STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JORDAN BROTHERS RANCH, Employer, and INTERNATIONAL UNION OF AGRICULTURAL WORKERS, Petitioner.	)	Case No. 82-RC-6-OX(SM) 9 ALRB No. 41

DECISION ON CHALLENGED BALLOTS

Following the filing of a Petition for Certification by the International Union of Agricultural Workers (IUAW or Union), the Oxnard Regional Director conducted a secret ballot election on September 24, 1982, among the agricultural employees of Jordan Brothers Ranch (Employer or Jordan Brothers).

In its Response to the Petition for Certification, the Employer maintained that the petitioned-for unit was inappropriate because it includes the employees of two custom harvesters, Raul Velasquez and Jesus Espinosa; and that because the employees of the two custom harvesters are not employees of Jordan Brothers, it was at less than 50 percent of its peak employment during the eligibility period.

After a preliminary investigation, the Oxnard Regional Director instructed the agents of the Agricultural Labor Relations Board (ALRB or Board) who conducted the election to challenge the ballots cast by employees of Raul Velasquez and Jesus Espinosa. As the challenged ballots were sufficient in number

to determine the outcome of the election (84 of the 95 ballots cast were challenged), the Regional Director conducted a further investigation and issued a Report on Challenged Ballots on February 24, 1983. Thereafter, the Employer timely filed exceptions to the Regional Director's report, along with a supporting brief and a declaration from Stephen Jordan.

Jordan Brothers excepted to the Regional Director's finding that Espinosa and Velasquez are not custom harvesters and that therefore their workers must be considered as agricultural employees of Jordan Brothers. It asks that the election be set aside or, in the alternative, that the issue of whether Espinosa and Velasquez are custom harvesters be set for hearing.

Pursuant to Labor Code section 1146,[1/] the Board has delegated its authority in this case to a three-member panel.

Section 1140.4(c) specifically excludes farm labor contractors from the definition of an agricultural employer and provides that the agricultural workers supplied by a labor contractor shall be deemed to be employees of the employer engaging the labor contractor. That section refers to section 1682 for a definition of what constitutes a labor contractor. Section 1682 defines a labor contractor as an entity which, for a fee, employs workers to render personal services in connection with the production of farm products, <u>or</u> which recruits, solicits, supplies, or hires workers on behalf of an agricultural employer, <u>and</u> which, for a fee, provides one or more of the following

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[1/] All section references herein are to the California Labor Code unless otherwise noted.

services: furnishes board, lodging, or transportation for such workers; supervises or otherwise directs or measures their work; or disburses wage payments to such persons. "Fee" is defined as the difference between the amount received by the labor contractor and the amount paid out by him to the employees, but also includes any valuable consideration for or in connection with any of the services the labor contractor provides.

In cases where the agricultural enterprise which provides labor provides "something more as well" (Kotchevar Brothers (1976) 2 ALRB No. 45), the Board's general approach has been to review the whole activities of the enterprise and the grower and determine which has the most significant attributes of an employer, including the capacity to enter into a stable collective bargaining relationship. (Tony Lomanto (1982) 8 ALRB No. 44.)

Jesus Espinosa

In the instant case, the Regional Director found that Jesus Espinosa hires and fires his own employees and manages the crew on a day-to-day basis. Espinosa has an oral agreement with the Employer whereby he provides the labor for its cabbage harvest and receives a fixed fee per bin picked.

We conclude that Espinosa is a labor contractor within the aforementioned statutory definitions. He provides labor for a fee. Unlike a custom harvester, he does not have complete control over the harvesting operations.

The declaration from Stephen Jordan states that Espinosa is paid 30 percent above his costs plus 10 cents per bin; that

Espinosa is responsible for the hiring and firing, discipline, and supervision of the crew; that Espinosa arranges for the sale of cabbage to buyers and receives a profit from those sales; and that Espinosa arranges for the hauling.

Nothing in Jordan's declaration contradicts the Regional Director's findings of fact and conclusions of law. While Jordan states that Espinosa arranges for the sale of the cabbage and arranges for the hauling, he does not state facts which establish that Espinosa in fact sells the cabbage and does the hauling. The Regional Director noted that during the investigation, Jordan Brothers claimed that Espinosa shared in the profit of the produce he harvests. However, the Regional Director's investigation did not find support for that assertion.

