. I was hired to work as tender engineer on the Vanguard which is a dry tender. Prior to being hired as tender engineer I had no mechanical job experience. In fact, other than working on cars which I owned I had no practical mechanical experience at all. Nor had I had any practical experience with diesels. Similarly, prior to being hired as a tender engineer I had no classes in mechanics, machine repair, diesel repair or diesel maintenance. I had done some pleasure boating. However, I did not have prior marine work experience. Nor had I had any prior navigation experience.

* * *

[p. 136]

THE COURT: Do you recall anyone in authority at Columbia Wards Fisheries

asking you about your prior mechanical
experience, prior to the time you were
hired as a tender engineer?

THE WITNESS: No.

* * *

DISTRICT COURT

TESTIMONY OF RICHARD GURTIZA

[pp. 140-141]

RICHARD GURTIZA, being first sworn,
states:

1. I live at 156 N.W. 84th,
Seattle, WA 98117. I am of Filipino
descent. I worked at Wards Cove Packing
Company, Inc. at its Ketchikan cannery
during the 1977 season as a cannery
worker. . . .

2. I attended Central Washington
State University during the 1974-75
school year. In the fall of 1975 I
attended Yakima Valley College. My major
was political science. I then attended
Shoreline Community College in the fall
of 1978 plus the fall and winter of 1981.
In the fall of 1981 I began as an
engineering major.

3. Prior to working at Wards Cove I had worked for about eleven months as a messman, oiler and wiper on an ocean-going vessel for the National Oceanic and Atmospheric Administration ("NOAA"). The vessel was 231 feet in length and was called the SS Rainier. I started as a messman whose job duties are like those of a waiter. I was then promoted to wiper which involves cleaning the engine room and assisting the engineer. As a wiper I worked directly under a licensed engineer. After that I worked as an oiler for about three months although my seaman's papers were not changed to reflect that. As an oiler I took readings in the engine room and worked with the engineers. I was also directly responsible for maintaining the diesel engines on the survey launches. . . .

* * *

[pp. 142-143]

5. My job at Wards Cove in 1977 was called "hook fish." It involved unloading the salmon from the tenders onto an elevator which carried it into the fish house. I spent much of my time in the holds of tenders pushing the fish onto the elevators. Both because I spent so much time on the tenders and because of my past sea-going experience I began to ask for a job on a tender. I asked the cannery superintendent Joe Brindle for one numerous times starting a quarter or a third of the way into the season. I told him about my marine experience and my Coast Guard papers. I told him I was interested in any job on a tender. Throughout the season I also asked a number of the tender captains for work on a tender. One of the captains I asked was the captain of the Dagney.

6. My job as hook fish enabled me to see changes in personnel on the tenders. There were at least two openings after I started asking Joe Brindle for a tender job. They were on tenders which had started at another cannery and then been transferred to Wards Cove. I think the tenders were the Dagney and the Northern Pride. Also, the skipper of the Dagney told me there was an opening on his tender before the opening was filled. The individuals hired to fill these openings were white. The one hired on the Dagney was a big, burly white fellow who wore John Lennon-type glasses. I wasn't hired for either of these openings.

7. After the season was over Joe Brindle let me work on a tender called the Sable but just for the trip south to Seattle. That only lasted for about seven days and simply involved helping the captain keep watch. I was the fifth

person on the crew going south. After we arrived in Seattle I asked Jerry Steele for a job on a tender for the next season. He was the bookkeeper at Wards Cove. He would not give me a commitment for the job. Instead, he told me to talk to him later. Had he given me a commitment then I would have returned the next year. However, I did not want to go back as a cannery worker.

* * *

DISTRICT COURT

TESTIMONY OF DAVID DELLA

[pp. 158-159]

Q. Mr. Della, do you have your affidavit before you?

A. Yes, I do.

Q. Let me call your attention to page 2. Initially, can you look at line 7? You say Bunkhouse 1 were one hundred per cent [sic] white. Did you mean white or non-white?

A. Non-white.

* * *

[p. 160]

1. I live at 1909 South College, Seattle, Washington 98154. I attended the University of Washington during 1973-76, but did not graduate. . . .

* * *

[pp. 161-162]

4. In 1974 we had two Filipino forklift drivers on our crew. They lived in Bunkhouse 1. There was a white forklift driver named Tom Slayton who worked at the cannery in the same year. He did not live in either Bunkhouse 1 or Bunkhouse 2. Instead, he lived in one of the white bunkhouses. The one white who stayed in our bunkhouse in 1974 did not eat in our mess hall. Instead, he ate in what we called the "white man's mess hall." At Wards Cove, there were a number of white women cannery workers from the Lower 48. They worked under the Local 37, I.L.W.U. contract. They did not live in our bunkhouse. Instead, they lived in Building 3 on Exhibit 163 with some members of other white male crews. Moreover, while we lived in barracks-type buildings, they had apartments. . . .

* * *

[p. 168]

Q. Mr. Della, you are of Filipino descent?

A. Yes, I am.

* * *

DISTRICT COURT

TESTIMONY OF ORLANDO BUCSIT

[p. 171]

ORLANDO BUCSIT, being first sworn,
states:

1. I live at 8830 Midvale Avenue North, Seattle, Washington 98103. I worked for Wards Cove Packing Company, Inc. as a cannery worker at Red Salmon in 1967, 1969 and 1970. I also worked at Wards Cove cannery in 1969 and 1978-1981. I worked a double season in 1969, starting at Red Salmon, then finishing at Wards Cove. In 1968, I worked for Bumble Bee Seafoods at its cannery in South Naknek. I was a cannery worker each year I worked in Alaska. I attended Yakima Valley College in 1970 and 1974-1976. I served as a boilerman in the Navy during 1971-1974. My work entailed tending boilers on aircraft carriers. These boilers

supplied power for the aircraft carriers--primarily for airplane catapults. I am of Filipino descent.

* * *

[p. 172]

2. In 1980 at Wards Cove, I learned of a deckhand vacancy on one of the tenders. I was employed as what is called "hook fish." As such, I helped unload the salmon from the tenders to the dock. As soon as I heard about the vacancy I asked the cannery superintendent Joe Brindle if I could fill it. He said that I could not because I was in Local 37, I.L.W.U. I asked him before the position was filled. A deckhand on a tender was being called home because of a family emergency. I asked Joe Brindle after I learned that the deckhand was leaving but before the deckhand actually left. The vacancy was eventually filled by a white individual

from Ketchikan. In Alaska that year I also asked Joe Brindle for a job at the Lake Union terminals boatyard in Seattle. He suggested that I talk to Alec Brindle after the season was over.

* * *

[p. 173]

6. There were two messhalls at Wards Cove each year I was there. One, called the "Filipino messhall," was for the male Local 37, I.L.W.U. crew. The other, which we called the "white messhall," was for the remaining employees at the cannery. No whites ate in our messhall regularly. Once in 1978 I tried to eat in the white messhall. I left because some of the machinists gave me a dirty look. Shortly after that the cannery worker foreman told us in a crew meeting that we were not to go to that messhall since there had been complaints that some of us tried to eat there. I

often walked by the white messhall. There is usually a bowl of fruit out. . . .

* * *

[p. 174]

12. Similarly, at Red Salmon there was both a "Filipino messhall" and a "white messhall." Once in 1967 I tried to take a mug-up in the white messhall but the cook turned me away. He said I wasn't supposed to be there.

* * *

DISTRICT COURT

TESTIMONY OF ANDY PASCUA

[p. 195]

ANDY PASCUA, being first sworn,
states:

1. I live at 116 West "C" Street, Wapato, Washington 98151. I worked for Wards Cove Packing Company, Inc. during the 1968-71 seasons as a cannery worker. I worked at the Wards Cove cannery in Ketchikan during the 1968-69 seasons. I worked at the Red Salmon cannery in Naknek during the 1969-1971 seasons. I worked a double season in 1969, starting at Red Salmon, then moving to Wards Cove. I am of Filipino descent. . . .

* * *

[pp. 198-199]

7. In 1970 I asked the cannery worker foreman at Red Salmon how to become a mechanic or quality control person.

That year our foreman was Arsenio Eleccion. At first he reacted in an apathetic way. He simply turned around and walked away. When I pressed him, he said that those jobs were not covered by our union and that I should forget about them. As I became more persistent he told me not to make trouble, to finish my job and then to go home at the end of the season. At one point, he told me not to make waves. He said that if I did, I was going to get him into trouble. I also wanted a job in the store. Eventually, I would have liked to work in an administrative job. I did not ask Arsenio Eleccion about those jobs because of the responses he gave to my other inquiries.

8. The reason I asked Arsenio Eleccion rather than someone else is that our crew had been directed to take up any complaints we had with him. He was our

supervisor, and as such, assigned jobs, overtime, bunkhouses and mess halls.

9. In 1971, I renewed my request for a better job with Arsenio Eleccion. By then, I had a year of college and was a little more assertive. Arsenio Eleccion was more forceful in 1971 in denying my requests. In fact, I began to be afraid that my persistence would jeopardize the jobs of my other family members. At that time, my father, my brother and my cousins were cannery workers at Red Salmon.

10. One year I also asked the machinist foreman at Red Salmon how to obtain a machinist job. He told me that I had to know someone. I did not pursue my request with him because I did not have that type of connections. During the time I was at Red Salmon, I saw no job openings posted, saw no advertisements for openings in the better jobs and knew of no application procedure other than to ask my foreman.

* * *

DISTRICT COURT

TESTIMONY OF MICHAEL TARDIF

MICHAEL TARDIF, being first sworn,
states:

[pp. 237-239]

1. I live at 108 E. 21st St.,
Olympia, WA 98501. I am an attorney
employed by the Washington State Attorney
General's Office. I was employed at Red
Salmon cannery as quality control during
the 1969-71 seasons. I started as quality
control when I was 19 years old between my
sophomore and junior years in college. I
am related to Ray Landry who was the
cannery foreman at Wards Cove cannery
then. I am white.

2. Before I applied Ray Landry
told me the company was looking for
someone with enough basic intelligence to
be a good record keeper, to understand
what the quality control job entailed and

to do what was required in the position. Prior to being hired in 1969 I did not have any college lab science courses. My only lab science courses had been in high school. I have never had any food science or nutrituion [sic] courses. All the training I received for the quality control position was on the job. I had a week to acquaint myself with the job prior to the canning season. I reviewed some written material, talked with a gentleman from the National Cannery Association who was at Red Salmon and talked with the cannery foreman and first machinist about the job. For the first few days of canning I also worked fairly closely with a machinist until I fully understood what I was supposed to do. I learned all the basic duties of the quality control position on the job at Red Salmon.

* * *

[p. 240]

6. In 1969 I lived in what is marked Building 9 on Exhibit 162. All the occupants of the bunkhouse were white. We were from various crews. For example, there were carpenters and machinists as well as myself. There was a dresser, table, chair, light and shelves in my room. We lived two per room. In 1970-71 I lived in what is marked Building 11 on Exhibit 162. Again, all the occupants were white. Again, we were from various crews. For example, there were [sic] beachmen and fishermen as well as myself. (The fishermen stayed there only when no fishing was permitted.) I had a table and shelves in my room. There were also benches in the hall. We lived four per room. However, when they were fishing, the fishermen didn't stay there, so there were often fewer people in the rooms. In both bunkhouses we had single metal-frame

beds rather than bunk beds. Also, in both bunkhouses we had a bull cook who changed our sheets and made our beds. Like Building 9, Building 11 was all white the years I stayed there. I also had a chance to visit Building 10. It was similar in layout, furniture and people per room to Building 9 except for the cannery foreman's quarters. He either had an extra large room or two rooms. He also had a private bath. Building 10, like Buildings 9 and 11, was also one of the "white" bunkhouses.

7. On several occasions I had a chance to go into what was commonly called the "Filipino bunkhouse." It is Building 13 on Exhibit 162. It was a different type of building from the one I lived in in 1969. It was a large barracks-style building with a long hall while the building I stayed in the first year was more like a house than barracks.

Also, it was more crowded than either of the buildings I stayed in. In fact, people were housed 4-8 per room there even though the rooms were of equal size or smaller than the ones in Building 11 where I lived in 1970-71. There were few if any tables, chairs, or dressers in the sleeping rooms in the "Filipino bunkhouse." In fact, the rooms were so crowded there was little room for furniture other than the bunk beds. Unlike the buildings where I lived the "Filipino bunkhouse" had bunk beds rather than regular single beds. The "Filipino bunkhouse" appeared to be about the same age as the buildings in which I lived. However, in my view the facts that it was more crowded and had less furniture made it less desirable.

* * *

DISTRICT COURT

TESTIMONY OF GARY MAMALLO

GARY MAMALLO, being first sworn,
states:

[p. 256]

1. I live at 2505 - 18th Avenue, Seattle, Washington. I am an apprentice carpenter. I graduated from high school in 1973, attended North Seattle Community College for two quarters and went to the University of Washington for a year and one-half. I worked for Wards Cove Packing Company, Inc. at its Ketchikan cannery during the 1973 season. . . .

* * *

[p. 258]

9. There were two mess halls at Wards Cove. One, which was called the "Filipino mess hall," was used to feed the male cannery workers who lived in the Lower 48 during the winter, all of whom

were non-white. The other mess hall was used to feed the white crews. The women cannery workers from the Lower 48, all of whom were white, were also fed in that mess hall. In evenings, separate mug-ups were served in the two mess halls. On one occasion, I saw what was being served for mug-up in the mess hall where the whites ate. It included a variety of meats, a variety of breads, a variety of fruit, and some cookies for dessert. In contrast, the mug-up in our mess hall consisted of one type of sandwich meat, such as bologna. We did not have nearly the variety the whites did in their mess hall.

* * *

DISTRICT COURT

TESTIMONY OF MIKE EDDIE ANTONIO

[p. 267]

MIKE EDDIE ANTONIO, being first sworn, states:

1. I live at 3402 Jefferson, Yakima, Washington 98902. I am employed as a letter carrier for the U.S. Postal Service. . . .

* * *

[p. 268]

3. In 1966 or 1967, I asked Vern Jones how to get on the beach gang. I considered this an application. He was the beach boss at Red Salmon during the years I was there. He did not offer me the job. Nor did he give me any information about how I could go about getting that job. The last year I worked at Red Salmon I asked Vern Jones the same question again. He did not offer me a job

this time either. Nor did he tell me what else I could do to obtain the job. . . .

* * *

[p. 268]

5. In 1966 and 1967 at Red Salmon, I asked the first machinist how I could go about getting a machinist job. He would not give me any information.

* * *

DISTRICT COURT

TESTIMONY OF WILLIAM T. PASCUA

[p. 281]

WILLIAM T. PASCUA, being first sworn, states:

1. I live at 2220 West Logan, Duplex C, Yakima, Washington 98902. I am employed as film director at KIMA television in Yakima. I take care of public service announcements as well as editing, scheduling, and tracing programs. I am an assistant to the program director. I am of Filipino descent. I worked for Wards Cove Packing Company, Inc. at Red Salmon during the 1970-1972 seasons. In 1970-1971, I was employed as a slimer. . . .

* * *

[p. 282]

4. There appeared to be definite racial barriers at Red Salmon. For

example, employees were housed almost entirely along racial lines. There were two bunkhouses for the male Local 37, I.L.W.U. workers. One, which housed the older men on the crew, was 98% non-white each season I was there. The other was 100% non-white during the three seasons. Only two whites lived there during the third season. Nearly all of the non-whites in these bunkhouses were of Filipino descent. Although they also held cannery worker jobs, male Eskimos were housed in two other bunkhouses. White women cannery workers had yet another bunkhouse. . . .

* * *

[p. 283]

7. There were two mess halls at Red Salmon during the years I was there. One, which was called the "Filipino mess hall," fed our crew. One year I was at Red Salmon, the Eskimo cannery workers

also ate in our mess hall. We called the other mess hall at the cannery the "white mess hall." It fed the white crews, and, for two of the years I was there, the Eskimo cannery workers. However, the Eskimo cannery workers did not eat in the same dining room as the white crews. Instead, they were given a small room off to the side of the main dining hall.

* * *

DISTRICT COURT

TESTIMONY OF SHIRLEY JEANNE SMITH

[pp. 321-322]

Q. Would you please describe your work experience as a demographer?

A. I have had several jobs as a demographer, the first of which was for the Census Bureau between 1969 and 1972, the second of which was for the Bureau of Social Science Research here in Washington in 1975-'76. And since that time, I have been working for the Bureau of Labor Statistics also here in Washington.

* * *

[p. 324]

Q. Is there a definition of labor supply which is standard in your field?

A. Yes, there is.

Q. What is the definition please?

A. Labor supply as we use the term is synonymous with labor force--that is, the employed population plus persons who are looking for jobs and are, therefore, unemployed.

Q. Is there a standard definition of the term "labor force" in your field?

A. It is the same.

Q. Same as labor supply?

A. Yes.

Q. Is there a standard definition of work force in your field?

A. Yes. Work force is synonymous with the employed portion of the labor force, excluding unemployed.

* * *

[pp. 327-328]

Q. Have you compared the seasonality of the Alaskan salmon canning industry with the seasonality of any other industries?

A. Yes, I have. It is perhaps unique, the degree to which it is seasonal [sic]. Most other industries have some element that [sic] carries through during the rest of the year. For instance, in agriculture, there are people who--farms don't shut down during the rest of the year; they may go into other types of activities besides field production, but the seasonality of the salmon canning industry is quite overwhelming because almost the entire labor or the work force is involved for two to three months in the summer and completely outside the industry for the rest of the year.

Q. How large is the migrant component of the work force of the Alaskan salmon canning industry compared to the migrant component of the work forces of other industries?

A. It is startlingly large. From records that I have seen, over 60 percent of the workers in the salmon canning industry are migrant. We know that at least 60 percent of them migrate to Alaska each summer from the Lower 48, and a large number of people who are Alaskans working in the canneries also migrate, but I don't have statistics on that.

* * *

[pp. 329-330]

Q. In studying the labor supply which defendants tap, did you do any background reasearch [sic] on the demographic characteristics of migrant seasonal labor supplies?

A. Yes, I did.

Q. What, if anything, did you conclude about the demographic characteristics of such labor supplies as compared with non-migrant labor supplies?

A. The groups of people who are responsive to migrant labor work from the limited amount of data which is available on the subject appear to be atypical of population as a whole. They--well, it stands to reason that people who are free to pick up and leave one place and go work somewhere else weren't heavily tied to the original location or in a particular job.

And the indications are that this group that is responsive to migratory and seasonal work is disproportionately made up of minority groups who don't have equal opportunities in the economic system at home.

* * *

[p. 322]

Q. (By Mr. Arditi) In general, is the racial composition of migrant seasonal labor supplies representative of

the racial composition of the areas from which they are drawn?

A. No.

Q. And in what way are they not representative?

* * *

[p. 333]

A. For the most part, because migrant and seasonal work draws on labor supply that is available sporadically, they tend to be people who didn't make it into the economic system in the first place at home. That is, people who are unemployed or outside the labor force, waiting for opportunities to develop. And those groups are both disproportionately made up of minorities so the migrant seasonal flow tends to be disproportionately made up of minorities.

* * *

[pp. 343-345]

Q. Now, could you tell us what, if any, trends Exhibit 63 shows?

A. Exhibit 63 shows a gradual decline in the non-white portion of the industry. Actually, it wasn't gradual; it occurred in a few sort of steps over the period from 1906 to the mid-fifties. The industry began as a predominantly non-white labor supply--75 percent, as a matter of fact, of the workers at the beginning of this series were non-white. But the salmon butchering machine came into use, I think, in 1903 or something like that or it was invented in 1903. So it predated the series, and as it came into use, commonly it displaced a lot of hand butchering. And the share of the labor supply that was non-white diminished. It dropped into the fifties by around 1920 and remained between 50 and 60 percent for several years thereafter

and finally dropped a second time about 1935 when unions came into effect, dropped down to around 50 percent.

And after World War II, it deopped [sic] between 50 and 45 percent and sort of hovered there for the rest of the series.

Q. Did it stabilize at a certain point?

A. Well, it more or less stabilized with the mid-thirties. The decline between, say--I don't know--1938 or something like that and 1955 was not dramatic. 1937. From there on, it ws pretty much in the 50 to 45 range.

Q. Did the percent non-white vary during the first half of the depression according to Exhibit 63?

A. In the first half of the depression, the--well, the depression began in 1929, and in the years prior to

that, from 1925 to '28, the proportion non-white was around 57, 59 percent.

Well, 56 or 57 percent. And the same figures were reported through about 1934. So there really wasn't any noticeable change in proportion non-white in that period.

Q. What, if anything, does that tell you as a demographer?

A. Well, it suggests that even in a time of job shortage that whites were not rushing into this industry and trying to grab up jobs.

Q. Was there a slight shift in the second half of the depression?

A. There was. As I said, it seemed to be it started about 1935 when the canning industry had its first unions. And at that point, the share whites actually increased.

* * *

[p. 346]

Q. What, if anything, does Exhibit 4 tell you about the entrance of cannery worker unions on the scene as that might or might not affect the racial composition of the industry labor supply?

A. Exhibit 64?

Q. Yes.

A. Well, the cannery workers' unions evolved around 1935 as I said before. And the pattern of employment that I have been talking about had been going on for a long time before that. The Chinese were already being eased out, and the Filipinos had already established a fairly strong position in the industry by the time the unions were first established.

And in fact, the number of Filipinos in the industry was higher a few years before than it was right at the time and following the institution of unions.

* * *

[pp. 369-370]

Q. Now, did you come to a conclusion in this case on the percent non-white [sic] in the labor supply as opposed to the work force that defendants tap for their Alaskan canneries?

A. I did, yes.

Q. And what was your conclusion?

A. My conclusion was that that labor supply was about 50 percent non-white.

* * *

[pp. 386-388]

Q. In your study in this case, have you adjusted the availability labor supply for differences in skills?

A. No, I haven't.

Q. So far as you know, is it possible to do so?

A. I don't think for this industry that it is possible.

Q. And why is that?

A. Well, the types of statistics that we have to look at the industry are not complete. We have information from the industry, from the work force itself, which I have used which clearly identifies these people as available. They have come and spent their summers in the industry so we know they are available. But the detail in that information about qualifications and skills is lacking.

Then, there is the data source that the defendants have used which is the census. That identifies what people do for a living or have done most recently for a living, but doesn't tell us anything about people's availability. And in order to really focus on availability by occupation or any sk-lled [sic] group or anything, you have to be able to identify occupation and race and availability, all

the same individual at the same time. And you have to have sufficient information about the occupation and work history and what not to know that it really is their qualification and not just something they happen to be doing.

Q. Well, his prior occupation then in your view is a good proxy for skill or not?

A. Not if it is just single prior occupation. The last thing you were doing. Because there certainly are a lot of people who temporarily work in jobs that are completely unrelated to their skill level.

Washington has a wonderful crew of cab drivers with Ph.D.'s in physics and things like that. So capturing what a person is doing at a particular moment isn't necessarily a good indicator of what they can do.

* * *

[pp. 405-406]

BY MR. DUNCAN:

Q. I don't think it did. You have previously testified in other cases to a fairly blanket assertion that seasonal industries are more likely to be non-white than white in comparison areas from which they are drawn.

* * *

Q. Have you previously testified to that?

A. Yes, and I think that's what I meant by what I just said as well.

Maybe I can clarify what the problem is. We have been talking about the general labor force in a fixed location over a year-round pattern. And we have, I think you have, some extremes. You have the migrant workers who are generally both seasonal and willing to pick up and leave their location. And you

have people who are neither seasonal nor willing to leave their location.

Migrants are quite atypical of the group that they come from or they are likely to be quite atypical of the group they come from. Seasonal workers are somewhere in between. They include people who for the same reason as migrants just happen to be available. They are not doing anything else. Their economic opportunities have not been great, and this is their one chance to get their foot in the work force for the year.

So a seasonal work force is more non-white than the total labor force, but it is less non-white than a migratory group because it includes a lot of people who can continue to live their ordinary lives in their home community and just take on a little additional work.

* * *

DISTRICT COURT

TESTIMONY OF H. J. PARRISH

[p. 622]

Q. Mr. Parrish, would you please state your full name for the record and spell your last name?

A. P-A-R-R-I-S-H, H. J.

Q. What is your first name?

A. Horace.

* * *

[pp. 622-624]

Q. Who was your last employer?

A. Wards Cove Packing Company, Incorporated.

Q. What? What did you say after that?

A. Incorporated.

Q. From responses to questions that we received in this case, they list you as Assitant Cannery Superintendent at

Red Salmon Cannery.
title?

A. No.

Q. What was your job title?

A. We had no title.

Q. Was your job a year around job?

A. Yes.

Q. Did you work at any other
cannery besides ~~Red~~ Salmon?

A. No.

Q. Did you have any duties with
Columbia Wards Fishery?

A. I had no definite duties.

Q. Did you perform tasks for
Columbia Wards?

A. Yes.

Q. What did you do for Columbia
Wards?

A. I would work for various
superintendents fo [sic] the plant and
personnel at Red Salmon, and for
Mr. Brindle.

Q. What did you do for the superintendents fo [sic] the Columbia Wards Fisheries Canneries? Did you help them in hiring?

A. No.

Q. Did you help them in bookkeeping?

A. No.

Q. What exactly did you do?

A. I would help them on transportation, and if there was nobody in the office, we would do purchasing for them.

Q. If ther [sic] was no one in which office?

A. In our main office in Seattle.

Q. Aside from helping with transporation [sic] and purchasing, did you do anything for the superintendents of the Columbia Wards Fishery Canneries?

A. If they were up north and were looking for help, I would try to help them

obtain anybody that they might want to contact or replace.

Q. When you say "help," you mean employees?

A. Yes.

Q. So you helped in hiring, then?

A. I had nothing to do with hiring the employee.

Q. You helped in recruiting employees?

A. Yes.

* * *

[p. 625]

Q. Were your duties for Columbia Wards Fisheries more or less incidental?

* * *

[p. 627]

Q. Could you tell me which job department you had recruitin- [sic] dutues [sic] for at the Red Salmon Cannery?

A. For all of the personnel, for all of the departments, mainly fishermen, cannery workers, some AFU members.

Q. Did you do the beach gang?

A. I did not hire them, but I would help recruit them, if I could.

Q. Tender?

A. The same.

Q. AFU culinary?

A. Yes.

Q. Machinists?

A. The same; yes.

Q. Quality control?

A. No.

* * *

[p. 628]

Q. And the people who worked in that were employees of Wards Cove Packing Company?

A. Yes. I would recruit them and line them up.

MR. LONG: I'm sorry. Did you say lined up storekeepers for the Naknek Trading Company?

THE WITNESS: Yes.

* * *

[p. 628]

Q. Who was responsible for the actual hiring at Red Salmon Cannery? Was that Mr. Brindle?

A. I would do some of the hiring; he would do some of the hiring; and the beach gang boss would do some of the hiring.

* * *

[p. 636]

Q. Did you look for any personal qualities in individuals you had a role in hiring?

A. Yes, we tried to get people that were capable, that knew--they had to know the machinery, for instance, for the machinists. Carpenters had to--be real

carpenters. Tender men [sic] had to have knowledge.

* * *

[p. 637]

Q. (By Mr. Arditi) But there were no set qualifications a person had to meet?

A. No.

Q. Pardon?

A. No.

* * *

DISTRICT COURT

TESTIMONY OF JILL HENDERSON

[p. 695]

JILL HENDERSON, being first sworn,
states:

* * *

[p. 697]

7. There were two messhals [sic] at Red Salmon. The Filipino cannery workers ate in one. It was commonly called the "Filipino messhall." (The Filipinos were also housed in what was commonly called the "Filipino bunkhouse.") Other employees--including me--ate in the other messhall. Both the Filipino cannery workers and white cannery workers like myself were Local 37, I.L.W.U. members. However, the Filipinos ate in one messhall. We were assigned the other one. I do not recall any non-whites eating in our messhall

except some Japanese nationals. They were not employees of Wards Cove Packing Company, Inc. Instead, they were employees of a company in Japan which bought the salmon eggs. They were there to make sure the eggs were processed correctly. Tables were assigned in our messhall. . . .

* * *

DISTRICT COURT

TESTIMONY OF PATRICK TIMOTHY RYAN

[pp. 705-708]

PATRICK TIMOTHY RYAN, being first sworn, states:

1. . . . I am a white male. I am related to Winn Brindle who is cannery superintendent at Alitak.

2. . . . In 1976 at age 18 I worked for Columbia Wards Fisheries as a machinist trainee. In 1977 at age 19 I worked there as seamer machinist, in 1978 at age 20 as salmon butchering machinist and 1979 at age 21 as first machinist.

3. Prior to being hired in 1976 I had no mechanical work experience in a paying job. I had been employed in a gas station to sell gas, maintain shelves and stock groceries. My duties at the gas station did not include mechanical work. I had worked on my own car as well as

other people's cars. This was for pleasure rather than compensation. It consisted of tune-ups, carburetor rebuilds and valve jobs. The only shop class I had taken was a one-year high school course which included wood as well as metal shop. I attended a general rather than a vocational high school. The course included instruction in woodworking, using wood lathes, welding, tool grinding, forging, using metal lathes and small engine repair and rebuilding. The small engines we dealt with in the course were lawn mower engines. This shop course was the only classroom training I had received in a mechanical field.

4. I consider machinist trainee an entry level job. Most of my work in the 1976 season involved working with the salmon butchering machines. The regular salmon butchering machinist was called away to replace two or three boat booms

which had broken. For about three weeks during the season I was basically doing his job. During that time I was essentially running the fish house. I learned about the salmon butchering machinery during the pre-season when I helped the machinists set up some of the cannery machinery. I continued to learn about the salmon butchering machinist's job throughout the 1976 season. While I was a trainee in 1976 I also did some pipefitting and welding. I had not done pipefitting professionally before this. The only pipefitting I had done was part of the carpentry work I did which is described in paragraph 13 below. The only welding I had done before this was in my high school shop class. During the pre-season and post-season in 1976 I helped the machinists put together and tear down salmon butchering machines, seamers, fillers and weighing machines. Finally,

I also did some parts fabrication in the machine shop at Alitak. The only such work I had done before this was in my high school shop class.

5. In 1977 I became the seamer machinist at Alitak. I had been occupied with the salmon butchering machinery during the 1976 season. Essentially, I learned about seamers during the 1976 pre-season. During the 1976 post-season I also helped dismantle the seamers and put preservative on them. After I started work as the seamer machinist I received some on-the-job training on the seamers. For example, during the 1977 pre-season the first machinist showed me how to rebuild seamer heads, tear down the seams on cans and report on the quality of the seams. I had not done any of these tasks before then. Also, during the 1977 pre-season the first machinist plus a representative of American Can Company

showed me how to make adjustments on the seamers. American Can Company is the manufacturer of the seamers at Alitak.

6. Between the 1976 and 1977 seasons I worked about 16 hours per week while I was in college at the Lake Union Terminals boatyard. My work consisted of outfitting three fishing boats. It did not consist of any engine or machinery repairs that I can recall. It did include some welding and pipefitting but not on cannery machinery. Between the 1976 and 1977 seasons I also took a course in commercial welding at Seattle Central Community College. It lasted one quarter, two nights a week, three hours a night. I was not nor have I ever been certified as a welder. By the fall of 1976 I had started college. My studies in structural engineering did not include any hands-on mechanical courses. However, some of the theory courses I took

on metals were helpful though not essential to my work as a-machinist.

* * *

[pp. 708-709]

8. I was not employed between the 1977 and 1978 seasons. Nor did I do any mechanical work except for repairs on my own car. This consisted of rebuilding and replacing the engine and transmission.

9. In 1978 I became the salmon butchering machinist at Alitak. I learned the job while I worked as a machinist trainee in 1976. In fact, during the 1976 season I learned both the seamer machinist and salmon butchering machinist jobs. I could go to the cannery foreman or first machinist for consultation since they had substantially more general mechanical experience than me. . . .

10. Between the 1978 and 1979 seasons I worked 16 hours a week at Lake

Union Terminals again. I was still in college during this period. I also worked full time during a two and one-half week break in school in March, 1979. I worked on the rebuild of two filler and cutter units for Alitak there. I worked under the supervision of Elroy Kowalski who told me what to do. When I was in school he would do the work on the filler and cutter units by himself.

* * *

[p. 758]

Q. Now, if I understand your testimony correctly, you felt that you were qualified to be a seamer machinist after the two or three weeks that you spent in the 1976 preseason plus the 1977 preseason, plus the first few weeks of the 1977 season, is that correct?

A. Yes.

Q. However, at the time that you were hired as the seamer machinist, and

that you held that job, the only experience that you had was the two or three weeks in the 1976 preseason, is that correct?

A. Yes.

* * *

[pp. 758-759]

Q. (By Mr. Arditi) Is it fair to say, then, that while you held the job as a seamer machinist, you were learning?

A. Yes.

Q. Now, do you have exhibit 640 in front of you?

A. Yes, I do.

Q. You mentioned a number of critical duties for the seamer machinist. Did you learn any of those critical duties during the 1977 season?

A. Yes, I did.

Q. So prior to the time that you were hired in that job in 1977, you were not able to do all of the things that you

have identified as critical duties, is that correct?

A. Yes.

* * *

DISTRICT COURT

TESTIMONY OF JOEL STROMME

[p. 778-779]

JOEL STROMME, being first sworn,
states:

1. I am a 33 year old white male and currently reside at 5687 Doren Road, Acme, WA 98220.

2. I worked for Columbia Wards Fisheries at its Ekuk cannery during the 1970 season as a tallyman and deckhand; during the 1971 season as a deckhand; and during the 1972 season as a tender engineer.

3. Before working for Columbia Wards Fisheries I had worked as a laborer and a logger.

4. Prior to 1972 my boating experience was limited to my past work at Ekuk as a deckhand and to pleasure boating on lakes.

5. My practical mechanical experience was limited to work on my own car, which is pretty good.

6. During the winter of 1971-72 I took refrigeration and diesel mechanic courses at Bellingham Tech.

7. However, neither was helpful. I could have done tender engineer's work without them just with my auto experience. The tender I worked on in 1972 did not have refrigeration equipment.

8. My work during 1972 required only minor repairs such as replacing injectors and hose fitting for engine coolers. The major repair work was done by the port engineers.

9. Anyone who had a lot of experience working on his car could have done the work.

* * *

DISTRICT COURT

TESTIMONY OF ALBERT BELASARIO

PASTORES, JR.

[p. 831]

Albert Belasario Pastores, Jr.,
being first sworn, states:

1. I am a Filipino male residing
at 3705 South 205th Place, Kent,
Washington. . . .

2. . . . In 1971 I was sent to
Bumble Bee by Local 37, I.L.W.U., again as
a slimer. . . .

* * *

[p. 832]

4. I asked Rudy Rodriguez, the
cannery foreman, why there were no
Filipino machinists, because I did not
want to be a slimer in 1971 because the
previous year I did not like the work. I
asked him how to get another job. Rudy
told me that Filipinos were not supposed

to have the other jobs. I did not ask anybody else about job possibilities because I had been instructed when I got there that if I had any questions, I was to direct them to Rudy exclusively. I considered Rudy to be a part of management, and I was not aware of any place at the cannery where I could apply for another job. He said that if I made waves about it, that would probably cause a lot of problems, and that discouraged me from making any further inquiries. I was not aware of any openings for machinists jobs posted at the cannery or any advertisements.

* * *

DISTRICT COURT

TESTIMONY OF EUGENE BACLIG

[pp. 869-870]

EUGENE BACLIG, being first duly sworn, states:

1. My address is Route 4, Box 4352, Wapato, Washington 98951. I am of Filipino descent. . . . I worked for Wards Cove Packing Company, Inc. at Red Salmon during the 1969-72 seasons. I also worked for Wards Cove Packing Company, Inc. at Wards Cove Cannery during the 1973 season.

* * *

[pp. 870-871]

3. When we arrived at Red Salmon, Mr. Eleccion told us which bunkhouses we would be staying in. They are marked Buildings 12 and 13 on Exhibit 162. I stayed in Building 13. Buildings 12 and 13 were commonly called the "Filipino

bunkhouse." Seven of us lived in a single room each of my four seasons at Red Salmon. It was about fifteen feet by fifteen feet with three double bunkbeds plus a single bed. The only furniture in the room was one small homemade table. There were no bathroom facilities in the bunkhouse. Instead, we had to use a shed near the bunkhouse. The bunkhouse was old in appearance, with peeling paint. The company did not provide someone to fix the beds or clean the bunkhouse.

4. The Alaska Native cannery workers were housed separately. They lived in Building 15. Sometimes, they also lived in Building 14. There were yet other bunkhouses for the white crews.

5. . . . There were two messhalls at Red Salmon.

6. One, which was called the "Filipino messhall," was used to feed our crew. Mr. Eleccion assigned our crew

this messhall. One or two years there were two or three whites who lived in our bunkhouse. They usually ate breakfast plus one or two meals in our messhall. . . .

7. _ The other messhall, which we called the "white messhall" fed the other crews besides ours. The Alaska Native cannery workers ate there. However, they did not eat in the same room as the white crews. Instead, they had a small dining room off to the side of the messhall. Unlike our messhall, the white messhall had an automatic dishwasher. The Japanese egg technicians also ate in the white messhall at a table in the back. They were not employees of the company.

8. At Wards Cove, just as at Red Salmon, housing was assigned essentially along racial lines. There were two bunkhouses for the Filipino crew. The white crews lived apart from us in other

bunkhouses. There were white women cannery workers from the Lower 48 at Wards Cove. They did not stay in the same bunkhouse as us. Instead, they stayed in what is marked Building 3 on Exhibit 163. Members of the white crews lived in the same building. There were also Japanese national egg technicians at Wards Cove. Again, they were not company employees, but employees of the purchaser of the salmon eggs. They also stayed in Building 3.

* * *

DISTRICT COURT

TESTIMONY OF CHRISTOPHER STEELE

[p. 910]

CHRISTOPHER STEELE, called as a witness on behalf of the plaintiffs herein, being first duly sworn, testified as follows:

* * *

[pp. 910-911]

Q. First of all, Mr. Steel, can you turn to page two of the affidavit you have in front of you?

Is that your signature on line 27?

A. Right.

Q. Now, are the statements in this affidavit true?

A. Right.

Q. You made a correction at lines 6 and 7 which you penciled in. You crossed out "no prior navigation

experience and no prior boating work experience.

Can you tell me why you crossed those out?

A. I remember making that trip South with Doni Brindle in '67, and I went on several of my days off following the fishing ground rules with him.

Q. About how many days off did you go out on?

A. Oh, five or six, sir.

Q. How long is the trip South?

A. Four days.

Q. Is Doni Brindle a friend of yours?

A. Yes.

Q. Okay. Is he a relative of Joe Brindle?

A. Yes.

Q. And how long have known Doni Brindle? [sic]

A. Ah, fifteen years, or so.

Q. The navigation experience, then, would that consist of standing wheel watch at times?

A. Right.

Q. Now, at lines 24 through 25, you also crossed that out. Can you tell me why you crossed that out?

A. Well, the refrigeration--the Vanguard doesn't have any. That was after I was engineer on it.

Q. Okay. In other words you took the refrigeration course after you became engineer?

A. Right.

* * *

[pp. 913-914]

CHRISTOPHER STEELE, being first sworn, states:

1. I am a white male residing at 10926 - 127th Place N.E., Kirkland, WA 98033. I worked for Wards Cove Packing Company at its Wards Cove cannery during

1966-71 and 1972-present. I was in the service between the 1971 and 1972 seasons. My father was Gerald Steele who was bookkeeper at the cannery when I started. He later became the cannery superintendent there.

2. My first job at the cannery was machinist helper. I was 16 years old at the time. I had not had any prior mechanical work experience. However, I had done some work on my own car. Prior to becoming a machinist helper the only mechanical course I had taken was a high school metal shop course. I had also taken a high school wood shop course. I worked as a machinist helper at Wards Cove for three seasons.

3. In 1969 I became engineer on the Vanguard which is a Wards Cove Packing Company tender. The Vanguard is a dry tender which means that it does not have facilities for refrigerating salmon.

Prior to becoming engineer on the Vanguard I had no prior experience working on diesel engines, no prior navigation experience and no prior boating work experience. In about 1970 I [sic] one-semester courses at Trident in refrigeration, diesels and navigation. I do not recall the precise year I took these courses. However, I do recall that it was after my first year as engineer on the Vanguard. The navigation course was a night school course. Before starting work as an engineer on the Vanguard my only mechanical work experience had been around the cannery but not on boats.

4. After I left the service I became a deckhand on the Whale for the 1972 seasons. Then in 1973 I became the skipper of the Vanguard. Prior to 1973 my only boating work experience was my prior jobs at Wards Cove which I have listed above. I do not recall exactly but I may

have taken a brush-up night school course in navigation after the one I took in about 1970. I have also taken a navigation course at the YMCA. However, I took that course after I had already been working as a skipper on the Vanguard.

* * *

DISTRICT COURT

TESTIMONY OF PHILLIP FUJII

[p. 925]

PHILLIP FUJII, being first duly sworn, states:

1. I am a Japanese male residing at 202 West Olympic Place, Seattle, Washington 98119. I graduated from Franklin High School in Seattle in 1971. I received a B.A. in Urban Planning from the University of Washington in 1975. I have completed the course work for a certificate in urban design during two years of graduate school. From 1976 through 1978, I worked for the Renton Planning Department. Then I worked for Don Miles Associates, an architectural firm in Seattle during 1978. Since then I have worked for the City of Seattle, Department of Community Development.

* * *

[pp. 926-927]

5. Prior to cannery work from late 1969 to 1971 I worked at Mount Baker Cleaners. My jobs at the cleaners included mainly cleanup and maintenance of the machines and equipment, including the pressers, the washers, dryers and some of the steam pipes. I oiled, cleaned, and changed lint baskets on the pressers. I changed gaskets on the washers and removed "muck," sediment that gathered in the bottom, from the washers. I also added solvent and read meters on the washers. I cleaned lint baskets and removed foreign objects from the dryers. I opened and closed the valves of the steam pipes and sometimes performed makeshift repairs. All of the training for this job was on-the-job training and my work was checked by two supervisors and the owners of the dry cleaners.

* * *

[p. 930]

Q. The foreign object that you removed from the dryer, wasn't that simply reaching in the dryer and pulling out buttons that had fallen off the shirts?

A. Yes, and changing the wind basket periodically.

Q. Now, the makeshift repairs you refer to in line 6 to the steam pipes, that was really just grabbin [sic] a piece of cloth around leak to keep it from leaking any further?