On the basis of applicable Board precedents we find that Jordan's declaration does not raise a material factual issue warranting further investigation or an evidentiary hearing. (Sam Andrews' Sons (1976) 2 ALRB No. 28; Rod McLellan Company (1977) 3 ALRB No. 6.)

We conclude that Jesus Espinosa is a labor contractor and that his workers are employees of Jordan Brothers and therefore eligible voters in the election herein. Accordingly, we hereby overrule the challenges to their ballots.

Raul Velasquez

Since 1978, Jordan Brothers and Raul Velasquez have been parties to an oral agreement whereby Velasquez provides labor for some of Jordan's operations. Until recently, Velasquez' crew was involved only in the Employer's hoeing and thinning

operations. Velasquez now provides the labor for the planting of celery and cauliflower, the hoeing and thinning of cabbage, lettuce, and cauliflower, and the harvest of celery and cauliflower.

Velasquez handles the hiring, firing, diciplining, and general supervision of his crew members. However, this does not exceed the statutory definition of a farm labor contractor. (See section 1682 and Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307, 323.)

Velasquez' compensation varies from operation to operation. In the planting, hoeing, and thinning operations, he receives a thirty percent commission over his labor costs. In the celery and cauliflower harvests, he receives a thirty percent commission as well as a commission on each unit of produce harvested and a daily fee for the use of his trucks and tractors. In the celery transplant operation, he receives a thirty percent commission plus a daily fee for the use of a transplanting machine.

An examination of these compensation arrangements reveals that Velasquez does not provide equipment for the hoeing and thinning operations or for the planting of cauliflower. Velasquez receives a daily fee for the use of his trucks and tractors in the celery and cauliflower harvests and the transplanting machine in the celery transplant operation.

We note that while the supplying of specialized or costly equipment is a factor we may consider in determining whether an agricultural enterprise is a custom harvester, that

factor would not be determinative here, where the equipment Velasquez supplies, trucks and tractors, is neither specialized nor costly.

The Regional Director found that Velasquez exercised some discretion over certain production decisions,[2/] that he determines which fields are to be harvested and the timing of the harvest. However, Dave Walsh Company, an agent of Jordan Brothers, has control over the marketing of the produce and the amount to be harvested. The market conditions determine the amount of produce to be harvested which in turn influences the timing of the harvest. In addition, Steve Jordan oversees the entire operation on a day-to-day basis and has final authority on the sales of the crops, the marketing arrangements and all other major policy decisions. We conclude that the minor degree of discretion exercised by Velasquez does not make him something more than a labor contractor.

As we conclude that Velasquez is a labor contractor, we find that we need not address the additional areas of inquiry suggested in our decision in Tony Lomanto, supra, 8 ALRB No. 44. Steve Jordan's declaration addresses many of the facts found by the Regional Director relative to the Tony Lomanto, supra, 8 ALRB No. 44, areas of inquiry. As we have found that we need not reach those questions, we find nothing in Jordan's declaration which raises a material factual issue warranting an investigative

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[2/] We reject the Regional Director's assumption that Velasquez' "entrepreneurial arrangement" with Jordan Brothers Ranch made him something more than a labor contractor.

hearing.

As we have concluded that Velasquez is a labor contractor, his workers are the employees of Jordan Brothers and were eligible to vote in the election herein. Accordingly, we hereby overrule the challenges to the ballots cast by the Velasquez crew members.

The Regional Director is hereby ordered to open and count all the ballots cast in the election and to issue a Tally of Ballots forthwith.

Dated: July 22, 1983

ALFRED H. SONG, Chairman

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

CASE SUMMARY

JORDAN BROTHERS RANCH
(IUAW)

9 ALRB No. 41
Case No. 82-RC-6-OX(SM)

REGIONAL DIRECTOR'S REPORT

In her Regional Director's Report on Challenged Ballots, the Regional Director (RD) found that since Raul Velasquez used his own trucks and tractors in his work for the Employer and exercised some discretion over various production decisions, he was something more than a labor contractor. She then applied the Tony Lomanto (1982) 8 ALRB No. 44 "totality of operations" test and concluded that Velasquez was simply a harvesting agent employed and controlled by the Employer.