A. And also turning off the valves, opening and closing valves; if there was a major leak we would see that and then we would turn off the steam valve and we would makeshift repair.

Q. But the repair work you did was simply rapping [sic] it with a cloth?

A. Yes.-

Q. It was the owners or your supervisor who actually fixed the pipes that leaked?

A. That is correct or they subcontracted it out.

* * *

DISTRICT COURT

TESTIMONY OF CATHLYN HJORTEN

[p. 939]

CATHLYN HJORTEN, being first sworn,
states:

1. . . . I worked for Bumble Bee Seafoods as a waitress in 1970-71 and as a cannery worker in 1980. I am presently employed as a dental hygenist. I am white.

* * *

[p. 940]

4. There were two messhalls at Bumble Bee, namely: the one I worked and ate in; and, what was generally called "the Filipino messhall" around the cannery. When the fishermen were there, about 300 people--almost all of whom were white--ate in our messhall. Several non-white employees also ate there each year. However, the largest number who did was

about ten in 1980. Several Japanese national egg technicians ate in our messhall each year as well. In 1980 there were 20 or more white male cannery workers. They ate in our messhall. Similarly, the women cannery workers, most of whom were white, ate in our messhall. So did two black male cannery workers. Some of the white cannery workers who ate in our messhall were from the Lower 48. In contrast, each year the people who ate in the "Filipino messhall" were almost all non-white. I knew that because I could see them lined up outside the messhall waiting to go in just before meal times. The non-white who ate there included the male Filipino cannery workers from the Lower 48 plus the male Alaska Natives whose jobs I can't recall. It was understood at the cannery where one was to eat.

* * *

[p. 941]

7. I was assigned a bunkhouse each year I was at Bumble Bee. For example, in 1980 whoever drove us in from the airport dropped us at the bunkhouse we would be staying in. It was one of two women's cannery worker bunkhouses in 1980. It is marked Building J on Exhibit 162. The Filipino cannery workers stayed in one bunkhouse. The 20 or more white male cannery workers stayed in another bunkhouse. I do not know where the one or two Black male cannery workers were housed although I often saw them hanging around the building where the white male cannery workers were housed.

* * *

DISTRICT COURT

TESTIMONY OF RODERICK E. CAMERON, JR.

[pp. 994]

RODERICK E. CAMERON, JR., called as a witness on behalf of the plaintiff, being first duly sworn, testified herein:

* * *

[pp. 994-995]

Q. I would like to trace your job history a bit, if I may. Prior to the time that you started working as a warehouseman, you worked for the Seattle School District?

A. Yes, I did.

Q. And did your job consist of cleaning buildings at night?

A. Yes.

Q. And did you also operate the boilers?

A. Yes, I have a license.

Q. And is that essentially it as far as your job duties went with the school district?

A. I operated them and then in the summer time you would tear the boilers down and clean them out real good and repair the pumps.

Q. Now, did the Seattle School District have a repair man or a service man or a mechanic who repaired the boilers?

A. As far as repairing, retubing of the furniace part, the oil burner part ws.

Q. So was it they who did the major repair work then on the boilers?

A. Well, the big thing, like I say, we would replace like valves if they leak, water glasses, repair the pumps.

Q. Prior to your work there you were in the Navy?

A. Yes, I was.

Q. And what did you do in the Navy?

A. I was a signalman, quartermaster.

Q. Before that you were in high school, were you not?

A. Yes, I was.

* * *

[pp. 996-998]

Q. Did you receive any training from the school district in operating the boilers?

A. Yes, I did.

Q. And that was provided by the school district?

A. Yes, they had a school.

Q. Now, aside from the high school metal shop and the training you received from the school district, have you have [sic] any other mechanical training?

A. Other than hauling my own car engines and that, no.

Q. So aside from those two courses, have you had any other mechanical courses?

A. No.

Q. Have you worked on your own car?

A. Yes.

Q. And have we covered your mechanical experience now prior to 1968?

A. Pretty much so, I would say, yes.

Q. In 1968, you worked at Naki (phonetic) Packing Company, is that correct?

A. Yes, I did.

Q. Was that your first season in Alaska?

A. Yes.

Q. And when was your next season?

A. 1970, I think.

Q. And who did you work for then?

A. Columbia Wards Fisheries.

Q. What was your job title, please?

A. Helper.

Q. Was that machinist helper?

A. Yes.

Q. And did you return in 1971?

A. Yes, I did.

Q. What was your job then?

A. The iron chink man.

Q. Is that a salmon butchering machine?

A. I guess so.

Q. Okay, did you return the enxt year?

A. Yes, I did.

Q. And what was your job then?

A. The same.

Q. Now, was your year at Nacket (phonetic) the first year you ever saw salmon butchering machinery?

A. Yes.

Q. And you were the casin man at Nacket, you weren't working with the salmon buthcering [sic] machinery, is that right?

A. I was the casin label man, I was over there to help during the preseason.

* * *

[p. 999]

Q. Now, was it during your 1970 season, as a helper, at Ekuk, that you learned the salmon butchering machinist job for the next year?

A. Yes.

Q. Once you became salmon butchering machinist, did something happen that you could not fix, would go to the cannery foreman for assistance? [sic]

A. Nothing happened that I couldn't fix.

Q. Well, was he available for you to go to if something happened that you couldn't fix?

A. I suppose he was.

* * *

[p. 1005]

THE COURT: Did you have any mechanical training at all in the service, in the Navy?

THE WITNESS: No, sir.

* * *

DISTRICT COURT

TESTIMONY OF ARSENIO ELECCION

Arsenio Eleccion, being first sworn,
states:

[p. 1089]

1. I am a Filipino male, residing at 1503 South Stevens, Seattle, Washington. I was employed by Wards Cove Packing Company, Inc. at Red Salmon cannery through 1972 and at Wards Cove from 1973 to the present. I worked at Red Salmon almost every season from 1943 to 1972.

* * *

[pp. 1089-1090]

3. In 1943 and 1944 almost all of the people who worked in the fish house were Filipino. In both years we had two blacks and there were no whites. The people who have worked in the fish house

up to the present have been mostly Filipino and there have been no whites.

4. From 1943 up until 1972, all machinists at Red Salmon have been white.

5. From 1943 to 1972, all office workers at Red Salmon have been white.

6. All employees who worked in the store at Red Salmon from 1943 to 1972 have been white.

7. From 1943 to 1972 all tender operators have been white.

8. From 1943 to 1972 among the beach gang members there have been no Filipinos, no Chinese, no Japanese, and no blacks. From 1949 on there have been Alaska Native beach gang members. However, these Eskimos were from Seattle.

9. Since 1943 the Filipino crew has had its own bunkhouse. - There have been almost no white people living in the bunkhouse. At no time since 1943 did any of the Filipino cannery workers live in

the same bunkhouse as the machinists or the beach gang or the Eskimo cannery workers. The Eskimo members of the beach gang did not live with the rest of the beach gang; they lived in the Eskimo bunkhouse. That was true in 1949 through 1972.

10. Since 1943 the Local 37 crew always lived together. There were two Filipino bunkhouses and two Eskimo bunkhouses.

11. Ever since 1943 there had not been any Filipino, Japanese or Chinese fishermen at Red Salmon. There had been a few Native Alaskan fishermen. The fishermen had their own bunkhouse but the Alaskan Native fishermen lived in the Eskimo bunkhouse. In 1972 the few Alaskan Native fishermen lived in the Eskimo bunkhouse also.

12. In 1943 the Alaska Native beach gang members did not eat with the other

beach gang members; they ate in the
Filipino messhall.

* * *

[p. 1091]

15. In 1943, the Alaska Native
beach gang members ate in our mess hall.
In 1969 the Alaska Native cannery workers
started to eat in the fishermen's
messhall.

* * *

[p. 1091]

17. The carpenters at Red Salmon
have had their own bunkhouse since 1943.
Carpenters have always been white also.

* * *

[p. 1096]

Q. Alright, when did--alright,
when did you start working for Wards Cove
Packing Company?

A. Well, when Mr. Brindle bought
the Red Salmon in 1949, then I started to
work with Brindle company.

Q. Okay, and did Wards Cove Packing Company own the cannery since 1949?--I will say it again, did Mr. Brindle own Red Salmon since 1949?

A. Yeah, they bought the cannery in 1949.

* * *

DISTRICT COURT

TESTIMONY OF ALEC W. BRINDLE

* * *

[p. 1100]

Q. Then on--still on page 13, paragraph 49, line 23, do you have a correction there?

A. Yes, there is a reference to individual fishermen earning shares in Bristol Bay of \$120,000. That is not quite correctly stated. What it really means is that the bulk earning was \$120,000, we have no idea how the boat captain would divide the earnings.

ALEC W. BRINDLE, being first duly sworn, on oath deposes and says:

* * *

[p. 1114]

1. I am the President of Wards Cove Packing - Company, Inc., and a comanager of Columbia Wards Fisheries. I

have held that position since August of 1977, following the death of my father A. W. Brindle on July 4, 1977.

2. I am 44 years of age and was educated as a lawyer, being admitted to practice in both the state of Alaska and the state of Washington. I obtained the degree of Bachelor of Law from the University of Washington in 1963 and also hold a Bachelor of Arts Degree in Political Science from the University of Santa Clara.

* * *

[p. 1118]

13. Readyng the fish camps and canneries for operation is accomplished during the months of May or June, depending on cannery location and timing of the expected run.

14. Preseason work is intense, involving extensive overtime, and must be accomplished in a short period of time.

Some tenders carry supplies and equipment to the facilities during the preseason. In addition to dewinterizing the facility and reinstalling equipment, docks are repaired and pilings are replaced; boats are launched and dewinterized; canning equipment is tested, lubricated and adjusted; water systems are replumbed; and other tasks necessary to restore the facility to viable operation are performed. Often new buildings or docks are constructed before the season.

15. The intense period of preseason work allows minimal time for training unskilled workers for skilled jobs. Because of this, it is not practical to do so.

16. When the cannery is open and running, the cannery workers arrive just before the commencement of fishing operations. If they are idle prior to canning they are often given unskilled

work as called for by their contract, such as grass cutting and cannery cleanup. (See infra, Miscellaneous Work.)

* * *

[pp. 1122-1123]

32. The hiring policies of Wards Cove and Columbia Wards during the entire case period have been to select the best people for any particular job without regard to race. Two of the Columbia Wards Fisheries superintendents, Carl Aspelund of the fish camp at Craig and Emil Norton of the Icy Cape cannery, are Alaska Natives. Sam Yoshida of Japanese descent is an employee of Columbia Wards Fisheries and is egg production manager in charge of the Egg Sales Department. He has the status of a cannery superintendent. Osamu Marao, who is Japanese, is employed in the home office of Wards Cove with the title of assistant superintendent. We have many other

minorities on our home office staff: Pete Gasca, of Chicano descent is office manager of Columbia Wards, is an officer of CWC Fisheries, Inc., and he is responsible for Wards Cove's most sensitive financial data. Also of Filipino descent is Jesus Canon, an office manager, Wards Cove cannery at Ketchikan and Juanita Quiban, Mexican assistant accountant Columbia Wards Fisheries. A complete list of minorities employed in the office of Wards Cove and Columbia [sic] Wards, 88 East Hamlin Street, Seattle, Washington, is attached as Exhibit A.

33. The primary consideration in hiring for all jobs at our facilities is the skill and experience of the person under consideration. Race is not a consideration or factor in hiring, except for affirmative action considerations.

34. The more skilled, experienced employees we can hire, the less time and effort is lost in on-the-job orientation, training, and inefficient, nonproductive activity.

35. Our policy and practice is to adhere to the union rehire preference clauses and to offer employment in the same jobs to past satisfactory employees for the new season. Employees, including nonresident cannery workers, take advantage of these clauses to secure employment.

36. Hiring for all jobs except resident cannery workers, spring and fall workers, and the majority of nonresident cannery workers takes place at our home offices in Seattle and Astoria during the first three months of the year. Most employees, particularly in the skilled jobs, are hired between January 1 and April 1 each year for the upcoming

season. The Machinists and Alaska Fishermen's Unions are generally notified by mid-April by our companies of the names of persons hired in jobs under their jurisdiction. Cannery workers are hired a little later in May or June. Each location has slightly different timing depending on the commencement of the fish run.

37. The rehire preference rights of past employees are respected in determining the number of vacancies to be filled for the new season. The remaining vacancies are filled from amongst those who seek employment with us during the fall and winter preceding the upcoming season. We seldom look to applications for the preceding season in filling openings for the upcoming season. Rehire preference rights are included in the union agreements for cannery workers, machinists, carpenters, and the AFU.

* * *

[pp. 1125-1126]

43. . . . None of the cannery worker foremen at any of our facilities are vested with any authority to hire for any position outside the cannery worker department, nor are they authorized to even discuss those jobs on behalf of management.

* * *

[pp. 1126-1127]

49. It also has been my observation that many Alaska Natives have a distinct preference for fishing. In fishing there is always the possibility of large earnings, even though in some years the average earnings may be moderate. We have had individual fishermen earning shares in Bristol Bay of \$120,000, at Chignik \$45,000 man share, and Southeastern of \$16,000 man share during the case period. In Alaska talk of these high liners is a

popular subject of conversation so it is natural for residents to be attracted to these jobs. Our fishing fleets at Ekuk, Craig, Chignik, and Hoonah are almost entirely Native. We have many Native fishermen at Kenai and Alitak as well. We have also had Native fishermen at Wards Cove cannery.

* * *

[pp. 1127-1128]

52. Local 37 of the International Longshoremen's and Warehousemen's Union (I.L.W.U.) has had the union contract for cannery worker jobs with us, except for the Ekuk facility, throughout the case period. Local 37 is predominantly Filipino in composition and almost entirely Asian.

53. The hiring process at Local 37 works like this: the superintendent will tell his cannery worker foreman how many personnel are needed for a season. The

cannery worker foreman will then prepare a list of persons based upon those who worked at the cannery the previous season and who had not been terminated. The cannery worker foreman attempts to contact these employees to confirm their availability and advise them of the date of dispatch. Within about a month from the time of receipt of the request from the cannery superintendent, the foreman furnishes a list to Local 37 president, Tony Baruso, or his predecessor Gene Navarro. Baruso will examine the list and delete the names of those who have moved or died and will add names to the list if more employees are needed than had worked the previous season. These names are added from members who may wish to work in Alaska or from new applicants. On the day of dispatch, the union dispatcher in the union hall reads the names from the list and when, or if, the individual is present

and responds, his union book is checked to verify his dues payments are in order. If the member's book does not indicate he is current in his dues, he is referred to the union secretary-treasurer who is located in offices immediately adjacent to the hall. The secretary-treasurer will either collect past dues or straighten out some other problems with the member's book. At the time of dispatch, one of our employees is also normally present.

54. Beginning in the late 1960's, our companies first started to find a market for salmon eggs in response to market demands from Japan. The product is "sujiko" and consists of eggs sorted by grade, treated in brine solution, and packed for export. Because the product is unique to the Japanese market, our customers have provided technicians to supervise this. They are Japanese Nationals and have been housed and fed at

the canneries. For some reason, the Local 37 male workers refused to work in the egghouse under supervision of the Japanese without over time. As an example, attached is a copy of Exhibit 435A a complaint from the Local 37 delegate at Wards Cove cannery in 1970 demanding over time for the work in the egghouse. Accordingly, we have looked outside Local 37 as a source of labor for the egghouse. These workers have been predominantly white, have been hired by the superintendent from applicants with little input from Local 37, but have been required to pay union dues.

55. On the day of dispatch, our employee in attendance at the union hall will present a list of egg workers to Baruso for union approval. Baruso will sometimes negotiate additional jobs at that time or replacements for those egg

workers who do not confirm employment. Baruso will add names of female workers to this list [sic]. The female egghouse workers added by Baruso have been nonwhite.

56. Local 37 thus produces an over supply of Asians, Filipinos in particular, in the unskilled cannery worker jobs. We continue to use Local 37 because it has a contract with all of our facilities except Ekuk.

* * *

[pp. 1128-1129]

57. There is a high turnover rate of our employees from one season to the next, particularly in the unskilled jobs. Because of this, and because of the lack of time which would be required to stop work and provide training during the season, we provide very little on-the-job training; that is, the type of training

that would turn a "greenhorn" into a machinist.

58. Because of the lack of time and personnel available for training at a salmon cannery, skills or qualifications cannot be considered "readily acquirable" unless they can be acquired within a matter of days with a minimal amount of training time required of supervisory and other skilled personnel.

59. To maximize production and minimize the amount of training which must be done at the canneries, we attempt to hire experienced persons in all job categories. We have found that because of the intensity of operation, experience in every cannery job is preferable.

* * *

[p. 1134]

61. Qualifications required for any individual position depend to a certain extent on the cannery involved, the age

and condition of equipment, the expected harvest of fish, skill level of other incumbents and supervisors, and other such factors. . . .

* * *

[p. 1135]

67. There are very few promotions during the season. If a vacancy does occur, we feel we are better off hiring a replacement from outside rather than creating an empty spot in the cannery and then hire another to fill that spot and pay him a season's guarantee.

* * *

[p. 1137]

79. Workers are housed primarily according to job department and time of arrival. The larger cannery worker bunkhouses are generally not opened up during the preseason. They are generally opened up and prepared for occupancy shortly before the cannery worker crews

arrive or upon the cannery workers arrival. This is typically within a few days of the anticipated beginning of the salmon run at each location. By the time the cannery workers arrive, most other employees have already begun working and have been housed. By the time the cannery workers arrive, there are generally few, if any, available spaces except in the cannery worker bunkhouses.

80. Cannery workers are housed for the shortest period of time of any employees and do not need the better insulated buildings required for the noncannery worker employees who arrive at the cannery earlier and stay later than the cannery workers.

* * *

[p. 1138]

86. In a general sense the policy of our companies is to provide housing at the various plants by job classification.

The higher paid employees receive slightly to somewhat superior housing facilities. The machinists, for instance, are our highest paid group of employees and also they spend more time at the cannery than the others. The machinists are the first ones to be sent North to the canneries to open them up and will spend three to six weeks getting the cannery ready to run. The cannery workers, on the other hand, arrive just shortly before canning is to commence because they are not needed for any significant amount of work outside the canning operation.

87. As workers arrive during the preseason or during the season the housing will develop like a series of concentric circles. The first to arrive will be given Bunkhouse A; the second group Bunkhouse C and so forth.

* * *

[pp. 1139-1140]

91. We provide substantially equal messing to all employees regardless of race. The leaders of Local 37, the bargaining representative for nonresident cannery workers, have traditionally demanded Oriental and Filipino food, a separate menu, and separate eating and cooking facilities for its members, most of whom are Filipino and Asian. Management has acceded to these wishes.

92. The Local 37 contract provides for a separate culinary crew for the Local 37 crew.

93. At Wards Cove, the food preparation and storage area ("kitchen") of the Local 37 mess is larger and as well equipped than that of the AFU mess. The Local 37 kitchen is about 777 square feet whereas the AFU kitchen is about 476 square feet. The Local 37 kitchen was remodelled and added to around 1977 or

1978. Prior thereto, the Local 37 kitchen was about 407 square feet. The AFU kitchen has also been remodelled since its construction in the 1930's. Thus, prior to the construction of the Local 37 kitchen addition, the kitchens in both messes were about the same size.

94. The quality and quantity of food served in mess halls is the responsibility of the steward or cook in the mess hall. Virtually all complaints about food can be traced to matters of personal taste and preference or the competence of the cook. We have had just as many whites complain about the food as we have had nonwhites complain.

95. We have ordered special food for the nonresident cannery worker mess halls in accordance with the wishes of the Local 37 union leaders, the Local 37 cannery worker foreman, and the Local 37 cook or steward.

96. We have not imposed any dissimilar budgetary or other restrictions on the quality, quantity, or type of food which may be ordered or served by the cooks in any of the mess halls in any of our facilities.

97. Our policy on messing is to permit the cook at each facility to order and provide what he reasonably wants. While the general quality of food for all employees as well as the quantity is well above what most of us would eat in our own homes, complaints about food have probably existed over the years in almost all of our facilities and aboard our tenders. If the employees in a particular mess do not like the food, they will go to the cook. If the cook for some reasons determines not to provide steak once a week, it is because of his decision, not that of management and he may be persuaded

by those that he feeds during the season to make adjustments.

98. Throughout the entire case period and by contract, Local 37 has their own culinary department. By tradition as well as by preference the Local 37 cooks will order a number of supplies such as bean sprouts, soy, canned abalone, and rice, and yet may often be designated as "Oriental food" in the paperwork. Indeed, it is Oriental food that is cooked.

99. The mess facilities may differ slightly between the Local 37 and the AFU department, but they are the same essentially. If the AFU has additional equipment it is for the reason that that department is required to serve more personnel or such as at Red Salmon and Alitak bake for the entire camp.

100. At Alitak the main mess hall is called the Winter Mess because when crab

are processed at Alitak during the wintertime all personnel eat in the same mess hall. Local 37 has never exercised jurisdiction at the Ekuk cannery and Ekuk has not had a separate mess for cannery workers.

* * *

[p. 1141]

105. For the tender fleet it is our policy, and we feel it is reasonable, to allow the tender captains some discretion in choosing crew as this work involves living and working for extended periods of time in close quarters, and sometimes long hours under arduous conditions at sea.

106. We feel that it is reasonable to hire applicants whose qualifications are known or who are recommended considering the facts of cannery operation. In addition, many jobs require an ability to get along with

others. All jobs require sobriety. Personal recommendations tend to weed out troublemakers in this regard. To do otherwise would risk setting problem personnel in a remote location where they are hard to replace.

107. We often hire additional cannery workers from the communities near the cannery during the season as the salmon catch impacts the demand for employees as there may not be time to look elsewhere.

108. It is necessary to hire beachmen, machinists, tender crews, carpenters and office personnel early in the season and prior to the time when cannery workers are hired, since they go to Alaska a month to six weeks before canning commences.

* * *

[pp. 1141-1142]

109. Only in Bristol Bay, Alaska, were there "company" or employee fishermen.

110. At Red Salmon and Bumble Bee during the case period many of the nonwhite fishermen have chosen to become independent fishermen. Most resident Alaskans in Bristol Bay who wanted to fish, including most of our nonwhite fishermen preferred to fish on the Nushagak River because of its greater reliability in fish runs and somewhat longer season. By selecting the Nushagak, they would not be available for company fishermen jobs on the Naknek at Red Salmon and Bumble Bee.

111. The "east side" of Bristol Bay is where Bumble Bee and Red Salmon are located. For more than 15 years these canneries operated in consolidation with each other and with the CWF fish camp at

Egegik. This was called the Naknek-Kvichak Joint Operating Agreement. Under its terms, we split the pack 30% to Wards Cove, 30% to Bumble Bee, and 40% to CWF. At Egegik we had about 17 Alaska Native company fishermen until 1973. They were housed and fed with the white fishermen. They also had the privilege of using Red Salmon and Bumble Bee cannery facilities on the Naknek. For accounting purposes they were regarded as Red Salmon fishermen. They were recruited primarily by my father, A. W. Brindle.

112. By 1974 we had no company fishermen left on the payroll. They were phased out because accounting studies showed that after payment of run money, room and board, and transportation, they were more costly than independent fishermen.

113. We felt it reasonable to allow company fishermen complete latitude in

hiring a boat puller since the two must live and work together in cramped quarters and are paid on a share basis. We did not view the crew as consisting of a boss and an underling; rather they were viewed as partners and they each received an equal share in the catch.

114. If a boat puller wanted his own boat and had a good recommendation from his skipper, he might have been given a boat.

* * *

[pp. 1142-1143]

115. There is no doubt that the Filipinos refer to themselves as Filipinos and, over the years in labor negotiations particularly, the union negotiators have taken great pride in the fact that the Filipino crews at the canneries are the best fish house crews that there are.

116. There has been considerable difficulty in getting over the term "Filipino bunkhouse." I can recall telling our affirmative action director, Salvadore del Fierro that perhaps we should avoid the term. Nevertheless he continued to use the term more often than not when referring to the Local 37 bunkhouse. The same is true of "Filipino crew" even though there are whites on it or even if the foreman is Chinese (Fred Wong).

117. Insofar as Alaska Natives are concerned, for mere ease or habit of identification they might be referred to as the Native crew. After all, they are Alaska Natives and proud of it. There are many organizations bearing the name "native," i.e., Alaska Native Co-Operative Association, Bristol Bay Native Association, Bristol Bay Native Corporation, etc. There are also

constant references to natives in Alaska as "Native Claim Act," "native rights," "native villages." One would normally assume, if you recruited from a Native or Eskimo village, the people who came from there would be Natives or Eskimos and they would often be referred to in that manner just as the Norwegian fishermen are referred to as Norwegians, Yugoslavians who are prominent in purse seining as "Slavonians," and Italians who are prominent in gillnetting as "Italians." The people from Manekotok, Unalakleet, etc., are almost entirely Eskimos and one would tend to call them such. Such labeling has never been used by our companies in either a derogatory or restrictive sense.

* * *

[p. 1143]

118. Insofar as hiring relatives is concerned, there is no doubt that they

have better information as to what jobs are available and what the conditions at a particular cannery might be. Most of the jobs given to relatives are unskilled and very often are cannery worker jobs.

119. Other factors which make hiring relatives a reasonable business practice would include that sometimes it is the incentive to get the relative back to Alaska or it is part of an economic package which makes working for our company more attractive.

* * *

[pp. 1144-1145]

123. . . . It would be extremely poor practice to try and run a tender with an experienced captain and an inexperienced crew. In the first place, you cannot expect the captain to be on the wheel all of the time. We lost a tender year before last because the captain had to lay down after a 24-hour storm and

while he was asleep the mate, whose qualifications we later found were suspect, managed to fall asleep and his vessel ran into a rock in open water. In the second place, the captain cannot be at the wheel and oil and grease the engine at the same time, nor in the case of an emergency, if you have an inexperienced crew, can you expect anybody to do anything since they don't know what to do. Obviously there have been situations where we have tried to get by with a crew with minimum requirements, but we normally would limit the use of the tender to make sure it wasn't used beyond the capabilities of the crew. For example, the tender VANGUARD is owned and maintained in yacht like condition by my uncle Joe Brindle. He spends a good part of each winter maintaining it and it is used only on short runs out of Wards Cove, Ketchikan. When witnesses Bird,

Milholland, and Chris Steele were on the VANGUARD as engineers they were on a tender not typical of the rest of our operation. We certainly could not do this on most of our other tenders.

* * *

[p. 1146]

128. It is essential to have an experienced crew in the machinist department. There is absolutely no way you can even come close to running a cannery with a totally inexperienced, unskilled crew even if they were working under the close supervision of a first machinist and a cannery foreman. We are processing food in these facilities and they are going into sealed containers and packed under regulations promulgated by the Food and Drug Administration. With an inexperienced crew, you would either have to restrict your production or you would wind up with a lot of questionable pack

that would have to be reexamined or even destroyed and this is very expensive.

* * *

[pp. 1147-1148]

138. While we do ship equipment south for major overhaul, major breakdowns can occur during the season. In one instance in 1977, when we had a heavy fishing season in southeastern Alaska, we had a clinching machine go wrong at Wards Cove. We had to borrow a clincher from a competitor since we could not get our fixed even with the assistance of the American Can Company man. The can shop equipment is leased from the can company. While they try to get by and make preseason adjustments and get out to help when you have a problem, their resources are limited and they have no control over weather or airplanes so they are not available "on call" as plaintiffs contend (Plaintiffs' Contention No. 120).

139. As an example, in 1977 at Wards Cove a lid got upside down in the seamer in the reform shop. We were fortunate to have two very qualified machinists (Landry and Mullis) there who were able to tear down the machine (it took all night) and repair it. The American Can man was not available. If we had not been able to fix it, our production would have been cut in half.

140. A port engineer has to understand marine diesels and they can be quite different from automobile engines. Marine equipment has problems different from regular automotive equipment. The port engineer should understand hydraulics. For example, he must know how to take an engine that has been swamped with salt water and get it running again. He really should have very good diesel mechanic experience since most of the engines in gillnet boats and seine

skiffs, as well as tenders and seine boats, are diesels. The port engineer has, however, so much total responsibility that we must rely on our tender engineers for most of the tender repairs. For example, at Ekuk, the port engineer has about 96 gillnet boats to keep running. Although the fishermen are independent, it is essential that we keep their boats running to keep their loyalty and to maintain their supply of fish. If an independent fisherman loses a day of fishing because of an engine breakdown it could cost him \$10,000 or more. Ekuk, Bumble Bee, Red Salmon, Chignik, Kenai, Egegik, and Alitak all store and winterize fishing boats under the port engineer's supervision.

* * *

[pp. 1148-1149]

141. Quality control is really a function of definition. It depends upon

what each individual superintendent expects out of his quality control person. If they expect that person to check out the work of the salmon cook and do part of the seam check, then they should have two season's experience working under the machinist foreman. I can think of a bad quality control situation a couple of years ago when we had to recheck several days' canning of half pound cans because of a seam defect discovered by the Food and Drug Administration. It was never satisfactorily explained just who was supposed to be doing seam checks, but it cost about \$40,000 to have that portion of the pack re-examined at the Port of Bellingham.

* * *

[p. 1149]

142. The work required of this crew varies from unskilled such as simply

unloading fish from the tenders to highly skilled, such as pile driving. Pile driving involves working with very heavy gear and mistakes can be fatal. Our crews have driven piling in various canneries. Other work of the beachgang involves launching boats, driving forklifts, and other heavy work around the cannery.

143. The beachgang is required to do a variety of skilled jobs. . Welding, pipefitting, carpentry, and rigging skills must be all possessed by the beachgang as a collective unit. Just moving heavy equipment like oil or water tanks is skilled if you are going to do it without injuring someone. Most of this skilled work is done during the preseason or in the fall so the cannery workers are not exposed to it. They probably regard the beachgang as people whose only jos [sic] is to unload fish.

* * *

[p. 1149]

144. Of the five class facilities, four have had members of the Brindle family as superintendents: Harold at Red Salmon and Kenai (my father, A. W., until 1977 at Red Salmon), Greg at Wards Cove (my uncle Joe Brindle up until 1979), and my brother Winn at Alitak. At Ekuk, Jim Ekern was superintendent for many years prior to the formation of Columbia Wards Fisheries, and continued in that job.

* * *

[p. 1149]

145. This depends on the size of the operation. The office manager or head bookkeeper's job requires more than a high school course in bookkeeping. In our operation, they are responsible for keeping track of records such as at Ekuk, 300 people, together with what is being bought and sold in the store and consumed in the mess house. At Ekuk, for instance,

the store is almost a year-round operation. The storekeeper must run the store like a business.

146. These personnel have to understand what keeping books is all about and they also have to understand what a cannery is all about because they are doing many different tasks. They are buying millions of dollars worth of fish and they are buying hundreds of thousands of dollars worth of equipment. We advance hundreds of thousands of dollars to fishermen and we advance money to employees. People have to understand how the union contracts work and what our responsibilities and our rights are under the contract. They have got to understand when to pay bills and when not to pay them and how to charge for personnel's time, such as port engineer's time on a fisherman's account, what it is charged to and whether it charged to, the boat or

to a tender. They also have to calculate both state and federal taxes.

147. Bookkeeping personnel also have to keep track of the daily canning records and how many pounds of raw fish came out as cans today compared with yesterday.

* * *

[p. 1312]

BY MR. ARDITI:

Q. Mr. Brindle, you are an attorney by training, is that correct?

A. That is my formal education, yes.

Q. And, you formerly appeared as an attorney for the defendants in this case, did you not?

A. That is correct, I entered a Notice of Appearance.

Q. You had a role in formulating the defense in this case, I take it?

A. I don't know that I had a role in formulating the defense because I'm

not sure what you mean by that. I had a role in attempting to, in the early stages of the litigation, in attempting to comply with discovery and shortly after the initial discovery was under way, I had less and less other roles in the case.

Q. Let me ask you, is it true that pages 3 thru 28 of your affidavit are taken in large part almost verbatim from the defense contentions in the Pretrial Order?

A. I have to tell you, I haven't seen the defense contentions in the Pretrial Order that I recall. I couldn't tell you, but I can tell you this, I have read these, some of this is my language directly and some of it I have discussed all these matters with counsel, and they put the affidavits together. Now, these discussions have gone on over a number of years. I don't know whether they are in a pretrial, what you call call [sic]

contentions, I don't know because I have not seen those. If I have seen them, I don't recall seeing them.

* * *

[p. 1315]

BY MR. ARDITI:

Q. This is in your handwriting?

A. It would appear to be my printing, yes.

Q. And would you please read the last three lines for us?

A. The last three lines?

Q. Yes.

A. "Got another phoney minority claim today from EEOC--it never ends"--exclamation point and my signature.

* * *

[pp. 1319-1322]

Q. Now, you have worked as a tender deckhand at Wards Cove when you were younger, didn't you?

A. That is correct.

Q. And, how old were you--you were about 13 or 14 when you first took that job, is that right?

A. That is when I first started getting paid.

Q. And, as you were going to school you became a tender engineer for Wards Cove Packing Company?

A. That is correct.

Q. And in fact, by age 21 or 22, you became a tender captain, correct?

A. I was assigned the captain's responsibilities the year I worked in Bristol Bay when the Skipper on a brine tender got sick and they needed an experienced man to take his place, and the next most experienced fellow was the Skipper on the boat I was on, so he was assigned on the brine, and I was assigned to the skipper on the Penguin which was

the vessel, and then assigned the pilot around the river system.

Q. You were in law school at the time, were you not?

A. That is correct, well, no I wasn't, I was in Bristol Bay at the time, and this was the summer I was attending law school in the winter. Yes.

Q. That is what I meant, and you were about age 21 or 22.

A. Somewhere in that area.

Q. Now, you learned the captain's job through your prior experience as a deckhand, correct?

A. Well, now, that depends on what you mean "learned it as a deckhand". I certainly learned it while I was on the boat doing a deckhand's function, but in addition to that, why, of course, the skipper was teaching me navigation, he was teaching me boat handling which was teaching me the rules of the road, so

within the frame of time that I was being a deckhand, yes, I learned the skipper's job, but I didn't learn to be a skipper because of or by being a deckhand.

Q. You did not have any courses in navigation prior to the time you became a tender caption, [sic] did you?

A. No, I had no formal courses in navigation, only courses from the skipper.

Q. In fact, you had no formal training at all for the tender captain's job, did you?

A. That is correct. I had no formal schooling as such.

Q. While you worked on tenders for Wards Cove Packing Company, you flew up to Alaska rather than sail up with the crew on occasion, is that true?

A. Oh, on occasion, yes.

Q. And that is because you were a student in school at the time?

A. That is correct.

Q. Now, I--

A. Well, that wasn't because I was a student, whether I went North on a tender or came South on the tender depended upon how my school schedule fit with the tender schedule. The first time I went up and worked, I went up on a tender. When I was about 14.

Q. So if your school schedule did not permit you to said [sic] up, then--

A. Then I would fly.

Q. And you started at a later date, then, correct?

A. Yes.

Q. Now, is it fair to say that neither Wards Cove Packing Company nor Columbia Wards Fisheries have fixed experience criteria for hiring of the beach boss?

A. Fixed experience criteria, I don't think that is accurate.

Q. Okay, do you recall having your deposition taken on June 3, 1980?

A. Yes.

Q. And, do you recall being asked the following questions and answers as follows:

MR. FRYER: Page, counsel?

MR. ARDITI: Page 55.

BY MR. ARDITI:

Q. "There is no set criteria then for hiring of beach boss, is that right?"

A. "Well, a beach boss has to be able to run a crew and do the work a beachgang does, so he has to know what the things are, but that type of work comes in many forms."

Q. "You don't measure that with respect to specific types of experience, do you?"

A. "I don't know how you would."

Q. Do you recall being asked those questions and answering as follows?

A. Yes.

Q. Now, in hiring tender captains, you look for different kinds of experience depending on which boat you are hiring for, is that correct?

A. Yes.

Q. And the same is true of tender engineer?

A. Yes.

Q. And although to lesser degree, the same is also true of deckhand jobs, correct?

A. I think that is correct.

* * *

[pp. 1326-1327]

Q. Okay. Could you turn to page 7 of your affidavit? At line 27 you use the term "Iron Chink", and based on your experience in the industry, is it your understanding that prior to mechanization in the industry, all the butchering of the salmon was done by hand?

A. Well, I guess prior to mechanization of butchering, the butchering was done by hand, there was no machine to do it.

Q. And that was done largely by Chinese workers?

A. That is my understanding, it was primarily a Chinese contract for labor and Japanese. Certainly, there were other Asians involved.

Q. And is it your understanding that the salmon butchering machine was named the "Iron Chink" because it replaced so many Chinese workers?

A. I don't know why the gentleman who invented the Iron Chink called it that. There are a great many stories.

Q. Is that one of the stories you have heard?

A. That is one, I suppose.

* * *

[pp. 1327-1328]

Q. Now, could you turn to page 11 of your affidavit, and specifically to lines 20 to 27 where you talk about preference clause for the machinists?

A. Yes.

Q. And that quotation would have come from the 1970 collective bargaining agreement, wouldn't it?

A. Yes, I would think so.

Q. Now, in 1971, that clause changed to require that people asserting a rehire preference also had to sent [sic] a rehire card in to the union, didn't it?

A. I don't recall when the rehire card procedure was put in, but I know there is, and I think there is today, that same language in the machinist contract.

Q. So to assert a rehire preference, a machinist has to send the card in to both the union and the company?

A. That is the technical requirement of the contract, yes.

- * * *

[pp. 1331-1333]

Q. Could you turn to page 14, paragraph 53 of your affidavit. At line 23 thru 29 you describe certain things that Mr. Baruso does requesting how, or are you physically present when he does this--when he removes names from the list or examines the list?

A. I have been physically present in the dispatch hall?

Q. No, what I am asking you, are you present at the time Mr. Baruso examines this list and deletes from the list and adds to the list?

A. Well, let's put it this way, I have had discussions on the telephone with Mr. Baruso concerning some of the people that were on the list that were being deleted or about people he wanted to

put on the list. I have not been in his presence when this was done, and I should probably--when I say Baruso in line twenty-five and a half, that really shouldn't have been just limited to Mr. Baruso, it should have really stated, to be more accurate, the people who are responsible for running the union hall, Mr. Baruso was president of the union hall, so we just talk about it as being Mr. Baruso. He's one I have had conversations with over the phone.

Q. Okay, then he makes adjustments or he talks to you about other people who are entitled to first preference, is that right?

A. Mr. Baruso has discussed with me people that he wanted to put on the list for particular canneries, yes.

Q. Now, your understanding of the collective bargaining agreement is the

first, second and third preference, correct?

A. That is correct.

Q. And the third preference is for new hires, is that correct?

A. I think that is my recollection. I can't recall all the preferences clauses, I think it is the third preference or the fourth preference is the applicant generally or mutually agreeable to the company. I can't remember which.

MR. ARDITI: Could the witness be handed a copy of say Exhibit A-2?

(The document was handed to the witness).

BY MR. ARDITI:

Q. Okay, in fact, the third preference goes to persons satisfactory to the company, doesn't it?

A. Well, it says "persons satisfactory to the company, including

but not limited to, union members or men recruited for employment by the union".

Q. But those hired do not have to be satisfactory to the company, correct?

A. Well, let's put it this way, if in lining up a crew, it has been our experience that if there was somebody that the union wanted to put on the crew, and unless we had some very specific objections to that individual, that it was in our best interest to accede to the expressed list of the union in that regard.

Q. And that would be in the same way that you might accede to a recommendation as a tender captain for a crew member, correct?

A. Not quite.

Q. You do retain authority under the collective bargaining agreement to various preferences.

A. Yes, the collective bargaining agreement gave us that power.

* * *

[p. 1339]

Q. Pages 33 thru 37, you talk about job qualifications for certain jobs, correct?

A. Yes.

Q. You do not hire for those jobs, do you?

* * *

[pp. 1352-1353]

THE COURT: Are you saying you can never recall an instance of taking a cannery worker and moving him into another job during the year, during the season I should say?

THE WITNESS: Not someone under the Local 37 jurisdiction. We have with other cannery workers that were under the resident jurisdiction, but we don't have the same kind of guarantee situation. The

other problem is just simply one of filling in the job that you have your resident cannery workers are there, and they're there because you need them to perform a function, and if you pulled one out, then you have to replace him, if you're going to have to replace him through Local 37, then we have another guarantee.

THE COURT: Well, you're not obligated to replace through Local 37, are you?

THE WITNESS: No, but often time it is very difficult to find the local people to fill in that job.

* * *

[Dep., p. 2]

BY MR. ARDITI:

Q. Please state your name.

A. Alexander Winn Brindle.

Q. And what is your business address?

A. 88 East Hamlin Street; Seattle, Washington.

Q. What is your job title, please?

A. President of Wards Cove Packing Company.

Q. And how long have you held that job?

A. Since approximately September of 1977.

Q. Do you have any jobs with Columbia-Wards Fisheries?

A. I am an officer of Columbia-Wards Fisheries, Inc.

* * *

[Dep., p. 5]

Q. There is no set criteria, then, for hiring a beach boss; is that right?

A. Well, a beach boss has to be able to run a crew and do the work that the beach gang does, so he has to know what those things are. But that type of work comes in many forms.

Q. But you don't measure that with respect to specific types of experience, do you?

A. Well, I don't know how you would.

* * *

[Dep., p. 57]

Q. What specific experience do you look for?

A. For who?

Q. A tender captain.

A. On which boat, in which area?

Q. It varies from boat to boat?

A. Certainly.

Q. Is that true of tender engineer as well?

A. Certainly.

Q. Tender deck hand?

A. Less.

* * *

DISTRICT COURT

TESTIMONY OF WARNER LEONARDO

* * *

[1509-1510]

Q. Mr. Leonardo, I have a couple of questions--did you do the hiring for the jobs at Bumble Bee - South Naknek outside the classification of cannery worker, did you do that hiring yourself?

A. Yes, I did.

Q. For those jobs, did you generally make it a practice to interview applicants yourself?

A. Yes, I did.

Q. And this would include people like machinists and tendermen?

A. Right.

Q. Could you tell the court the types of questions you customarily would ask of people who wanted, let's say a tender engineer's job?

A. Well, I would ask him if he had any experience on boats before and if he knew anything about the particular type of diesel engines that we were using and if he had any tools--

Q. What kinds of qualifications did you impose for the job of, let's say, tender deckhand?

A. Well, I tried to get some young people that were--that had experience, in fact, I tried to get them out of Astoria because most of the kids had been on boats [sic] before with their fathers or with somebody, and knew how to tie up a boat, and ship, whatever it might be, and it is better than hiring a greenhorn.

Q. Mr. Leonardo, I am going to ask you to assume that an expert witness testified in this case that a cannery such as Bumble Bee could be properly operated with the machinist foreman, a first machinist, and the remainder of the

machinist crew being composed of machinist helpers. Now, just assume that as a fact, would you agree that Bumble Bee - South Naknek could be operated with the machinist crew like that?

A. Absolutely no.

(pp. 1510)

* * *

Q. Do you remember my question, Mr. Leonardo? What kind of qualifications did you require when you hired people at Bumble Bee - South Naknek for the machinist crew?

A. Well, it depends on what field he was going to be in, what part of the operation, why it would be the general question of how much experience he had and if he had tools and where he worked before and stuff of that nature.

Q. Did you ever hire any greenhorns on the machinist crew at Bumble Bee - South Naknek?

A. No, but I have hired some bummers.

* * *

[pp. 1513-1514]

1. My name is Warner Leonardo and I reside at 23302 Northeast 237th, Battleground, Washington. From 1952 until 1980, I was the superintendent of the Bumble Bee cannery at South Naknek, Alaska. . . .

2. During my years as superintendent at South Naknek, I attempted to personally interview every applicant for a job at the cannery other than cannery workers who were hired through Local 37 or cannery workers hired in Alaska. Our policy throughout the case period was to select the best applicants possible for any skilled job, regardless of race. In my experience, a personal interview was usually necessary to find the best applicant. Once the season has

commenced in Alaska, I felt we could get burned if we did not have the most qualified person since replacements at that time are very difficult to come by.

* * *

[p. 1514]

3. In the 1960's we always had a few Alaska Native fishermen. However, the Natives went independent early compared with the nonresident fishermen. Some of our company fishermen were older and did not want to make the cahnge [sic].

4. We tried to take our best fishermen and make them independent so they would be able to pay for their boats. Alaska Natives were among this group.

5. Our policy concerning hiring boat pullers was mainly to let the skipper hire his own partner. We felt that since they had to live together under difficult circumstances and share equally in the catch, the skipper had to find someone

that he could work closely with. If a skipper could not find a boat puller, I would pick a skipper off a relatively nonproductive boat and make him a puller. I would always take an ~~experienced~~ man. There were too many things to learn and it was too short a season. The season starts in the Naknek-Kvichak area on June 25 and is over on July 20. The peak of the season is from the 4th of July to the 10th of July when most of the fish are actually caught. This does not leave any time for training.

* * *

[p. 1514]

6. For hiring in this position, I always wanted someone who was at least 200 pounds in weight, strong and could lift 150 pounds or better. Actually, I preferred loggers because they were used to working with wire rope and slings and moving heavy objects. I also looked for

backgrounds in other types of heavy work such as dock work, pile driving, wire splicing, longshoring, and things of that nature.

* * *

[p. 1515]

8. For tender engineers I required that they should be able to handle tools and make minor repairs on the tenders and be available to fix fish boat engines on grounds. . . .

* * *

[pp. 1515-1516]

11. We were the first company in Bristol Bay to employ Eskimos as cannery workers from the Bethel-Kuskokwim area. In the 1970 season, however, we had a very high rate of turnover. We found that many of the Ekimoes [sic] that we hired that year were not experienced (it was a very heavy fishing year in Bristol Bay), did not want to stay for the whole season, and

some even left before they went to work. We were stuck for the cost of flying them down from the Bethel area and for the cost of flying them home even though they did not work or [sic] all or only for a short period of time.

12. Following this experience, we decided not to hire from that area again. We did develop the practice of employing military personnel from the air force base as temporary cannery workers during periods of heavy production. They were a mix of all races.

* * *

[p. 1516]

13. I could rarely get a local resident (Bristol Bay) to have anything to do with any job in the cannery. Once in a while someone would agree to take a tender to Egegik for me but most, if they did take a job like that, would only last a few days during the fishing season. On

the other hand, we frequently were able to get local residents to work as spring and fall laborers before and after the actual fishing season.

* * *

[p. 1517]

17. Plaintiffs' Exhibit 348. The Native galley was referred to as such simply because the Natives ate there. Nothing derogatory was intended. . . .

* * *

[p. 1517]

21. In about 1968, Local 37 objected to our plans to open one mess hall for all employees. They insisted on having their separate mess and customary style of food.

* * *

CROSS EXAMINATION

[p. 1544]

BY MR. ARDITI:

Q. Mr. Leonardo, you recruited applicants for the machinist job by word-of-mouth is that correct?

A. Talked to them, yes.

A. And did you recruit applicants for beachgang jobs, also, by word-of-mouth?

A. Yes.

Q. And did you recruit applicants for quality control jobs also by word-of-mouth?

A. Yes.

Q. And, did you recruit applicants for AFU culinary also by word-of-mouth?

A. Yes.

* * *

[pp. 1544-1548]

Q. Did you recruit by word-of-mouth for all jobs, Mr. Leonardo?

A. All but thirty-seven, I didn't, the foremen did that.

Q. So, the foremen recruited the Local 37 workers?

A. Yes.

Q. And, you recruited by word-of-mouth for all other jobs?

A. I think so, yes.

Q. Now, you also did some recruiting by correspondence, didn't you?

A. Some.

Q. And some by telephone?

A. Whatever, yeah.

Q. Now, you never posted a vacancy at the cannery, did you?

A. Never, what?

Q. Posted a job vacancy at the cannery?

A. No.

Q. And, you never advertised in a newspaper or radio for a job vacancy, did you?

A. No.

Q. And, in fact, it was your preference to hire people whom you recruited by word-of-mouth by telephone or by mail, wasn't it?

A. Yes.

Q. That is true for machinist jobs?

A. Yes.

Q. Beachgang jobs?

A. Yes.

Q. For quality control jobs?

A. Yes.

Q. And for all jobs besides cannery worker, is that correct?

A. Yes, sir.

Q. Now, you did not give any tests for applicants for employment, did you?

A. No.

Q. At Bumble Bee, you hired some tender cooks who did not have previous at-sea experience, didn't you?

A. Yes, I had.

Q. And you hired some deckhands who did not have previous sea experience?

A. Yes.

Q. And you also hired beachmen without previous experience, didn't you?

A. Yes.

Q. Now, is it fair to say that in your view, on the beachgang, all you needed was a beach boss plus one or two beachmen who know how to run wenches, launch scows and run cranes?

A. Yes, it was more to it than that, but --

Q. Now, in your affidavit, you mention that in hiring for beachgang jobs you wanted someone who was at least two hundred pounds in weight, is that correct?

A. That is a good figure.

Q. Do you know many Filipinos at the cannery who appear to be two hundred pounds in weight?

A. No.

Q. And most of those who appear to meet that requirement were white, is that correct?

A. Yes.

Q. Now, you did not require everyone you hired to fill out a written application, did you?

A. Well, most generally, I wouldn't -- I don't know.

Q. Mr. Leonardo, can you tell me how long there have been two mess halls at South Naknek?

A. Ever since I have been there.

Q. And how long is that?

A. Thirty-one years.

Q. And has one also been for cannery workers?

A. Yes.

Q. And the other has -- and has the other been for other employees?

A. Well, whatever. I had them both ways.

Q. How long at South Naknek have you housed cannery worker crews separate from other crews?

A. State that question again.

Q. To your knowledge, how long at South Naknek have cannery worker crews been housed separated from other crews?

A. Well, as long as I have been there.

Q. Now, beachmen work with the tides sometimes, don't they?

A. Yes.

Q. And that means they unload fish when the tide is in, is that correct?

A. Yes.

Q. And they are housed with carpenters, is that correct?

A. Yes.

Q. And carpenters prepare the docks when the tide is out, correct?

A. Yes.

Q. So, they get up at different times, is that correct?

A. I guess, yes.

Q. Now, are the culinary workers for Local 37 housed with the cannery workers?

A. I guess so, yes.

Q. Do the culinary workers have to get up earlier than the cannery workers to prepare breakfast?

A. Well, yes.

Q. Do the port engineers live with machinists?

A. Yes.

Q. The port engineers have to get up at odd hours, is that correct?

A. Yes.

Q. So their working times are not necessarily the same as the other machinists, is that correct?

A. I guess, yes.

* * *

[1975 Dep., p. 3]

Q. You are currently employed by Bumble Bee Seafoods, a division of Castle & Cook?

A. Right.

Q. In what capacity?

A. Cannery superintendent.

* * *

[1975 Dep., p. 20]

Q. Let me try to clarify the question a bit. You stated that your tendency is to prefer people whom you recruit by word of mouth, by telephone, or by mail because you know them or because somebody has recommended them. Right?

A. Yes. — —

Q. This would be true for machinists, right?

A. Yes.

Q. Would it be true for beachmen as well?

A. Yes.

Q. Would it be true for quality control?

A. Yes.

* * *

[1975 Dep., p. 21]

Q. Aside from cannery workers, does this preference of people who have been recruited over people who have applied on a walk-in basis extend to all job classifications?

A. Yes.

* * *

[1975 Dep., pp. 58-59]

Q. The beachmen unload fish, is that right?

A. Right.

Q. And when is their call-out time generally?

A. Well, at all hours, depending on the tides.

Q. They work with the tides then?

A. Yes.

Q. Now, the beachmen live with carpenters. Is that right?

A. Yes.

Q. The carpenters don't work with the tides, do they?

A. In some instances, yes.

Q. Why don't you state for the record what you mean by working with the tides?

A. If the carpenters were working on the dock for some reason or other, why they would have to wait for the tide to go out.

Q. How about with regard to beachmen?

A. Well, the beachmen have to operate when the tide is coming in or high or going out.

Q. Well, the boats come in when the tide is high, right?

A. Right.

Q. So they do unloading work when the tide is high, right?

A. Yes.

Q. That's the time when the carpenters can't work on the docks, right?

A. Yes, that's right.

Q. So all the unloading work that the beachmen do is done at different hours from the dock repair work that the carpenters do. Is that right?

A. Yes.

* * *

[1975 Dep., p. 60]

Q. Now, when carpenters aren't working on the docks, they are working on the buildings or the boats. Right?

A. Yes.

Q. They are not working with the tides then, are they?

A. No.

* * *

[1975 Dep., pp. 60-61]

Q. Port engineers don't work in operating the machinery inside the fish house or the canning house, do they?

A. No, not in our place.

Q. But they are machinists, right?

A. They are in the machinists contract.

Q. And they are housed with the rest of the machinists, right?

A. Yes.

* * *

[1975 Dep., p. 63]

Q. So the salmon butchering machinists would work the same hours as the fish house cannery workers. Right? You would start them a half-hour early, right?

A. No, he probably would want to be on the job earlier because the plant is all electric; there are certain technical switches that he has to pull and put the

generator plants on the line and stuff, so he would come earlier than they would even.

* * *

[1975 Dep., p. 64]

Q. But still, he would come at a different time from the machinists who worked the canning machines, right?

A. Yes.

Q. And that would be at a different time from the time the port engineers started work, right?

A. Well, port engineers are on a different schedule.

* * *

[1975 Dep., pp. 65-66]

Q. The resident -- strike that. The resident cannery workers work the same hours as the non-resident cannery workers, right?

A. Yes.

Q. Yet they are housed separately.
Is that right?

A. Yes.

Q. Where do the Local 37 culinary personnel reside? Do they reside in the Local 37 bunkhouse or elsewhere?

A. Yes.

Q. In the Local 37 bunkhouse?

A. Yes.

Q. Now, are the culinary workers hours the same as the cannery workers?

A. No.

* * *

[1975 Dep., p. 73]

Q. Let me clarify again. At the start of the canning season, do people then move into those different bunkhouses or do they stay in the same bunkhouses they occupied in the pre-season period?

A. Some of them do.

Q. Some of them change bunkhouses?

A. Yes.

[1978 Dep., p. 2]

Q. Could you please state your full name for the record?

A. Warner Leonardo, W-a-r-n-e-r
L-e-o-n-a-r-d-o.

Q. And are you still the cannery superintendent at the Bumble Bee Cannery?

A. Yes.

* * *

[1978 Dep., p. 46]

Q. You don't have any written job qualifications at Bumble Bee, do you?

A. No.

Q. Have you ever had them?

A. No.

* * *

DISTRICT COURT

TESTIMONY OF DONALD E. WISE

[pp. 1688-89]

Q. Dr. Wise, would you refer to Exhibit A-278 and turn to the Wards Cove and Red Salmon tab, table four, which I believe is the same as table two in your affidavit.

A. Yes.

Q. So, now, were you the person who set up these statistical tests shown in this table?

A. Set them up may be a broad word.

Q. What was your involvement?

A. I have reviewed and designed and prepared and interpreted the results of these tests.

Q. Could you explain to the court the number in the machinists column on the same exhibit starting with BNML Critrow (phonetic) down through CMPS or composite

deviation row and explain how those are calculated using that job family?

* * *

[p. 1695]

Q. So, in terms of determining whether or not the hiring of machinist job family at this particular group of canneries was within two composite standard deviations, if we look at CMPS-DEV, row, composite deviation row--

A. That is correct.

Q. If that is in excess of one point nine six positive, that would indicate that it's outside--well, it would be unusual to be outside of that, and still be by chance if it is less than that one nine six, they you're within the bounds of chance.

A. That's correct.

* * * -

[pp. 1714-1719]

11. I now turn to a line-by line explanation of the tables contained in Exhibit A278. For illustration purposes I have used the table that contains data on "new seasonal" hires at the Wards Cove and Red Salmon canneries for the years 1971 through 1980. Ex. A278, Tab: "WC & RS," Table 4. [Note: This table is included in the Excerpt of Record.] The relevant labor market target percentage for white workers is computed using a geographical weighting based on the "relevant seasonal labor force," with the weighting being based on the section of job.^[1] The exact procedures for computing the target percentage of white workers are described in detail in Dr. William Price, Jr.'s and Dr. Rees' affidavits.

1. The weighting used for each job family is indicated by the last line in the table, labeled WEIGHTING.

12. The columns in the table show the results for each of the job families at the canneries.^[1] The specific job titles represented in each job family are detailed in Dr. Price's affidavit. The last three columns of the table are aggregates of the other columns. For example, the column labeled AT ISSUE refers to the composite results for the twelve at issue job families, i.e., all except CANNERY and LABORER.

13. The first row in the table, labeled HIRES shows the total number of new seasonal hires for this cannery group and job family for the years 1971 and 1980. The table indicates that there were 211 new seasonal hires in general skill jobs during 1971 through 1980 at Wards Cove and Red Salmon combined. There were

1. This table is organized by job families. We have also prepared tables organized by departments. In general, the comments I make here apply equally to those tables organized by department.

709 new seasonal hires in the at issue families, and a total of 2,047 new seasonal hires for all jobs at these canneries.

14. The second row of the table, labeled ACT %, gives the percent of these new seasonal hires who were white. For the general skills jobs, this was 73.460%, i.e., 155 out of the 211 new seasonal hires in the general skill jobs were white.

15. The third row of the table, labeled TARGET, indicates the percent of the relevant labor force who are white. This value is calculated using the geographical weighting scheme mentioned above and discussed by Dr. Rees' and Dr. Price's Affidavits.

16. The remainder of the table deals with the issue of how close the "actual" is to the "target". This issue is central to the question of whether the

hiring pattern at the canneries is discriminatory. The classical statistical approach to this question is to ask "Are the observed data so different from what are expected from a random selection (i.e., race blind) process, that we must conclude that the process is not random?" If so, we must look for other explanations, one of which might be race discrimination.

17. There are two primary reasons that the "actual" and "target" will seldom be the same. First, the canneries hire only a small percentage of the "relevant labor force" and, therefore, there is sampling variation in the hiring process. Second, detailed census data on occupation and industry are only available for a sample of the population and, therefore, there is sampling variation in any census-based estimate of the "relevant labor force." Both of these

sources of sampling error need to be considered in any comparison of hiring patterns at the canneries to the "relevant labor force."

18. The next to last line in the example table, labeled CMPS DEV gives the results of our best comparison of the actual to the target hiring percentages for white workers at the Wards Cove Packing Co. canneries. This row indicates the number of "standard deviations" the actual hiring percentage differs from the target hiring percentage. These standard deviations measure the variation in the difference between the sample percentage and the true population percentage which can be attributed to chance variation. If the hiring process is random with respect to race, and if it were to be repeated a large number of times, we would expect the actual hiring percentage to be within

plus or minus 1.96 standard deviations of the target 95 percent of the time. This range of plus or minus 1.96 standard deviations from the target percentage contains what is known as a 95 percent confidence interval. Values falling within the range of the confidence interval are consistent with the hypothesis that hiring can be represented by a random process, i.e., a race blind process. Furthermore, values of 1.96 or greater indicate that substantially more white employees than expected were hired, while values less than -1.96 indicate that substantially fewer white employees were hired than expected.

19. Inspection of the last row of the table indicates only one column where the value for CMPS DEV exceeds 1.96. The value for TENDER is 2.230 standard deviations, indicating that the percentage of whites in the TENDER group

exceeds the expected value by a statistically significant amount.

20. What conclusions can be drawn from these findings? There are two possible explanations. The first is that the canneries have not hired TENDER's in a manner consistent with a random selection process and, therefore, some other explanation must be found for the hiring pattern observed at Wards Cove Packing Co.--for example, race discrimination or perhaps skill requirements that we have not adequately incorporated in our estimates of the relevant labor force. The second possible explanation is that the hiring process is race blind, but that we observed an unusual situation, e.g., that Wards Cove had an unusual and unrepresentative set of applicants to hire from. In fact, the consequence of the statistical nature of the test insures that approximately once in each

twenty times we apply this test we should expect to find values of CMPS DEV that exceed 1.96, even if the hiring process is an absolutely random process. Since the proper interpretation of the statistical results is crucial to an understanding of this case I will return to this subject later.

* * *

[pp. 1851-1852]

BY MR. ARDITI:

Q. I suppose what we have established at this point is that when we find one point nine six for larger standard deviations, and the composite deviation row, then we have a statistically significant over-representation for a statistically unrepresentation of non-whites, is that correct?

A. Yes, that would be correct.

Q. Now, when in the same row we find minus one point nine six or more standard deviation, it means that we have a statistically significant over-representation of non-whites, is this correct?

A. That is correct.

Q. And, I realize that there is a proper way to phrase this from a statistician's point of view and an improper way, but if it's one point nine six standard deviations, what we are really seeing there is a suspicion of discrimination against non-whites, correct?

A. I think that you are seeing there is evidence that you don't have random selection from a target of pool with that particular target as to whether or not that is discrimination or not is a different issue.

Q. Okay, but when we find a plus sign there we are talking of over-representation of whites, correct?

A. That is correct.

Q. And, when we find a minus, we are talking under-representation of whites, correct?

A. That is correct.

Q. Now, one interpretation or one possibility of finding a great deal of minus signs with one point nine six standard deviations or less, saying going down to minus three or whatever, is that the availability figure that you selected is wrong, isn't that one interpretation of it?

A. That would be one, yes.

* * *

[p. 1853]

Q. Alright, let me give you an example. Let's say that in hiring Alaska residents, an employer hires primarily

from Alaska native villages, okay, rather than in an even way from the state as a whole, okay?

A. Alright.

Q. And Alaskan native villages are more heavily non-white than as the state as a whole, isn't that correct?

A. I assume.

Q. And the smallest breakdown that you have on one in one hundred public use sample for Alaska is statewide, correct?

A. That is correct.

Q. So, if an employer is actually hiring and actually, or actually get applicants from the native villages rather throughout the state as a whole, use op [sic] the one in one hundred public use tape is going to under estimate the percentage of non-whites, isn't it?

* * *

DISTRICT COURT

TESTIMONY OF DR. ALBERT REES

[pp. 1865-1884]

ALBERT REES, being first duly sworn,
on oath deposes and says:

* * *

1. Let me begin by stating my qualifications to be an expert witness in this case. I received the Ph.D. in Economics from the University of Chicago in 1950. I have been Professor of Economics at the University of Chicago and at Princeton University and for many years taught undergraduate and graduate courses in labor economics at both these institutions. I also supervised a large number of doctoral dissertations in labor economics at both institutions. I am the author of three books in labor economics and the coauthor of a fourth; two of these books deal in part with racial

discrimination in labor markets. I have also had many articles published in leading journals, including the American Economic Review, the Journal of Political Economy, the Industrial and Labor Relations Review, the Journal of Human Resources, and the Monthly Labor Review. A full list of my publications is attached to this affidavit.

2. The plaintiffs in this case allege that the defendants engage in racial discrimination against nonwhites in hiring employees for certain seasonal jobs in five of defendants' facilities in Alaska (these will be referred to as "class facilities"). The way in which such allegations are ordinarily judged is to compare the percentage of nonwhites hired by defendants in the jobs at-issue with the percentage of nonwhites in the supply of labor qualified for and potentially available to do the work in

question. For most manual jobs, including skilled manual jobs, the ordinary procedure for estimating the percentage of nonwhites in the labor force would be to examine the racial composition of the qualified labor force living within reasonable commuting distance of the place of employment. For some professional jobs, one might examine the racial composition of the regional or national pool of people qualified for the job.

3. This case presents special difficulties that render the usual procedures inapplicable because most of defendants' seasonal employees do not live within the commuting distance of defendants' facilities. Many are hired in the lower 48 states, largely from the states of Washington and Oregon, and are transported at the employer's expense to Alaska (generally from Seattle) for the

summer packing season. Other seasonal employees are hired from remote Alaskan villages and transported within Alaska to defendants' facilities. While at the defendants' facilities, migrant workers live in bunkhouses or apartments provided by their employers.

4. To deal with this difficulty, I have devised a special procedure to estimate the racial composition of the available labor force in the geographical areas from which the defendants hire. This procedure has been carried out under my general direction by Dr. William G. Price, Jr., and his associates.

5. The basic data source used in this procedure is the one-in-one-hundred Public Use Sample of the United States Census of Population and Housing for 1970. This data source makes available on computer tapes the detailed individual records of age, sex, race, labor force

status, industry, and occupation of a 1% sample of the population. The smallest geographical areas by which these data are classified is the county group; a county group must have a population of 250,000 or more. In densely populated areas, a county group may be a single county; in sparsely populated areas, it may be a whole state. Thus, King, Snohomish, and Pierce Counties, Washington, each constitute an entire county group (Nos. 13501; 13502; and 13503). The whole state of Alaska is county group 14801.

6. The first step in the estimation procedure is to examine the defendants' employee records for those who worked at any of defendants' Alaska facilities (except Icy Cape) in each of the years 1971-1980. From these records we determine each employee's race and place of residence at the time of hire.

These places of residence for the whole ten-year period are then grouped into the county groups used by the Census. This process permits us to derive weights to be applied to the Census data in which the weight given to each county group is proportional to its importance in providing the employees actually employed by defendants in the years 1971-1980. These weights can be derived for all hires or for new hires, and can be derived separately for particular facilities or for particular occupations. In each instance, the weights provide accurate estimates of the geographical sources of defendants' labor supply.

7. In estimating labor supply for particular departments or job families at defendants' facilities, we may use Census data either for the labor force as a whole or for parts of the labor force comprising occupations which involve skills relevant

to particular job families. In my opinion, the latter method, indicated by the phrase "Skilled Workers," provides the better basis of comparison for defendants' hiring into the skilled job families. However, for the "General Skills" job family, and for comparisons by department (without skill differentiation), references to the Census of the whole labor force ("All Workers") is appropriate.

8. The more difficult part of the procedure is to estimate which individuals in these geographical areas are available for seasonal work. None of the data in the Census tapes provide definitive information on this, nor would any other statistical data source. The Census data, however, can be used to identify the classes of workers most likely to be available for migrant seasonal employment.

9. In some versions of the procedure, I have assumed that workers with full-time year-round employment would not be willing to leave this employment to take seasonal work even where the seasonal work is very well paid. This leaves several different categories of workers available: the unemployed; students and teachers who are free to work during summer; and workers in other seasonal industries whose seasons do not necessarily coincide with the salmon packing season. In addition, there are workers in industries such as construction who are not usually employed steadily by any one employer. The sum of these categories is the availability class called "Relevant Seasonal."

10. As an alternative assumption, we have used the availability class of everyone in the civilian labor force aged 18 and above. From either of these

availability classes the employer would select those applicants best qualified by skill and experience to fill the vacancies not filled by returning workers from previous seasons.

11. In my judgment, the availability class "Relevant Seasonal" reflects the composition of defendants' work force more accurately than the class "Everyone in Work Force." The two assumptions, however, give roughly similar results so that the choice between them is usually not crucial.

12. We use these skill and availability considerations to extract from the Census data our best estimates of the racial composition of the labor supply available to the various jobs in Alaska salmon canning industry. In doing this, we do not claim to identify those particular individuals in the Census sample who are, in fact, willing and able

to work in the industry. It is certainly true, for example, that not all college students are willing to work in Alaska. However, the best independent estimate we have of the racial composition of those college students who would be willing and able to work in Alaska is the racial composition of college students reported in the Census.

13. The same argument applies to our procedures for estimating the racial composition of the labor force for any of the at-issue jobs. For example, the Census does not identify each of the cannery machinist jobs as an occupation. Nonetheless, the best available estimate of the racial composition of persons qualified to be cannery machinists is the racial composition of those workers in the Census sample reporting occupations most similar to those in the machinist job family. Based on Mr. DeFrance's

information, this would be those workers who reported their occupations as those in the machinist job family, Attachment 8 to Dr. Price's affidavit. We cannot infer from this that all workers in these occupations could be cannery machinists, nor that all cannery machinists would report one of these as their occupation group. We simply use these classifications to construct our best estimate of the racial composition of people available to be cannery machinists.

14. A final comment on the use of the Census is that the month of the year the Census was taken is not particularly important to the validity of our study. Our purpose is to estimate the racial composition of the relevant labor force. Since most workers do not change occupations on a seasonal basis, the date of the Census enumeration should have

little effect on the distribution of sampled individuals across the occupational categories.

15. In some versions of this procedure the geographical patterns are based on "all hires" or "all seasonal hires;" in other versions the pattern is based on "new hires" or "new seasonal hires." The word "seasonal" indicates that we have omitted employees who work in defendants' facilities in the lower 48 states--the home offices of Wards Cove Packing and of Columbia Wards Fisheries and the Lake Union Terminals. These workers are employed by defendants during the season when the Alaska canneries do not operate, and are therefore not strictly migrant seasonal employees. The difference between "all hires" and "new hires" is that in "new hires" each individual is counted only if he did not work in the same facility on the same job

in the previous season, while in "all hires" each employee is counted once for every season in which he is employed, even when he returns to the same job at the same facility.

16. Defendants are generally required by the terms of their union contracts to rehire union employees from the previous season who make a timely written request to be rehired. In any event, defendants would want to rehire a satisfactory employee, particularly in a skilled job, rather than take a chance on an unknown applicant. For this reason, versions of the analysis based on "new hires" are preferable to those based on "all hires." If there is any racial discrimination, it would be reflected in the initial hiring decisions, which are the only decisions where the defendant employers always exercise free choice. The "all hires" versions of the procedure

also suffer because the multiple counting of the same individual, which overstates the number of hiring choices open to the employer, can make random events appear incorrectly to be statistically significant.

17. The procedure we have devised can be applied to all the workers in a department or only to the skilled workers. In the tables for "skilled workers" (e.g., Exhibit A-278, Table 4 for each tab), the unskilled and hard-to-classify jobs in each department have been removed and listed in a separate column headed "general skills." The remaining job families contain most of the highly skilled, well paid jobs that are the main subject of contention in this litigation.

18. Furthermore, the procedures can use geographic weighting patterns (for the Census data) based only on particular

jobs, based on the section of the job (cannery workers and laborers are one section, other employees are the other), or based on the entire cannery workforce. Of these three possibilities, the second seems strongly preferable. Weighting by individual jobs results in samples that are too small to produce reliable weights. A few individuals in the same job hired from the same county group can greatly inflate the relative importance of that group. At the opposite extreme, using the entire workforce ignores some important differences between the geographical origins of cannery workers and laborers on the one hand and the remaining workers on the other. In particular, this version of the procedure overweights Alaska, which provides a larger portion of cannery workers and laborers than of more skilled workers. Since the cannery worker jobs are not at-

issue in this litigation, this seems inappropriate. Weighting by section is appropriate because almost all the workers other than cannery workers and laborers are hired at company headquarters, whereas most cannery workers and laborers are not.

19. The Census data gives the race of each individual in the Census sample. By following the procedures summarized above, we have estimated the percentage of nonwhites in the labor supply of seasonal workers as defined by the various geographical weights and availability classes I have described. We then compare the estimated percentage of nonwhites in the labor supply with the percentage of nonwhites actually hired by defendants. Where these percentages differ, as they ordinarily do, we use standard statistical tests to determine whether or not the differences are small

enough to lead one to presume that they could have occurred by chance. The results of these comparisons and tests of statistical significance are given in Exhibits A-278 ("new seasonal hires") and A-279 ("new hires").

20. The general conclusion I would draw from these exhibits is that there is not a pattern or practice of racial discrimination in hiring skilled workers for defendants' facilities. In many job families the percentage of nonwhites hired is larger than their percentage of the relevant labor supply. In many more job families, nonwhites are slightly under-represented, but the differences are not statistically significant and could have occurred by chance with a high probability. In a few job families of the class facilities of two of the defendant companies, nonwhites are under-represented in comparison with the labor

force estimates, and the differences are significant at the 5% level. Racial discrimination is one possible explanation of such differences.

21. The procedures used are more reliable when applied to groups of facilities rather than to individual facilities. In the individual facilities the sample size can be so small that even relatively large disparities between the percentage of nonwhites hired and the percentage of nonwhites in the labor force would not be statistically significant.

22. For the defendant Wards Cove Packing Company, the table that in my judgment best enables one to test the allegation of racial discrimination is the one entitled "New Seasonal Hires, Wards Cove Packing Company (Wards Cove and Red Salmon) for Skilled Workers Weighted by Section of Job for

Availability Class Relevant Seasonal." (Exhibit A-278, Tab: WC&RS, Table 4). This table shows 709 hires in the jobs at-issue in this litigation. Of these 709 workers hired, 85.3% were white. The percentage of whites in the labor supply for these jobs is estimated as 89.9%, which is listed on the line labeled "target." Thus, in general, Wards Cove Packing Company hired a larger percentage of nonwhites in the jobs at-issue than the 1970 percentage of nonwhites in the relevant seasonal labor force of the geographical areas from which they draw employees, when these geographical areas are combined with weights representing the area of origin of workers in all jobs at-issue in all Alaska facilities (except Icy Cape) of the three defendant companies.

23. When we examine the columns of this table, which represent job families,

separately, we find four in which the percentage of whites hired was greater than the percentage of whites in the labor supply. These job families are carpenter, fisherman, medical, and tender. We now examine the row labeled "composite deviation" to determine whether these differences are statistically significant at the 5% level, given the sampling errors inherent in the process of hiring from a pool of applicants and the 1% sampling of the Census. This row tells us that in three of the four cases the differences could have occurred by chance (the composite deviation is less than 1.96, the critical level). In the remaining case, the tender job family, the result would occur by chance less than one time in twenty. I conclude that nonwhites are significantly under-represented in hiring in the tender

job family, which could be the result of racial discrimination.

24. It might be argued that the two class facilities of Wards Cove Packing Company should be examined separately, to the extent different individuals do the hiring at the two facilities. If we examine the table for new seasonal hires of skilled workers at the Wards Cove cannery alone (Exhibit A-278, Tab: WC, Table 4), we find 318 hires in the jobs at-issue, of which 89.623 percent were white. The estimated percentage of whites in the available labor supply is (weighted by section) 89.949 percent, so that in general, nonwhites are not under-represented. Nonwhites are under-represented in four job families: fisherman, machinist, office, and tender, but in none of these cases is the difference statistically significant at the 5% level.

25. If we examine the corresponding table for the facility at Red Salmon (Exhibit A-278, Tab: RS, Table 4), we find 391 hires in the jobs at-issue. Of these 81.941% were white. The estimated percentage of whites in the labor supply is again 89.949%, so that in general, nonwhites are not under-represented in the jobs at-issue at Red Salmon. They are under-represented in five job families: carpenter, fisherman, medical, radio, and tender, but only in the tender job family is the difference statistically significant at the 5% level. In the tender job family, the under-representation of nonwhites could be the result of racial discrimination.

26. If we examine the corresponding tables for the defendant Columbia Wards Fisheries (Alitak and Ekuk) (Exhibit A-278, Tab: CWF: AK&EK), we find 862 hires in the jobs at-issue at the two

facilities taken together. Of these 71.694% were white. The percentage of whites in the relevant seasonal labor supply is again estimated at 89.949%, so that for all the jobs at-issue taken together the percentage of nonwhites hired substantially exceeds that in the labor supply. This is also true for each job family separately, except for "office" and "store and stockroom." In neither of these is the under-utilization of nonwhites statistically significant. I conclude that there is no evidence in this table to support the allegation that nonwhites are under represented in at-issue jobs at Columbia Wards Fisheries.

27. If we look at the corresponding tables for the two facilities separately, we obtain the same result. At Alitak (Exhibit A-278, Tab: AK, Table 4), only 67.333% of the workers hired in the jobs at-issue were white, substantially less

than the percentage in the available labor supply. Nonwhites were underrepresented in two job families, fisherman and office, but in neither case is the difference statistically significant. At Ekuk (Exhibit A-278, Tab: EK, Table 4), 76.456% of the hires in jobs at-issue were white, again well below the percentage in the available labor supply. Nonwhites were underrepresented in five job families: carpenter, culinary, machinist, medical, and storekeeper/stockroom, but none of these differences is statistically significant at the 5% level.

28. Next we examine the corresponding table for South Naknek (Exhibit A-278, Tab: SN, Table 4), the only class facility operated by defendant Castle & Cooke (Bumble Bee Seafoods). Here we find 536 hires in the jobs at-issue. Of these, 84.142% are white. The

percentage of whites in the relevant seasonal labor supply is again 89.949%. For at-issue jobs at South Naknek as a group, nonwhites are not under-utilized. Examining the separate job families, however, we find seven where the percentage of whites is greater than the target percentage. These are beachgang, carpenter, culinary, fisherman, machinist, store and stockroom, and tender. In two of these seven job families (fisherman and machinist) the differences are too large to have occurred by chance more than one time in twenty. I conclude that nonwhites were significantly under-represented in hiring in the fisherman and machinist job family at South Naknek, which could be the result of racial discrimination.

29. In considering whether the defendants engage in a pattern of discrimination based on race, it may be

useful to look at the data for all their facilities, and not merely at the "class facilities" at which discrimination is alleged by plaintiffs. This approach is especially relevant to the extent that defendants follow common hiring practices and policies at all facilities. It also results in larger sample sizes that increase the power of the statistical tests.

30. A broad view is obtained by looking at all Alaska facilities in which Wards Cove Packing Company has an interest, which combines Wards Cove Packing Company and Columbia Wards Fisheries (except Icy Cape). Exhibit A-278, Tab: WC: AL-IC, Table 4. For this group of facilities, we examine the table for new seasonal hires of skilled workers weighted by section of job. Id. There were 2,789 hires in this group, of which 74.722% were white. The percentage of

whites in the relevant seasonal labor supply was 89.949%,--so that in this large set of hires, nonwhites were substantially over-represented. They were under-represented in only three small job families--administration, medical, and radio--with a total of only 27 hires. In none of these was the difference statistically significant at the 5% level.

31. The same kind of comparison can be made for another broad group of facilities, Castle & Cooke, Inc. interests, all Alaska facilities (except Icy Cape). Exhibit A-278, Tab: C&C Al-IC, Table 4. This overlaps the previous grouping of facilities because it also includes Columbia Wards Fisheries. For the Castle & Cooke interests, we look at skilled workers weighted by section of job family for the availability class "Relevant Seasonal." Id. In this

grouping there were 2,616 hires in the jobs at-issue, of which 73.777% were whites. The percentage of whites in the labor supply was again estimated at 89.949 percent, so that for these facilities as a group, nonwhites are not under-represented. They are under-represented in only two job families, administration and culinary, and in neither of these cases is the difference statistically significant at the 5% level.

32. In Table 1, I have summarized the results discussed so far for all at-issue workers by facility. In Table 2, I have summarized the results for the facilities in Table 1 which had job families where there are significant positive differences between the actual and target percentages of whites. (The source for both tables is Exhibit A-278, Table 4 for each Tab.) The remaining

facilities in Table 1 had no job families with a significant positive difference.

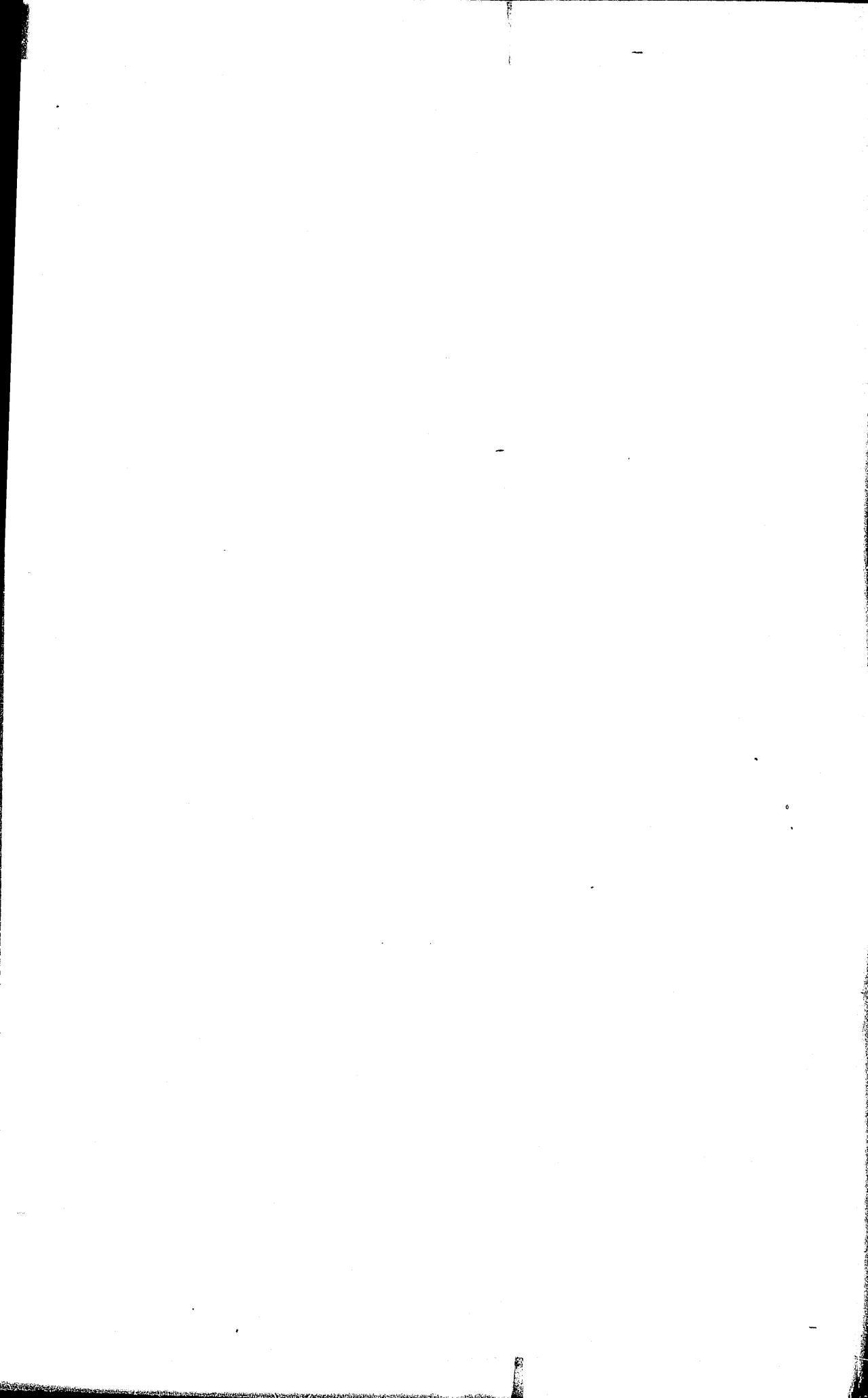


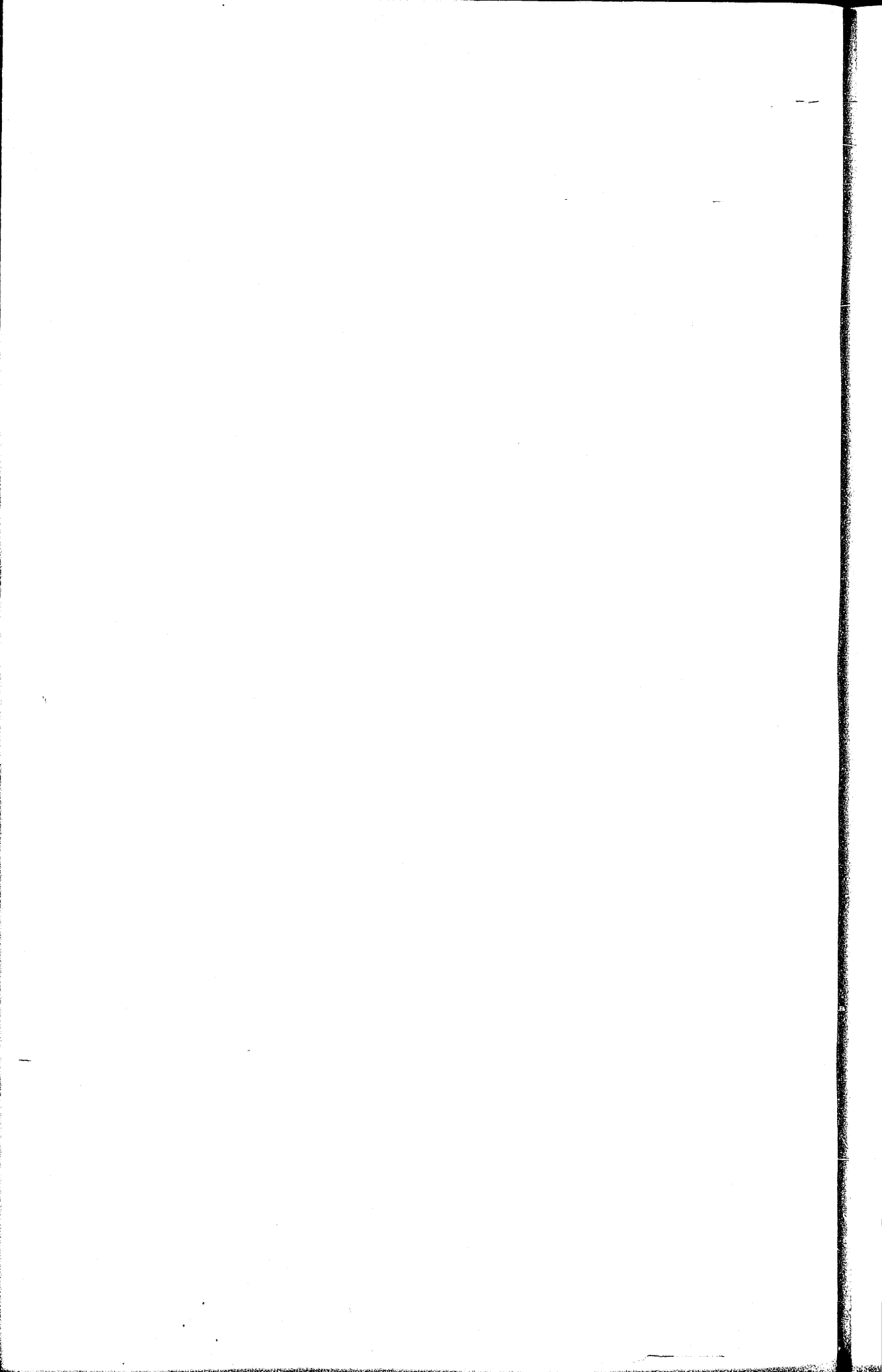
Table 1
**Summary of Statistical Results for New Seasonal Hires,
 Skilled Workers Weighted by Section of Job Family
 Availability Class Relevant Seasonal;
 for All At-Issue Jobs**

<u>Facility or Group</u>	<u>No. of Hires At-Issue</u>	<u>Actual Percent White</u>	<u>Target Percent White</u>	<u>Composite Deviation</u>
Wards Cove	318	89.6	89.9	-0.17
Red Salmon	391	81.8	89.9	-4.58
Alitak	450	67.3	89.9	-13.46
Ekuk	412	76.5	89.9	-7.78
South Naknek	536	84.1	89.9	-3.67
Wards Cove Class Facilities	709	85.3	89.9	-3.20
Columbia Wards Class Facilities	862	71.7	89.9	-13.37
Wards Cove Interests Alaska Operations	2,789	74.7	89.9	-14.27
Castle & Cooke, Inc. Interests, Alaska Operations	2,616	73.8	89.9	-15.02

Table 2
Summary of Statistical Results for New Seasonal Hires,
Skilled Workers Weighted by Section of Job Family,
Availability Class Relevant Seasonal; by Job Family*

<u>Facility or Group, and Job Family</u>	<u>No. of Hires in Job Family</u>	<u>Actual Percent White</u>	<u>Target Percent White</u>	<u>Composite Deviation</u>
Red Salmon, tender	108	96.3	87.4	2.04
South Naknek, fisherman	70	100.0	83.1	2.69
machinist	76	100.0	91.1	2.49
Wards Cove Class facilities, tender	296	95.3	87.4	2.23

* Job families shown are those with positive differences that are significant at the 5% level.