As for Jesus Espinosa, the RD concluded that whether or not he is something more than a labor contractor, he fails to meet the totality of operations test for an agricultural employer.

BOARD DECISION

The Board concluded that both Velasquez and Espinosa are labor contractors within the definition of Labor Code 1682. Velasquez provides labor for hoeing, thinning, and harvest operations, receives a fixed commission over his labor costs, and is compensated a fixed fee for the use of his trucks and tractors. He exercises a minor degree of discretion over some production decisions, but not enough to make him something more than a labor contractor. Espinosa hired and fired his own employees and managed his crew on a daily basis. He received a fixed fee per unit of produce harvested. Neither of these two persons exceeds the statutory definition of a labor contractor and thus the Board did not address the additional areas of inquiry raised in Tony Lomanto (1982) 8 ALRB No. 44.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

Agricultural Labor Relations Board
MAR 1 1983
RECEIVED
Exec. Secretary

In the Matter of: INTERNATIONAL UNION OF AGRICULTURAL WORKERS, Petitioner, and JORDAN BROTHERS RANCH, Employer.	CASE NO. 82-RC-6 -OX(SM) CHALLENGED BALLOT REPORT

On September 17, 1982, the International Union of Agricultural Workers ("IUAW") filed a petition for an election among the agricultural employees of Jordan Brothers Ranch in Santa Barbara County.

On September 24, 1982, the election was conducted. After a preliminary investigation, the Regional Director made a determination to challenge the ballots of the crews of Raul Velasquez and Jesus Espinosa and to impound the counting of the ballots until an investigation was completed on the employer's objection.

The number of challenged ballots is sufficient to affect the final outcome of the election.

The pay period of September 2, 1982 to September 15, 1982 is the applicable eligibility period for this election.

The following voters were allowed to cast their respective votes pursuant to Board Regulations section 20235:

Members of the Crew of Raul Velasquez

Members of the Crew of Jesus Espinosa

Upon requests by the agent in charge, the parties were to submit their respective position regarding the post-election determination of the challenged ballots. The parties submitted their respective positions which were taken into consideration in formulating these recommendations.

BASIS OF CHALLENGES

It is contended by the Employer that the unit petitioned for is inappropriate because it includes the employees of two custom harvesters, Raul Velasquez and Jesus Espinosa. If Velasquez and Espinosa are found to be custom harvesters, then there is a question as to who should be considered the employer of their crews. If Velasquez and Espinosa are deemed the employers, then Jordan Brothers did not have fifty (50) percent of its peak workforce employed during the eligibility period.

REGIONAL DIRECTOR'S RECOMMENDATIONS

1. The Crew of Raul Velasquez

A. Labor Contractor Status

Under the ALRB, a labor contractor is not an agricultural employer. Labor Code section 1140.4(c). An entity is considered a labor contractor if it supplies labor for a fee, and is reimbursed for the cost of labor provided, plus an additional surcharge. Labor Code section 1682. A labor contractor is legally deemed to be an agent, either actual or constructive, of the agricultural employer who employs the contractor. Labor Code section 1140.4(c); (Vista Verde Farms v. ALRB, 29 Cal. 3d 307, 320-322 (1981)).

If, however it is determined that the alleged labor contractor exceeds the statutory definition, i.e., by being something akin to a custom harvester, the Board will consider the "whole activity"

of both possible employers in order to determine which should be deemed the employer to provide the most stable bargaining relationship. Tony Lomanto, 8 ALRB 44(1982); Napa Valley Vineyards Co., 3 ALRB 22(1977); Gourmet Harvesting and Packing, 4 ALRB 14(1978).

From the facts of the instant case, it is evident that Raul Velasquez was acting, at the very least, as a farm labor contractor in his work for the Employer. In addition to considering himself as such, Velasquez fits the statutory definition--supplying labor for a fee and being compensated by a percentage override of the actual cost of labor. Kotchevar Brothers, 2 ALRB 45(1976).