33. The sample can be further broadened by moving from "new seasonal hires" to "new hires," which includes in the cases considered workers who worked in an Alaska facility during the packing season and also in a base facility (Lake Union Terminal, Wards Cove Home Office, or Columbia Wards Home Office) at some other time during the year. Most of the workers added by this change are employed by defendants on a year-round basis, but a few may have been employed only briefly at a base facility.

34. I have reexamined each of the cases considered above, changing the sample from "new seasonal hires" to "new hires" (i.e., see Table 4 at the same Tab in Exhibit A-279). In almost every case the numbers change slightly. In only two cases would the change affect my conclusions, and these work in opposite directions. At the Red Salmon facility of

Wards Cove Packing Company, I concluded on the basis of new seasonal hires that the under-representation of nonwhites in the tender job family was statistically significant at the 5% level. On the basis of new hires, it would not be. Exhibit A-279, Tab: RS, Table 4. This change in the statistical significance of the under-representation occurs despite the fact that the sample size is only 108 new seasonal hires, but 145 new hires.

35. At the Ekuk facility of Columbia Wards Fisheries, I concluded on the basis of new seasonal hires that the under-representation of nonwhites in the machinist job family was not statistically significant at the 5% level. On the basis of new hires, it would be statistically significant. Exhibit A-279, Tab: EK, Table 4. The change in statistical significance is due, in part, to the increase in sample

size from 64 new seasonal hires to 79 new hires.

36. The concept of the labor supply for the skilled jobs advanced by the expert witness for plaintiffs, Dr. Robert J. Flanagan, is very different from what I have used above. In general, he assumes that the labor supply for the skilled jobs in the salmon canning industry consists of people who have previously worked in the industry, including people who have held unskilled jobs. His analysis assumes, however, that some of the skilled jobs require too much special training or skill to be held by unskilled workers.

37. Exhibits A-282 and A-283 are called "plaintiffs' version" of our statistical analysis. In this version, the jobs that Dr. Flanagan did not include in his analysis (because the jobs are too skilled to be performed by

unskilled workers or because he had no opinion about them) have been moved out to the various skilled job families. These jobs as defined by Dr. Flanagan in his deposition have been grouped together in a separate column labeled "excluded." We can now reexamine the results for Wards Cove Packing Company (Wards Cove and Red Salmon) for New Seasonal Hires, Skilled Workers Weighted by Section of Job, Availability Class Relevant Seasonal, using "plaintiffs' version" of the jobs at-issue (Exhibit A-282, Tab: WC&RS, Table 4). In this case, the comparisons still show an under-utilization of nonwhites in the tender job family, but it is no longer statistically significant at the 5% level. The same loss of statistical significance occurs if we examine the results for the tender job family at the Red Salmon facility

separately, using "plaintiffs' version."
Exhibit A-282, Tab: RS, Table 4.

38. Using "plaintiffs' version" of the comparison for Columbia Wards Fisheries (Alitak and Ekuk) makes no difference. (Exhibit A-282, Tab: CWF: AK&EK, Table 4). In "plaintiffs' version" as in "defendants' version" there is no job family where nonwhites are significantly under-represented, and this is also true when the two class facilities, Alitak and Ekuk, are examined separately. (Exhibit A-282, Tab: EK, Table 4). When we use "plaintiffs' version" to make the corresponding comparison for the Castle & Cooke (Bumble-Bee Seafoods) facility at South Naknek (Exhibit A-282, Tab: SN, Table 4), the results for the fisherman job family are unchanged. Nonwhites remain significantly under-represented. For the machinist job family, the under-

representation of nonwhites is no longer statistically significant.

39. Up to this point, I have considered the areas from which defendants recruit as a single geographical labor market. In some respects it may be desirable to divide this market. The testimony of expert witnesses for the plaintiffs, Dr. Robert Flanagan and Dr. Shirley Smith, deals largeley with migrant seasonal labor. This does not correctly characterize some of the Alaska residents hired by defendants, namely those who live year-round in the vicinity of defendants' Alaska facilities, such as the cannery at Wards Cove. Moreover, defendants' union contracts generally provide that preference in hiring will be given to Alaska residents. For this reason it is useful to examine Alaska and the areas from which defendants draw employees in

the lower 48 states as two separate geographical labor markets.

40. Exhibit A-500 examines data for those new hires who did not live in Alaska when hired. It produced some conclusions different from those obtained by examining all new hires (i.e., from both Alaska and the lower 48). In examining all new hires, I concluded that Wards Cove Packing Company, in its two class facilities combined, under-represented nonwhites among skilled workers in the tender job family. If we look at the table in Exhibit A-500 for Wards Cove Packing Company (Wards Cove and Red Salmon) for skilled workers hired outside Alaska weighted by section of job for availability class relevant seasonal, we find a very slight under-representation of nonwhites, which is not close to being statistically significant. Exhibit A-500, Tab: WC&RS, Table 4. The reason

for this change is that the target percentage of whites has risen--that is, there is a higher percentage of whites in the relevant seasonal labor force outside Alaska than in the two geographical labor markets combined.

41. On the other hand, Exhibit A-500 shows an under-representation of nonwhites that did not appear in previous exhibits. If we examine skilled workers hired outside Alaska at the Ekuk facility in all the jobs at-issue in this case, we find that 97.361% are white, whereas the estimated percentage of whites in the available seasonal labor force outside Alaska is 92.140%. Exhibit A-500, Tab: Ek, Table 4. This difference is statistically significant at the 5% level.

42. In judging the meaning of this under-representation of nonwhites among skilled non-Alaskans at Ekuk, it should

1

be kept in mind that of the Alaskans hired at Ekuk in the at-issue job families, 91.6% were nonwhite, and all of these were Alaska Natives. Exhibit A-501, Table 2(A). This is why Ekuk does not show under-representation of nonwhites when both geographical markets are considered together.

43. In examining new hires from both labor markets at Ekuk, I concluded that whites were under-represented in the machinist job family to a statistically significant degree. See, ¶35, supra. When we examine the corresponding table in Exhibit A-500, the under-representation is no longer statistically significant. Exhibit A-500, Tab: EK, Table 4.

44. In examining new hires from both labor markets at the South Naknek facility of Castle & Cooke, I concluded that nonwhites were under-represented in

the fisherman and machinist job families to a statistically significant degree. When we examine these job families for non-Alaskan hires only, the underrepresentation is still present but is no longer statistically significant at the 5% level. Exhibit A-500, Tab: SN, Table 4.

45. Exhibit A-501 examines the hires of Alaska residents. Table 18 shows the percentage of nonwhites in the unweighted labor pool for Alaska. There are 14.1% nonwhites in the whole labor force in 1970 and 15.4% nonwhites in the relevant seasonal labor force. Table 2A shows the percentage of nonwhites among new hires in the five class facilities. In four of the five (Alitak, Ekuk, Red Salmon, and South Naknek) the percentage of nonwhites among Alaska residents hired in the job families at-issue is far higher than in the Alaska labor force as a whole,

ranging from 63.5% at Alitak to 91.6% at Ekuk. All but one of the nonwhite Alaska residents hired at these four facilities were Alaska Natives. On the other hand, the cannery at Wards Cove has only 7.4% nonwhites among its new hires of Alaska residents. Exhibit A-501, Table 2(A). This cannery is located near the town of Ketchikan, whose 1970 population was 12% nonwhite. (See plaintiffs' Exhibit 480, p. 29). It should also be noted (A-501, Table 1A) that for Alaska residents the percentage of nonwhites hired in the defendants' Alaska operations (except Icy Cape) is just as high for the at-issue jobs (62.0 percent) as for cannery workers and laborers (61.9 percent).

46. I turn now to the general theory of the case presented by the expert witnesses for the plaintiffs, Dr. Robert J. Flanagan and Dr. Shirley Jeanne Smith. As I have noted previously,

Dr. Flanagan considers the labor supply to the skilled jobs to consist of all workers who have previously worked in the Alaska salmon industry. To measure the racial composition of this labor supply, he relies primarily on a statistical series compiled by the old United States Bureau of Fisheries for the years 1906-1936 and by the United States Fish and Wildlife Service for the years 1941-1955. Using the last five years of this series, he determines that the labor supply of skilled workers to the Alaska salmon canning industry is 47% nonwhite. This percentage is far higher than my estimates discussed above, which are in the general neighborhood of 10% nonwhite.

47. The first objection to the data used to form Dr. Flanagan's estimate is that they are out of date. Even the last year used, 1955, is fifteen years earlier than the 1970 Census data on which I rely,

and long before the period covered by this litigation.

48. Even if the data were up-to-date, however, they would be inappropriate. Dr. Flanagan assumes that unskilled workers in the salmon industry constitute the labor supply to the skilled jobs because they can be adequately trained for skilled work and then promoted. There are some industries, such as the basic steel industry, in which this would be a correct assumption. Such industries have three crucial characteristics: (1) that most skilled workers are in fact hired at the unskilled level and are promoted from below; (2) that the facilities operate all year-round; and (3) that all unionized employees belong the same industrial union [sic]. The defendants' canneries do not have any of these three crucial characteristics. Skilled workers

at defendants' canneries are usually hired directly into skilled jobs, so that the labor supply to these jobs lies largely outside the industry. The very short packing season and the intense pace of work while fish are running leaves insufficient time for the present skilled workers to train unskilled people to take over their duties. Workers in different departments of the canneries are represented by different labor unions, each with its own contract regulating hiring and rehiring, so that we have a craft union situation like that in the construction industry, not an industrial union situation like that in the basic steel industry. In the circumstances of the Alaska salmon canning industry, Dr. Flanagan's theory is entirely inappropriate.

49. The heavy representation of nonwhites among migrant cannery workers

in defendants' facilities is in large part a result of the influence of the International Longshoremen and Warehousemen's Union, Local 37, which is predominately Filipino, and which represents cannery workers at several of the defendants' facilities.

50. The influence of Local 37 on the racial composition of the labor force at defendants' facilities is shown in Exhibit A-498, which shows the detailed racial composition by union status of all hires who were nonresidents of Alaska. Of those nonresidents who were members of Local 37, 68.9% were nonwhite and 58.4% were Filipino (Exhibit A-498, Table 4). For those who were members of other unions or of no union, the percentage nonwhite ranged from 3.1% to 11.1% and the percentage of Filipino from zero to 1.6 percent. In my estimates of the labor supply in the geographic areas from which

defendants draw employees, Filipinos constitute only 0.477% of the relevant seasonal labor force. Exhibit A-278, Labor Pool Tables, Table 4.

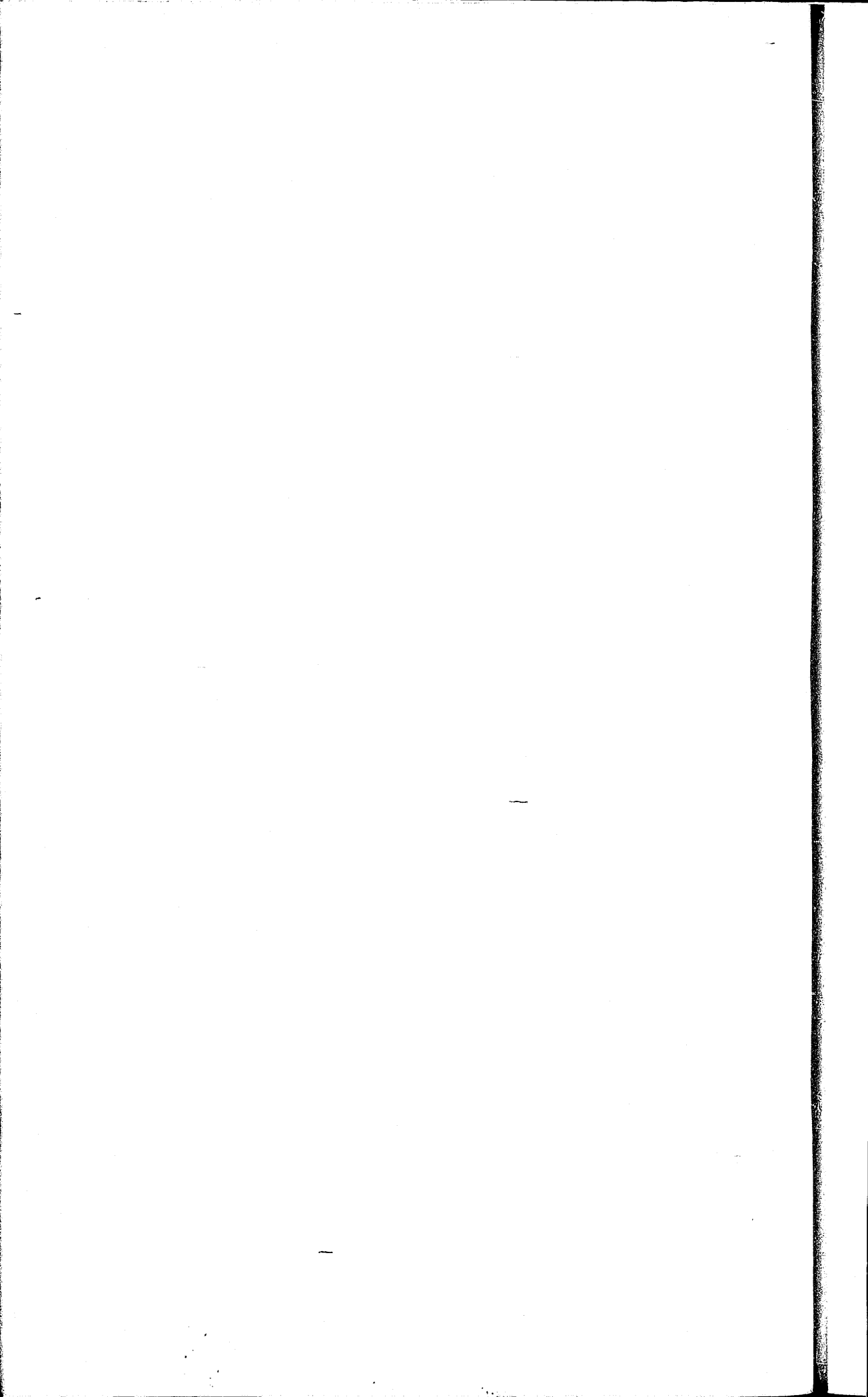
51. Unweighted data on the percentage of Filipinos in the population and labor force of the broad areas from which defendants draw employees are available from the published volumes of the Census of 1970. Some such data are presented below in Table 3. Although the percentages of Filipinos are generally slightly higher than in my weighted estimates of labor supply, none of them exceeds one percent.



Table 3
Percentage of Filipinos in Selected
Population Groups and Areas, 1970

<u>Area and</u> <u>Group</u>	Number (thousands)		<u>Percent</u> <u>Filipino</u>
	<u>Filipinos</u>	<u>Total</u>	
Total population			
Alaska	1.3	300	0.43
California	135.2	19,953	0.68
Oregon	1.5	2,091	0.72
Washington	11.5	3,409	0.34
Labor force, 16 years and older			
California	62.7	8,338	0.75
Washington	5.1	1,399	0.37
Seattle-Everett SMSA	3.5	611	0.57
Employed workers, Seattle-Everett SMSA			
Craftsmen, foremen, and kindred	0.3	82	0.37
Operatives including transportation	0.5	66	0.76

Source: Census of Population, 1970.



52. For institutional reasons connected with the history of the industry and of Local 37, Filipinos are greatly over-represented among cannery workers. Dr. Flanagan's theory of labor supply would require that an employer whose work force in one department greatly over-represents a particular racial minority should over-represent this minority correspondingly in all other departments. I cannot see any basis in labor economics for such a requirement.

53. Dr. Flanagan has asserted that defendants engage in occupational segregation by confining nonwhite workers to unskilled jobs. Exhibit A-499 indicates that to the extent this occurs, it is the result of the influence of Local 37. Table 1 of that exhibit examines the racial composition of new hires at the class facilities who were not

residents of Alaska, with members of Local 37 excluded. Of 808 such hires in the cannery worker and laborer departments, 79, or 9.8% were nonwhite. Of 2,001 such hires in the at-issue departments, 168 or 8.4% were nonwhite. These percentages are very similar. Comparable results are obtained when all Alaska operations of defendants are considered. (Tables 4 and 9).

54. Both Dr. Flanagan and Dr. Smith state the view that nonwhites are heavily over-represented in the labor supply of seasonal migrant workers generally. This view is based on their examination of studies of migrant farm labor, of which the most recent cited is Leslie Whitener Smith and Gene Row, The Hired Farm Labor Force of 1976, U.S. Department of Agriculture Economics, Statistics and Cooperatives Services, Agricultural Economic Report No. 405, July 1978. This

report shows (Table A-16, p. 41) that a preponderance of migrant farm workers who traveled 1,000 or more miles to reach their most distant work place in 1976 were Hispanic. Minorities were not heavily represented, however, among hired farm workers who lived in Standard Federal Region X (Alaska, Idaho, Oregon, and Washington) in December 1976. Hispanics, blacks, and other nonwhites were only 6% of the 204,000 hired farm workers in the region (Table 5, p. 14). (These figures include nonmigrants).

55. I seriously question the relevance of information on migrant farm workers for seasonal migrant industries in general and for the Alaska salmon industry in particular. There are other important seasonal migrant industries besides agriculture, including heavy and highway construction and the Eastern seasonal resort hotel industry. Although

little data is available on the racial composition of the workforce in seasonal resort hotels, casual observation indicates that it is predominately white.

56. D. Quinn Mills, in his book Industrial Relations and Manpower in Construction (1972) states that "construction crews on highways, pipelines, transmission lines, and heavy construction projects are mobile because of the location of the projects and their nature." (p. 138) The word mobile in this quotation refers to geographical mobility. He identifies five trades as making up the heavy and highway branch of the industry: carpenters, laborers, operating engineers, cement masons, and teamsters. (p. 14) The data he gives on the racial composition of these five trades in 1970 range from 5.0 percent nonwhite for operating engineers to 30.3% nonwhite for cement masons (p. 145).

Data for 1974 from the Federal Highway Administration show 15% minorities among equipment operators on Federal highway projects. H. R. Northrup and H. G. Foster, Open Shop Construction (1975), p. 342.

57. The Alaska salmon industry offers jobs to migrant workers that are very different from migrant jobs in agriculture. Workers are transported to salmon canneries by plane or ship at the employer's expense. Migrant agricultural workers are usually transported to job sites in dilapidated trucks or buses, usually at their own expense. (See Lloyd H. Fisher, The Harvest Labor Market in California, 1953, pp. 57-58). They may find no work available when they arrive, and unlike cannery workers get no pay when work is not available.

58. Most important, salmon canning is well paid, while migrant workers in

agriculture are paid very little. The study by L. G. Smith and G. Rowe cited by Dr. Shirley Smith tells us (p. 10) that migrant farm workers in 1976 earned an average of \$1,807 for 82 days of farmwork. This is \$21.80 per day, or \$153 for a seven day week. In the same year, skilled workers in the defendants' facilities in Alaska were earning \$400, \$500, or even \$600 a week, much more than workers with comparable skills in Seattle or Portland. See, Table 4 attached. It is not at all surprising that whites are not attracted to low wage migrant farm work and, therefore, that Hispanics with limited job alternatives would constitute most of the labor supply for this kind of work. At the same time it is not surprising that whites would be eager to work in the high-wage salmon canning industry. In general, I find the testimony of Dr. Flanagan and Dr. Smith of limited

relevance to the circumstances of this case.

* * *

CROSS EXAMINATION

[pp. 1917-1929]

BY MR. ARDITI:

Q. Dr. Rees, Exhibits 278, and A-278 thru A285 were prepared under your supervision, were they not?

A. Yes, they were.

Q. And they reflect your conclusions using different assumptions, is that correct?

A. I draw my conclusions from [sic] them, yes.

Q. Now, each of these tables is arranged by facilities or a combination of facilities, is that correct?

A. That is correct.

Q. Where hiring responsibilities, is ultimately in the hands of each cannery superintendent, you would look at the

percent non-white hired separately at each cannery to determine whether there was any discrimination, would you not?

A. Yes, under your assumption as you have stated it, I would.

Q. And, in exhibits A-278 thru A-285, that would be the first five tabs, would it not?

A. Yes, it would.

Q. Now, within each tab of each of each [sic] of those exhibits, you have eight tables, correct?

A. That's correct.

Q. In tables five thru eight, you take as the availability class everyone in the work force or in the labor force, correct?

A. Correct.

Q. Now, within any given geographical area, most people in the labor force would prefer full-year

employment to seasonal employment, would they not?

A. That's generally correct, yes. It depends a little bit on the wage of the seasonal employment. The higher the wage in the seasonal employment, the more people would apply.

Q. But generally, that is correct?

A. Generally, that is correct.

Q. Now, tables five thru [sic] eight do not adjust for availability for seasonal work, do they?

A. No, they assume that everyone in the labor force is available.

Q. So is it fair to conclude that to the degree that most people prefer full-year employment to seasonal employment, tables five thru [sic] eight are not a good measure of availability?

A. I think tables one thru [sic] four are a better measure, but I wouldn't

go so far as to say that five thru [sic] eight are not a good measure.

Q. Now, within tables--or, in tables on thru [sic] four, you make an attempt to adjust for availability for seasonal employment, correct?

A. Yes, we attempt to identify those members of the work force who are most likely to be interested in accepting seasonal employment.

Q. Okay, but you make no adjustment for those interested in migrant work, do you, as opposed to seasonal work.

A. I assume that those who are interested in migrant seasonal work are a subsection of those who are interested in seasonal work generally.

Q. Okay, my question is, you do not, do you make a separate adjustment for those interested in migrant seasonal work

as opposed to those interested in non-migrant seasonal work, do you?

A. I know of no way of doing so either through this data set or any other.

Q. Is your answer no?

A. Would you repeat the question, counsel?

Q. In tables one thru [sic] four, you do not make an effort to adjust for people interested in migrant seasonal work as opposed to non-migrant seasonal work, do you?

A. No, I do not.

Q. You would agree, would you not that in any given geographical area, most people would prefer full-year fixed location employment to migrant seasonal employment, correct?

A. Well, that's true of most people in the availability class. Every one in the work force, I would not assume

that is true with most people in the other availability class relevant to seasonal.

Q. I am asking you a general question. Within any geographical area, is it not true that most people prefer migrant--I'm sorry--prefer full-year fixed location employment to migrant seasonal employment?

A. Yes, it is true. I thought that had been asked and answered before, counsel.

Q. In tables one thru [sic] four, you focus on certain groups in looking at your relevant seasonal availability class, correct.

A. (No response).

Q. Certain occupational groups?

A. Yes, those tables are by job family.

Q. Okay, what I am getting at is how you developed your target figure for those tables, okay?

A. Yes, well, that was described yesterday in Dr. Price's testimony how we did that, I will be happy to explain further if that is helpful.

Q. You focused on certain occupations, among other things, in developing your availability figures in tables one thru [sic] four, correct?

A. Yes, in the availability figures for the individual job families, we focused on certain occupations.

Q. And certain industries as well?

A. The industries are taken into account in defining the availability class, not in defining the relevant workers in a particular job family.

Q. Among the industries that you focused on in your availability figures in tables one thru [sic] four, was the construction industry, correct?

A. That is correct.

Q. And another was those employed as teachers?

A. Yes, in the education industry, generally, not necessarily as teachers.

Q. And, another was those employed in the canning of fruits and vegetables and seafoods?

A. Correct.

Q. And, another was those engaged in agriculture?

A. Correct.

Q. And then students were yet another?

A. Yes.

Q. And the unemployed was yet another, correct?

A. Correct.

Q. Okay, let's start with people involved in construction. The Alaskan salmon canning industry employment in that industry peaks in the [sic] summertime, correct?

A. That's correct.

Q. And, employment in the construction industry also peaks in the summertime, does it not?

A. Yes, in most parts of the country. I don't know how big the season is in the Pacific Northwest.

Q. But you'd expect it to be large in the State of Alaska, wouldn't you?

A. If construction is started, yes, very large.

Q. So far as the time of the year goes, would it be fair to say that the summer is that time of the year when people in the construction industry would be less available for work in the salmon industry?

A. They may nevertheless be between jobs during the summer because employment in that industry is often for short stretches.

Q. That wasn't my question. Let me ask it again. Is it fair to say that the summer would be that time of the year when people in the construction industry would be less available for work in the salmon industry?

A. That would certainly be true in Alaska. I would not know whether it is true in Washington or Oregon.

Q. That is because you are not familiar with the weather patterns here?

A. That's right. It was my impression you have mild winters here and they would not impede construction work. You certainly know more about that than I do.

Q. Now, some construction trade hire out of hiring halls, is that correct?

A. Yes, many of them do. The unionized construction trade, not all construction is union.

Q. Now, among the unionized construction trades, hiring is often done or dispatching is often done on the basis of experienced weighted dispatched lists, is it not?

A. I believe that it is. I'm not very familiar with how hire halls work in the construction industry.

Q. Well, is it your understanding that people who have "X" hours of work in the trade, in the locale, would be given first preference, and people who have smaller number of hours have a more preference?

A. That is certainly one possible arrangement, and I believe that it is fairly common.

Q. So, if a person who had been engaged in the construction industry left the industry during the period of peak development, namely the summer, he or she might lose the opportunity to build up

preferences for dispatches in the latter parts of the year, correct?

A. That's true. If the person is a unionized construction worker. Throughout this country, most construction work in the residential construction is non-union, and therefore, it doesn't have a hiring hall and doesn't have this kind of preference.

Q. But in your availability figures you made no effort to weed out non-union from union construction workers, did you?

A. We can't because the census doesn't identify union memberships.

Q. At least for unionized construction workers, who work under this particular type of dispatch system, the loss of experience which could affect employment opportunities in the latter part of the year would be a reason not to

take employment in the salmon industry, wouldn't it?

A. Yes, it might.

Q. Now, you have been a college professor for quite some time, correct?

A. Well, I no longer am, but I was for quite some time.

Q. And, let me ask you whether you, yourself, say in the last twenty years, were ever available, ever available during the summer to go to work in Alaska as a cannery worker?

A. No, sir, I was not.

Q. And one reason you found employment in your profession is that was during the summer?

A. Yes, I did most summers.

Q. And another is was that going to Alaska would cause you a certain amount of personal dislocation?

A. Yes, though I never lived in that part of the country, counsel.

Q. Now, even putting aside the question of wages, you could lose certain benefits to your career if you took a summer off to go to Alaska as opposed to doing something like working on a research paper, correct?

A. Early in my career that would have been correct.

Q. And so there are a number of reasons [sic] why you, yourself, would not have been available for work in Alaska, correct?

A. Yes.

Q. And that is true of most other college professors you know, isn't it?

A. Well, the ones I know tend to be at the major universities and have the best opportunities for summer work. I would not want to generalize to all college professors and all little colleges across the country. It is my impression that professors in small

liberal colleges are quite frequently available for other kinds of employment during the summer.

Q. My question was that is true of most of the other college professors you know, isn't it?

A. Yes, it is.

Q. And in fact, to your knowledge, that is true of most college professors on the West Coast, isn't it?

A. I know very few college professors on the West Coast.

Q. To your knowledge, that is true of most college professors on the West Coast, isn't it?

A. It is true of the ones I know.

Q. Okay, did you make any attempt in devising your availability figure to weed out college professors?

A. No, I don't think we should have.

Q. Now, at least some high school teachers are not available for migrant seasonal work, is that correct?

A. In all parts of this availability class some people are not available for migrant seasonal work, we're not attempting to identify a class of people all of whom are available, we are attempting to identify a class of people from whom an employer might reasonable [sic] be expected to draw some employees.

Q. I gather that your answer is at least some high school teachers are not available for migrant seasonal employment, correct?

A. That's correct.

Q. And you do not have a way of determining exactly what percentage of high school teachers are available and what percentage are not available, do you?

A. No, I do not.

Q. And in fact those available could be comprised only of a small percentage of high school teachers, correct?

A. They could.

Q. Now, in the other industry that you focused on in determining your availability figures for table one through four, there are at least some full year employees, for example, a manager, or a mechanic in agriculture who might be a full year employee, correct?

A. Yes, he might.

Q. And in the industries that you looked at in determining your availability figure for tables one through four, you did not factor out those who had full year employment as opposed to those who had only seasonal employment, correct?

A. That's correct. Well, there is one exception to that, and that is the unemployed who form a fairly substantial part of that class, and my definition is they were not employed at the time the census was taken.

Q. I'm speaking of industry classifications.

A. Rather than the whole availability class?

Q. Right.

A. With that qualification, it is correct.

Q. Now, would it be fair to say that whether a given student takes work in the salmon industry during the summer depends on whether or not better options are available to him or her?

A. Yes, that's correct.

Q. And you did not adjust your data to exclude students who had better options, did you?

A. There is no way of identifying in that data base or any data base that I know of.

Q. Now, even among the unemployed there would be people who are not available for migrant seasonal work in the this [sic] industry.

A. There might be some, sure.

Q. Of your relevant seasonal availability class, namely the ones in table one through four, do you know what percentage of those people were involved in the construction industry?

A. I don't know off-hand. We could probably provide that if it is important.

Q. Do you know what percentage are teachers?

A. No, I don't have a recollection of how that available class devised among its various components.

Q. Now, in arriving at your availability figures, you used the census one and one hundred use tapes, did you not?

A. That's correct.

Q. And the occupational detail in those tapes appears only at the level of county groups, is that right?

A. That's correct.

Q. The entire State of Alaska forms one county group, doesn't it?

A. Yes, it does.

Q. Do you know what the percent non-white is in the State of Alaska?

A. My recollection is that for the total population of Alaska, it is about fifteen percent.

Q. And that would be considerably lower than the percent non-white in Alaska native villages, wouldn't it?

A. Yes, very much so.

Q. Is it your understanding that those Alaska residents employed at Ekuk, Bumble Bee, Red Salmon, and Alitek [sic], during the case period, came almost entirely from Alaska native villages?

A. Yes, that is my understanding with respect to the particular facilities that you have named.

Q. You used various types of weighting schemes in devising your availability figures, correct?

A. Yes, we used two. We weight a job and we weight by the section of the job. My preference is for the second of the two. The reason, would you like me to explain the reason for that?

Q. Well, I would rather you just answer the question, frankly. I think--it is up to the court if the court--

THE COURT: It could be covered on re-direct.

BY MR. ARDITI:

Q. In weighting by job, then, you used the residence of the people actually hired in those jobs to determine the weighting that should be given in the availability figure, correct?

A. Yes, the people hired in those jobs at all of the Alaskan facilities of the three defendant companies, with the exception of the facility at Icy Cape.

Q. Now, when you weighted by section, you took as one section, cannery worker and laborer, correct?

A. Correct.

Q. And you took as the other section all jobs except cannery worker or laborer, correct?

A. Correct.

Q. And when you devised availability figures for each of the non-cannery worker and non-laborer jobs, you weighted by that section that was

comprised of jobs other than the cannery worker and other than laborer, correct?

A. Yes, for each of the job families.

Q. Now, where an employer recruits can itself be discriminatory, can it not?

A. It can be.

Q. And where there is some reason to believe that an employer's recruitment practices are discriminatory, it would be less preferable than in other cases to use a weighting scheme based upon where employees were hired, correct?

A. I have no reason to believe that that's true in this case.

Q. My question was a general one, and you can you answer it, or would you like--

A. If I had a reason to believe that an employer was deliberately recruiting in some areas and not in others in order to influence the racial

composition of his work force I would have to take that under account.

Q. And you would also have to take it into account if you had reason to believe that the employer was deliberately recruiting in heavily non-white areas for low paying jobs or less desirable jobs, and deliberately recruiting in predominately white areas for high paying or more desirable jobs, correct?

A. This is still a hypothetical question?

Q. Yes, it is.

A. I would have to take those facts into account.

Q. Now, in your table you attempt to take a skills in the sense that on at least some occasions you looked at census occupational categories that you felt were geared to skill?

A. Yes, that is correct.

Q. Now, in selecting those occupational categories, you relied solely on Mr. DeFrance's analysis, is that correct?

A. That is correct.

* * *

[pp. 1929-1930]

Q. Is it fair to say then that your statistics on the availability of non-whites with the relevant skills rises and falls with Mr. DeFrance's cross-mapping?

A. Yes, if Mr. DeFrance's cross-mapping bore no resemblance to the skills that were needed in these job families, then we would be in trouble.

MR. ARDITI: Now, could the witness be handed Exhibit A-278.

(The exhibit was handed to the witness by the Bailiff).

BY MR. ARDITI:

Q. Do you have that in front of you?

A. Yes, I do.

* * *

[pp. 1931-1932]

Q. If you're more comfortable, we can turn to Red Salmon, that is perfectly fine, turn to Red Salmon and I'm going to ask you to compare tables one and three.

A. Alright.

Q. Now, your availability figures were given in the row labeled [sic] "target", right?

A. That is correct.

Q. And they are given as percent white rather than percent non-white?

A. Correct.

Q. Is it fair to conclude by comparing tables one and three that when you adjust for skill, you find that there are more non-whites, in other words the availability figure for non-white fishermen increases?

A. The target in table one is eighty-nine point five zero six, in table

three it is eighty-two point six three zero, yes, in that particular instance it does increase, that is a possible result.

Q. Now, let's look at another occupation or another category [sic]. Let's look at machinists.

A. The same two tables?

Q. The same two tables.

A. Yes, okay.

Q. Now, in those two tables, when you adjust for skill, the availability of non-whites goes down somewhat?

A. In table one, we have got the same availability figure right across the tables and in table one the availability is not being done by job family.

Q. I understand that, but in table three it is, correct?

A. In table, it is [sic]. In the case of machinists, the availability of non-whites is lower, in table three, or it

is lower in table three than it is in table one.

Q. Okay, so when you adjust for skills with machinists, what you are really doing is bring the availability figure for non-whites down about three percentage points, is that correct?

A. That's correct.

Q. Now, I would like to ask you about instances in which you found statistically significant under-representation of non-whites, okay?

A. Yes.

* * *

[p. 1941]

Q. In fact, you find statistically significant under-representation of non-whites in machinist jobs and company fishermen jobs at South Naknek in tables one, two, three, four, five, six, seven and eight of that exhibit?

A. Yes, I would say that particular case, the evidence of underrepresentation is fairly conclusive and does not depend on which table you look at.

Q. Now, in Exhibit A-280, you use yet another method of counting hire, correct?

A. Yes, 280 uses all hires that it counts a person each time he appears on a payroll, even if he has appeared in that job, that facility in the previous season.

Q. Let's see if we can't verify that. It refers to all seasonal hires?

A. All seasonal hires, correct.

Q. So that would then indicate or count as a hire each occasion an individual appeared in a seasonal job, correct?

A. Yes, correct.

Q. And as you understand it, the deviation of hires for seasonal jobs here is essentially a definition that Dr. Flanagan was using?

A. That's correct.

Q. Let's look at the South Naknek tab of Exhibit A-280, okay?

A. Yes.

* * *

[pp. 1942-1946]

Q. Okay, let's go back to table one of the South Naknek tab of Exhibit 280, A-280.

A. Correct.

Q. Now, in table--or in that table, we find statistically significant under-representation of non-whites, not only in company fishermen and machinist jobs, but also in carpenter and tender jobs, correct?

A. Correct.

Q. And we find the same thing in table two, correct?

A. That is correct.

Q. In table three, we find statistically significant under-representation of non-whites not only in fishermen and machinist jobs, but also in tender jobs, correct?

A. Correct.

Q. Now, in table four, table five, and table six, and table eight, we also find statistically significant under-representation of non-whites not only in fishermen and machinist jobs, but also carpenter and tender jobs, correct?

A. You skipped seven, but included eight, is that correct?

Q. Yes.

A. Yes, that is correct.

Q. Now, let's turn to the Red Salmon tab--strike that--let's go to Wards Cove.

A. Wards Cove in A-280, I have it.

Q. Okay, on this table, table one, we find statistically significant under-representation of non-whites in miscellaneous, machinists and tender jobs, correct?

A. Correct.

Q. In table two, we find statistically significant under-representation of non-whites in machinists and tender jobs, correct?

A. Correct.

Q. In table three, we find statistically significant under-representation of non-whites in machinists jobs, correct?

A. Correct.

Q. And table four, we find it in machinists and tender jobs, right?

A. Right.

Q. And in table five, we find statistically significant under-representation of non-whites in three

department, miscellaneous, machinist, and tender, correct?

A. Correct.

Q. And in tabale [sic] six, we find it machinist?

A. Yes.

Q. The same in table seven?

A. Yes.

Q. And in table eight, we find it in both machinists and the tender jobs, correct?

A. Table eight?

Q. Right.

A. I show for tender composite deviation of one point nine zero five which would not be significant at the five percent level as to the significance.

Q. Okay, let's turn to Red Salmon.

A. Yes.

Q. In table one, we find statistically--

THE COURT: Mr. Arditi, you don't need to go through these, I can go in and read these and see which is more than one nine six if that is the point of examination, is that the point of it?

MR. ARDITI: That is basically--

THE COURT: Well, I think I can handle that.

BY MR. ARDITI:

Q. In Exhibit 281, you used a definition of "all hires", right?

A. Yes.

Q. And how does that differ from the definition that you use for hires in Exhibit 280?

A. Again, the difference is the people who work during the winter at Lake Union Terminals, they are included in 281, excluded in 280.

Q. Now, you mentioned at page five of your affidavit that you prefer using new hires to all hires, is that correct?

A. That's correct.

Q. And this is in essence saying you have a different view of vacancies than Dr. Flanagan?

A. That's right.

Q. Now, in any of your tables that counts new hires or new seasonal hires, you look only at hires which occurred [sic] from 1981 onward, is that correct?

A. 1971.

Q. I mean '71 onward, is that right?

A. Yes, for the season 1971 through '80.

Q. And I think you say at page five, lines twenty-eight through thirty that you believe that this is acceptable because if there is any racial discrimination your method of counting hires would show it in the initial hiring, correct?

A. That's correct. If there is discrimination in the period covered by the litigation.

Q. Exactly. Now, if there were discrimination in 1970, your figures would not show it, correct?

A. If there had been discrimination prior to 1970 that was reflected in the composition of the 1970 labor force, yes.

Q. Now, it would be possible that a policy of rehiring past employees in their old jobs would--would or could perpetuate discrimination that occurred prior to 1971, isn't it?

A. Well, it is. May I state my reasons for preferring new hires to all hires?

MR. ARDITI: Well, that would be up to the court again.

THE COURT: Alright, Mr. Duncan will cover that.

THE WITNESS: Alright.

BY MR. ARDITI:

Q. Now, your definition of hires does not take account of this possibility that there may have been discrimination in 1970 which is perpetuated by a practice of rehiring past incumbents in their old job, does it?

A. That practice is required under the defendants' union contracts.

Q. Dr. Rees, that wasn't my question. My question is--

THE COURT: Just answer the question.

THE WITNES: Alright. Would you restate the question, counsel?

BY MR. ARDITI:

Q. Your preferred method of counting vacancies does not take into account of possible discrimination in 1970 which is them [sic] perpetuated

through a practice of rehiring past incumbents in their old jobs?

A. No, it does not.

* * *

[pp. 1947-1955]

Q. Now, as I understand these tables, when you find something in the composite deviation row, which is minus one point nine six or less, we have statistically significant underrepresentation of whites, is that correct?

A. That's correct.

Q. Let's start with--

THE COURT: Excuse me, just a minute. Did you say minus one point six nine six or less?

MR. ARDITI: Yes, it would go to--

THE WITNESS: You figure the bigger minus number.

THE COURT: Alright.

MR. ARDITI: I wasn't sure how to phrase that exactly.

THE COURT: Alright.

BY MR. ARDITI:

Q. Let's start with this miscellaneous column there.

A. Okay.

Q. Well, first of all, to your knowledge, miscellaneous jobs at Ekuk are not covered by the Local 37 contract, are they?

A. I don't have any knowledge of that, I don't really know what has been put in the miscellaneous job column at Ekuk.

Q. Well, the minus six point six nine six standard deviation would show a highly significant under-representation of non-whites--I'm sorry, a highly significant under-representation of whites, wouldn't it?

A. Yes, it would.

Q. Okay, I want you to assume those are non-union jobs, okay?

A. Alright, I will assume that.

Q. That under-representation, then, could not be attributable to any union practices, could it, in hiring?

A. If those jobs are not covered by any union, no, it would not.

Q. Let's look at the beachgang, it is your understanding that that job is covered by the Alaska Fishermen's Union rather than any other?

A. I have looked at the agreements, counsel, but I don't have detailed recollection of just which jobs at which facility are covered by the facility. There are a lot of unions involved here.

Q. Alright. We find highly significant under-representation of whites in the beachgang job, don't we?

A. Yes, we do.

Q. And if it is your understanding that there are no Local 37 workers at Ekuk?

A. Yes, that is my understanding.

Q. We find a statistical [sic] significant under-representation of whites in the culinary department, correct?

A. Correct.

Q. And, we find it in the storekeeper, stockroom department, correct?

A. It's statistically significant. It's not as pronounced as in the other cases you have mentioned.

Q. And we find it in the tender department, correct?

A. Correct.

Q. And we find it to an almost alarming degree in the cannery worker department, don't we?

A. Why is it alarming?

Q. Well, it is minus thirty-five point eight one zero standard deviation.

A. I find it large but not the least alarming.

Q. What is the statistical probability that you could come up with a disparity that great between the actual percent white hired and the target percent white solely by chance?

A. If you were hiring these workers solely by chance from the entire area from which these defendants recruit, that would be a highly improbable event. In fact, we know, both you and I know that is not the way cannery work is not recruited at Ekuk. I can explain that if you want me to, but it isn't alarming.

Q. Minus one point nine six standard deviations would indicate that something other than chance is happening at the level of ninety-five percent certainty, correct?

A. Yes.

Q. Okay--

A. That you're not hiring at random from the whole geographical area on which these tables are based.

Q. Okay, can you give me an idea of what percent certainty you find at the level of minus thirty-five point eight one zero standard deviations?

A. Well, it's an event that would happen by chance in a random draw from the whole population, certainly, that's the one time in ten thousand, and it is way out of the tail of the probability distribution. I'm sure Dr. Wise could compute it for me, but I can't guess it.

Q. Now, is it fair to assume, just in lay people's terms, what or when you find these minus signs which are really finding as a suspicion of discrimination against whites?

A. You can call that if you like, what you are finding is that that particular work force is heavily non-white.

Q. Okay, but your finding has such a high degree that it raises the inference of discrimination against whites, correct?

A. Well, that's one way of describing it.

Q. Now, just generally speaking, would it be fair to say that there is a fairly high incidence of this statistically significant underrepresentation of whites in the job tables that you prepared, the exhibits you prepared?

A. Yes, it happens more often than the reverse, than statistically significant discrimination against non-whites.

Q. And it happens at Ekuk where there is no Local 37, correct?

THE COURT: You are talking now about cannery workers?

MR. ARDITI: I'm talking about all departments, and I will be more specific.

BY MR. ARDITI:

Q. It happens at a number of departments at Ekuk where there is no Local 37 workers, correct?

A. Correct.

Q. It happens at Red Salmon, for example, in labor departments were [sic] workers are not represented by Local 37, correct?

A. If you give me just a second to get the--that is correct.

Q. It happens at Alitek [sic] in miscellaneous, beachgang, carpenter, tender and labor jobs, none of which are covered by Local 37, correct?

MR. DUNCAN: Your Honor, I would like to know which table we're looking at when we're coming up with these particular figures.

THE COURT: Alright, please refer to the table, Mr. Arditi.

BY MR. ARDITI:

Q. Well, let's start with table one.

THE COURT: Of which cannery?

MR. ARDITI: Alitak, Exhibit A-278.

THE WITNESS: Okay.

BY MR. ARDITI:

Q. It happens at miscellaneous--

THE COURT: Wait a minute. Alright, go ahead.

BY MR. ARDITI:

Q. It happens in miscellaneous, beachgang, carpenter, culinary, machinist, tender, laborer, correct?

A. Correct.

Q. And none of those would be attributable to Local 37, would it?

A. No, some of them are represented by other unions that have clauses in their agreement giving preferences to hiring of residents of Alaska.

Q. Now, if your availability figure for non-whites were hire, [sic] it would reduce the incidence of this statistically significant under-representation of whites, wouldn't it?

A. Yes, it would.

Q. And, in fact one possible interpretation of this pretty substantial incidence of statistically significant under-representation of whites is that your non-white availability figure is too low, correct? Isn't that an interpretation or possible interpretation of it?

A. I think maybe too low for some of the facilities on Bristol Bay which in some unskilled job categories hire heavily from native villages and not from the region as a whole, but I have no way of making separate availability figures for those facilities from the census data because the census data [sic] treats Alaska as a unit.

Q. So, to that degree, your reliance on the one and one hundred public use sample tapes has produced for you availability figures for non-whites in the Bristol Bay canneries which are in fact too low, correct?

A. They are too low for those unskilled and semi-skilled jobs where recruitment is in the native villages, yes. They are not necessarily too low for some of the skilled jobs where recruitment is in the Lower Forty-eight.

Alright, but if going back to an earlier section of our discussion today you had reason to believe that there was deliberate recruitment of cannery workers only in heavily non-white areas, and deliberate recruitment of other people for other jobs in heavily white areas, then that availability figure would be too low, not only for what you lable [sic] the unskilled jobs, but also for the other jobs as well, correct?

A. I'm sorry, I lost that, counsel, could you repeat it?

Q. If I understood your previous response correctly, it was that one possible interpretation of this underrepresentation of whites was that your availability figure for non-whites in unskilled jobs in the Bristol Bay canneries was too low, correct?

A. Yes, given the recruitment patterns of those canneries for those jobs.

Q. And you attributed that to the fact that the census one and one hundred public use sample tapes do not give fine enough detail on a geographical level for you to get an accurate assessment, correct?

A. That is true within the State of Alaska only. In the other states they give a sufficient detail.

Q. And the reason, I believe, that you limited that conclusion just to what you call the unskilled jobs is that you felt that that was the only place where--I'm sorry--the reasons that you limited that to what you called the skilled jobs is that you believe that only recruitment for the unskilled jobs was done in Alaskan native villages, correct?

A. That's correct.

Q. Now, if you had reason to believe that the recruitment practices at least as far as selecting which location to recruit for different jobs was concerned, you had reason to believe that the recruitment practices themselves were deliberately discriminatory, then you would also have to suspect, wouldn't you, that your use of the one and one hundred public use sample tapes was also inappropriate for what you call the skilled jobs at the Bristol Bay cannery, correct?

A. If I believed that, that would be correct, yes.

Q. Thank you.

A. I have not--I happen not to believe it, I think there are other ways in which this can be explained, should be explained.

Q. Let me ask you to draw on your general expertise which I gather was

substantial as a labor economist. Generally, in our particular society, we find that more discrimination against non-whites than we do against whites, don't we?

A. Yes, that's correct.

Q. And from your examination of the wage information in this case, we could conclude that the whites receive the higher paying jobs as opposed to the lower paying jobs, correct, on the whole?

A. On the whole, although the cases you have just been citing are cases of over-representation of non-whites in skilled jobs so it is by no means a uniform picture.

Q. That is not my question. If you look at the higher paying departments at the canneries, you will find they are more heavily white than the lower paying departments, correct?

A. That is in general correct.

Q. Okay, so when you were looking at the distribution of non-white and non-white workers at the canneries, you find that the white workers generally get the better paying jobs as opposed to their non-white counterparts, correct?

A. There is a high proportion of white workers in the better paying jobs, yes.

Q. And based on the contact you had in this case with management, you would conclude that management is largely white, is it not, at least at the highest levels?

A. The representatives of management I have met have been white, yes.

Q. I gather from your tables that you find there is a higher incidence of statistically significant under-representation of whites than of non-whites, correct?

A. Taking all departments of the cannery together, or the facilities into account, that is correct, yes.

Q. Dr. Rees, does it jar your common sense at all to conclude that in light of the fact that society-wise, there is a, there is greater discrimination [sic] against non-whites than whites, in light of the fact that whites generally get the better paying jobs at the cannery than non-whites and in light of the fact that management at the upper levels of the canneries is white rather than non-white, doesn't it jar you [sic] common sense at least to some degree to conclude that there is greater discrimination against whites than non-whites?

A. I haven't concluded there is discrimination against whites, I have concluded that whites are over-represented in certain departments. We

haven't yet had an opportunity to discuss why.

Q. Now, Dr. Rees, I gather from your affidavit that it is your belief that Local 37 in some way contributes to the substantial number of non-whites in this particular industry, is that correct?

A. Yes, in those facilities where they represent the cnanery [sic] workers and some of the culinary workers, they clearly contribute to the higher proportion of non-whites in those two departments.

* * *

[pp. 1958-1959]

Q. Let me just ask you this, Dr. Rees, in your view as a labor economist, have you ever encountered situations where an employer tries to blame his discrimination on a union?

A. To blame it on a union?

Q. Yes.

A. A few cases, yes.

Q. Now, is it not correct to say, in your view, that an employer's statements about the source of discrimination are not always reliable for just that reason, mainly that they will try to blame it on another?

THE COURT: I think that question is a question that I am going to have to resolve, Mr. Arditi.

MR. ARDITI: He has written about it.

THE COURT: Okay, well, if he has then ask him about it.

BY MR. ARDITI:

Q. Have you written on that subject?

A. Yes, the statement you have just made, I think is a quote or a paraphrase from my textbook, "The Economics of Work and Pay".

* * *

[p. 1960]

Q. Now, in your view as a labor economist, one form of employment discrimination occurs when an employer succumbs to the prejudice of its employees, correct?

A. Correct.

Q. Okay, and this can lead to segregated work crews?

A. Can, yes.

Q. And an example of this is hiring Black janitors to work at night by no Blacks in production worker jobs, correct?

A. That would be an example, yes.

Q. And this minimizes contacts between whites who may be prejudice and non-whites, correct?

A. Correct.

Q. And another way of minimizing this contact in a facility that provides

housing is to have separate housing for whites and non-whites, correct?

A. Yes.

* * *

[p. 1969]

Q. Dr. Rees, what is the probability in any given table, in Exhibit A-278, that there would be one or more out of ten job families with more--with a positive one point nine six standard deviation?

A. If you regard each job family hiring into each job family as an independent event, then Dr. Wise has calculated that probability by twenty percent. In one table out of five you would expect to find such an event. That is, simply by chance, simply as a random of cards.

* * *

BY MR. ARDITI:

* * *

[pp. 1970-1973]

Q. Now, is it your understanding that many of the native villages are coastal villages?

A. I know a map has been introduced and where the villages are, I haven't examined it.

Q. Why don't you assume that many of these villages are coastal villages, and please assume further that many of the residents of these villages grew up around water and around boats. Under those circumstances, when you weight by areas from which the employer recruits for that job, isn't it possible that you are losing [sic] a great many non-whites in these areas who would have the skills required for tender or company fisherman jobs?

A. I think that is probably right, that may very well be why in your earlier cross-examination you discovered in the

tables some of those job families in which non-whites were over-represented.

Q. Let me--you would use those figures then for tender jobs, correct, you would want to weight by cannery worker hiring for such tenders?

A. No, no. If we had data, which unfortunately we don't, which gave us geographical detail within Alaska by occupation, I would have wanted to use those. They don't exist, and that would show up these people that you are talking about that have whose occupation is fisherman and whose occupation is boat caption [sic] or whatever.

Q. It would be fair to assume, would it not, that if you weighted by the entire cannery worker work force rather than by specific jobs or job sections that percent of non-white in your availability figure would go up?

A. It goes up slightly, yes.

Q. And it makes at least some sense to do that for jobs such as tender and company fisherman which involve marine work, correct?

A. Arguable.

Q. Now, is it your understanding that the percent non-white and cannery worker jobs at Ekuk is as high or higher than at any of the other canneries at issue?

A. I would have to check that. It can be done very easily.

Q. Why don't you check it.

A. The cannery worker jobs at Ekuk are approximately thirty-five percent white. It is fairly low. I'm sorry, that is Alitak. Ekuk, at Ekuk it's thirty-three percent white or whites, it is a couple of percentage points below Alitak. South Naknek is forty-eight percent white, cannery department. Red Salmon is thirty-six percent white, Wards Cove,

sixty-nine percent white. So, yes, it is one of the lowest.

Q. That is one of the lowest percent white?

A. Percent white, yes.

Q. And correspondingly, it has the highest percent non-white, correct?

A. That is correct.

Q. And that is the cannery that does not use Local 37 labor, is that correct?

A. That is correct.

Q. Now, if I understood your testimony correctly, in your view, at least if Local 37 were somehow cut out of the picture, the percent Filipino and other Asians would decline, correct?

A. It would decline gradually over the years. That doesn't mean that experienced workers wouldn't be rehired. I assume that they would.

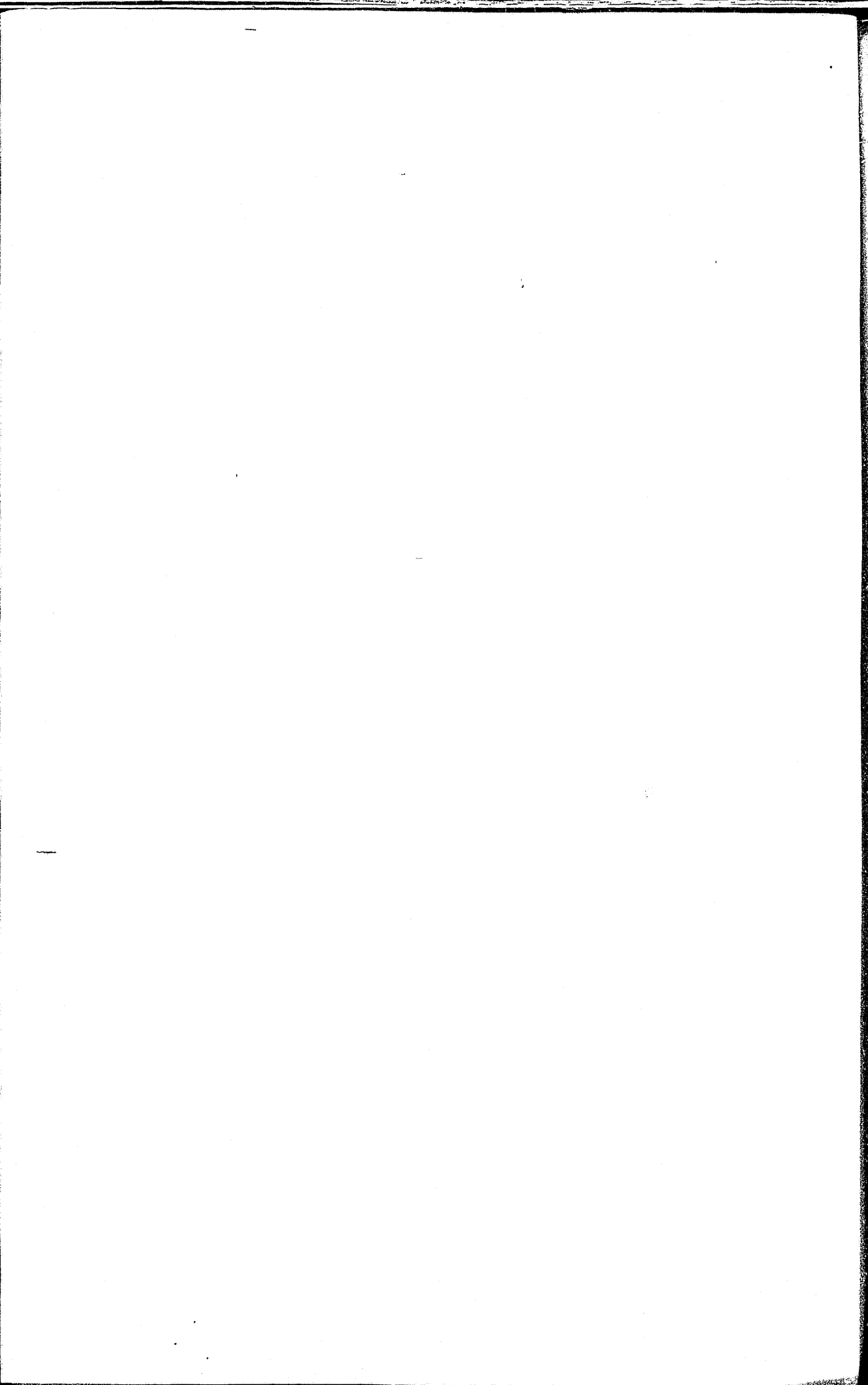
Q. But, you're not able to predict the precise racial mix of those who would come in and fill those jobs, are you?

A. No, I am not.

Q. And at least some of those jobs would be filled, in your [sic] view, by non-whites who are not of Filipino or Asian descent, correct?

A. Correct, that is especially true in the Bristol Bay area.

* * *



DISTRICT COURT

TESTIMONY OF ROBERT J. FLANAGAN

[p. 2064]

Q. Could you tell us what the correction is.

A. The corrections are in the second sentence of the second full paragraph. Five lines down, cross out the word "plaintiffs" and substitute the word "defendants." Two words before that, cross out the word "perform" and substitute the following phrase: Based on both the 47 percent figure, and the high and low estimates of availability developed. To be sure that's an insert, let me read the corrected sentence entirely just to be sure it's correct in the record. The second sentence. "Nevertheless, I note that statistical tests, based on both the 47 percent figure and the high and low estimates of

availability developed by defendant's expert Dr. Albert Rees, indicate that employment of non-white carpenters generally fell below the confidence interval at the Bumblebee, Red Salmon, Ekuk and Alitak canneries.

* * *

[p. 2121(a)-(b)]

ROBERT J. FLANAGAN, being first sworn, states:

Attached is a document entitled Witness Statement of Robert J. Flanagan which summarizes my testimony in this case. I incorporate its contents into this affidavit by this reference.

WITNESS STATEMENT OF

ROBERT J. FLANAGAN

Associate Professor of Labor
Economics and Director of the
Public Management Program
Graduate School of Business
Stanford University
Stanford, California 94305

I. Qualifications and Background

My general expertise is in the area of labor economics. I have a B.A. degree from Yale University and an M.A. and a Ph.D. degree from the University of California at Berkeley. All of these degrees are in economics with a specialization in labor economics and include training in statistics and econometrics. I am also a member of the American Economics Association and the Industrial Relations Research Association.

* * *

[p. 2121(c)-(d)]

Labor supply: The number of individuals who are available for work in a particular organization or industry. The most common empirical analog to this concept is the labor force which consists of the employed plus those who are looking for work in the industry but cannot find it (the unemployed).

Work force: this is usually a synonym for employment in an organization.

Seasonal work: work that occurs only part of a year but usually in about the same part (months or weeks) of each year. When seasonal work occurs in areas that are remote from major population centers, it usually requires the services of migrant workers.

Labor market discrimination occurs when individuals who have equal ability to perform a job but differ by race or sex (or some other characteristic that is

unrelated to their productivity) are treated differently in terms of pay or employment opportunities.

Occupational segregation: occurs when individuals of a particular race (or sex, etc.) are disproportionately employed in lower-wage jobs and underemployed in higher-wage jobs, given their qualifications.

Analysis for this Litigation

I was asked by an attorney for the plaintiffs in this case (1) to determine the percent of the labor supply to the defendant salmon canning companies that was nonwhite for the period since 1970, and (2) given the percent nonwhite in the labor supply, to determine whether there was discrimination in the allocation of jobs to nonwhites at the defendant canneries.

* * *

[p. 2121(e)-(k)]

Nonwhite Availability

The choice of a source of data that provides an accurate measure of the availability of nonwhites for work in the Alaska salmon canning industry is dominated by two unusual characteristics of employment in that industry: (1) employment is highly seasonal, since the canneries normally operate for only a few months in the summer, and (2) most of the canneries are in remote locations so that migrant labor is required. Seasonal, migratory work offers less job security and greater disruption to family life than do full-time, full-year jobs, and for these reasons it is generally less preferred. Judged by their job choices, most workers prefer full-year employment. Migrant, seasonal workers do not normally have full-year employment opportunities. Among the reasons for this is

discrimination in full-year employment opportunities. As a result, the nonwhite proportion of a migratory labor force is usually considerably higher than the nonwhite proportion of the full-year labor force in the areas from which a seasonal industry draws its workers, and it is inappropriate to estimate nonwhite availability to such an industry solely from the racial mix of the full-year labor force in those areas. Therefore, the basic problem confronted in measuring the availability of nonwhites for employment in the Alaskan salmon canning industry was to find a source of data that provided a clear indication of availability for seasonal migratory work.

With respect to statistics on labor supply, there were three choices. One is data from the 1970 Census of the Population. This source provides considerable data on the size and race

composition of the labor force
disaggregated by geographical area,
occupation, industry, and other
characteristics, and for this reason it
has been frequently used in determining
availability or labor supply in Title VII
litigation. However, this source has one
fatal defect as a measure of labor supply
for the Alaskan canning industry. The
Census data are dominated by people in
full-year, full-time employment. For
most Title VII litigation, in which
discrimination is alleged in
organizations engaged in full-time, full-
year operations and employment, the use
of the Census of Population data is
appropriate. However, it is
inappropriate in the present case because
a seasonal, migrant labor force tends to
have a disproportionately large minority
component. The use of Census data will
therefore result in a substantial

understatement of the availability of nonwhites for work in the industry.

The second alternative is data on racial employment patterns developed and published by the Equal Employment Opportunity Commission from employment data on the EE01 forms submitted annually by many organizations. This source shares the flaw in the Census data, in that it is dominated by full-time, full-year employment, but has other debilities as well. There is, for example, much less occupational and geographic detail than is available in the Census. In addition, there are a number of shortcomings and biases in the data that are tied to the sample and data collection procedures and that the EEOC itself acknowledges in the volume in which the data are published.

The third and in my opinion the preferable alternative is a long statistical series on employment in the

entire Alaska salmon canning industry prepared first (from 1906 to 1939) by the U.S. Bureau of Fisheries and later (from 1941 to 1955) by the U.S. Fish and Wildlife Service. (These data are in Exhibits 61 and 62.) These data have the advantage of showing the racial composition of those individuals who actually choose to work in an industry characterized by seasonal, migrant work. In examining these data, I have considered three possible objections to their use. First, they provide information on industry employment, but the standard measure of labor supply, the labor force, includes the unemployed as well as the employed. The number of unemployed is usually a small fraction of the number of employed in a labor market, and, more importantly for the issues in this litigation, the unemployment rate of nonwhites generally exceeds the

unemployment rate of whites by a large margin. Therefore, if information on the unemployed were available, it is very likely that it would raise the estimate of the nonwhite percent of the labor force available to the Alaska salmon canning industry. The use of figures that are limited to employment provide a conservative estimate of nonwhite availability from the standpoint of the plaintiffs' interests. The second possible objection is that the data were not collected after 1955. This would be a particularly serious limitation if the percent nonwhite in the industry was highly variable over time or if it seemed to exhibit a particular trend. But in fact it was very stable. Over the last seventeen years that the series was published, the percent nonwhite stayed around 50 percent. The fact that employment at the defendant canneries in

this case, in the Domingo v. Nefco case, and in the Carpenter v. Nefco-Fidalgo case was also around 47 percent nonwhite during the 1970s indicates that the nonwhite availability to the industry has remained stable since 1955. The third potential objection to using this data source to estimate the nonwhite percent in the labor supply to the Alaska salmon canning industry is that the data do not include information on skill. In recognition of this problem, I have made adjustments for skill in my statistical analysis. The analysis and the adjustments will be discussed in the following section.

In determining the percent nonwhite available for work in the Alaskan salmon canning industry I have used the data from this third source for shoresman and transporters. (They are summarized in Exhibits 63 and 625.) In order to smooth

out minor annual fluctuations in the data, I have taken the average percent nonwhite for the last five years for which the data were gathered, 1951-55. The average percent nonwhite during those years was 47 percent. Because of the general stability in this figure over a much longer previous period, it appears to be an appropriate (although somewhat conservative, given the omission of unemployment) estimate of the percent nonwhite available for jobs in the industry that do not require extensive training.

Job Allocation Analysis

In order to reach an opinion concerning whether there was evidence of discrimination in the employment of nonwhites in the defendant's salmon canneries, I performed a statistical comparison of the percent nonwhite available with the percent nonwhite

employed in various job categories at the canneries. The standard of nondiscrimination that is used in the analysis is random selection, which means that each individual in the labor pool has an equal likelihood of being selected for employment. The purpose of the statistical analysis is to determine whether any difference that may exist between the percent nonwhite available to the Alaska salmon canning industry (47 percent, as noted above) and the percent nonwhite hired at any particular cannery is consistent with random selection in the allocation of jobs. In general, some difference between the two figures would be expected; that is, an individual cannery would not be expected to match the 47 percent availability figure exactly. This is because a single cannery hires only a portion (or, in statistical terms, a sample) of the industry's migrant,

seasonal labor force. Because a sample is only partially representative of the population from which it is taken, the characteristics of the sample (such as the percent nonwhite) are unlikely to match exactly the characteristics of the underlying population. Consequently, in the present case an employer's work force will not precisely reflect the racial mix of the industry-wide labor pool. However, the difference between the percent nonwhite employed by a cannery and the percent nonwhite available (47 percent) must remain within certain bounds to be consistent with random selection (i.e., nondiscriminatory hiring).

The nondiscriminatory range of nonwhite employment is determined by using standard statistical concepts of the normal variation in a characteristic such as the percent nonwhite associated

with random (nondiscriminatory) selection. More specifically, statisticians and economists frequently use the standard deviation, a measure of the normal variation of a characteristic around the average value of the characteristic, to construct a "confidence interval" which is the range around the availability figure (47 percent in the case of the salmon canning industry) in which the percent nonwhite hired is expected to fall most of the time if an organization is practicing nondiscriminatory hiring. The confidence interval that is regularly used in the social sciences is defined as plus or minus two standard deviations around the availability figure. (This is known as the 95 percent confidence interval.)

* * *

[p. 2121(1)-(p)]

The interpretation of the results of the statistical analysis when hiring into a simple job is at issue is as follows. If the percent nonwhite selected by an organization falls within the confidence interval, the organization's selection process is consistent with random or nondiscriminatory selection. On the other hand, it is unlikely that an organization would select a percent nonwhite below the confidence interval if it were selecting randomly. In this situation discrimination is likely. When an organization practices occupational segregation, i.e., the restriction of nonwhite workers to low-wage jobs despite the ability of some to hold high-wage jobs, the employment of nonwhites will tend to fall below the confidence interval for high-wage jobs and may fall

above the confidence interval for low-wage jobs.

Before examining the results of my analysis of job allocation at the defendant canneries, it is necessary to address two further issues bearing on the interpretation of the results: (1) skill, and (2) the role of unions representing workers at the canneries. In analyzing the data for the defendant salmon canneries, I have considered adjustments that might be necessary for skill and other qualifications for employment in the industry. It appears that there are few (if any) written, objective qualifications for jobs at the canneries other than job descriptions that have been prepared for recent discrimination litigation, and the latter have been characterized as ideal criteria, rather than the criteria that are actually applied in hiring

decisions.[4] Most jobs appear to be unskilled or could be learned with a relatively brief period of experience in the industry. Nevertheless, a few jobs appear to have significant skill requirements, and there are others for which knowledge of skill requirements was lacking. Since the data that I have used to estimate availability does not include information on skill levels of whites and nonwhites, I have adjusted the internal employment data of the canneries to reflect skill requirements and/or uncertainty concerning skill requirements. Within some departments (e.g., machinist) there are a few jobs that appear to have substantial skill requirements. For those skilled jobs I assume that the only nonwhites who are qualified for the jobs are those who are actually hired. Operationally, this involves deducting openings for those

jobs from the total number of hires. The procedure is extremely conservative from the perspective of the plaintiffs, since it assumes the total absence of skilled nonwhites other than the few who were employed in skilled positions. The particular deductions for skilled jobs that I have made in my analysis are noted in Table 1. Once the openings for the most skilled jobs (and jobs where knowledge of skill requirements was lacking) were removed from consideration, the statistical analysis for the entire department, including both jobs which do and jobs which do not have significant skill requirements, could be conducted using the 47 percent availability figure.

I have also considered the possible influence of the unions that represent some employees in the industry. My general conclusion is that the content and implementation of collective

bargaining agreements in the industry leave employers with considerable discretion in their hiring and other personnel decisions and do not constitute a binding constraint.

The results of that analysis for each of the defendant canneries is presented in Exhibits 634-638, which have also been appended to this statement for reference. In each case the data have been analyzed separately for the periods 1970-80 and 1971-80. There are three columns of data for each of these time periods. The first, "Hires," gives the total number of positions filled (adjusted for skill as described above and in Table 1) and constitutes the value of "n" in the formula for the standard deviation. That is, each job in each year is treated as a separate hiring decision, so that the "hires" figure is the cumulative employment over the time

interval under analysis, minus the employment of skilled individuals, as explained above. (Data on the number of white and nonwhite hires are from Exhibits 593-602.) The second column gives the actual percent of the positions that were filled by nonwhites and shows that nonwhite representation was highest in the low-wage positions and was generally low in the high-wage positions. The third column gives the 95 percent confidence interval for the percent nonwhite that would be expected to be if the hiring of whites and nonwhites was done randomly (i.e., without regard to race).

In all of the canneries, the hiring of nonwhites for the machinist, company fishing boat, tender, beach gang (except at Ward's Cove where the total number of hires was too small to perform the statistical test), and clerical positions

was significantly lower than would be expected if hiring were done without regard to race.^[5] In two of the canneries, Wards Cove and Ekuk, the hiring of nonwhites for quality control jobs also fell below the confidence interval, and at Bumble Bee and Wards Cove, the hiring of nonwhites for miscellaneous jobs fell below the confidence interval.

In the case of carpenters, I was unable to construct a statistical test given considerable apparent ambiguity concerning the nature of the skill requirements for that position in the Alaska salmon canning industry. Nevertheless, I note that statistical tests performed by plaintiffs expert, Dr. Albert Rees, indicate that the employment of nonwhite carpenters generally fell below the confidence interval at the Bumble Bee, Red Salmon,

Ekuk and Alitak canneries. (These data are shown in parentheses in Exhibits 634-638.)

On the other hand, the employment of nonwhites in the lower wage positions of laborer and cannery worker generally fell above the confidence interval in the defendant canneries.^[6] This overall employment pattern of exclusion from the high-wage positions and concentration in the low-wage positions at most of the defendant canneries is consistent with the employment pattern described earlier as occupational segregation. Moreover, the pattern is not explained either by skill, since skill adjustments have been made, or by other qualifications, which appear to be subjective in this industry.

* * *

DISTRICT COURT

TESTIMONY OF GARY P. LATHAM

GARY P. LATHAM, being first sworn,
states:

[p. 2201(b)]

1. I live at 15260 Maple Wild Avenue S.W., Seattle, WA 98166. I am an industrial psychologist. I have a Ph.D. in Industrial Psychology, an M.S. in Industrial Psychology and a B.A. in Experimental Psychology. I currently have a half-time appointment in the Business School at the University of Washington and I have my own private practice. I teach the senior level course in performance appraisal and I supervise the research of doctoral students. I also do individual seminars on employee motivation. . . .

* * *

[p. 2201(c)]

5. In 1978 I was appointed court monitor in Domingo, et al., and Kookesh, et al. v. New England Fish Company, W.D. 713-73 C2. In that capacity I reported to the court on certain employment practices of New England Fish Company in three of its Alaska salmon canneries. I also made an assessment of qualifications for certain jobs at issue in that case. I was selected jointly by the parties in that case. I was paid for my work by New England Fish Company by court order. My role in that case was that of a neutral party.

* * *

[p. 2201(g)]

19. I have based my conclusions in this case on a combination of the following sources of information:
(a) the Monitor's Final Report which I prepared in Domingo v. New England Fish

Company, (b) depositions of job incumbents and cannery supervisors, and (c) defendants' interrogatory answers and job duties where noted.

20. The beginning point of my work in this case was the monitor's report which I submitted in the New England Fish Company case in 1978. I took the following steps in performing my study of job qualifications in that case. First, I read background material supplied to me by the attorneys for all parties in that case. I then prepared structured interviews which contained the questions I intended to ask incumbents and supervisors. I reviewed the structured interview with attorneys for all parties in that case. Attached is a copy of Exhibit 639 [Note: This table is included in the Excerpt of Record] which is an excerpt from my report in that case. . . .

[p. 2201(h)]

21. I then prepared checklists of possible job duties for a number of jobs. For the most part I used material prepared by the defense expert in that case. I reviewed these checklists with incumbents and supervisors to find out whether any duties were missing. I also asked supervisors and incumbents to delete noncritical duties.

22. I conducted interviews during the 1978 season at the canneries. I conducted some during the preseason as well. I promised each interviewee confidentiality before the interview. The interviews were conducted in quiet, isolated places. No lawyers or company personnel aside from the interviewee were present. Throughout the interviews I took notes on each interviewee's responses.

23. In Seattle I analyzed and integrated the results of the answers. I drew conclusions where there was uniformity in responses at the level of n minus 1. That is, if I interviewed 5 people regarding a job, then 5 was n . If at least of them (n minus 1) agreed on a job duty or period of learning time, I relied on their answers. If less than 4 agreed, I did not rely on their answers.

24. The conclusions I drew were reported in the Monitor's Final Report. Pages 22-34 of Exhibit 640 are excerpts of the report which reflect my conclusions both as to critical job duties and learning time. The listing of critical job duties forms a job analysis for the pertinent jobs.

[p. 2001(i)]

25. In the Monitor's Final Report I stressed that I did not perform an independent job analysis. The words

"independent-dependent" are not synonymous with such words as good-bad. The term independent refers to the fact that the questionnaire was based primarily on the listing of job duties prepared by Nefco's expert witness, Arnold Gibson. Gibson's listing was labelled excessive or ideal by Judge Solomon. My preliminary work during the 1978 cannery preseason indicated that the listing was, indeed, exhaustive in that it contained every conceivable job duty that might possibly be performed by a job incumbent without taking into account necessity or frequency. My job analysis was thus "dependent" upon the comprehensiveness of the job duties initially prepared by Gibson.

26. In this case I also relied on material I reviewed in the Nefco-Fidalgo case. It is established practice in psychology to consult sources of

information concerning similar jobs in the same industry. This is especially true where the sample size for a given job (e.g., salmon butchering machinist) in a company is small.

* * *

[p. 2201(j)]

28. In July, 1980 as part of my study in this case I sent my assistant Lise Saari to three Alaska salmon canneries run by defendants to interview incumbents and supervisors. Ms. Saari is a doctoral student who assisted me in my work as monitor.

29. I gave diminished weight to the results of interviews that Ms. Saari conducted there. In my professional judgment, the circumstances of these interviews make the responses of incumbents questionable. First, a grant of confidentiality to the interviewees was impossible because defense counsel

was present. Second, defense counsel spoke with nearly every interviewee prior to the interview. Some of the interviewees were deposed after July, 1980. I attended these depositions. However, I felt that because the interviewees had already committed themselves to one position in Alaska, their deposition responses would be similarly suspect.

30. The jobs I examined in this case are first machinist, seamer machinist, can shop or reform machinist, filler machinist, salmon cook, salmon butchering machinist, machinist helper or trainee, quality control, dry tender engineer and beachman. In examining machinist jobs I also reviewed the duties entailed in the cannery foreman's job.

31. In reviewing material in this case I tried to focus on who was responsible for the difficult repairs.

For example, at Nefco the cannery foreman and first machinist were involved in major repairs on the cannery machinery. They were highly skilled people whose duty it was to supervise and assist the other machinists in the more technically demanding work. This meant that the other machinists operated primarily as machine operators and -- to some degree -- as maintenance mechanics. The cannery foreman and first machinist may well be true machinists but the other machinists are generally not. In my view -- to use the words of a Nefco-Fidalgo cannery foreman -- "A machinist is someone who can run a lathe, run a milling machine, all the shop equipment, and weld, and fit bearings, and heat treat parts, whatever." "A cannery machinist isn't. A seamer machinist, a fillerman is not a general machinist." Similarly, at Nefco major repairs on the tender engines were

formed by the port engineer or during the winter months in Seattle. This relieved dry tender engineers of the need to know how to perform major repairs on the engines.

[p. 2201(k)]

32. I compared the depositions and witness statements listed above with my findings in the Monitor's Final Report. A summary of the information in the depositions and witness statements is contained in the attached Tables 1-7. The only substantial discrepancy between the Monitor's Final Report and the information contained in many of the depositions and witness statements is that the former contain a larger number of job duties than the latter. This may be explainable by the fact that the questionnaire I used as Monitor was not shown to these people. It is likely that a questionnaire might facilitate [sic]

recall. What is significant is that the learning times reported by respondents to perform adequately on the job are approximately the same regardless of cannery and regardless of whether the respondents were shown the Gibson-based questionnaire.

33. I have concluded that the views I expressed in the Monitor's Final Report are applicable to the jobs I studied here. In large part this is because skilled personnel such as cannery foremen, first machinists, tender captains and port engineers assist incumbents in the jobs at issue. As I discuss below the material in Tables 1-7 is buttressed by the listing of job duties in defense interrogatory answers.

* * *

DISTRICT COURT

TESTIMONY OF RONALD BACLIG

[p. 2206]

RONALD BACLIG, being first sworn,
states:

1. My address is Route 4, Box 4352, Wapato, Washington. I am of Filipino descent. I work as a supervisor for Ross Packing Company in Selah, Washington. I was employed as a cannery worker by Wards Cove Packing Company, Inc. at Red Salmon Cannery in 1971-2.

* * *

[p. 2207]

3. In 1972 with some other non-whites I tried to go to a mug-up at the white messhall. The cook turned us away saying that we did not have any business over there. He said that we had our own messhall which was where we should eat.

* * *

DISTRICT COURT

TESTIMONY OF ALAN LEW

[p. 2214]

ALAN LEW, being first sworn, states:

1. I am a male of Chinese descent and am a plaintiff in this case. I graduated from Cleveland High School in Seattle in 1971 and entered the University of Washington in summer quarter of that same year. I graduated from the University of Washington in 1975 with a B.A. in architecture. I am presently employed with the Department of Defense as an Architect and Interior Design Consultant with a G.S. rating of 12. I am responsible for architecture and interior design of projects for fourteen Air Force bases located throughout the United States. . . .

* * *

[p. 2220]

12. I was not aware of any job progression in the cannery. There was no posting of jobs by the company. I did not know how the defendants employed mechanics, fishermen, warehousemen, or members of the beach gang. On an informal basis I tried to determine how to apply for those other jobs that were "white" within the cannery operation. Part of the difficulty was trying to understand the system. Since we were never privy to the system, we could not apply for those "white" jobs. It was my impression, based upon observation and conversations with occupants of quality control, tenderman, and bookkeeper positions that I would have been fully qualified to perform any of these jobs. Instead, I remained a cannery worker and was likewise required to perform less safe and more difficult and degrading work. . . .

* * *

[p. 2221]

13. I was fed, housed, and worked around strictly non-white personnel. Housing was segregated between white and non-white; social groups were generally segregated along racial lines. A Filipino foreman supervised the non-white crew; a white foreman or supervisors supervised white crews. There were separate messing facilities for white and non-whites. I had the impression that these positions were set, and there was no way for me to take any other positions--I was up there for a limited period of time within the cannery environment, socially I felt compelled to play by their rules essentially. To me, it was the first time that I was exposed to prejudice. I came from a family that I considered average middle-class and in the cannery I was being treated differently, receiving a

different diet, and essentially no
respect, solely by reason of my race.

* * *

DISTRICT COURT

TESTIMONY OF CHERYL TATOM

[p. 2233]

CHERYL TATOM, being first duly sworn, states:

* * *

[p. 2233]

. . . I was involved in the preparation of Exhibits 583-624 and 751.

* * *

[p. 2261]

Q. (By Mr. Duncan) Would you take a look at Plaintiffs' Exhibit 603? This is a list of Bumble Bee employees who are related to each other.

Mrs. Tatom, with respect to the persons that might have been married, how did you go about determining whether they were married as opposed to being blood relations?

A. I didn't.

Q. All that you had was that two people were related together, whether by blood or by marriage?

A. Right.

Q. Did you make any effort to determine how many of those persons who were married actually met at the cannery and got married subsequently?

A. No, I didn't.

* * *

[pp. 2262-2263]

Q. As I understand it, any instance in which a cannery worker is related to another cannery worker, they are just totally excluded?

A. That's right.

Q. Now, in both 603 and what I'll call the underlying exhibits, 603 through 609, employees who are related to each other year after year are both counted as being persons who are related or, as

Plaintiffs will argue, nepotistic hires; is that right?

A. That's right.

Q. So for instance, on Page 1 of Exhibit 603, you have Item No. 1, Ervin Puffinberger related to Donald Puffinberger. Then we go on to 1981, which is Page 95, Item No. 2, you have Ervin Puffinberger as a relative of Donald Puffinberger.

That-sort of thing goes on all the way through these exhibits; isn't that right?

A. That's true.

Q. Now, you have counted as related people persons who were employees being related to people who were not employees; i.e., independent fishermen; isn't that right?

A. That's right.

Q. Did you make any effort to determine whether anyone was related to

any other independent contractors, such as airline pilots or anyone like that?

A. No.

* * *

[pp. 2263-2264]

Q. (By Mr. Duncan) Mrs. Tatom, did you do the summaries in 610 through 6 -- I believe the summaries are 608 through 612.

Now, let's take for instance the example of Mr. Puffinberger on Page 1, Item 1 of 603. You counted both ends of that relationship as nepotistic hires; isn't that right? In other words, you counted one for Ervin and one for Donald?

A. That's right.

Q. Isn't it more logical that you would only count one of them as having been nepotistically hired, so to speak, rather than both of them?

A. It could have been done that way, I suppose.

* * *

[pp. 2264-2265]

Q. . . . Individuals who worked on tenders who were counted as being related to a person at Wards Cove, and then they are on a traveling tender and go down to another cannery, they are counted again in that same year; isn't that right? They would be counted, both people counted two times at each cannery?