At issue is whether or not Velasquez supplied services to the Employer which went beyond those normally provided by farm labor contractors. Beside handling the hiring, firing, disciplining, and general supervision of the crew members, Velasquez administered the workers salary and benefit package, and took care of all bookkeeping, including printing and distribution of paychecks. These services, though, in and of themselves, do not exceed the statutory definition of farm labor contractor. See Labor Code Section 1682; Vista Verde Farms, supra; Joe Maggio, Inc., 5 ALRB 26 (1979). However, Velasquez also used his own trucks and tractors in his work for Jordan Brothers, exercised a certain amount of discretion over various production decisions at Jordan Brothers Ranch, and had the primary employer relationship with the employees. (See discussions below). While it may well be that these aspects of Velasquez' relationship with Jordan Brothers Ranch do not go substantially beyond those customarily performed by labor contractors (see Sutti Farms, 8 ALRB 63(1982), it is here assumed that Velasquez' entrepreneurial arrangement with Jordan Brothers Ranch made him something more than a labor contractor.

With this assumption made, a full exploration of Velasquez' status can then be attempted to determine whether he is a custom harvester and thus the employer of his workers.

B. Totality of Operations Test for Determining Agricultural Employer Status

The factors listed by the Board that should be considered at this second stage of analysis,termed the "Totality of Operations" test, are the following:

- Who exercises managerial control over the various farming operations? Who has day-to-day responsibility?
- Who decides what to plant, when to irrigate or harvest, which fields to work on?
- Who is responsible for performing the farming operations?
- Who provides the labor? Does the provider also supervise the labor?
- Does someone provide equipment of a costly or specialized nature?
- Who is responsible for hauling the crop to be processed or marketed?
- Who owns or leases the land?
- On what basis are any contractors compensated and who bears the risk of crop loss?
- Do the parties have any financial or business relationships with each other, outside of the relationship at issue in the case? What form of business organization is each party to the case?
- How do the parties view themselves, i.e., does the grower/landowner consider the contractor a custom harvester? If other growers enter into similar arrangements with the contractor, what are their views?
- How long has each party been entering into arrangements of the kind at issue in the case? What is each party's investment in that line of business and how easily could that investment be liquidated?

-What continuity of employment relationship exists between any of the parties and the agricultural employees involved in the case, e.g., did harvest employees also work before or after the harvest for one of the parties?

-Ultimately, who is the "employer" for collective bargaining purposes and what is the correct legal status of each of the parties?

(Tony Lomanto, 8 ALRB 44 (1982))

1.) Who exercises managerial control--

a.) Background

Jordan Brothers Ranch (hereafter referred to as "JBR") is a partnership owned by Steve and John Jordan. The enterprise is a year-round commercial farming operation, consisting of cultivated crop land and a packing shed/commercial cooler. During the period immediately following the representation election, JBR had approximately 700 acres under cultivation in the following crops:

Celery	232 acres
Cauliflower	166 acres
Lettuce	160 acres
Cabbage	86 acres

(See Exhibit C)

JBR has about 82 cultivated acres not presently used. An additional 85 acres are leased to another grower.

Except for the leased out portion, Steve Jordan oversees the entire operation of the farm on a day-to-day basis. He makes all the decisions concerning the choice of crops, the amount to be grown, the irrigation, disking, and the use of pesticides. He decides on the sale of the crop, has final authority over the hauling of the crop from cooler to market, and the marketing arrangement.

JBR employs 13 steady workers year round. Twelve of these are primarily assigned to soil disking, ripping, spreading fertilizer and irrigating. Another worker is a supervisor and in charge

of assigning the different irrigating and tractor driving duties for land preparation.

JBR has an oral agreement with Raul Velasquez whereby Velasquez supplies the labor for the planting and transplanting of cabbage seeds, celery plants, and cauliflower, the hoeing and thinning of cabbage, lettuce, and cauliflower, and for the harvesting of celery and cauliflower.[1/]

JBR owns and operates a commercial cooler shed. The crops are hauled to the shed by the harvesters. The crops are cooled and subsequently driven to market. JBR has control over the shipment of the crops to market, either providing its own trucks, or leasing them. The marketing particulars are coordinated between JBR, Velasquez, and the sales agent in Los Angeles.

b.) Overall control: Analysis

In Napa Valley Vineyards, supra, the Board based its finding of employer status mainly on the fact that the entity in question performed "all major farming operations throughout the year," (emphasis added), as opposed to spot jobs. In the instant case, JBR supplies the crops, determines the amount and type to be planted, analyzes the soil conditions, directs the use of fertilizer and pesticides. JBR oversees the irrigation jointly with Velasquez. Velasquez, on the other hand, in addition to doing the planting and hoeing, determines the fields to be harvested, the amount and timing of the

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1. JBR's steady crew plants the lettuce, cultivates it, and harvests it. Velasquez' crew does the hoeing and thinning. The Dave Walsh Co. does the harvesting and receives one-half ownership of the receipts in return.

harvesting, and arranges for the crop to be transported to the cooler.

Although Velasquez possesses considerable discretion in the carrying out of his duties, JBR has the final authority on policy decisions. This conclusion is drawn from the nature of the operation, the day-to-day control exercised by Steve Jordan throughout the year, and his decision-making authority in the areas noted above. JBR's ownership and use of the cooling/packing operation, its control over marketing, and its risk of crop loss further suggests the magnitude, if not the necessity, of its control.

The mere fact that Velasquez supervises the areas of work per his agreement with JBR does not demonstrate conclusively that he has final authority over any decisions affecting such work. The lack of clarity underlying the oral agreement[2/] suggests that JBR was not relinquishing total control over decisions affecting cultivation and harvesting. As the NLRB has stated, in an analogous context, "[i]t is the right to control, not its exercise, that determines an employer relationship." NLRB v. Cement Transport, Inc., 490 F.2d 1024, 1027, 85 LRRM 2292, 2294 (6th Cir.), cert. den., 419 U.S. 828 (1974).

2.) Who decides what to plant--

As noted above, JBR has overall authority over the type of crops to plant, the timing and method of crop operation, chemical treatments, and irrigating decisions. It appears that JBR decides which fields will be cultivated. (See Appendix C) Velasquez

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2. Compare the enumeration of duties in the written contract between the grower and custom harvester in Napa Valley, supra, at 67 (ALO decision).

decides which fields will be harvested and when the harvesting will take place.

3.) Who is responsible for performing the farming operations--

Refer to the discussions above, in sections (1) and (2).

4.) Who provides the labor and supervision--

Velasquez provides all the labor for the planting, tilling, and harvesting operations assigned to him. He also supervises these employees on a day-to-day basis. JBR provides its own labor force and supervisor for the rest of the work on the farm.

5.) Who provides costly or specialized equipment--

According to JBR, Velasquez supplies all the trucks and tractors necessary for his operations. However, the listing of equipment used by JBR in its operations suggests otherwise (See Exhibit A). Moreover, the facts reveal that Velasquez' tractors pull celery transplant machines owned by JBR. The listing of equipment owned by the two entities shows that the more costly and specialized equipment is owned by JBR. (See Exhibits A and B).

Analysis

In numerous decisions, the provision of costly or specialized equipment by an entity has been found crucial for employer status. Kotchevar Brothers, supra, Cardinal Distrib., 3 ALRB 23(1977); Freshpict, 4 ALRB 4 (1978); In Tony Lomanto, supra, the "substantial and special investment of several million dollars in tomato harvesting" equipment by Lomanto was one of the key factors in the Board's conclusion that customer harvester status existed.

6.) Who is responsible for hauling--

Velasquez is in charge of hauling the crops to the cooler, and he uses his trucks in this connection. He supplies no

packing materials and bills JBR for any items incident to the packing operation, including ice, rubber bands, crayons, files, and knives. (See Exhibit D)[3/]

As to the risk of loss during handling, JBR equivocated in its response, and it is unclear, at least legally, who bears such burden.

JBR is in charge of the cooling/packing shed and arranges for the hauling of the produce to market.