A. If they are listed on Interrogatory 25 as being employed by both canneries, then, yes, they would be counted at both canneries.

Q. You have no information that any of these people were hired because they were related, as opposed to what their qualifications or background or experience were; isn't that right?

A. Would you repeat your question, please?

Q. You have no information that -- as to whether or not these people were hired because of their relationship rather than just because of their qualifications?

A. No.

Q. You have no information whether these people simply heard about the cannery, came up and got hired, rather than got the job because a relative got it for them; isn't that right?

A. I don't understand. I don't understand the question. I mean, I don't know why they got hired, no. I have no idea why they got hired.

* * *

[p. 2268]

Q. Just one further question about the traveling tenders.

If someone is hired at Wards Cove-- hired at Red Salmon one time and that tender goes down to Wards Cove, that's

another count. And if that person is related to, say, A. W. Brindle in both instances, A. W. Brindle is counted twice even though it's the same company?

A. The year--the supervisors are only counted once. See if I can think of--I think John Gilbert is one. A. W. Brindle is one.

Q. Is A. W. Brindle counted one time at Wards Cove and one time at Red Salmon?

A. Yes, he would be.

* * *

[p. 2269]

Q. Two Brindles at Red Salmon who are related. Then they go down, both of them on the same tender, down to Wards Cove. Are they both counted again?

A. Yes. They are on Interrogatory 25 at both canneries. They are counted at both canneries.

* * *

DISTRICT COURT

TESTIMONY OF CHARLEY ANDERSON

[p. 2347]

1. My name is Charley Anderson and I reside at 2427 Inga Street, Anchorage, Alaska.

2. I am an Alaska Native.

* * *

3. I was raised in the Naknek area and have been around Bristol Bay canneries since I was a youngster. I will be 62 years old next week. . . .

* * *

[p. 2348]

6. In the late 1960's, there were between ten and twelve Native company fish boats. There were two men to a boat. Currently there are about six Native independent boats and several setnetters fishing for the Red Salmon cannery. There are about ten or twelve Native

independent fish boats based at Egegik, a fish camp that is associated with Red Salmon.

7. I have never encountered a problem obtaining a leased fish boat from the Red Salmon cannery. As a matter of fact, I have sometimes been leased the boat at no cost. (See Plaintiffs' Exhibit 437 attached.) I am not aware of any Native fishermen who requested a market and were denied.

* * *

[p. 2350]

13. In the preseason when the number of people at the cannery is small, all of the workers eat their meals in the Blue Room in the main mess hall. This is the only mess hall and dining room that is open at this time. Everyone, including the cannery superintendent, office workers, crew foremen, machinists, beachgang, carpenters, and port engineers

eats [sic] their meals in this dining room. The persons eating in this dining room have been a mixed racial group, including whites, blacks, Alaska Natives, and Filipinos.

14. When it is close to the time that the fish begin running and there are more people in camp, the larger dining hall in the main mess is opened. My crew, I, and many members of the other crews that had been eating in the Blue Room, transfer to the larger dining room in the main mess hall. Persons who eat in this mess hall include my crew, beachmen, sometimes tendermen, female cannery workers, and all of the fishermen. This group is also a mixed racial group. As long as I can remember, there has been a free choice of seating in this dining room during the first week. Then, everyone pretty much settles into sitting at the same seat every day. People like to go to

the same seat so that they know that a seat will be available every meal, set [sic] with friends, and that they don't have to make a mad rush to get the spot they want in the dining room.

* * *

[p. 2350]

15. I am very familiar with almost all of the people who live in the Naknek River Basin. I know of no people who are qualified canning machinists.

* * *

[p. 2351]

16. During the years that I have worked at Red Salmon (about 1942 through the present), I feel that everyone has been treated equally and fairly.

* * *

[pp. 2354-2356]

Q. You don't know specifically what qualifications are imposed for canning machinist's jobs, do you?

A. No, I don't.

Q. So what you mean in Paragraph 15 is simply that you don't know of any people who live in the Naknek River Basin who are employed as cannery machinists; is that right?

A. That's right.

Q. Now, to your knowledge, are there quite a few Alaska natives, say, in the Bethel area who are qualified to work as company fishermen?

A. Well, there is some up there that could be qualified for company fishermen.

Q. How about in other coastal regions of Alaska? Are there other Alaska natives who are qualified to be company fishermen?

A. As a company fisherman?

Q. Right.

A. Yes, there is.

Q. In fact, quite a few Alaska natives grow up around boats; is that correct?

A. Well, they have to grow up around boats, yes.

Q. That's true in the Bethel area?

A. Yes.

Q. It's true in other coastal regions?

A. Yes.

Q. Many of them make a living doing subsistence fishing, too; isn't that correct?

A. Subsistence fishing?

Q. Right. They fish to--they live off of what they fish, right?

A. That's right.

Q. Now, you had a crew in Red Salmon for quite a while; is that correct?

A. Yes.

Q. That's mostly Alaska natives, isn't it?

A. Yes.

Q. They did the same work as the beach gang, didn't they?

A. Yes.

Q. Now, does Red Salmon have any Eskimo cannery workers today or in the current seasons?

A. In the cannery workers?

Q. Eskimo cannery workers, right.

A. No.

Q. You have to answer out loud.

A. I don't get what you're--

Q. Okay. Let me ask it again. Say in the 1981, did Red Salmon have any Eskimo cannery workers?

A. Not as I know of.

Q. In previous years, they did have Eskimo cannery workers?

A. Yes.

Q. Those Eskimo cannery workers were fed in a separate dining hall, weren't they? Separate dining rooms?

A. Yes.

* * *

DISTRICT COURT

TESTIMONY OF ROBERT KRAPP

ROBERT KRAPP, being first duly sworn, on oath deposes and says:

[p. 2370]

1. I live at 13821 Beverly Park Road, Alderwood Manor, Washington. I have been an employee for Wards Cove Packing Company, Inc., since 1960 and have the stockman at the Red Salmon cannery since the 1967 season. . . .

* * *

[p. 2380]

47. During the preseason, everybody at Red Salmon ate in the same mess hall. This was the main mess. In all the years I have been at Red Salmon, I have never heard this mess hall referred to the "white mess hall" or "white man's mess hall." It has always been called the mess

hall or the main mess or the fishermen's mess.

48. Those that are at Red Salmon are of mixed races. The minority machinists referred to above as well as the spring and fall workers, many of whom are Alaska Natives, all eat there. In fact, the earliest crews, including the Natives who work on Charlie Anderson's ways crew, eat in the Blue Room. As we got more people into the cannery, we would expand out into the main fisherman's dining room. During the season the superintendent, guests, the machinists, carpenters, and office people eat in the Blue Room.

49. It is not until the Local 37 cannery workers arrive that the other mess hall is opened up. Once the Local 37 cannery workers leave, everyone once again eats in the main mess hall.

50. Although I have liked the food at Red Salmon pretty well, I have always heard a lot of grumbling and griping about the food, especially when we are not canning at all and people were bored, or when we were canning heavily and people were getting tired and irritable. This is just human nature. The cooks could never seem to please everyone: "the food is too heavy," "there is not enough fruit," "there is not enough variety," "there is too much gravy," "there is not enough gravy," etc. I remember in 1977 that we got so tired of the food in the main mess that we circulated a petition to have the cook fired. Although this cook, Ed Faust, was a good baker, he served us cabbage with virtually every meal for what seemed like eternity.

51. The whole time I have been at Red Salmon, fresh fruits and vegetables have been very difficult to come by. The

only fresh fruit we ever saw was what came up on the tenders from Seattle. This was almost exclusively apples and oranges and we didn't get those all that often. It was once in a blue moon that we get to see a head of lettuce.

* * *

[pp. 2383-2384]

Q. Now, your first job for either Wards Cove Packing Company or Columbia Wards Fisheries was as a tender cook, wasn't it?

A. Yes.

Q. Prior to getting that job, you had not had any professional experience working as a cook, had you?

A. No.

Q. Now, you mentioned in your affidavit that you were in the Coast Guard?

A. Yes.

Q. While you were in the Coast Guard, you worked in a control tower at Ketchikan; is that right?

A. That's right.

Q. You didn't work on boats then, did you?

A. No.

Q. So the job that you had on a tender your first season was your first job working on a boat, wasn't it?

A. Yes.

* * *

[pp. 2384-2385]

Q. You worked for Wards Cove Packing Company as both a tender cook and as tender cook/deckhand, didn't you?

A. Yes.

Q. When you held those jobs, you only cooked for the tender crew didn't you?

A. That's correct.

Q. How many people were there?

A. Four, including myself.

* * *

[p. 2385]

Q. So the major work on the tenders, major repair work is done in the yard before they go to Alaska, isn't it?

A. Yes.

Q. One of the functions of the employees at Lake Union Terminals is to insure that the boats are in good working order before they make the trip north, correct?

A. Correct.

Q. Isn't it fair to say that it's rarely, if ever, are there major problems on the tenders up north in Alaska?

A. That's something you can't predict.

Q. It's pretty rare, though, isn't it?

A. It's happened, but it's rare.

* * *

[pp. 2386-2387]

Q. Now, in the years that you've been at Red Salmon, there have been two mess halls during operating years, haven't there?

A. Yes.

Q. Can you tell me what those are called?

A. We call the mess house the mess house and the other mess house has always been called the Filipino mess hall.

Q. Now, the cooks who cook, though, for that mess hall, where do they live?

A. For the main mess hall?

Q. No, no. For the other one. Where do they live?

A. They must live over to the cannery workers mess house or bunkhouse.

Q. Is that bunkhouse ever called the Filipino bunkhouse?

A. Certainly.

Q. Now, I understand from your affidavit that the cook for the main mess hall lives in the Fish Inn; is that correct?

A. The cooks, yes. But the steward, I don't think so. The steward is Filipino. He stays over with the Filipinos.

Q. Is the cook white, then, as opposed to the steward?

A. We have had. I have no idea what they have this year. I think we have a colored cook this year.

Q. Last year, he was white?

A. White, yes, sir.

Q. And he stayed in the Fish Inn?

A. Right.

Q. The steward stayed in the?

A. Cannery worker.

Q. Okay. Now, some years at Red Salmon in the past you used to have Eskimo cannery workers, didn't you?

A. Years back, in the early sixties.

Q. In fact, through the early seventies, too, didn't you?

A. No, I don't think so. I think in the late sixties was the last we had.

Q. Where did they live in the cannery?

A. They had their own bunkhouses.

Q. Do you know why they had their own bunkhouses?

A. It was there when I came. It was tradition, I guess.

* * *

[p. 2389]

BY MR. DUNCAN:

Q. What were your qualifications to be a tender cook?

A. I could cook. I cook for my family.

Q. Why did you cook for your family?

A. My wife worked days and I worked nights. So I cooked for the children at home. Fixed the evening meals.

Q. Pardon me?

A. I say I fixed the evening meals.

Q. For the whole family?

A. Right.

Q. For how long?

A. Oh, that went on for five or six years.

Q. Before you became a tender cook?

A. Uh-huh.

* * *

DISTRICT COURT

TESTIMONY OF RICHARD QUIRION

RICHARD QUIRION, being first duly sworn, on oath deposes and says:

[p. 2393]

1. I live at 8707 Northeast 88th Street, Vancouver, Washington 98662. I worked for Wards Cove Packing Company at its Wards Cove, Ketchikan cannery from 1978 to 1981.

* * *

[p. 2393]

2. I was hired in 1978 as first cook for the Upper Mess. I am one quarter American Indian. I neither experienced nor observed any incident of racial discrimination while I was at Wards Cove. I felt that Joe Brindle and Jerry Steele were fair in their management of the cannery.

* * *

[p. 2395]

10. Jerry Steele told me not to turn away any employee who wanted to eat in my mess hall. I never turned away anyone who wanted to eat in the Upper Mess. . . .

* * *

[p. 2405]

Q. Were you ever up in the kitchen in the lower mess hall?

A. Yes, I was.

Q. Did you ever hear the lower mess hall referred to as the Filipino mess hall?

A. Some people called it that, but I never did.

Q. Did only Filipinos eat there?

A. Uh-huh. As far as I know.

* * *

DISTRICT COURT

TESTIMONY OF EBERLE MERCER

[p. 2541]

1. My name is Eberle Mercer and I reside at 5221 La Jolla Hermosa, La Jolla, California.

* * * _____

[p. 2542]

7. Since about 1975 I have been chef/steward at the Alitak cannery during the summers and during winters a ship's cook on tuna vessels based out of San Diego, California.

* * *

[p. 2542]

8. Since I have been employed at the Alitak cannery as chef/steward the food supplies for both the winter mess hall and summer mess hall have been equally accessible to both messes.

9. As a matter of course Oriental foods are more expensive in the Seattle area than American-style food pound-for-pound and dollar-for-dollar. It has been my experience that the chief cook of the summer mess hall has made an order prior to the season of the foodstuff he requires, submitted that order to the cannery office in Seattle, it has been purchased, and supplied to him.

* * *

[p. 2542]

10. Prior to the 1980 fire, a summer mess hall and a winter mess hall were operated at Alitak. The summer mess was basically Oriental cuisine. The winter mess hall served basically camp-style "Alaskan supply" food.

11. Mainly those persons under ILWU jurisdiction ate in the summer mess hall. All others ate in the winter mess hall. However, it was the practice to permit

persons who requested and informed the cook, in advance, to eat where they saw fit. I do not recall refusing anyone who came over from the summer mess hall to sit and eat in my mess hall. The summer mess hall had the same policy. The persons who ate in my mess hall, over the years, have been a mixed racial group, including whites, Latinos, Alaska Natives, Japanese, and some Filipinos.

* * *

[p. 2546]

Q. Did you ever observe anyone eating in the summer mess hall?

A. Frequently.

Q. But you can't tell what race they were?

A. I don't know exactly what race they were. They were a mix.

Q. A mixture? Would you say they were more or less white?

A. I would say less.

Q. How about with respect to the mess hall which is denominated the winter mess hall? That's your mess hall?

A. That is correct.

Q. Subsequent to 1975 and previous to 1980, would you say that that mess hall, that the people who were fed in that mess hall were predominantly white?

A. I would say so, yes.

* * *

DISTRICT COURT

TESTIMONY OF EARL ANDERSON

[p. 2625]

EARL ANDERSON, being first duly sworn, on oath deposes and says:

* * *

[p. 2625]

1. I live at 4615 Leif Erickson Drive in Astoria, Oregon. I am presently the carpenter/shipwright foreman at the Bumble Bee Seafoods cannery in South Naknek, Alaska. I have been the foreman since about 1967. From about 1960 through 1965 I was a carpenter and shipwright for Bumble Bee during the summers at South Naknek. I was a company fisherman for Bumble Bee from about 1952 through about 1965, when I became an independent fisherman. I continued to fish for Bumble Bee through the 1980 season. I hope to fish again this coming season.

* * *

[p. 2627]

8. My crew starts work the day after they arrive at South Naknek, usually in early May. Any major work that has to be done to the tenders or fishing boats by my shipwrights must be done before the season starts, which is only about month or so after we arrive. Therefore, my shipwrights must know how to do the job right the first time because there just isn't enough time to do the same job over and over again before the fish start running. This is also true of the more traditional carpenter-type work that is done. My crew only has about three months to get one year's worth of construction, maintenance, and remodeling work done. We work at a pretty fast clip and have to do our work well so that the buildings will withstand the harsh Bristol Bay winters. Exhibit A-161(119)-

(125) show some of the damage that heavy snowfall did to some of the buildings a few years ago.

9. Because of our location, we do not have ready access to building materials. This means that for all practical purposes, what we take up to South Naknek with us is all we have to work with. My crew is, and must be, very conscious of conserving materials. We really cannot afford to have people wasting materials or doing sloppy work that has to be redone because once the materials are gone, we may not be able to get anymore. Sometimes we can get extra materials from other canneries or by flying them in, but this takes extra time that we usually do not have.

* * *

[pp. 2627-2628]

10. I cannot think of a single carpenter or shipwright that I have had on

one of my crews at Bumble Bee who did not have previous work experience as a carpenter or shipwright. We have hired only a few people (Henry Koski, Jr., and Les Stone come to mind) who were not already journeymen, but these men were almost finished with their formal apprenticeship programs and had at least a year of on-the-job experience in addition to work they had done before they had entered their apprenticeships.

11. We do not run a "school" for unskilled or inexperienced persons who want to become carpenters or shipwrights. We couldn't do this even if we wanted because of the limited amount of time and personnel we have. Everyone in my crew has his own work to do and we don't have time to give step-by-step guidance to inexperienced, unskilled people.

12. My shipwrights work on company and privately owned fishing boats. The

private owners spend \$25.00 and up per hour to have their boats fixed. They do not want a green man "being trained" on their boats at those rates. If the work had to be redone, they would refuse to pay it and the company would have to absorb the cost. It is simple economics that the shipwrights have to be skilled before they ever get to Alaska.

13. Although the superintendent has the final say in hiring the people on my crew, I have made recommendations. I have never recommended anyone who did not have previous carpenter and/or shipwright experience. I do not recommend persons without such experience because I do not believe they could do the job.

14. I do not think someone who was just familiar with common hand tools, even if he had carpentry experience, would be of much use to us at the cannery. This is because we use almost entirely

power tools and you need experience with them to use them effectively and so that you don't hurt yourself or somebody else. I do not think someone who was familiar with home shop-type power tools and common hand tools would be qualified to work on my crew, even doing some of the light maintenance work unless he had some work experience in the field. Such a person would also not be qualified to be a shipwright. Carpentry and shipwright work are skilled trades and take skilled people to do them.

* * *

[p. 2630]

20. All of the members of my crew usually eat in the main or lower mess during the time we are at South Naknek. During the preseason, everyone who is there (i.e., all the noncannery workers) eats in this same mess hall. Once the cannery workers come in just before the

fish start running, the cannery opens up another mess hall where they eat. The female cannery workers, several of whom have been Asian, usually eat in the main mess during the years that I have been at South Naknek. John Lum eats in the main mess and he is Chinese. Ray Gomez, the new office manager, is Filipino and he eats in our mess.

21. In 1973, a poor season, our cannery crew was much smaller than normal. Because of this, the small (or upper) mess hall was not used that year and everyone at the cannery, including all of the cannery workers, ate in the main mess hall. Occasionally, towards the end of some seasons when many of the fishermen have gone home, the small (upper) mess hall was closed early, and everyone who was eating in that mess hall was transferred to the main (lower) mess hall for the remainder of the season.

22. Currently, we are doing work to the main mess hall and our preseason crew is eating its meals in the small (upper) mess hall.

23. Over the years I have often been invited by the cook to eat meals and attend coffee breaks in the small mess hall. I have found that the quality of the food served in the small mess hall to have been the same as that served in the main mess hall.

24. As long as I can remember, the small mess hall has had one white cook and one cook of Filipino descent.

25. Since the addition of the cold storage facility, cold storage workers have eaten in the small mess hall. They were a mixed racial group.

26. Sometimes, at the peak of the season, the cannery will bring in workers from the Air Force base at King Salmon. Depending on which mess hall has the most

room at the time, they ate either in the main mess or the upper mess. These men are a mixed racial group.

* * *

[p. 2632]

BY MR. ARDITI:

Q. Mr. Anderson, you do not make any hiring decisions for Bumble Bee, do you?

A. No, I do not.

* * *

DISTRICT COURT

TESTIMONY OF FRANK SHUCKA

[p. 2736]

1. My name is Frank Shucka and I reside at Star Route, Box 272, Carlton, Washington 98814.

* * *

[p. 2738]

12. Throughout my years as a captain, I have mostly hired my own crew. Although I have never exercised it, I probably had veto power over anyone hired by the company to be a crewman on my vessel. If I had not had veto power, I would not have continued to work for the company. The company has never vetoed anyone who I have hired. I consider crew compatibility to be very, very important, especially on a briner where we spend five months together in confined quarters. . . .

* * *

[p. 2756]

Q. Now, your wife Diane has worked with you as tender cook on your tender, has she not?

A. That's right.

* * *

[p. 2756-2758]

Q. I want to call your attention to the first year that she worked as tender cook, okay? Prior to that time, you and she had run a malt shop, had you not?

A. That's right.

Q. She was not the cook at the malt shop, was she?

A. No, sir.

Q. But she worked around the malt shop?

A. We all cooked at some time or another.

Q. Now, that was, in fact, the only professional cooking experience that she'd had before she became a tender cook, correct?

A. Professional, yes.

Q. Now, you have a son who is also named Frank, don't you?

A. Yes, sir.

Q. Has he worked on any tenders for Columbia Wards Fisheries?

A. Yes, sir.

Q. In fact, he started--strike that.

Was his job as a deckhand initially?

A. Yes.

Q. Did he first have a deckhand job at age 17?

A. I'm not sure of the age.

Q. Was it around age 17?

A. Somewhere around. 17 or 18.

Q. Now, had he been with you on any oyster dredges before that?

A. Yes.

Q. But he was not an employee, he was simply accompanying you, correct?

A. That's correct.

Q. Now, he had not had any prior marine work experience before he became a tender deckhand, had he?

A. No.

Q. Now, how big is your family?

A. Five.

Q. Do you have another son named Walter?

A. That's right.

Q. Has he worked for Columbia Wards Fisheries on a tender?

A. Yes.

Q. What job did he start at?

A. Deckhand.

Q. How old was he when he started as a deckhand?

A. I'm nor sure of that age either. But somewhere--17 or 18.

Q. Now, after he was a deckhand, he became a tender engineer, didn't he?

A. Yes.

Q. He was about 18 at that time, wasn't he?

A. No. He had been with me for two or three years and then I think he went as an engineer at Wards Cove on one of the small dry tenders.

Q. Is that the ROWITA?

A. Yes.

Q. Isn't it true that prior to obtaining his job as tender engineer on the ROWITA, your son Walter had not had any prior mechanical work experience?

A. Only as deckhand on the dry tender that I was running.

Q. Now, Walter eventually became a tender captain, didn't he?

A. Yes.

Q. Was that for Columbia Wards or Wards Cove?

A. Wards Cove.

Q. In fact, he became a tender captain at age 21, didn't he?

A. I'm not sure of the age. Somewhere around there.

Q. Now, you're not aware of any written qualifications for tender jobs, are you?

A. No, sir.

Q. I gather that you've hired three of your own family members on your tender, correct?

A. At different times. Never all at the same time.

* * *

DISTRICT COURT

TESTIMONY OF JAMES W. YONKER

[p. 2827]

JAMES W. YONKER, being first duly sworn, on oath deposes and says:

* * *

[p. 2829]

9. In May of 1976 I became aware that Bumble Bee Seafoods was interested in training an assistant superintendent for Warner Leonardo and there was an assistant superintendent job available. I applied for that job and started in that position in May of 1976. I have continued as assistant superintendent for Bumble Bee to the present date.

* * *

[pp. 2831-2832]

15. In terms of qualifications I feel that the minimum is that an applicant must have experience in one or more of the

following areas before he is hired:
— carpentry, welding, pile driving (there is much ice damage in Bristol Bay during the winter time), rigging, splicing wire rope and rope, operation of heavy equipment, and construction.

* * *

16. It is our policy to provide a room with a bed, pillows, towels, linens (clean linen once a week), heat, a window, showers, a washroom, facilities to wash clothes and protective clothing to every employee employed by Bumble Bee. The men and women are segregated for reasons of privacy.

17. Employees are assigned housing according to the length of the time at the plant, by the time of arrival, and, to a large extent, by their crew.

18. The assignment of bunkhouses depends, to some extent, on the weather. Early May can be very cold in Bristol Bay

and sometimes all the preseason employees end up in one bunkhouse.

19. The preseason employees such as the cooks, the machinists, the carpenters, and the beachgang arrive on or about May 5th and are assigned housing then. The cannery workers arrive about June 15th.

20. I feel that it is ridiculous to have the early season crews settled into their bunkhouses and then ask them to pick up and move for three weeks when the cannery workers and the cold storage workers come in. It would also be totally unfair to everyone to have a complete hodge podge of crews in the housing because you would virtually guarantee sleeping disruptions every day which would cause a lot of friction between people who are extremely tired and irritable as it is. I cannot believe that the plaintiffs really want this.

21. In 1980 we opened the operation of the cold storage facility and this added about 75 employees to the Bumble Bee cannery. The women working in the cold storage were at first housed with the cannery worker women. It was very unfair to both groups. We had about 40 of each and sometimes the cold storage women would get up at 4:00 in the morning but the cannery worker women weren't due to go to work until 8:00 a.m. You can imagine the clamor when 40 people are getting up, walking through the halls, flushing toilets, getting their clothes on, banging doors, and the like. The same was true when the cold storage women were trying to sleep. When we are running long hours for several consecutive days (14-16 hours) the people are verging on exhaustion and they must get some sleep. This is imperative. We try to set up the housing so that we can best minimize the

disruption from various groups, especially large groups of people working different hours but working side by side. It is not a perfect system but it is the most fair and keeps disruption to a minimum.

22. Because of the problem with the cold storage women in 1980 we moved all of them into the two old bunkhouses on the south river end of the cannery.

* * *

[pp. 2838-2839]

Q. So you, yourself, don't have hiring duties; is that correct?

A. Yes and no.

Q. The superintendent is the one who makes the final hiring decisions?

A. Yes, that's correct.

Q. Now, in your affidavit you mention that in 1962, you worked in Bristol Bay as a puller for an independent fisherman; is that correct?

A. Yes, sir.

Q. You graduated from high school in 1964; is that right?

A. Yes, sir.

Q. So how old were you when you started working as a puller?

A. Probably 16. 15 or 16.

Q. Then in 1965, Bumble Bee hired you as a tender deckhand, right?

A. I was rehired as tender deckhand.

Q. What was your first year as a tender deckhand?

A. 1964. I was working at New England Fish Company's Peterson Point Plant as a dishwasher and a waiter. When I left, when Peterson Point closed down their season, I contacted Bumble Bee to see if they had any openings.

Q. Okay. Well, how old were you when you started as a deckhand for Nefco? You would have been 18 years old?

A. I didn't start as a deckhand with Nefco. I started as deckhand with Bumble Bee.

Q. Sorry. You were 18 years old then?

A. Yes, sir.

Q. And Bumble Bee continued to rehire you in the deckhand position; is that right?

A. Yes, sir. Up until, I believe it was--yes, sir.

Q. Was this while you were in college, then?

A. Pardon?

Q. Was this while you were in college summers?

A. Yes.

* * *

DISTRICT COURT

TESTIMONY OF JOHN R. GILBERT

[p. 2854]

1. My name is John R. Gilbert and I reside at 11025 Lakeside Avenue Northeast, Seattle, Washington. I hold the title of vice president of Bumble Bee Seafoods, Division of Castle & Cooke, Inc. . . .

* * *

[p. 2861]

20. By and large our company fishermen boat pullers were selected by their captains. . . .

* * *

[pp. 2882-2883]

Q. Okay, Mr. Gilbert. What I'm asking is whether in that exhibit you talk about the way in which women on the Local 37 crew are being hired?

A. More as to how they will be dispatched rather than how they will be hired.

Q. Is it correct to say that they are hired by the company directly, they are selected by the company directly?

A. Yes.

Q. After they are hired, they are dispatched, correct?

A. Yes.

Q. So is it fair to say that the use of the term "dispatched" in this exhibit means something other than selecting who is going to be a cannery worker?

A. I don't follow the question.

Q. What do you mean by the word "dispatched" in Exhibit 303?

A. Well, dispatched was the procedure. Now, the people were hired on the basis of their preference under the union agreement. And the dispatch

procedure was basically to--for the union representatives to have an opportunity to talk with them and explain their--how the union's jurisdiction and so on in relation to their employment.

Q. But in any case, they are hired before they are dispatched; is that right?

A. Yes. -

* * *

DISTRICT COURT

TESTIMONY OF WINN F. BRINDLE

[p. 2887]

1. My name is Winn F. Brindle and I reside at 1251 22nd East, Seattle, Washington. I am 48 years of age and one of the sons of A. W. Brindle. Since the 1964 salmon season, I have been superintendent of the Columbia Wards Fisheries' cannery at Alitak on Kodiak Island.

* * *

[p. 2890]

14. It is not our policy to hire by race but by ability and qualification. I can only recall one instance of a Filipino approaching me and asking for a higher paying job. That was Glen Ebat, a cannery worker in 1970 who asked to be a machinist helper the next year. We gave him that job because he appeared to have promise

and aptitude. He performed satisfactorily as a machinist helper in 1971 and I asked him to come back again in 1972. He refused, advising that there was too much peer pressure from his Filipino coworkers because he had taken the job and become an "Uncle Tom." He said he was going back to school rather than experience this pressure again.

15. We frequently use the AFU and the Machinists' Unions, Local 79, as sources of employees. We feel we have an obligation to contact these unions first and we also feel that there is a better chance to obtain qualified people at those sources, rather than hiring at random.

* * *

[p. 2891]

20. Housing is generally organized by crew classification and time of arrival. The machinists,

carpenter/shipwrights, and beachgang are there a longer period of time, are higher paid, and as a matter of company policy receive better quarters. Also, since they arrive first the winter bunkhouse is opened first. The machinists also are at the cannery at the end of the season winterizing the machinery long after the cannery workers are gone. The housing is also organized by job department as the majority of a particular department will go to work at the same time which may be at a different time than another department. All housing has been slowly but surely upgraded through the years, since I have been there, and reported to our Affirmative Action director.

* * *

[pp. 2891-2892]

21. When I first became superintendent at Alitak in 1964, we fed all employees in two shifts in one new

mess house. At the end of the season, I was advised by my father, A. W. Brindle, that Local 37 insisted that we reopen the other mess hall for Local 37 employees. Thereafter, it became our company policy to feed the male Local 37 employees separately. Their mess hall was known as the summer mess and the main mess as the winter mess. See Exhibit A-171, which are records kept in the ordinary course of business.

22. _ During the case period, the summer mess hall was used to feed the male cannery workers. These personnel are about 90% minority and 10% white. The other employees are fed at the winter mess and the racial composition of those employees will vary but occasionally is a majority of nonwhites. Throughout the case period, there always has been a substantial number of minorities in the winter mess hall. As seen by attached

Table C, the winter mess hall has had 55% minorities (1979) and 42% (1974).

23. Before salmon canning begins, at the end of the salmon season and during the crab season, all employees regardless of union affiliation are fed in the winter mess.

* * *

[p. 2912]

Q. In some instances, do you hire people without what you consider to be either the best qualifications or even minimum qualifications?

A. You take calculated risks.

* * *

[p. 2921]

Q. Isn't it true that within particular job classifications, there are different call-out times?

A. Yes, very definitely. And there's also cutoff times, too, which is just as important.

Q. Isn't it true, for example, that some cannery workers are called out before others?

A. Oh, yes.

* * *

[p. 2927]

THE COURT: Well, I understood it to be on occasions, he hires students as carpenters, beach gang, et cetera, that they accommodate them and they come when they get out of school.

THE WITNESS: Yes, sir.

* * *

DEPOSITION OF WINN F. BRINDLE

[p. 2]

Q. Would you please state your full name?

A. Winn Frederick Brindle.

* * *

[p. 12]

Q. Did you assist in preparing the answer to Interrogatory 20-C?

A. Yes.

* * *

[p. 14]

Q. When you wrote the minimums, the minimum experience requirements in this answer, were you copying them from another document that gave the minimum years of experience?

A. No. This is my personal preference of what I would like to have.

Q. So, it is your ideal for qualifications?

A. Yes.

Q. And Alitak may have hired on lower qualifications, in fact?

A. Oh, yes. We always shot for the best.

Q. So your answer to Interrogatory 20-C does not get job qualifications as they were actually imposed at Alitak from 1970 onward?

A. Right.

* * *

DISTRICT COURT

TESTIMONY OF LARRY L. DeFRANCE

BY MR. ARDITI:

* * *

[p. 2940]

Q. In this case, you have not done a construct validation study, have you?

A. No.

Q. Nor have you done a criterium-related validity study, have you?

A. No.

Q. In fact, you have not done a content validity study in full compliance with the Uniform Guidelines on Employee Selection Procedure, have you?

A. No.

* * *

DIRECT EXAMINATION:

* * *

[p. 2941]

1. My name is Larry L. DeFrance. I am a management consultant doing business as the Northwest Advisory Group, located at 19676 Southeast 150th Street, Renton, Washington 98056. My responsibilities include assisting clients in government, industry, and the legal profession in Washington, Oregon, and Alaska, in affirmative action programs and seminars, compensation administration, discrimination complaints and litigation, employee handbooks, job and performance evaluation systems, organizational planning, personnel policy and procedure manuals, personnel records systems, staff planning, and supervisory/management development.

* * *

[p. 2944]

11. I have been retained as an expert by both the defense and plaintiffs

in several discrimination litigation cases.

* * *

[pp. 2944-2945]

12. This affidavit was prepared in four sections.

a. Section I presents the method, results, and conclusions of the job analysis we conducted for this case.

b. Section II presents the results of a hypothetical prescreening of employees who worked for the defendants during the 1980 processing season. This prescreening used the qualifications opinion outlined in Section I, as well as the biographical sketches (or resumes) prepared for the defendants by Statistical Services Incorporated.

c. We researched the procedures used to code occupational data in the 1970 and 1980 Census of Population. Based upon this research, and the work

reported in Section I, I have outlined in Section III conclusions regarding the relevance of various Census occupational groups for purposes of the Labor Market Analysis of Dr. Rees. The purpose was to determine what census classifications would be more likely sources of employees with requisite skills, based upon the job analysis results, than members of the general population.

d. Finally, Section IV of this affidavit discusses the methodology and conclusions of plaintiffs' expert on job qualifications, Gary Latham.

e. Each of these areas is, or came to be through trial research within our realm of experience and expertise.

* * *

[pp. 2945-2946]

13. In May of 1980, the Northwest Advisory Group accepted this assignment. Its purpose was to conduct a job analysis

of certain jobs in the salmon processing industry. This analysis was undertaken at the request of the law firm of Moriarty, Mikkelsen, Broz, Wells & Fryer. The jobs which were to be analyzed were in question as to minimum skills reasonably required, in a matter pending litigation.

14. The salmon canning industry has three distinct phases in its annual cycle:

a. The first, called the "preseason" occurs in the spring of each year, predominantly in the months of May and June. The timing and duration of the preseason will vary by year and location. During this phase, cannery facilities which had been abandoned to the Alaskan winter are made ready for the activity that occurs when the salmon runs begin. During the preseason, equipment which had been shipped to the lower 48 for overhaul

is reinstalled; the equipment winterized and left behind is repaired, tested, adjusted, and made ready for processing; the cannery itself and its associated systems (electrical, plumbing, hydraulic, etc.) are repaired and made ready, stores and supplies are laid in; facilities and docks are built and/or rebuilt; fishing boats and tenders prepared; and so on.

b. The second phase is the actual processing season itself. It begins with the annual return of the salmon to the spawning grounds. This occurs in late June or early July of each year and may last until August or September, depending upon several factors, including the geographical location of the cannery, the length of the salmon run in the area, the density of the salmon run, the catches allowed by local regulatory agencies, and so on. By now the canneries are fully staffed and the

work days are typified by long hours and the frenzied activity associated with the processing of a perishable food product.

c. The third phase of the operating cycle is the "offseason." The run for the year is completed, the cannery is winterized, the supplies, people, boats, and some of the equipment returned to the lower 48, where offseason overhaul and maintenance is performed on the boats and equipment.

15. The industry is, by its nature, one which involves great risk. Each year the canneries make huge capital and labor expenditures in advance of a fish run which simply may not appear. It is a seasonal business which deals with an unpredictable product yield and a highly perishable product. Processing occurs in remote geographical locations in which production operations are often hampered by logistical problems and climatological

conditions. It is an industry largely untouched by technological improvements. The industry has, as has all industry, been aided to some degree by the advancement of technology in general (improved electronic communications, computers, improvements in air and sea transportation, etc.). But the process of canning salmon and the technology involved in the canning process remains largely unchanged since the late 1930's.

16. The processing of salmon is either by canning or freezing. Freezing is the newer technology of the two.

17. The salmon are purchased from the fishing fleet and transported to the cannery by tender boats. There they are unloaded, sorted, and stored for a brief period of time before the canning process begins. The product begins to deteriorate when taken from the ocean and must be iced or kept in the hold of boats

equipped to refrigerate the fish with chilled sea water.

18. In the canning process, the salmon must be butchered, cleaned, cut to the proper size, placed into cans of the proper size and weight, vacuum sealed, and cooked in retorts (or large pressure cookers) for specified times under specified conditions to meet industry and government requirements. Once butchered, the product is highly perishable. The product must be fit for human consumption.

19. Time is of the essence in processing canned salmon.

* * *

[pp. 2947-2950]

20. The first task was to perform a job analysis. The goal was to determine the minimum qualifications for certain jobs which were in issue. There are numerous reasons why practicing

professionals in the field of Human Resource/Personnel Management (those who are actively engaged in personnel management jobs) conduct job analyses, most having little or nothing to do with litigation.^[1]

21. The point here is that it is a useful and customarily employed technique by practitioners. Psychologists and academicians generally place job analysis in a much more narrow context, both as to use and the appropriateness of different procedures.

22. Job analysis is a thorough and systematic study of jobs and what they

1. Any basic text on the subject of Personnel Management addresses the topic and its numerous uses. Contrary to the statement of Gary Latham in plaintiffs Exhibit 641 (p. 1), Ash and Levine, for example, have identified 10 potential uses or purposes for job analysis (pp. 54-55). McCormick, writing in the American Society of Personnel Administrators' "Handbook of Personnel and Industrial Relations" (pp. 4-40), identifies some 22 purposes.

involve and/or require.^[2] [Footnote omitted.] It is a process that focuses on the here-and-now, the way things are as opposed to the way things should be, and considers the total relevant context in which the work is performed. This is what we attempted to do.

* * *

23. There are numerous techniques for analyzing jobs. They may be used separately, or in combination.^[3] [Footnote omitted.]

24. It was against this background that we undertook our assignment to conduct an analysis of the jobs in the present case with an eye towards developing minimum reasonable job requirements. We employed the most traditional techniques, namely, the interviewing of incumbent job holders and their supervisors, supplemented by

observation of incumbents and supervisors in the work environment.

* * *

25. Our assignment involved analyzing jobs in five Alaskan canneries. The canneries were owned by three different business entities: Wards Cove Packing Company, Inc. (WCP), Bumble Bee Seafoods (BBSF) (a division of Castle & Cooke, Inc.), and Columbia Wards Fisheries (CWF).

26. Three of the canneries are in the Bristol Bay vicinity, one is on Kodiak Island, and one is near Ketchikan.

27. The western most cannery is the CWF facility at Ekuk. It is situated at approximately longitude 158.5° on Nushagak Bay. This cannery, which is a completely self-contained camp, is some 20 miles by air charter or boat from the nearest town (Dillingham) serviced by commercial airlines. The airport in

Dillingham has a gravel runway and the resident population numbers perhaps 1,000 people. There is a medical facility available in Dillingham. Ekuk is a self-contained camp.

28. The next two canneries are approximately at longitude 157° on Kvichak Bay at the mouth of the Naknek River. The CWF cannery at Red Salmon is approximately four miles east of the town of Naknek on the north side the river. The BBSF cannery is across the river at South Naknek. Red Salmon and BBSF, like Ekuk, are camp environments. Both are approximately 15 miles from the nearest commercial air service at King Salmon. Red Salmon lies off a paved road which runs between King Salmon and Naknek. BBSF is accessible only by boat or charter plane. The medical facilities available are at King Salmon. The population of

Naknek and King Salmon are not known to us, but neither is very large.

29. The next facility is CWF Alitak which is located at the opposite end of Kodiak Island from the town of Kodiak. It is located near Cape Alitak on Alitak Bay at approximately longitude 154°. The three previous canneries are on the Bering Sea side of the Aleutian Islands, while Alitak is on the Pacific Ocean side. Alitak is accessible only by boat or float plane and is approximately 100 miles from the nearest commercial air field at Kodiak. The population of Kodiak is approximately 30,000 people and it is the nearest medical facility. Alitak is a completely self-contained camp, and very isolated.

30. The last cannery is the WCP facility on Wards Cove at approximately longitude 132°. It is some nine miles north of Ketchikan, the nearest

commercial airport, by paved road. It is not nearly as self-contained as the other four facilities, and draws heavily on the labor market and services in Ketchikan, Alaska's third largest city.

31. Ekuk, BBSF, and Alitak have no telephones and must communicate with civilization by radio. Red Salmon and Wards Cove now have telephone communications.

32. Commercial air transportation to Dillingham and King Salmon is available only through Anchorage. The logistics associated with moving people, equipment, and supplies to all locations except Wards Cove are difficult, at best, and very unreliable. This is particularly true for Alitak, which is subjected to sudden and severe changes in weather, even in the summertime.

33. All five canneries have different layouts of the physical plant,

and notable differences in the age and condition of the processing equipment. For example, the boilers which provide the steam at Ekuk are manual, while the other canneries have automatic boilers. Likewise, the processing equipment at Alitak has, over the period of the last several years, been shipped to the lower 48 and overhauled during the offseason. Much of the plant at Red Salmon is newer, having been rebuilt after a major fire in 1973.

34. In addition, there traditionally have been differences in the length of the salmon run at the different locations, and in the various species of salmon involved in the different runs. For example, the processing season at Ekuk, typically starts in mid-June and is completed by the end of the first week in August. The processing season in Ketchikan, on the

other hand, typically does not start until early July and will extend until early September. The 1980 processing season at Red Salmon and BBSF lasted only two weeks. The Bristol Bay canneries process a greater variety of salmon species, the majority being Reds and Chums. Bristol Bay also has a more intensive salmon run. Alitak and Wards Cove tend to process more Pinks. The species is a factor in the adjustment of the iron chink and the filler.

35. These and many other differences between the canneries are important to note. The operating environments, and the differences in them, must be considered for the analysis of jobs within those environments.

* * *

[pp. 2950-2953]

36. It was our strategy while performing this analysis to immerse

ourselves totally in the project. We spent 27 man days in the canneries in Alaska. Seventy man days were spent in research and the development of back-up information prior to the trips. Several hundred pages of material were reviewed, including such things as shop manuals on the processing equipment, history of the salmon canning industry in Alaska, and so on. (See Exhibit B). I also visited the Bumble Bee Seafoods cannery in Bellingham, Washington.

37. Two trips were made to the canneries by each of our personnel assigned to the project. The project was under my supervision, and Mr. James A. Vawter assisted me in the design of the structured questionnaire we used, as well as with the interviewing and observation. Mr. Vawter is an experienced consultant and interviewer who assists with job

analysis as a normal part of his work with us.