7.) Who owns the land--

JBR owns all the land in question.

8.) On what basis are contractors compensated; who bears the risk of crop loss--

The basis of compensation for Velasquez, per oral contract with JBR, is on a per box or per carton basis. It is a flat rate, not based on fluctuations in the market price. For the celery transplant, JBR pays Velasquez a commission of 25% over the hourly labor charge. Additionally, Velasquez bills JBR $50.00 per day for the use of a Velasquez tractor which pulls JBR's celery transplant machine.

The financial agreement for the harvest of celery is similar; the commission for the total work force continues at 30%. On top of this, Velasquez gets $.10 per carton of celery harvested and another $.10 per carton for the use of Velasquez' trucks to haul the celery to the cooler. Dave Walsh Co. supplies the celery boxes, which carry the Dave Walsh label. For the harvest of bulk celery, JBR compensates

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3. The charging by Velasquez to JBR of various tools belies the grower's claim that Velasquez supplies all his own tools.

Velasquez on a per bin rather than on a per carton basis, and pays him the same 30% rate, the $50.00 a day tractor rate, and a $6.00 per bin commission.

For cauliflower, Velasquez charges the 30% labor rate plus the cost for his tractors. This rate applies to the planting, the hoeing and the thinning.

The rates that Velasquez charges for the celery, cauliflower and cabbage remain constant, and are not affected by the crop's market price. Thus, Velasquez profits depend largely on the labor costs involved, and there is little opportunity for him to increase his profits. Likewise, he bears no risk for any crop losses due to weather, field conditions or market demands.

Analysis

In Kotchevar, supra, Napa Valley, supra, and Jack Stowells, supra, a finding of custom harvester status was predicated, to a great degree, on the basis of the fee arrangement between the parties. In all these cases, a per acre management fee was the basis of compensation.

In the final analysis, the risk of profit or loss for JBR's agricultural crops is determined primarily by the following factors: the type grown, the soil condition, the effectiveness of the fertilizer, the provision of adequate water, the ability to control weeds and insects, and the demands and manipulations of the market. All of these aspects are within the control of the grower, JBR.

9.) Do the parties have any financial relations outside--

Velasquez owns 16 acres outside Santa Maria. The sales of these crops is handled by the JBR agents who deduct a sales commission before forwarding the sales amount to Velasquez.

10.) How do the parties view themselves--

Velasquez considers himself a labor contractor, (see Exhibit B), although JBR states that he views him otherwise. It is unclear how other growers view Velasquez. In any event, the subjective intent of the parties to a labor contract cannot override the economic realities reflected in the factors described above. See Real v. Driscoll Strawberry Associates, Inc., 603 F.2d 748, 755 (9th Cir. 1979).

11.) How long has each party been entering into such arrangements; what is each party's investment and how easily could it be liquidated--

Valasquez has done labor contractor work for JBR since 1978, but his work, until recently, had been largely confined to supplying labor for the hoeing and thinning. He does the cauliflower harvesting for Sahara Packing Co. for approximately three months of the year, and supplies the labor for Sahara Packing Co. for the hoeing pruning, and transporting of celery. No heavy or specialized equipment is used by Velasquez in these operations. Velasquez also does the harvest and celery transporting for Guerra's Farming.

Velasquez works out of a converted garage in the basement of a private house in Santa Maria. He has one secretary and no office equipment. JBR, on the other hand, is a large sophisticated farm operation of 800 acres with a modern office. The difference in each entity's capital investment is considerable. The respective difficulties if each were to liquidate its investment would obviously be in marked contrast.

In past cases involving determinations of employer status, the Board has relied heavily on the amount of capital investment of the entity in question. In most cases, this has been the deciding factor,

since without sufficient capital, according to the Board, a company lacks stability for purposes of collective bargaining. (See recent discussions in San Justo Farms, 7 ALRB 29(1980); Sam H. Hatai, 8 ALRB 35(1982); Lomanto, supra; and Robert Hickham, 8 ALRB 102(1982).

12.) What continuity of employment relationship exists between the parties and the employees involved--

Velasquez hires his own workers, has two supervisors and does his own payroll. He handles all the personnel problems among his year round workforce which consists of between 60 to 80 workers.

13.) Ultimately, who is the employer for collective bargaining purposes and what is the correct legal status of each of the parties?

In determining who is proper employer, the ALRB has traditionally looked to that entity which provides the most stability in a collective bargaining relationship. The statutory exclusion of farm labor contractors, coupled with the provision that the employer engaging the farm labor contractor shall be deemed the employer of the contractor's employees serves the goal of stability by fastening the bargaining obligation upon the entity with the more permanent interest in the ongoing agricultural operation. Gourmet Harvesting, supra. The Lomanto factors are indicia of that permanent interest, based on social and economic realities, to which the Act refers.

There have been but a few cases in which the ALRB has found labor contractors to be custom harvesters, and therefore, employers under the Act. In all these situations, the entities were seen to possess sufficient attributes indicative of an inde-

pendent and long-term interest in agricultural operations and production. The crucial ingredients, in each case, related to the control exercised by the entities over the operations and the control of capital and equity.

In Kotchevar, supra, the entity supplied costly and specialized equipment, assumed responsibility for transporting the crop to the winery, and charged a management fee. In Napa Valley, supra, the company had total control of all major farming operations throughout the year, and received a management fee. In Freshpict Foods, supra, the company supplied all the equipment. In Gourmet, supra, the entity owned the packing shed, the packing materials, and controlled the marketing and shipping. In Lomanto, supra, San Justo, supra, Hatai, supra, and Hickham, supra, both the control over operations and the amount of capital invested were considerable.

In the present case, it is evident that, compared to JBR, Velasquez has insufficient capital investment to suggest sufficient economic independence for bargaining stability. He has no proprietary interest in the crops he harvests, and does not own the land in question. The trucks and tractors he owns are not highly costly or specialized. He owns neither supplies nor equipment, controls neither packing shed nor marketing operation. He runs his business from a garage.

As to the totality of Velasquez' control over farming operations at JBR, the record indicates that his involvement in the production process is limited to the areas assigned to him by JBR. His discretionary authority is similarly curtailed. He supervises and administers his crew, but his decision-making powers

are restricted to those areas which are not major to JBR's operations. His fee arrangement, similarly, is based on labor costs, and he has a narrow scope within which he can manipulate his profit margin.

Since economic realities dictate that Velasquez does not possess the requisite stability and permanent interest necessarily crucial to a finding of employer status, Velasquez should be seen as simply a harvesting agent employed and controlled by JBR. For the purposes of collective bargaining, JBR should be seen as the employer.

RECOMMENDATION

The crew of Raul Velasquez should be deemed agricultural employees employed by Jordan Brothers Ranch. Overrule the challenges and count the ballots.

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II. The Crew of Jesus Espinosa

Espinosa is the owner of Big E Produce. At the time of the election, Big E Produce had been in business four months. Espinosa has no real capital investment except for his own personal pick-up truck. He has an oral agreement with Jordan Brothers whereby he provides the labor for the Jordan Brothers Ranch cabbage harvest (which is performed ten months each year), in return for a commission plus a fixed fee per carton or bin picked. Boxes are supplied by Jordan Brothers. The delivery of the crop (cabbage) from the fields to Jordan coolers is done by a separate trucking service, which is in turn compensated by Jordan Brothers on a per box basis.

Espinosa has one foreman and a crew which has fluctuated in number from between 12 and 15 workers. He hires and fires his own workers and handles the day-to-day employee/employer relationship with his crew.

Jordan Brothers Ranch has stated that Espinosa shares in the profit from the sales of the produce he harvests, which seems to include, in addition to cabbage, bulk celery and bulk lettuce.

Under the Lomanto, supra test, regardless whether or not Espinosa is something more than a labor contractor, he clearly fails to meet the "totality of operations" test for agricultural employer status, set forth above in the Velasquez discussion. There is no showing that he exercises total control over his own operations,

let alone over the year-round cultivation of the crops he harvests for Jordan Brothers Ranch. He does not decide what to plant, when to irrigate, or which fields to work on. He provides the labor, but not the equipment. He is not responsible for hauling the crop to be processed or marketed. He does not own the land. His compensation arrangement suggests that he bears a certain amount of risk for any crop loss.[4/] However, he has been in operation for four months, and there is no showing that he has sufficient capital investment for the permanency and stability required for collective bargaining purposes.