38. In mid-June, during the preseason, each consultant visited all canneries with the exception of Alitak which was inaccessible due to local weather conditions. Approximately 30 days later, during the processing season, Mr. Vawter again visited Ekuk, Red Salmon, and BBSF. At the same time, I went to Alitak and Ketchikan.

39. Each trip was made to interview various job incumbents, using a structured questionnaire approach. Incumbents were also observed in the performance of their duties. As an additional record, cannery operations were photographed both during preseason and processing season. Approximately 1,500 photos were taken.

40. The Job Information Checklist which was used appears in Exhibit C-1.

The interviews took approximately 45 minutes to an hour and 15 minutes on, and all incumbents reviewed the Checklist at the end of the interview, made changes and corrections as necessary, and signed the Checklist to verify the accuracy of the information recorded. This is a standard technique in job analysis.

41. All interviews were conducted in private, unless an interpreter was required, and all incumbents were told that the interviews and their Checklist were strictly confidential and the Checklists would be seen by no one except for members of the consulting firm. Privacy and confidentiality are essential to obtain accurate information. Such assurances are standard when conducting a job analysis.

42. As letters had been distributed to class members explaining the interviews in the context of the pending

litigation, we explained to those interviewed, class and nonclass members alike, that:

a. There was a lawsuit involving race discrimination.

b. Our assignment was to study jobs to provide an independent opinion as to minimum skills.

c. This involved interviewing several people like themselves in similar jobs in several locations.

d. Our report to the court would be a summary of these many interviews.

e. We would also be in the cannery to observe work processes and may ask more questions later.

This was done to minimize the potential impact of rumor on our results.

43. It became apparent after the first few preseason interviews that the Job Information Checklist for recording

incumbent interviews was far too lengthy and contained redundant information. A decision was made to modify the Checklist, deleting the questions noted in Exhibit C-2.

44. In addition, each incumbent was presented with nine paragraphs taken verbatim from the instruction booklet for filing the annual Employer Information Report (EEO-1) with the federal Joint Reporting Committee. The incumbents were asked to select the paragraph that in their judgment best described their jobs. The paragraphs used appear in Exhibit D.

45. Also, the incumbents were presented with selected job descriptions from the Dictionary of Occupational Titles (D.O.T.). They were asked to select which, if any, described their job. A total of some 63 job descriptions were available, although the analysts preselected those presented to the

incumbents since all job descriptions did not apply to all positions. Exhibit E-1 shows which D.O.T. job descriptions were presented to the incumbents for their selection and Exhibit E-2 contains copies of the actual D.O.T. descriptions used.

46. In addition, during the second trip to Alaska for the processing season, supervisory personnel were interviewed regarding the positions which reported to them. This is commonly done in job analysis as a cross-check against what incumbents say. The supervisors were interviewed using a structured Job Information Checklist, which appears as Exhibit F. These interviews were briefer, typically taking about twenty minutes each. At the conclusion of each interview, the supervisor was asked to review the Checklist, make any changes necessary to ensure the accuracy of the reported information, and sign to

indicate its accuracy. The supervisors also selected EEO-1 paragraphs and D.O.T. job descriptions.

47. A total of 69 incumbents were interviewed. Forty-four of the incumbents were interviewed during the preseason. The balance were interviewed during the processing season. During the processing season some 42 interviews were held with supervisory personnel regarding the jobs in question.

48. We also observed cannery operations, as well as incumbents and supervisors in the performance of their duties (including tenders). Various meetings were held with cannery superintendents and foremen. Cannery layouts and workflow were analyzed. We met with the on-site medical personnel to discuss the hazards involved in cannery work.

49. Additional interviews were conducted with eight incumbents of office positions plus two of their supervisors. These were held after the season in December of 1980 and did not include the office personnel from BBSF. These interviews were required to clarify conflicting information which resulted from differences in job titles used by incumbents in the Alaska interviews.

50. Incumbent responses on the Job Information Checklist were summarized and cross-checked against the ten items appearing on the Job Information Checklist for supervisors. All Checklists were grouped according to job title, and summaries prepared of Checklist responses for supervisors and incumbents.

51. Similarly, the EEO-1 paragraphs and the D.O.T. job descriptions selected by incumbents and supervisors were

tabulated to allow comparison between supervisors and incumbents responses by job title.

52. Each consultant independently reached his conclusions, and these results and conclusions were jointly prepared.

* * *

[p. 2954]

Several of the incumbents interviewed during the pre-season and processing season were in supervisory or management positions. Such positions are clearly skilled and required extensive experience to perform. As a result, the following job titles were excluded from further, more detailed, analysis:

1. Cannery foreman;
2. Assistant manager;
3. First machinist;
4. Office manager;
5. Carpenter foreman;

6. Beach boss;
7. Net boss;
8. Set net pick up boss;
9. Tender captain.

In addition, the following job titles clearly require substantial prior skills and experience, and we understand have been so conceded by counsel for the plaintiff:

1. Port engineer;
2. Wet tender engineer;
3. Carpenter; carpenter/
shipwright;
4. Shop machinist;
5. Refrigeration man;
6. Electrician.

Again, the Checklists of individuals in these job titles were excluded from further, more detailed, analysis.

* * *

[pp. 2970-2974]

53. Since the purpose of the study was to determine minimum skills reasonably required, we have tended to be conservative in our conclusions. In assessing reasonableness of skill, we used as a standard that degree of skill expected to be possessed by most people generally engaged in a particular trade, occupation, or job.

54. Our conclusions are presented with the following caution. We analyzed the jobs in question during only two of the three phases in the cannery operating cycle. We did not seek, nor did the Checklists provide, much information about the duties of the incumbents, nor the skills required of them, during the offseason. Many of the employees interviewed, however, indicated that they were employed on a year-round basis by the canneries.

55. In reaching our conclusions, we considered not only the information available from the Checklists, but also the myriad of other data available to us based upon our personal observation, research, and experience (see also Exhibit B).

56. Finally, our conclusions regarding minimum skills are stated for each position taken by itself. We do not mean to imply that it would be practical, realistic, or reasonable in terms of running a safe, efficient, and/or profitable operation, to staff each position with people meeting only minimum requirements. It is our judgment that any business staffing at a minimum skills level for all positions is asking for trouble. We believe this is even more true for those operating in the kinds of conditions (remoteness, short and intense production periods, perishable product,

difficult logistics, etc.) in which the canneries must operate. These factors, and the financial risk associated with this business, would lead any prudent person to this conclusion.

57. The following jobs are supervisory, require management abilities, and extensive experience to successfully perform: superintendent, cannery (machinist) foreman, assistant manager, first machinist, office manager, carpenter foreman, beach boss, net boss, setnet pick-up boss, and tender captain.

58. The following jobs require substantial prior skill and experience to successfully perform: port engineer, wet tender (briner) engineer, carpenter, carpenter-shipwright, shop machinist, refrigeration man, and probably electrician.

59. Minimum qualifications reasonably required for successful

performance of the jobs listed below are as follows:

a. Iron Chink Machinist.

Requires two seasons experience as a helper-trainee in the fish house with one winter of off-season training or one year of mechanical experience of a similar nature. This job also requires an ability to work with minimum supervision and without the aid of shop manuals, a knowledge of and ability to use mechanic's hand tools for adjustment and repair of equipment, early season availability, and ability to understand and communicate effectively in English. Must be capable of training a machinist helper-trainee in the fish house if one is employed.

b. - Reformer-Can Shop Machinist. Requires two seasons as machinist helper-trainee in cannery

or six months mechanical experience of a similar nature. Job requires the ability to work without close supervision, knowledge of and ability to use seam micrometers, gauges, and mechanic's hand tools to make adjustments and repairs to equipment. Must be able to read, comprehend, and communicate effectively in English, understand mechanical drawings, and possess leadership skills. Early season availability is also required.

c. Fillerman. Requires two seasons as machinist helper-trainee on the canning line with one winter of off-season training, or one year of mechanical experience of a similar nature. Knowledge of and ability to use mechanic's hand tools to make adjustments and repairs to equipment is required. Ability to read, comprehend, and communicate

effectively in English, ability to understand mechanical drawings and early season availability are required. Leadership skills may also be required.

d. Filler Operator. See machinist helper-trainee.

e. Seaman. Requires two seasons experience as a machinist helper-trainee in the cannery or six months mechanical experience of a similar nature. Ability to read, comprehend, and communicate effectively in English is required. Knowledge of and ability to use mechanic's hand tools to make adjustments and repairs to equipment is required. Early season availability is also required.

f. Seamer Operator. See machinist helper-trainee.

g. Salmon Cook-Pipefitter.

Requires one year of plumbing and/or pipefitting experience, less depending on amount and type of experience with boilers or pressure vessels. Job requires proficiency in basic mathematics, ability to read gauges and thermometers, and ability to handle the strain, responsibility, and pressure of "cooking" as many as nine retort loads of salmon simultaneously. Must have knowledge of and ability to use mechanic's and pipefitter's tools to make adjustments and repairs. Must be able to understand and accurately complete required inspection and report forms required by governmental agencies and industry associations. Early season availability is also required.

h. Machinist Helper-Trainee.

Requires mechanical ability, knowledge of and ability to use mechanic's tools. Must be flexible, willing to learn, and to follow directions. Must be able to communicate effectively in English and have the ability to read and comprehend English if placed in canning line or can shop. Early season availability is required.

i. Fireman. Requires

mechanical ability, ability to use mechanic's and some pipefitting tools, and early season availability.

For the foregoing machinist crew jobs: possession of at least one of the following additional skills is highly desirable and preferred in hiring: welding, pipefitting, electrician, and machine shop; requires willingness and ability to work independently or with

other crew members in performing a wide variety of maintenance and repair tasks on cannery buildings, grounds, fixtures, and equipment.

j. Quality Control. Requires ability to read, comprehend, and communicate effectively in English, ability to check weights, record temperatures, and use basic mathematics through decimals. Must have ability to handle detail, be able to handle reports and paperwork, be reliable, and be honest. One season of general cannery experience or other relevant experience or education, such as food technology, is required.

k. Beachman. Requires good health, and the capacity for and ability to perform heavy work out-of-doors. Requires familiarity with wide range of hand tools (both

mechanical and carpentry), small power tools, and operation of forklifts and other equipment. Minimum qualification requirements vary depending on size of beachgang: the larger the beachgang, the greater the ability to take on less skilled personnel. Minimum qualifications for a new beachman joining a crew of three or more beachmen (not including beach boss) would be three to six months prior heavy work experience, preferably out-of-doors and construction or shipyard related.

1. Dry Tender Engineer.

Requires one year of related boat experience or six months engine mechanical experience and one season of tender experience, knowledge of and ability to use mechanic's and some pipefitting tools to make adjustments and repairs to shipboard

machinery and equipment, ability to live in small quarters and function as an effective member of a small group. Willingness and ability to work long hours on ocean-going vessel is required. Ability to act as relief helmsman and back-up navigator may be required on some boats.

m. Accountant/Bookkeeper.

Requires two years formal bookkeeping education or comparable work experience, familiarity with use of computers in data processing (depending upon location), typing, and ability to accurately operate ten-key calculator. Two seasons as assistant cannery bookkeeper would also satisfy requirements. English literacy and preseason availability are required.

n. Assistant Bookkeeper.

Requires knowledge of basic

bookkeeping, basic mathematics, familiarity with use of computers in data processing (depending upon location). Job also requires ability to use typewriter and accurately operate ten-key calculator. English literacy is required. Preseason availability is required.

o. Office Assistant/

Bookkeeper-Helper. Requires knowledge such as would be obtained from office practice training course or comparable work experience, knowledge of basic mathematics, ability to type, and ability to accurately use ten-key calculator. Preseason availability may be required. English literacy required.

60. Qualifications required for any individual position depend to a certain extent on the cannery involved, the age and condition of equipment, skill level of other incumbents and supervisors, and

other such factors. Offseason work may require additional and/or different skills, or no skills.

* * *

[pp. 2974-2975]

61. As our work on the job analysis was concluding we were asked by counsel to research the coding of occupational data in the decennial Census of Population. The purpose was to establish whether or not groups of Census job codes could be established which would be more likely sources of people with the requisite skill, experience and/or training for cannery jobs than those found in general population statistics. If this could be accomplished the experts who were working on the question of availability would be better able to specify the racial characteristics of the external labor market for the position in question.

62. This was done after an extensive review of the way the Bureau of Census handles the coding of occupational data.

[pp. 2981-2986]

63. Our primary sources for developing the Census categories we selected were the same. Both the Alpha and Classified Indices include the categories used in the Industrial Classification System and in the Occupational Classification System. - It was the latter which was of particular use to us. It correlates the 23,000 job titles used by the Census into some 417 categories.

64. Each of the 417 categories was examined in depth, referring to the occupational section of the Classified Index when needed, to determine if the job titles listed in a category were such that it was likely to contain people with

backgrounds consistent with our skills requirements. The D.O.T. was used as needed to clarify job titles which were unfamiliar to us.

65. In the case of the defendants' jobs which were not studied by us, we examined the categories assuming some experience was needed. The specific experience was based upon information provided by the defendants. The assumptions were:

1. Storekeeper - retail or mercantile experience;
2. Stockman - stocking experience;
3. Steward and First Cook - institutional or camp cooking experience;
4. Other Cooks - occupational cooking experience;
5. Baker - occupational baking experience;
6. Pilebucks and Pilebuck Boss - experience in piledriving, working with cranes, or building docks;
7. Nurse - experience as an RN;
8. Painter - experience in structural painting;
9. Set Net Pickup - truck driving experience;

10. Mate/Deckhand and Deckhand
-occupational experience
with boats;
11. Radioman - radio repair
experience and license;
12. Brite Stack Machinist -
Same as Machinist Crew
plus electronics
experience; and
13. Casing Machinist - same as
Machinist Crew plus
electrical experience.

The results of our study are presented in
below.

ACCOUNTANT/BOOKEEPER

- 001 Accountants
- 141 Adult Education Teachers
- 202 Bank Officers & Financial
Managers
- 304 Bookkeeper
- 312 Clerical Supervisors, N.E.C.

ASSISTANT BOOKEEPER

- 141 Adult Education Teachers
- 303 Billing Clerks
- 304 Bookkeepers
- 312 Clerical Supervisors, N.E.C.
- 341 Bookkeeping & Billing Machine
Operators
- 342 Calculating Machine Operators
- 360 Payroll Clerks

OFFICE ASSISTANTS/BOOKEEPER HELPER

- 303 Billing Clerks
- 325 File Clerks
- 341 Bookkeeping & Billing Machine
Operators
- 342 Calculating Machine Operators
- 360 Payroll Clerks
- 372 Secretaries, N.E.C.
- 391 Typists
- 395 Not specified Clerical Workers

TENDER CAPTAINS

221 Officers, Pilots & Pursers;
Ship
701 Boatmen & Canalmen
725 Fishermen & Oystermen

DRY TENDER ENGINEER

473 Automobile Mechanics
481 Heavy Equipment Mechanics, Inc.
Diesel
523 Plumber & Pipe Fitter
Apprentices
545 Stationary Engineers
661 Sailors & Deckhands
701 Boatmen & Canalmen
747 Auto Mechanics, Apprentices
752 Fishermen & Oystermen

WET TENDER ENGINEER

473 Automobile Mechanics
481 Heavy Equipment Mechanics, Inc.
Diesel
523 Plumber & Pipe Fitter
Apprentices
545 Stationary Engineers
661 Sailors & Deckhands
701 Boatmen & Canalmen
747 Auto Mechanics, Apprentices
752 Fishermen & Oystermen
470 Air conditioning, Heating, &
Refrigeration Mechanics

PORT ENGINEER

134 Trade, Industrial, & Technical
Teachers
461 Machinists
481 Heavy Equipment Mechanics,
Inc., Diesel
540 Shipfitters
545 Stationary Engineers
561 Tool & Die Makers

REFRIGERATION MAN

134 Trade, Industrial, & Technical
Teachers
470 Air conditioning, Heating, &
Refrigeration Mechanics
545 Stationary Engineers

ELECTRICIAN

134 Trade, Industrial & Technical
Teachers
430 - Electricians

CARPENTER, SHIPWRIGHT

134 Trade, Industrial & Technical
Teachers
415 Carpenters
416 Carpenter Apprentices

SHOP MACHINIST

134 Trade, Industrial & Technical
Teachers
461 Machinist
462 Machinist Apprentices
561 Tool & Die Makers
562 Tool & Die Makers' Apprentices
652 Lathe & Milling Machine
Operatives

BEACH GANG

412 Bulldozer Operators
416 Carpenter Apprentices
424 Cranemen, Derrickmen, Hoistmen
433 Electric Power Linemen &
Cablemen
436 Excavating [sic], Grading & Road
Machine - Operators; excluding
Bulldozer
550 Structural Metal Craftsmen
554 Telephone Linemen & Splicers
661 Sailors & Deckhands
680 Welders & Flame-Cutters
706 Forklift and Tow Motor
Operatives

- 710 Motormen; Mine, Factory,
Logging Camp, etc.
- 750 Carpenter's Helpers
- 760 Longshoremen & Stevedores
- 761 Lumbermen, Raftsmen &
Woodchoppers
- 822 Farm laborers, Wage Workers
- 823 Farm Laborers, Unpaid Family
Workers

QUALITY CONTROL

- 323 Expeditors & Production
Controllers
- 393 Weighers

HELPER/TRAINEE

- 401 Automobile Accessories
Installers
- 431 Electrician Apprentices
- 462 Machinist Apprentices
- 479 Automobiles Mechanic,
Apprentices
- 480 Farm Implement Mechanics
- 482 Household Appliance & Accessory
Installers & Mechanics
- 486 Railroad & Car Shop Mechanics
- 491 Mechanic, excluding Auto,
Apprentices
- 492 Miscellaneous Mechanics &
Repairmen
- 523 Plumber & Pipe Fitter
Apprentices
- 562 Tool & Die Maker Apprentices
- 604 Bottling & Canning Operatives
- 621 Filers, Polishers, Sanders &
Buffers
- 633 Meat Cutters & Butchers, Mftg.
- 642 Oilers & Greasers, excluding
Auto
- 650 Drill Press Operatives
- 651 Grinding Machine Operatives
- 656 Punch & Stamping Press
Operatives
- 680 Welders & Flame-cutters

690 Machine Operative, misc.
specified

SALMON COOK/PIPE FITTER

134 Trade, Industrial & Technical
Teachers
404 Boilermakers
470 Air-conditioning, Heating &
Refrigeration Mechanics
522 Plumbers & Pipe Fitters
523 Plumbers & Pipe Fitters
Apprentices
545 Stationary Engineer
622 Furnacemen, Smeltermen &
Pourers
666 Stationary Firemen
680 Welders & Flame-cutters

MACHINIST CREW (Fillerman, iron
chink, seaman & can shop man)

134 Trade, Industrial & Technical
Teachers
141 Adult Education Teachers
461 Machinists
462 Machinist Apprentices
471 Aircraft Mechanics
473 Automobile Mechanic
474 Automobile Mechanic Apprentice
480 Farm Implement Mechanics
483 Loom Fixers
486 Railroad & Car Shop Mechanics
491 Mechanic, excluding Auto,
Apprentices
495 Not specified Mechanics &
Repairmen
502 Millwrights
523 Plumbing & Pipe Fitting
Apprentices
562 Tool & Die Maker Apprentices

FIREMEN

523 Plumbers & PF Apprentices
622 Furnacemen, Smeltermen &
Pourers

626 Metal Heaters
666 Stationary Firemen

SALMON COOK

134 Trade, Industrial & Technical
Teachers
622 Furnacemen, Smeltermen &
Pourers
626 Metal Heaters
680 Welders

BEACH BOSS

412 Bulldozer Operator
424 Cranemen, Etc.
436 Excavating, Grading, Etc.
Operators
706 Forklift & Tow Motor Operators
710 Motormen, Mine, Factory, Etc.
760 Longshoremen
441 Foreman, N.E.C.

FIRST MACHINIST

441 Foremen, N.E.C.
461 Machinist
502 Millwrights
561 Tool and Die Makers

CANNERY FOREMAN

245 Managers & Administrators,
N.E.C.
441 Foreman, N.E.C.
461 Machinist
502 Millwrights
561 Tool and Die Makers

NETMAN/NETBOSS

762 Fishermen & Oystermen

CARPENTER FOREMAN

415 Carpenters

OFFICE MANAGER

001 Accountants
202 Bank Officers

305 Bookkeepers
312 Clerical Supervisors, N.E.C.
220 Office Manager, N.E.C.

STOREKEEPER

245 Managers & Administrators,
N.E.C.
282 Sales Representatives,
Wholesale Trade
283 Sales Clerks, Retail Trade
225 Buyers

STOCKMAN

283 Sales Clerks, Retail Trade
381 Stock Clerks, Storekeepers

STEWART & FIRST COOK

230 Restaurant, Caffe [sic] & Bar
Managers
912 Cooks, Excluding Private
Household
950 Housekeeper, Excluding Prive
[sic] Household
981 Cooks, Private Household

OTHER COOKS

230 Restaurant, Cafe & Bar Managers
912 Cooks, Excluding Private
Household
950 Housekeeper, Excluding Prive
[sic] Household

BAKER

402 Bakers

PILEBUCKS

415 Carpenters
416 Carpetners [sic] Apprentices
424 Cranemen, etc.
436 Excavating, Etc., Operators

PILEBUCK BOSS

415 Carpenters
424 Cranemen, etc.

436 Excavating, Etc., Operators
441 Foreman, N.E.C.

NURSE

075 Registered Nurses

PAINTER

510 Painters, Construction &
Maintenance
511 Painter Apprentice

SET NET PICK-UP

715 Truck Drivers

MATE/DH, D/H

661 Sailors, D/H's
701 Boatmen & Canalmen
752 Fishermen & Oystermen
221 Officers, Pilots, Pursers -Ship

RADIOMAN

153 Electrical & Electronic Techs
171 Radio Operators
485 Radio & TV Craftsmen

BRITE STACK MACHINIST

153 Electronic Techs
485 Radio & TV Craftsmen
430 Electrician
431 Electrician Apprentice

CASING MACHINIST

134 Trade, Industrial & Technical
Teachers
430 Electricians
141 Adult Education Teachers
461 Machinists
462 Machinist Apprentices
471 Aircraft Mechanics
473 Automobile Mechanics
474 Automobile Mechanics
Apprentices
480 Farm Implement Mechanics
481 Heavy Equipment Mechanics, Inc.
Diesel

483 Loom Fixers
486 Railroad & Car Shop Mechanics
491 Mechanic, excluding Auto,
Apprentices
495 Not specified Mechanics &
Repairmen
502 Millwrights
523 Plumbing & Pipe Fitting
Apprentices
562 Tool & Die Makers' Apprentices

* * *

[pp. 2987-2990]

66. Our task here was to compare the backgrounds as shown on the employee questionnaires assembled by Statistical Services, Inc. (SSI, Mr. Parker and Ms. Dittner) to see if, hypothetically, certain employees of defendants would have survived a prescreen process on their initial hire or if they possessed certain qualifications which would have allowed them to be prescreened into other jobs. This is one of the common duties of Human Resources/Personnel Managers with employment related responsibilities. It is done because the recruiting effort (i.e., the process of getting applicants

in the first place), if successful, typically can yield large numbers of applicants for a single position.

67. Thus, the employment process, at least to the point of identifying the final candidates for a position, is largely one of narrowing down the number of people who have applied. This process, which may have several steps, is usually called "pre-screening" the applicants.

68. If the recruiting activity has involved advertising duties and qualifications and soliciting resumes, the initial prescreening is done on the basis of information on the resumes received. It may also be done on the basis of information from company employment applications and/or brief interviews with applicants. It simply involves a knowledgeable person comparing job requirements with reported training and experience and making a judgment that

each individual meets or does not meet the job requirements, or that more information is needed to make that determination.

69. Those individuals judged to meet requirements then proceed to the next stop of the process which is usually, but not always, an employment interview. Those individuals falling in to the "need more information" category may, or may not, be contacted for that information, depending upon how many people appearing to meet qualifications are available. The process is considered in most of the texts available on the subject of personnel management or employment, several of which appear in our bibliography. It is a standard technique commonly used by personal practitioners.

70. Biographical backgrounds, or brief resumes, were available on most of the people employed by the defendants in

1980. These were prepared by Statistical Services, Inc., using the procedures outlined in Roger Parker's affidavit. Modified versions of these resumes were used to perform a prescreening of the incumbents based upon the job skills requirements identified in our job analysis. They were modified in the sense that information identifying the incumbents was removed from each resume.

71. I performed several hypothetical prescreenings using the modified SSI resumes.

72. First, those of the noncannery workers were evaluated to determine if each individual would have survived a prescreen at the point of first job hired by one of the defendants, if the job was one we had studied.

73. Second, the noncannery worker resumes were examined to determine if each individual would survive a prescreen

at the point the person was first hired into a position we studied, whether or not it was the first job that the individual held with a defendant.

74. Third, resumes of cannery workers were examined to determine if, at the point of first hire by a defendant, they met the qualifications for any of the jobs we studied.

75. In all cases, "point of first hire" was construed to mean after 1970.

76. The results of this prescreening analysis are presented as follows:

a. Based on a study of the information provided in the 1980 noncannery worker profiles at the point of first job hired by one of the five class facilities after 1970 (if the job was one studied):

(1) "Qualified" for
position: 131/139. . . .

(2) "Not Qualified" for
position hired: 8/139. . . .

(3) "Need More
Information:" 14/262. . . .

(4) Position for which
person was hired was not one studied by
expert: 109/262. . . .

b. Based on a study of the
background profiles of the - 1980
noncannery workers at point the person
was first hired by one of the five class
facilities after 1970 into a job studied
by expert (whether or not it was the first
job person held with a defendant):

(1) "Qualified" for
position hired: 155/164. . . .

(2) "Not Qualified" for
position hired: 9/164. . . .

(3) "Need More
Information:" 29/262. . . .

(4) Did not hold job
studied by expert: 69/262. . . .

c. Based on a study of the background profiles of the 1980 cannery workers in the survey at the point of first hire after 1970 by one of the five class facilities, the employees can be categorized as follows:

(1) The employees identified by number in Exhibit I.1 would pass the first step of a prescreening process for the non-cannery worker jobs lists opposite the employees identification number.

(2) The employees identified by number Exhibit I.2 would not pass the first step of a prescreening process for a non-cannery worker job studied.

(3) Additional information is needed to determine whether the following persons identified by employee number in Exhibit I.3 would pass the first step of a pre-screening

process for a non-cannery worker job studied.

77. It should be pointed out that such prescreening was routinely part of my, or my staff's responsibilities while at Unigard. It has also been a standard part of the curriculum of courses I have taught on the subject of employee selection or personnel [sic] management, including the accreditation course I am currently instructing for the American Society of Personnel Administrators. In fact, the text for that course is a good reference for the subject.^[8]

* * *

[pp. 2996-3001]

120. One of the most difficult tasks of the researcher is that of keeping his/her work in the context of the real,

8. See "ASPA Handbook of Personnel and Industrial Relations," Staffing Policies and Strategies, Chapter 4.4, "Selection, Interviews, and Testing," by Harold Stone and Floyd Ruch.

as opposed to the ideal. This is difficult, in part, because the researcher is trained to work in the abstract and to seek perfection in the research method.

121. We have already seen that job analysis must consider the context in which the jobs occur. The result of a job analysis is a snapshot or picture of the jobs and their requirements as they exist in a particular setting, at a particular time.

122. Unfortunately, litigation is not a normal context for most job analyses. It is important that the job analyst remember that while litigation raises many issues worthy of examination, the expert's position is not one of advocacy.

123. The matter is further complicated by the fact that experts work in the fields that are technical in

nature. This makes it difficult to communicate one's approach and results to the various lay people involved, particular when dealing with the rebuttal of the other sides expert.

124. It is our belief, then, that one of the primary functions of the expert is to simplify and clarify for the court matters that can be highly technical. This cannot be accomplished without grounding the expert opinion solidly in reality.

125. It has been our purpose, in the present litigation, to focus on the intelligibility of our work and conclusions, while staying within the boundaries of generally accepted professional ground rules.

126. The context for the jobs and skills requirements for the present litigation is unique. What are its attributes?

127. First, the defendant is engaged in a high risk, profit-oriented, competitive business. The business is seasonal and the product highly perishable, and must be fit for human consumption.

128. Second, production operations are carried out in remote and often isolated locations. Logistics and communications with the "outside world" are difficult, to say the least. The canneries, by and large, must be self-sufficient camps.

129. The production operations involve a tremendous "front end" capital expenditure. Equipment and supplies must be taken North well ahead of the production cycle. Likewise, labor is secured in advance of production and wages guaranteed for the season for large numbers of employees.

130. While there are similarities in the canneries, there are differences as well. Many of these differences are trivial, but many are not.

131. In the present case, there are three different ownerships of the facilities. There are differences in the age and condition of the physical plant and equipment. There are differences in the services the canneries provide to the fishing fleet. There are differences in the availability of part and outside services. There are differences in the type of duration of the fish run from location-to-location and from year-to-year in the same location.

132. Significantly, there are differences year in and out in the available supply of labor. In a period of low unemployment skilled employees are more difficult to find and employees more likely to have to settle for people that

will have to "make do" with. If one is fortunate, making do may work for a time.

- But that does not mean it is desirable or prudent, particularly in a business with an inherent high risk factor such as processing canned salmon in Alaska.

133. Plaintiffs have basically argued that the positions in question can be learned during the preseason by people of little experience and average mechanical ability, if the responsibilities are restructured to eliminate the requirement that incumbents be able to troubleshoot, repair, and maintain the equipment. We have already pointed out that this begs the question. The jobs are structured the way they are for reasons, including many of the factors outlined above. That they may be structured an infinite number of different ways may be arguable, but is not relevant in job skills analysis.

134. Supervisory personnel are in the canneries to supervise, not to perform the work of their subordinates. The fact that they may be able to do this, if needed, is interesting, and would perhaps make a Superintendent more comfortable, but it is not relevant to the issue of what the subordinates are hired and paid to do.

135. Crews are taken North in the preseason to make the cannery ready for production, not to train a collection of inexperienced people. Since they are working on the equipment some training is possible, in some canneries and in some situations.

136. Observing a cannery in operation, something which Plaintiffs' expert has not done in several years and never done in any of the Defendants' facilities, is an enlightening process.

137. If everything goes as it "should," the cannery operates smoothly and there are no equipment breakdowns or failures. Indeed, there is a certain amount of gambling among incumbents regarding who will have the fewest breakdowns and equipment down time. The machinists on the line and the Tender Engineers can appear to the casual observer to be machine operators.

138. However, things go as they "should" only if there has been proper maintenance and set-up of the equipment. It also requires a little luck, since equipment will break down under even the best of conditions.

139. Why do the employers in this case seek and/or experienced people. Financially, it would be in their interest to hire the cheapest labor available. Since labor costs are typically one of the most controllable

expenses in a firm's profit picture, one would predict that the tendency would be to hire machine operators if that was all that was necessary. The answer is simply that the situation is not nearly as simple, easy, and straightforward as Plaintiffs' expert would have us believe. In the words of one cannery superintendent, "what you learn to expect up here is the unexpected."

140. For example, one of the things that the Superintendents and Foremen watch very carefully is the recovery rate in the fish house. This has to do with how much usable product is left after butchering and is directly affected by the set-up and adjustment of the Iron Chink. The Foreman at BBSF indicated that the head cut adjustment can make a difference of one fish per case canned. Assuming an average fish weight of 5.8 lbs. at \$0.57 per pound, this can be a

difference of over \$300,000.00 on a 100,000 case season. Apparently, there can be false economies.

141. Every cannery needs to have a mix of skills to accomplish its work. How those skills are present among those available in the labor market will determine, to some degree, how jobs are structured each season. For example, there can be a great amount of welding work in the canneries. One can fill that need a variety of ways. One way is to hire a couple of welders. However, most of the welding is finished by the start of the season, and the salary guarantees include the season. In the alternate, one can look for people to fill other jobs who also have welding skills, and use those employees to do welding when needed. This is in fact, one of the things the defendants have done. Which people, in which jobs, have those skills can and does

vary from season-to-season. That some of the crew needs to have those skills is indisputable.

142. The point here is that jobs, and how they are structured is a fluid matter. In actual practice, jobs are often structured around the skills of the people who are available to fill them, rather than the other way around.

143. Because our conclusions on skills were stated as minimum skills reasonably required, they were stated for each position by itself. Since each incumbent's skill level can impact on the recruiting requirements for other positions, we do not believe it is reasonable, nor necessarily safe, to staff each position with people of minimum skills. Each position that is staffed with a minimally skilled person in effect requires the raising of the

requirements for other jobs in the system if the total mix is to remain in balance.

144. In other words, all things being equal, a crew of "average" capabilities and a crew half of which is minimally skilled and half "maximally" skilled will each produce "average" output. Most employers are far from satisfied in being "average" in their competitive market.

145. The analogies of the sporting world are appropriate here. It is highly unlikely, for example, that a professional basketball team would be competitive if it started a team of five rookies, unless the rookies all were people of above-average professional skills. If the rookies were all minimally skilled, or even "average" rookies, the team would be in for a tough season.

146. A good example in the present case is the composition of a tender's

crew. Plaintiffs' expert contends that people of the machine operator skill level can be hired, if the captain is skilled in engine troubleshooting, repair, and maintenance. Ignoring for a moment the fact that it is not the captain's job, it could conceivably work. If someone else on the crew can cover the captain's job while he is repairing the engine. Who should that be? Do we now require navigation and piloting skills of our deckhand, cook, or minimally skilled engine operator? And this does not even address the more safe situation in which at least two different crew members know how to repair the equipment and navigate and pilot the boat. And, of course, the other unanswered question is how many captains actually can repair the engines, not to mention the electrical and hydraulic systems? Some of the captains

we interviewed indicated that they could not.

147. Finally, we have stated that we were conservative in our establishment of skill requirements. We believe this to have been borne out by the skills requirements adopted by the court in Carpenter v. NEFCO, which are generally higher than ours, and corroborated by the requirements found by the court to be ". . . generally realistic and fair" in Domingo. [15].

148. It should be made clear, however, that our conservatism had to do with the fact that the matter was pending litigation. Our recommendation to clients in a normal situation (i.e., not involving litigation) would never be to hire minimally qualified employees when possible. Rather, it would be to

15. Opinion and Order, Domingo v. NEFCO, 7/19/79, p. 8. See also Affidavit of Patrick Vess, 4/9/79, esp. Ex. A.

eliminate from consideration any not meeting minimum requirements, and then to select the most suitable person remaining. This would be particularly true if the wages for the position were fixed, regardless of the incumbent's skills. Further it would appear to be a reasonable business practice to prefer an experienced person over a nonexperienced person all other factors being equal. Latham concurs. . . .

149. This contextual information is important, but ignored or glossed over by Plaintiffs' expert. If you are in the business of processing canned salmon in Alaska, however, it could be critical to ignore the context.

* * *

[p. 3060]

BY MR. ARDITI:

Q. Now, the term machinist as it is generally used refers to a journeyman

machinist who's served an apprenticeship in the trade, and it usually means in particular a shop machinist; is that correct?

A. Generally, that would be correct.

Q. Now, cannery machinists are not machinists in that sense, are they?

A. Not all of them, no.

Q. Do you know whether they are called machinists simply because they work under the machinists contract?

Or I'll rephrase that. Simply because the name of the union that represents them is the machinists union?

A. I suspect that has something to do with it, yes.

* * *

[pp. 3064-3065]

Q. So is it fair to say that in each of the major repairs that you saw in

the canneries, either the first machinist or the cannery foreman was involved?

A. They were--one or the other was involved, yes.

Q. Now, is it fair to say that some of the incumbents that you talked to about job qualifications exaggerated the difficulty of their jobs?

A. I think there was some of that, yes.

Q. And they also exaggerated the learning time for their jobs, didn't they?

A. I think that there was some exaggeration generally with some of the interviews, yes.

Q. Could you take a look at Page 15 and 16 of your affidavit?

A. Yes.

Q. Is it fair to say that the supervisors in machinist jobs were more likely to characterize the machinist job

an operative job than the incumbents were?

A. For some classifications, yes.

Q. I gather that from your table on Page 15, there is at least some room for a difference of opinion as to whether a machinist job ought to be characterized as an operative job or a skilled job?

A. That is correct. In some cases, we have overlapping frequencies here and some people said, "Well, it's a little of this and it's a little of that." But as I recall, when that occurred, they were asked to still pick the one that they thought best fit, so there was some feeling on the part of both incumbents and supervisors that there was a mix.

* * *

[pp. 3066-3067]

Q. Now, you, in fact, do not know what qualifications the Defendants actually imposed, do you?

A. No. I read some interrogatory answers at one point, but I really do not beyond that.

Q. In fact, at least at the time of your December 26th, 1980, deposition, the Defendants had not imposed the qualifications that you devised; is that correct?

A. Not to my knowledge.

Q. Is it fair to say that in some sense, the qualifications that you're offering are hypothetical qualifications? At least in the sense that they were never imposed?

A. In that sense, I suppose that could be said.

* * *

[p. 3071]

Q. You did an analysis of whether incumbents in certain noncannery worker jobs met your qualifications, didn't you?

A. Yes.

Q. And you in fact found that some could not, didn't you?

A. Correct.

* * *

[pp. 3072-3073]

Q. In each of the jobs that you list qualifications for or asserted qualifications for, you speak of ability to do something, correct?

A. In each of the jobs that I list asserted qualifications for, I speak of ability to do something?

Q. Right.

A. Without reviewing the list, I don't recall whether there's something like that in all of them. Many of them, most of them, perhaps.

Q. Now, in some of the qualifications that you assert, you speak of mechanical experience of a similar nature, correct?

A. Correct.

Q. If that were a qualification that were actually used, would you leave it up to the employer to decide what mechanical experience of a similar nature is?

A. Not necessarily. It would depend upon who on the employer's staff was involved. Depends upon who made the hiring decision.

Q. Well, without a definition of what mechanical experience of a similar nature is, there is substantial room for discretion in deciding whether a person meets that standard or not; isn't that correct?

A. To the uninitiated, yes.

* * *

[p. 3075]

Your Honor, that's a bulky exhibit so what we've done is just made excerpts or xeroxes of excerpts of it.

That's an excerpt for David Jones, who is quality control at Wards Cove, 1977 to '80; is that correct?

A. That's correct.

* * *

[pp. 3076-3078]

Q. (By Mr. Arditi) That individual does not meet your requirement of a season of general cannery experience, does he?

A. No.

Q. In fact, it doesn't show any other work experience for that individual, does it?

A. No.

Q. There's no showing that the individual had any background in food technology, is there?

A. No.

Q. So is it fair to say that that individual would not have met your qualifications for quality control?

A. Yes.

Q. That's an excerpt from Mike Morgan?

A. Correct.

Q. Mr. Morgan did not have a year of cannery experience, did he?

MR. FRYER: Your Honor, this is another one where Mr. DeFrance has stated he's not qualified.

THE COURT: All right. Stipulated he's not qualified.

MR. ARDITI: We will go on to the next one, then.

Q. Do you have before you an excerpt for William Lenhardt?

A. Yes, I do.

Q. He worked as a salmon cook-pipefitter at Ekok [sic]?

A. That's correct.

Q. This does not show that Mr. Lenhardt had a year of prior pipefitting--strike that.

A year of prior plumbing experience, does it?

A. It does not, no.

Q. Nor does it show that he had a year of prior pipefitting experience, does it?

A. No.

MR. FRYER: Same stipulation, Your Honor. This also was covered.

THE COURT: All right. Stipulate he does not fit the qualifications.

Q. (By Mr. Arditi) Do you have before you the excerpt for Walter Smith?

A. Yes.

Q. He worked as a tender engineer at Bumble Bee; is that correct?

A. Now, he did not have a year of prior related boat experience, did he?

MR. FRYER: Your Honor, this is another one that we will stipulate to. It's covered in the affidavit.

THE COURT: So stipulated.

MR. ARDITI: Well, some of them are, some of them aren't.

MR. FRYER: Well, this one is. This is 533.

Q. (By Mr. Arditi) Do you have an excerpt for Joseph Plesha*?

A. Yes, I do.

Q. Now, in 1978, he was hired as a tender engineer at Wards Cove; is that correct?

A. Yes.

Q. Prior to that, he'd not had any mechanical experience, had he?

A. Prior to?

Q. Being hired as tender engineer for the first time.

MR. FRYER: Your Honor, on this one, I would stipulate that it was Mr. DeFrance's conclusion based on the survey that he was not qualified. I won't stipulate that he wasn't qualified. But

as far as this witness is concerned, he wasn't.

THE COURT: Within the qualifications established by this witness?

MR. FRYER: Yes.

THE COURT: All right. Now, is that as to just the tender engineer position?

MR. ARDITI: Tender engineer. That is the only I'm examining him on at the moment.

* * *

[pp. 3090-3091]

Q. (By Mr. Arditi) Okay, Mr. DeFrance, I'd like to turn to the census portion of your study now, if I could.

You made an effort in this case to try to cross-map jobs in this industry with census occupational categories, didn't you?

A. I believe I did that, yes.

Q. The purpose of this was to assist Dr. Albert Rees in his efforts to determine the availability of qualified non-whites for certain jobs; is that right?

A. I don't think I stated it quite that way. The purpose is stated on Page 34 of the affidavit.

Q. The purpose was to assist in determining the percentage of what the Defendants believe were qualified non-whites in the available labor supply; is that right?

A. The purpose--according to Page 34, the purpose was to establish whether or not groups of census job codes could be established which would be more likely sources of people with the requisite skill experience and/or training for cannery jobs other than

those found in general population statistics.

Q. Then it says, "If this could be accomplished, the experts who are working on the question of availability would be better able to specify the racial characteristics of the external labor market for the position in question"; is that correct?

A. That's correct.

Q. Thank you. And the results of this portion of your study are given on Pages 42 through 46; is that right?

A. Yes.

Q. Now, on Page 42, under account/bookkeep, you list adult education teachers?

A. Correct.

Q. Is it your view that by virtue of being an adult education teacher, an individual would be more likely to be

qualified than others for accounting-bookkeeping work? --

A. Some of them, yes.

Q. But not all; is that correct?

A. No.

Q. So you're not saying that everyone in the census category "Adult Education School Teacher" was necessarily qualified for a bookkeeper or accountant's job, are you?

A. No. I'm saying that the people in that category are a more likely source of people with the skills than general population statistics.

Q. But we've at least established so far, I think, that these census occupational categories would be over inclusive?

A. Some of them.

* * *

[pp. 3093-3094]

Q. You mentioned that the census used inexperienced coders?

A. Correct.

Q. You also mentioned that the census urged its coding specialists to use a certain amount of creativity in looking for alternate job titles that they couldn't find in the master list?

A. Correct.

Q. Now, that could have a significant impact on the reliability of the census occupational data in an industry which has a number of job titles which are not listed by the census in its Alpha index, correct?

A. Okay. Have a significant impact, period.

Q. So your answer is yes?

A. Could you repeat the question?

Q. What we've just mentioned could have a significant impact on the

reliability of census occupational data in an industry which has a number of job titles which are not listed by the census in its Alpha index, correct?

A. Yes, it could.

Q. This is in fact just such an industry, isn't it?

A. You mean in some sense different from other industries?

Q. Well, that it has job titles that are not listed on the Alpha index.

A. That's correct. There are job titles which are not listed in the Alpha index.

Q. Now, the census was taken on April 1, 1970, was it?

A. I'd have to check the date. That sounds correct.

Q. The reference week was the last week in March, wasn't it?

A. Again, I'd have to check the date, but that sounds correct, yes.

* * *

[pp. 3094-3097]

Q. Let me try it again, Mr. DeFrance. In the census questionnaire, they ask, "What was your job the last week in March?" Correct?

A. I believe that's the question.

Q. And seasonal jobs in this industry would not have started the last week in March, would they?

A. That would be correct.

Q. So in all likelihood, people would not have reported their jobs in this industry, would they?

A. I think that's a link that goes to what the individual would have done. I don't think that I can speak to that. I think that that would cause some questions about the census as it relates, yes.

Q. Let me just ask it less in a general way and ask specifically.

A. All right.

Q. If you planned to go to work as a beach man at Bumble Bee in the 1970 season and you were asked to fill out a questionnaire that asked you what your job was in March, you wouldn't describe a job that you weren't working in, would you?

A. No, I would not.

Q. Now, if I understand your affidavit correctly, there are occasions when an individual might list two occupations on the census questionnaire and one would be--an example that you gave, I think, was waiter/bartender; is that correct?

A. I believe so, yes, Waitress/bartender, yes.

Q. In the event, for example, that an individual gave both his off-season employment and his seasonal employment,

which of those two jobs would be coded by the census for this industry?

A. Would depend upon the response to Question 30B.

Q. You really mean 34B, don't you? 34 or 35?

A. Yes. I believe that's an error. It's the question on the if two job titles were listed in the occupation section, they then went to the section on important activity or duties, and then the instruction ~~was to go~~--as I recall, the instruction was to go with the first activity listed.

Q. So it would really be, then, a complete fortuity whether a person listed the seasonal job first or second, correct?

A. I'm not sure what you mean by a fortuity. It would depend upon what they wrote down, okay? The procedures that the census follows, the instructions to the

coders are fairly specific. But what an individual writes down, of course, depends upon the individual.

Q. It's possible, of course, that people who work in the salmon industry sometimes hold jobs in the off-season that are not related to their work in Alaska, isn't it?

A. Yes.

Q. An example would be a person who works as a warehouseman in the Lower 48 and a salmon butchering machinist in Alaska; is that correct?

A. That could be an example, yes.

Q. That person would not show up in a mechanical occupation in the census listing, would he?

A. In a mechanical occupation?

Q. Well, warehouseman would be considered an operative job.

A. It would not be classified under 278, the industry code. It would

not be classified likely as a mechanic and repairman, no. He would be classified elsewhere.

Q. Now, when a person's job, reported job was not listed on the Alpha index, the census coder would go by a very short description of the job that the respondent supplied; is that correct?

A. I would need to review the affidavit here. I believe the first thing they were instructed to do was try to think of other job titles and see if they could find them. Then in the event that could not happen, they then went to the brief description of activities and duties to try to see if that shed any light on it. And if that did not, it would go to prime referral pool. I believe that's the process.

Q. In reading that brief description, the census coders would

concentrate on the first word that appeared in the description generally?

A. They would concentrate--back to our waitress and bartender example. If the first question said waitress and bartender and the next question said wait on customers, tend bar, then they would classify it as waitress. If it was the other way around, tend bar, wait on customers, they would classify it as bartender. So it would be more than one word.

Q. Don't you give another example in there of a person who says operate and maintain machinery as opposed to maintain and operate machinery?

A. Let's see here. Okay. That--yes, that's problematic.

Q. If the person said operate and maintain, he would likely be classified as an operator, but if he says maintain

and operate, he'd be classified as a mechanic?

A. That is correct.

* * *

[p. 3098]

Q. In fact, the census is not a very accurate device for determining the percentage of qualified non-whites, say, for a job like -the salmon butchering machinist; is it?

MR. FRYER: I'm going to object to that question. I think that's beyond the scope of direct and beyond the affidavit, Your Honor.

THE COURT: No, I think it's all right for cross-examination. Overruled.

THE WITNESS: The census, in my opinion, is at best indicative.

Q. (By Mr. Arditi) It's not a very accurate device for that purpose, is it?

A. I would not call it conclusive.

Q. In fact, you'd have to take the census with a grain of salt as far as this is concerned, wouldn't you?

A. I think that the census as a measure of availability always should be taken with a grain of salt. It was not designed to do that.

* * *

[p. 3100]

Q. If the qualifications that you suggest in this case could be shown to have an adverse impact, then you would agree that you would have to do more work on your study, wouldn't you?

A. If I could determine that the qualifications that I have established have an adverse impact, then I would want to take another look at them, that's correct.

* * *

[pp. 3104-3107]

BY MR. FRYER:

Q. What was your objective in looking at the census classifications for all industries?

A. The purpose, again, was stated in the affidavit, to try to find census codes that were more likely to have people with the skills, training or experience for the cannery positions than would general population statistics.

Q. You indicated that there might be a difference between the initiated and the uninitiated in the selection process. I believe that was your word. Could you tell the Court what you mean by that?

A. Well, I believe I was responding to a question about trying to define similar experience more fully. And I think how that--first of all, the process of doing that would involve going to subject matter experts, such as the Defendants. The needs to do that would

depend upon who was doing that pre-screening and the hiring.

If I were to take the uninitiated and try to turn them loose to make a determination of similar experience, I would not be terribly comfortable. If I were to take somebody with the experience and exposure in the industry, know what that is, then I would feel differently.

In other words, I think one way to look at it is in some large companies, there is a staff person usually in the personnel department who handles pre-screening. I would not feel comfortable turning that individual loose for the first time with something that simply said "similar experience." If it was somebody with substantial industry experience, substantial mechanical experience of their own, then I would feel much more comfortable.

So it depends upon who is using that qualification and what their background is.

Q. A difference between Harold Brindle on the one hand, perhaps, and a ribbon clerk on the other?

A. Or an employment agency, yes.

Q. You mentioned a major repair at Alitak cannery?

A. That's correct.

Q. That occurred while you were there?

A. Yes.

Q. You said--was it the first machinist that was working on that?

A. That's correct.

Q. How many other machinists were at the cannery?

A. At the cannery?

Q. Yes.

A. I'm not sure how many were at the cannery. The first machinist was the

only individual there when the breakdown occurred.

Q. I see. The only person on the scene?

A. On the line, that's correct.

* * *

Q. You mentioned a period of two to three weeks, I believe, within which a person could learn to use handtools. Were you talking about the use--learning the use of the tools in terms of their function or were you talking about the use of the tools correctly?

A. Well, I guess you need to make a distinction. I think you can learn to use the tools that are required to repair an automobile fairly quickly, but that doesn't mean you can fix the automobile.

Q. You indicated that the incumbents in some cases exaggerated qualifications; is that correct?

A. That's correct. That's my feeling.

Q. Did you take that into consideration in preparing your analysis?

A. Yes, sir, I did.

Q. With respect to your personal experience, have you seen a cannery in operation?

A. Yes, I have.

Q. Were you in court during Dr. Latham's testimony?

A. Yes, I was.

Q. Do you recall that he testified that one of these canneries could successfully operate with a machinist foreman, a first machinist and the rest of the staff composed of helpers?

A. Yes, I do.

Q. Do you agree with that opinion?

A. Absolutely not.

Q. Could you tell the Court why?

A. I think, first of all, the cannery foreman and the first machinist are paid to be there to supervise, not to perform the repairs.

Secondly, the availability of those people--it's not like they're right there all the time. They have other responsibilities. The helper trainees do not, in my opinion, have the experience to figure it out on their own. Some of the repairs can require more than one or two people just to effect the repair. So generally, I don't feel that that would work at all.

* * *

[pp. 3109-3110]

BY MR. ARDITI:

Q. You evaluated people using the SSI survey just in jobs they held from 1970 forward; is that correct?

A. Actually, let me check the affidavit for the exact--there were two

different analyses. One based on first job hired after 1970, as I recall, and the other was first job studied after 1970. So I believe it was from 1971 forward.

Q. Let's take a look at Wayne Haverly, all right? He worked as a tender engineer from '69 to '80?

A. Correct.

Q. In evaluating him for jobs from 1970 or '71 forward, you would have counted the tender engineer experience he had previously obtained working for Bumble Bee in the first year or two that he worked there; is that correct?

A. That would have been considered along with the other things we have just discussed about him, yes.

Q. Wouldn't it in fact have been more accurate to look at his qualifications at the point that he was first hired in that job and not at some

point after he had already had it for a couple of years?

A. That's not what I was asked to do.

Q. What I'm asking you is wouldn't it, in fact, have been more accurate to do that?

A. For what purpose? Accurate for what purpose?

Q. Accurate for determining whether individuals met your certain qualifications at the time they were first hired for the job.

A. That's not what I was asked to do.

Q. So if I understand you correctly, what you were asked to do is to look at the qualifications of people and not at the time that they were first hired for that job, but to include experience that they had already acquired for that job; is that correct?

A. No. I was asked to take a look at the individuals on the SSI survey at the point of first hire after 1970 and evaluate whether their experience at that point met my qualifications, my experience requirements.

* * *

[pp. 3112-3113]

Q. (By Mr. Arditi) And this is my last question. In your analysis with the SSI material, you used certain qualifications that do not appear on Pages 31 through 34 of your affidavit, correct? When you looked at cannery superintendent, for example.

A. I evaluated some jobs which I did not render a skills opinion, yes.

MR. ARDITI: Okay. Thank you.

MR. FRYER: Nothing further,
Your Honor.

THE COURT: All right.
Mr. DeFrance, in this case, I believe you

already testified that the Defendants have not adopted, to your knoweldge, the minimum qualifications that you recommended; is that correct?

THE WITNESS: That's correct. I don't know that they have ever been adopted.

* * *

[pp. 3113-3114]

THE COURT: Well, my concern, obviously, is what pursuit there was by the employer of a determination of minimum qualifications. Is that outside the scope--it appears that may be outside the scope of your assignment.

THE WITNESS: Well, again, we asked management people what they viewed as minimum skills. And we asked the incumbents that. And that was part of what we considered in reaching our opinion. But I had--once that opinion was reached, there was no discussion with

cannery personnel at all about those qualifications that we rendered the opinion on. Does that--

THE COURT: Well, was there any discussion as to the interview process as to how management went about determining what the individual's qualifications were?

THE WITNESS: No.

* * *

DISTRICT COURT

TESTIMONY OF JACK AIELLO

[pp. 3163-64]

4. CREW REQUIRED. During the days of company fishermen, there were two persons required to fish a gillnetter by union contract; a skipper and a boat puller. The union contract allowed the skipper to select his boat puller.

5. QUALIFICATIONS OF SKIPPER. I believe that at least five seasons' experience is usually required to qualify one as a skipper of a gillnet boat in Bristol Bay unless the fisherman had substantial outside experience. A skipper needs to possess the following skills and knowledge. He should know how to set a course on a compass, to compensate for current, and to be able to read a chart for bearings, distances, and depth of water. He should have the

familiarity in Bristol Bay to avoid the shoals and sandbars as the shoals change from time to time due to river currents and the charts are not accurate on showing their location. He must know how much of a load of fish to take aboard and to avoid taking too many fish in rough weather because this might create a danger of swamping or capsizing. He should know how the fish show on a tide, where they move, and where the tide may take them. The skipper must know where to let a net out and how long to leave it there before bringing it in--if the net is left out too long where there are no fish, it would be better used fishing in some other area. He must be a good seaman. He must possess all the skills required of a boat puller.

6. QUALIFICATIONS OF BOAT PULLER.

In my opinion it is both inefficient and dangerous to hire an inexperienced boat puller. At least some fishing experience

is required. Bristol Bay is an area where the gillnet boats fish in a bay exposed to the open ocean and it is an area of swift currents, tides of more than 20 feet, and is full of sandbars and dangerous shoals. A boat puller must have a proven ability to avoid being seasick and should have a general knowledge of basic seamanship. A boat puller should also know how to pick fish from a net. Only by becoming adept at picking fish can one be a successful fisherman because the net cannot be set again until the fish have been picked. Experience by the boat puller does not have to be in Bristol Bay. Bristol Bay is more dangerous fishing than other much more protected areas such as the Sacramento River, the Columbia River, Puget Sound, Southeastern Alaska, and the Copper River, all of which areas have had gillnetting efforts. Gillnet fishing experience can be gained in these areas

with less danger than in Bristol Bay. Other fishing experience such as on purse seine vessels in Puget Sound or Alaska would be helpful to qualify as a Bristol Bay boat puller.

7. DANGERS OF INEXPERIENCED CREW.

In my opinion both skipper and puller should be experienced for fishing in Bristol Bay or they can be lost. Indeed many men have been lost over the years in Bristol Bay. I have always had an experienced boat puller aboard my boat. The boat puller must be knowledgeable as to possible risk and must be able to react quickly to changing conditions.

8. COMPATIBILITY. Skipper and puller shared and were paid on the basis of of [sic] fish actually delivered. By union contract (AFU), the skipper and puller were paid equally and it was regarded by both as a joint effort. They worked and lived aboard a small boat in

confined- quarters and in often rough weather. To be able to work effectively as a team, it was essential that a skipper be able to select a partner who he felt was equal to his share and compatible to be with.

* * *

DEPOSITION

[Dep., p. 17]

Q. Were you fish boss before or after Mr. DiMercurio?

A. After.

Q. So far as you know, Red Salmon had no written qualification for boat puller, did it?

A. No, as far as I know.

Q. And it left the hiring decisions for boat pullers to the various fish captains, correct?

A. Right.

* * *

[Dep., p. 18]

Q. But aside from joining the AFU after you were hired, the fish captains were the ones who decided what their standards would be for hiring fish pullers, right?

A. That is correct.

* * *

[Dep., pp. 18-19]

Q. No. You, yourself do not know what if any qualifications the company would have established before hiring started for those fish captains who were recruited from Alaska, do you?

A. There was no qualifications.

* * *

[Dep., pp. 18-19]

Q. You were asked one question by Mr. Arditi and you gave a response, there was no qualifications. What did you mean when you said that?

A. Well, what I meant was that there was no instructions from the company that there was certain guidelines to take on a boat puller.

Q. Did the fishermen in your experience exercise their own judgment in taking on a boat puller?

A. You mean the skipper of the boat?

Q. Yes.

A. Yes, by all means. They wanted to protect their own lives as well as the person that they hired.

* * *

[Dep., p. 22]

Q. (By Mr. Fryer) Is there any safety factor, in your opinion, in a captain selecting an experienced boat puller as opposed to one who is inexperienced?

* * *

[Dep., p. 22]

A. Yes, there is.

Q. And what is that?

A. Well, for one thing, there is a lot of danger, especially in Bristol Bay. I have fished up and down the Pacific Coast, I fished inland waters in California and I have yet to see a place as dangerous as Bristol Bay. And I, myself, as a skipper would not risk my life and take on a puller with no experience. I would be losing my life, chances are, and the person that I would take that does not have the experience.

* * *

[Dep., p. 27]

Q. (By Mr. Fryer) How many years experience did your son have before you took him as a puller?

A. About four years.

Q. And where did he get those years of experience?

A. Well, first, he fished in the river with me. That was sport fishing. And he fished in Puget Sound with me on a gillnetter, also.

Q. You regularly fish in Puget Sound?

A. Yes, I do.

* * *

DISTRICT COURT

TESTIMONY OF LAURIE BRINDLE ROMINE

[p. 3189]

LAURIE BRINDLE ROMINE, being first duly sworn, on oath deposes and says:

* * *

[p. 3189]

1. I am the daughter of Joe Brindle and I reside in Ketchikan, Alaska.

2. Beginning in 1968, I worked at the Wards Cove cannery every year except 1978 (when I did not work) and 1971 (when Wards Cove was closed and I worked at Alitak).

- * * *

[p. 3190]

5. I remember Clarke Kido as quiet and considerate and always got along with him.

* * *

[pp. 3190-3191]

7. Clarke Kido and Lester Kuramoto used to complain because they didn't get fruit. They went up on one occasion to the other mess and just kind of barged in. They were then surprised when they weren't allowed to stay. I talked to them later and told them that they have to have some respect for the rights of others. It wasn't discrimination that kept them out, but the way they barged in.

8. I also recall an incident when Clarke, Lester, and others went up to look in and see the mugup in the main mess. They were upset because of the big layout. I told them to go talk to their foreman, but they said it didn't do any good.

9. I recall another incident when Clarke, Lester, and I were sitting on the dock in the evening and chatting. They were again discussing the food situation in the mess and the mugup. I suggested

that they attend our mugup that evening,
and went to ask permission from the cook.
I received such permission, returned to
get Clarke and Lester, and the three of us
took mugup in the main mess. I remember
that they had a discussion with the cook
while we were there, but I don't recall
them ever asking again to attend mugup in
the main mess.

* * *

DISTRICT COURT

TESTIMONY OF ELROY KOWALSKI

ELROY KOWALSKI, being first duly sworn, on oath deposes and says:

[p. 3208]

1. I live at 6312 - 186th S.W., Lynnwood, Washington. I am Caucasian.

2. During the case period (since 1970), I have held the following machinist jobs: 1970 at CWF-Port Bailey, first machinist; 1971 at CWF-Alitak, iron chink machinist; 1972 and 1973 at CWF-Alitak, first machinist; 1974-1979 at CWF-Kenai, machinist foreman; 1979-present at Red Salmon, machinist foreman. During the 1979 season I was foreman at CWF-Kenai and then when the foreman at Red Salmon, Winnie Lessley, had a heart attack, I moved over from Kenai and Dennis Mohr took my place at Kenai. (During the 1979 season after the Red Salmon season

had ended, I returned to Kenai for three more weeks as foreman.)

* * *

[pp. 3208-3211]

3. Prior to 1970, I had the following training and experience:

4. I took three years of shop courses in high school. I learned welding (gas and arc), automotive mechanics, metal fabricating, and how to work with metal lathes, drill presses, and shapers. One of my class projects in high school was to completely rebuild my father's tractor, including the engine, the rear end, and the transmission. During this period of time I also completely rebuilt my own car's engine.

5. After high school, one of the jobs I held was with Lynden Canning Company in Seattle. They canned chicken and other products. That was where I started to learn about the canning

business. While I was there one of the jobs I held was as a machinist's helper type position, working on the canning lines. I also at that time became familiar with the retorts at that cannery.

6. In about 1964 I went to Alitak to work in the hand pack crab operation the first year CWF operated the cannery. I started after the salmon season and worked the fall of 1964 and winter of 1965 in the crab operation. During 1964 I did maintenance work around the cannery, cooked the crab in the smaller crab retorts, and took care of the boiler.

7. During the winter of 1965 I worked on the canning line for the slow-speed crab hand pack operation there at Alitak. I also cooked the crab in the retorts and ran and maintained the boiler.

8. In that particular operation, we had one day full-time of maintenance and we canned the other six days. On the maintenance day we checked all of the cannery machinery and equipment, greased, oiled, cleaned the boiler flues, etc. Any repairs that needed to be done would usually be done on this day if the conditions allowed. We had three machinists: myself, the shop machinist, and a powerhouse man. The superintendent of that winter operation was Ray Landry, who had been first machinist at CWF-Ekuk for their salmon season.

9. During the salmon season in 1965, I was the fireman at Alitak. We had two hand fired boilers at Alitak and I did all the plumbing and piping in the cannery and ran the boilers.

10. As soon as the salmon season ended and the machinists left, I moved over directly to the crab line and began

assembling the crab line machinery for the winter crab operation. This took about one month.

11. During the winter of 1966 I worked in the crab operation at Alitak. That winter I ran the canning machinery myself, as well as doing the cooking of the crab in the retorts operating and maintaining the boiler.

12. During the salmon canning season of 1966 I worked as the can shop man at Alitak.

13. That fall (1966), I once again got the crab machinery ready to process crab in the coming winter. I then did the same job in the crab cannery that I had done the previous year.

14. The following salmon season (1967) I was the seamer machinist at Alitak. I held this job each season at Alitak from 1967 through 1969. In the offseason I worked for American Can

Company rebuilding cannery machinery. Some of the machinery I rebuilt included seamers, reformers, fillers, curler-clinchers, and flangers. I worked in the offseason for American Can for the off-seasons of 1967 and 1968.

15. In the fall of 1969 I started doing rebuilds of the machinery for the Brindles at the LUT yard in Seattle. The winter of 1969-1970, I rebuilt one iron chink, one filler and one cutter, and one clincher.

16. During the salmon season of 1970 I went to work at CWF-Port Bailey on the north end of Kodiak Island as the first machinist.

17. The offseason of 1970-1971, I rebuilt another iron chink, rebuilt four clinchers, one weighing machine, and one seamer at the LUT yard.

18. The salmon season of 1971 I went to Alitak as the iron chink man.

19. 1971 was a big year at Alitak. I had to do a lot of major work at the cannery. One of the things that I did was convert four iron chinks from belt drive to hydraulic drive. This was about a four week project. I did the entire job myself. This included building motor mounts, mounting the electric motors, mounting the hydraulic pumps to the motors and then installing the hydraulic motors on the chink itself, plus running the hydraulic lines from the pump to the iron chinks.

20. Every offseason after that I worked for the Brindles at LUT yard working on cannery machinery, fishing boats, tenders, and anything else that the canneries sent down for work in the offseason.

* * *

[pp. 3211-3215]

21. In each of the machinist jobs I held prior to becoming first machinist (i.e., can shop machinist, seamer machinist, and iron chink machinist), I was responsible for the machinery in my area. After I became first machinist and foreman, the machinists in these jobs on my crews were also responsible for the machinery in their areas. In the can shop, this machinery includes several flangers, reformers, seamers, and a considerable amount of transport machinery, as well as supervision of the cannery workers. In the fishhouse, the iron chink machinist is responsible for all of the iron chink machines, elevators, conveyors, piping, etc, located in the fishhouse. For the seamer machinist, the responsibility entails several seamers, curler-clinchers, cooler

loaders, and conveyors on the canning lines.

22. When I was can shop man, seamer machinists, and iron chink machinist, I was expected to and did perform all major and minor adjustments, maintenance, and major and minor repairs. The only exceptions would be if we were in a real time-crunch (e.g., big load of fish on the way and the machinery is down or it's in the preseason and we're getting very close to the start of canning) or if the job required two people. In those situations, I and one of the other machinists, usually but not always the first machinist or the foreman, would provide assistance. Since I have been first machinist and foreman, this situation hasn't changed. That is, we relied on the other machinists to do their own work, unless we got into a real time-crunch or the job required two people. In

those cases, the first machinist or foreman would usually help out.

23. Some of the major work I did as iron chink machinist is described in paragraph 19. When I was seamer machinist at Alitak, some of the major work I did independently included rebuilding clutches in the preseason, replacing rolls and chucks, balancing and setting seams. These were all done on the seamers on the canning lines. Some of the major work I did on the clincher included rebuilding the top-end unit of the worm drive and setting the curler guages. I did similar types of repairs and adjustments when I was can shop man at Alitak.

24. It has been my experience that the machinist foreman cannot spend much time doing actual hands-on repairs or adjustments. The foreman's job requires broad overseeing responsibilities and he

cannot afford to be tied down working on a repair. The foreman has to rely on his crew to do that. This has certainly been true since I have been foreman at both CWF-Kenai and Red Salmon. When Wally Mullis (presently foreman at Wards Cove) was the foreman at Alitak in the late 1960's and early 1970's, he rarely if ever did hands-on adjustments and repairs. His role was almost entirely that of broad overseeing and scheduling of cannery work. His involvement with work on the machinery was usually to provide ideas to the machinists doing the work and then to go off and cover other areas of the canning operation. This was also true of John Jorgensen when he became foreman at Alitak. John had been a first machinist and was a very skilled person, but after becoming foreman, he was much less available for hands-on type work.

25. Based on my experience in the canneries, I don't think someone who came in looking for a job and said he was "comfortable with hand tools" because he had done some work on a lawnmower or tuned up his car would be qualified for a machinist job. At most, he might qualify for machinist helper/trainee. If all such a person had done was minor repairs on his car or a lawnmower, I don't think I would seriously consider him even for a machinist helper/trainee job. This is because we expect the helper/trainees to do other things around the cannery. In fact, I can't recall a single machinist helper we've had at any cannery where I've worked who didn't have some additional skills beyond being "familiar with hand tools."

26. For instance, two of the machinist helpers we have had recently at Red Salmon, Lionel Mateo and Jeff

Higgins, are both skilled welders, can do machine shop work, and pipe fitting. Having people like this on the crew to do a lot of the maintenance and minor repair work on the cannery machinery and other equipment at the camp frees up the other machinists to do the more major work. I don't think someone who was just comfortable with hand tools would really be of much use to us at the cannery.

27. I have recommended people for employment as machinists at the canneries where I've worked. I have never recommended someone for a machinist job who had just done a little work on his car. Usually, even if the person is an experienced mechanic, I don't recommend them for something other than machinist/helper. This year I was contacted by a man who was a very experienced auto mechanic about a job in Alaska. This guy was certainly more than

"comfortable with hand tools." He was a skilled mechanic. However, I only recommended him for a helper job his first year.

28. It has been my experience that even skilled mechanics take much longer than a single preseason to learn one of the machinist jobs. There is no way that someone who could just tune up his car could learn it in that period of time. The machinery and equipment is complex, high speed, and has many closely timed and inter-related parts, gears, chains, motors, cams, and shafts. Lawnmowers do not have this. Someone who had just done tune-ups or carburetor rebuilds on his car would be overwhelmed in the preseason. Someone like that would need step-by-step, over-the-shoulder, almost-constant supervision and instruction. We simply don't have the time to do that.

29. Another problem with someone trying to be a machinist who had just done a little work on his car is that he simply doesn't have the mechanical savvy to retain what he is shown at the cannery or the capacity to apply it to new situations. Thus, we couldn't just explain one principle to him and expect him to apply it to the new situations he would encounter while working on the machinery. We would have to explain and show him how to do virtually every step of the operation, repair, maintenance, or adjustment. We would have to have a skilled machinist by his side all the time. If we had to do that, then the person is really not much more than a helper. We cannot run a cannery like that.

30. I am advised by counsel that plaintiffs' expert, Dr. Latham, stated that he felt that a cannery could safely

and efficiently operate with just a first machinist and foreman, together with a machinist helper in the can shop, in the cannery, in the fishhouse, and on the salmon cook/pipe fitter job. Even if I took the four most skilled helpers I've had on my crews in the last ten or fifteen year and put them in each of those four slots, it would be impossible to safely and efficiently run the cannery. It would be complete chaos. There is no doubt in my mind that we would be unable even to get the preseason work done, let alone actually process a can of salmon with a crew like that.

31. For instance, when I was at Alitak and we were in full production, we ran two one-pound tall lines simultaneously. If we had a bad jam on the seamer and two of the three seaming heads were completely ruined, we would have to shut down that line. At Alitak if

this had occurred on the No. 1 tall line, we could only run the No. 2 tall line. This is because the configuration of the canning lines at Alitak would not allow us to run the No. 2 tall line and the half-pound line simultaneously. In other words, our production would be cut in half until we got the No. 1 line back up. When you have 300,000 to 500,000 pounds of fish waiting for processing, you really can't afford to waste any time getting the line back up. It's for that reason that we would have the seamer machinist work on one of the seaming heads and have the first machinist work on the other.

32. Even if this situation had occurred when we were just running one of the tall lines, switching over to the other tall line is not just a matter of pushing the "start button." When you have to start the other line up, you have to warm up the seamer, make sure the seamer

is pulling a vacuum, make up can codes for the clincher, install a knife in the filler, prime the machine with fish, get the weights set when the line is started, check the codes and seams, and then as processing begins you start making all the finer adjustments to the weights, start pulling seams, etc. This is not the kind of thing you can tell a helper/trainee to go do. It takes somebody with skill. You can't have the can shop man or the iron chink man or the salmon cook do it because they have their own areas to take care of during production. If you have the first machinist and seamer machinist working on the seamer, you would have to have the foreman and maybe a helper get the other line started up.

33. The situation I have just described is only one of many that can and do occur at the cannery during the season.

These types of situations can occur in any part of the cannery. You can really run into problems if the first machinist is tied up in one place and a problem occurs in another place. The first machinist just wouldn't be available. This adds to the length of time to get the repairs or adjustments made, which results in slowed or stopped production. If we get too many fish backed up, the cannery has to put the fishermen on limits, and the fish they might have caught are simply lost. Obviously, the result is very expensive for the company.

34. Although there are American Can Company representatives in Alaska, we can't and don't rely on them to come in and do the work on the American Can machinery. First of all, they could be in Dutch Harbor two days away from Bristol Bay. That isn't much help when you've got

300,000-500,000 pounds of fish on the floor that need to be processed now.

* * *

[pp. 3215-3216]

35. When I stayed in the old machinists' bunkhouse (building No. 10) at Red Salmon in 1978 and 1979, our beds were the old style metal frame-with-springs with a mattress on top. You always felt like you were about to roll out of the bed. They were not comfortable like box springs and mattress beds that you get Down Below. At several of the canneries I have worked we have had old style wringer washers to do our laundry. We had these at Port Bailey, Alitak, and Kenai. My first two years at Alitak I had to put blankets over my windows to keep the sun out, because we didn't have curtains. It was pretty common around the cannery to throw a blanket up on your window. Finally my roommate and I got

smart and scrounged up some materials to cover the window.

36. I have worked with many minority machinists at the CWF and Red Salmon canneries. Some of the ones that I can recall having worked with include Chuckie Walker, an Alaska Native seamer machinist at Alitak and Port Bailey; Lewis Tang, a Chinese salmon cook for several years at Alitak; Al Samaniago, Sr., a port engineer at Alitak, Henry Maldonado, who was a port engineer at Alitak and is of Mexican descent; Edmundo Hernandez, a Mexican salmon cook at Kenai; Edgar "Andy" McCaw, a Filipino at Red Salmon who is a journeyman refrigeration mechanic, plumber, and electrician and is our present iron chink machinist; and Lionel Mateo, a machinist helper at Red Salmon. They all lived with the machinists. I don't know of any instance in which a minority machinist

lived with the cannery workers at any cannery I've been to.

* * *

[p. 3267]

BY MR. ARDITI:

Q. Now, if I understand it correctly, you do not do any hiring for machinists; is that correct?

A. That is correct.

Q. Now, is it also correct to say that the first machinist helps with major repairs at Alitak when there's a breakdown that would threaten stoppage of the line?

A. Yes. When he has to, yes.

Q. Is it part of your job to make sure that the line keeps going and that the fish are canned?

A. As a first machinist or foreman?

Q. As first machinist--I mean, as foreman. Sorry.

A. Yes. Responsible for the cannery to keep processing.

Q. So you're in charge of the mechanical end of operations in the cannery?

A. Yes. Distribute the work. I distribute the work.

Q. If there was a breakdown that actually threatened the operation of the cannery, wouldn't you have to pitch in and help, too?

A. Yes, sir.

Q. In case something comes up in the course of operations that one of the machinists cannot take care of themselves--in other words, the machinists may need technical assistance--you would provide that technical assistance, wouldn't you?

A. If I'm available, yes.

* * *

[p. 3269]

BY MR. ARDITI:

Q. At Alitak, how many machinists total are there in the fish house, cannery proper and the can shop?

A. Seven.

Q. Does that include the cannery foreman and the first machinist?

A. No. That's first machinist's helpers and so forth.

Q. So is it fair to say, then, that on the average, for every three and a half machinists you have in those areas, you have one supervisory machinist such as the first machinist or the cannery foreman?

A. The first machinist normally is in the cannery. And then he's got his helpers, can shop man has got his helper and the fish house man has got his helper.

Q. You're in the cannery some of
the time, too?

A. Yes.

* * *

DISTRICT COURT

TESTIMONY OF JOHN LUM

JOHN LUM, being first duly sworn, on oath deposes and says:

* * *

[p. 3271]

1. I was born in 1918. I am of Chinese descent.

* * *

[p. 3272]

7. In 1966 I was made one of the plant accountants for the Bumble Bee salmon canning facility at South Naknek, Alaska. This is a year-round position, but requires me to go to the cannery each year for approximately 3-1/2 months. and I work full time during the remainder of the year in Astoria, Oregon.

8. In 1978 I became assistant superintendent. My duties as assistant superintendent are to oversee the buying

of supplies including the food, the feeding, and housing of the workers and the fishermen at the cannery, overseeing the operation of the store, and helping out at the cannery itself whenever or wherever possible. Although I may, on occasion, discuss with the superintendent, Warner Leonardo, whether to hire certain individuals, I have no direct authority to hire. That is done solely through Mr. Leonardo. Wes Fahlstrom took over Mr. Leonardo's position in 1981.

* * *

[p. 3272]

10. During all the years I have worked at Bumble Bee, South Naknek, Warner Leonardo, the superintendent, has treated me fairly and has always tried to improve things for everyone, regardless of their race.

* * *

[p. 3273]

11. Housing accommodations have changed from year to year depending upon the situation. There are bedrooms in the office building and I have stayed there certain seasons. The office crew usually stays together. I have stayed in the office building and, in recent years, the rooms in the recreation hall. I have roomed with Jim Yonker, Richard Aho (storekeeper), and Wes Fahlstrom over the years. They are all white. The office building was put up in 1968 or 1969, and most of the years since then I have been housed in the office.

12. We have generally tried to improve crew accommodations over the years. Unfortunately, we have not always been able to plan which accommodations are to be remodeled first. We had a fire in the laundry, carpenter's, and machinist's bunkhouses in November 1972,

and those buildings obviously had to be replaced. New buildings were put up in 1973.

13. The bunkhouses are usually opened as the crews come in. The cannery worker crew is the last crew to come in.

14. Prior to the fire in the beachgang and carpenter quarters in 1972, those quarters were among the most crowded in camp, if not the most crowded. We had lots of complaints from the old timers who used to say that when people would sit facing each other their knees would touch. The rooms were very small.

* * *

[p. 3275]

22. We often bring in temporary cannery workers from a nearby Air Force base during the peak of the season. They stay with us for up to two weeks. This group tends to be very racially mixed, although predominately white. We house

them, usually, in Bunkhouse A, the cannery worker crew quarters. They have eaten in both the upper mess and the main mess in different years, depending on what was available in any particular year. At any given time there are about 15-20 of these workers in camp at the height of the season.

* * *

[p. 3275]

26. I remember Clarke Kido, Lester Kuramoto, Joaquin Arruiza, and Albert Abuan, who worked as cannery workers for Bumble Bee in the past. None of them ever talked to me about any other jobs at the cannery. Had they done so, I would have told them to see the superintendent.

* * *

[pp. 3276-3277]

31. At one time we considered dispensing with the upper mess at Bumble Bee. The result was a big protest from

the cannery worker foreman, and we did not do so.

32. Since we installed the cold storage facility in 1979 and 1980, we have greatly increased the number of processing workers at the camp. We now hire about 50-60 cold storage workers from those who apply at the home office. The cold storage crew consists of approximatley [sic] 20 women and 30-40 men. These workers have been a mixed racial group. They are predominantly white. Since they now reside in Bunkhouse A (men) and Bunkhouse B (women), these workers eat at the upper galley which is right next to their bunkhouses. The remainder of the persons now eating in the upper galley are those who live in Bunkhouse D. They are the members of Rudy Rodriguez's crew, which is predominantly Filipino.

33. Generally speaking, everyone else in camp eats in the main mess hall. This includes the female cannery and warehouse workers who live in Bunkhouses J1 and J2, the male cannery workers who live in Bunkhouse Z, the machinists, carpenters, beachgang, and fishermen. The temporary workers from the Air Force base who come in will eat in whichever mess hall happens to have space available that season.

34. We have had requests from a few of the people eating in the main galley to eat in the upper galley because they prefer the food there. These are usually female cannery workers. We allowed them to eat in the upper galley if there was room, but we did request that they continue to eat in that mess hall, rather than shifting back and forth daily which can cause the cooks problems--

particularly if large numbers of people do it.

35. We have a huge number of fishermen at South Naknek. Because we are never sure exactly how many of them will be eating in the main galley, we have to set aside a number of tables in the main galley for them to eat. We usually have a pretty good idea of when they will be eating in the main galley because of the opening and closing of fishing periods and the tides. (The fishermen cannot come in to shore unless the tide is in.)

* * *

[p. 3279]

43. Badges are assigned to employees on the basis of crew, not race. For example, plaintiffs' Exhibit 342 lists several persons with consecutive badge numbers. These persons are of mixed races. For instance, badge no. 50, 51, and 52 are white employees in the culinary

crew. No. 53, 54, and 55 are Asian members of the same culinary crew.

44. The reason that the badge numbers of the Local 37 people are together is that we get a list of people from the union and we simply assign people numbers according to the list. Over the years, there have been white cannery workers on this list and they got a badge number according to their place on the list, not according to their race.

45. Generally what we did with the badge numbers was set aside a whole block of numbers for each group of workers, e.g., carpenters, machinists, etc. We gave the Local 37 members their badge numbers based upon the list which we receive from the union. We gave the resident cannery workers their badge numbers with the block of numbers for them in accordance with the time they arrived in camp. The Alaska Native culinary

workers did not receive badge numbers within the series of numbers assigned to resident cannery workers, most of whom are Native.

46. The references to "Native cook" in Exhibit 342 is simply a reference to the cook who cooks in the upper galley. The cook referred to there is George Falangus, who is white. I am the person who typed up that list. Some of the older members of the company and I remember decades ago when that mess hall was called the "Native galley." It has not been called that for years. The reference to "Native cook" is not a racial reference, but a reference to the cook who works in the building that was once called the "Native galley." Most of the Local 37 crew now eats in that galley, which has no Alaska Natives.

* * *

[pp. 3284-3285]

BY MR. ARDITI:

Q. Mr. Lum, you're of Chinese descent, I take it?

A. Yes.

Q. Can you tell me what the salmon butchering machine is called at South Naknek?

A. Well, it's always been in the past called the iron chink.

Q. Is it still called that now?

A. Well, most--it's commonly used as iron chink, but the new name, I guess, is the salmon cleaning machine.

* * *

[pp. 3285-3286]

Q. Now, you became assistant cannery superintendent in 1978; is that correct?

A. That is true.

Q. Now, by 1980, there were two additional assistant cannery superintendents, weren't there?

A. Yes. The cannery I believe has got to the point where it's quite large, so each one of us shared different duties.

Q. The other two were white, I take it?

A. Yes.

Q. They were Mr. Fahlstrom and Mr. Yonker?

A. Yes.

Q. Now, in 1980, one of the three was promoted to cannery superintendent; is that right?

A. That's right.

Q. That would be Mr. Fahlstrom?

A. Yes.

* * *

[pp. 3287-3289]

Q. Now, I'd like to call your attention to the early seventies. Let's

say 1970 and 1971. Did you have two mess halls at South Naknek during that period of time?

A. I believe so, yes.

Q. One of them did you refer to as upper galley that fed the nonresident cannery workers; is that correct?

A. Yes. Both nonresident and resident cannery workers in those years.

Q. The nonresident cannery workers were largely or exclusively, almost exclusively Filipino; is that correct?

A. That is true. They consist of--they were living in the bunkhouse closest to the galley there, yes.

Q. The resident cannery workers were exclusively or almost exclusively Alaska natives; is that correct?

A. Yes.

Q. Now, did the company serve one or two menus in the upper galley during that period of time?

A. They generally always served meals exactly--similar to the one in the main galley, only in addition to that they have the Filipino cooks that cook the ethnic food that the Filipino workers like.

Q. So is it fair to say, then, that in the upper galley, they were serving American food to whoever wanted it, that might include Alaska natives?

A. Yes.

Q. And Filipino food to whoever wanted it, and that might include some of the Filipinos?

A. Include mostly the Filipinos, I believe.

Q. Now, how long have there been two mess halls at South Naknek?

A. I believe there has always been two mess halls, since they built the cannery.

Q. You started going up there in '58; is that right?

A. '58 I went up, but we did not operate the cannery that year. We were a fish camp.

Q. Did you operate in '59?

A. I did not go up in '59. I did not go back until 1966.

Q. In '66, who ate in the upper galley?

A. It would be mainly those groups of people that live in the Bunkhouse A and Bunkhouse B.

Q. Would that be for the most part the Filipino cannery workers and the Alaska native cannery workers?

A. Yes.

* * *

[pp. 3290-3291]

Q. Would it be fair to characterize cold storage workers as fish processors? They hold processing jobs?

A. Yes. I would say so.

Q. The cannery workers are also fish processors, are they not?

A. Yes.

Q. Now, in 1980, the cold storage workers, the male ones, were housed in Building C at the cannery, were they not?

A. Yes, they were.

* * *

[pp. 3292-3293]

Q. Of 51 who lived there, 48 were white.

A. That's what it says here. But I seem to recollect there were at least--well, four. There should have been at least four that I recollect.

Q. So would you say it's 47 white out of 51 total?

A. Probably.

Q. Now, in Building D, you also housed male cannery workers, didn't you?

A. Yes.

Q. And in 1980, of the 43--of the 47 who lived there, 43 were non-white; is that correct?

A. According to this.

Q. Does that accord with your recollection?

A. Yes.

* * *

[pp. 3294-3295]

Q. What time is breakfast served in the main mess?

A. Breakfast is served at 7:15 in both messes.

Q. So workers who want to get up in the morning or who are called out to work in the morning who want to eat breakfast have to get up in time for that 7:15 breakfast, correct?

A. That's right.

Q. Incidentally, is there a bell or buzzer that rings throughout the cannery in the morning?

A. Yes. There is--you mean, for the mess or for the workers?

Q. Well, for the mess. Let's start with that.

A. Mess, yes.

* * *