Unlike the custom harvesters in Napa Valley, supra, Jack Stowells, supra, and Gourmet Harvesting, supra, Espinosa does not have complete control over the farming operations. Unlike most of the custom harvesters in previous Board decisions, Espinosa neither supplies equipment nor involves himself in the hauling of the crop. Finally, and more significantly, he possesses no indicia of the type of economic stability the Board requires for employer status.

RECOMMENDATION

The crew of Jesus Espinosa should be deemed agricultural employees employed by Jordan Brothers Ranch. Overrule the challenges and count the ballots.

CONCLUSION

The challenges to the following votes should be overruled and the ballots opened and counted:

Members of the Crew of Raul Velasquez

Members of the Crew of Jesus Espinosa

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4. This uncorroborated assertion by Jordan Brothers Ranch is suspect, given other discrepancies noted in its testimony. (See , eg., No. 5 and note 3)

Pursuant to section 20363 of the Board's Regulations, the conclusions and recommendations of the Regional Director, as set forth in this report provided for in section 20363(b) shall be final unless Exceptions to the Conclusions and Recommendations are filed with the Executive Secretary by personal service within five (5) days or by deposit in registered mail postmarked within five (5) days following service upon the parties of the Regional Director's report.

An original and six (6) copies of the Exceptions shall be filed and shall be accompanied by seven (7) copies of declarations and other documentary evidence in support of the Exceptions. Copies of any Exceptions and supporting documents shall be served pursuant to section 20430 on all other parties to the proceeding and on the Regional Director and proof of service shall be filed with the Executive Secretary along with the Exceptions.

Dated this 24th day of February, 1983, in Oxnard, California.

JUDY WEISSBERG
Acting Oxnard Regional Director
AGRICULTURAL LABOR RELATIONS BOARD
528 South A Street
Oxnard, CA 93030
(805) 486-4475

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Exhibit A

JORDAN BROTHERS RANCH
P. O. BOX 371 LOMPOC, CALIFORNIA 93436
PHONE: (805) 736-6659

Agricultural Labor Relations Board
NOV 29 1982
RECEIVED
Oxnard Regional Office

Baltazar Martinez
528 South A Street
Oxnard, CA 93030

Dear Sir,

The information you requested on our equipment is as follows, excluding irrigation sprinklers and miscellaneous items.

FARM EQUIPMENT	MODEL	VALUE
Versitile	835	$40,000.00
Versitile	875	50,000.00
Versitile	700	7,000.00
International Harvester	1086	12,000.00
International Harvester	Hydro 70	5,000.00
International Harvester	Hydro 70	5,000.00
International Harvester	784	8,000.00
4) Irrigation Tractors		12,000.00
HARVEST EQUIPMENT	QUAN.	VALUE
Cauliflower Harvest Trailers	3	15,000.00
COOLER EQUIPMENT	QUAN.	VALUE
Forklifts	7	100,000.00
Pickups	5	25,000.00

I hope this list fills your needs.

Sincerely,

Steve Jordan

Exhibit B

RAUL VELAZQUEZ
LABOR CONTRACTOR
190 SILER LANE
SANTA MARIA, CA 93455

Agricultural Labor Relations Board
OCT 2 2 1982
RECEIVED
Oxnard Regional Office

	Year	Model	Price
1	1982	Chevy - Pick-up	1195220
2	1982	Chevy - Caprice	1637072
3	1981	Chevy - Pick-Up	1408607
4	1978	Chevy - Pick-up	815724
5	1982	Chevy - Pick-up	1100544
6	1975	Dodge - Van	250000
7	1969	Leo Flat Bed	500000
8	1975	Ford - Pick up	950000
9	1980	Flat Bed - Chevy	3742904
10	1981	Flat Bed - Chevy	4419296
11	1976	Flat Bed 1½ton Chevy	751132
12	1978	White Tractor	1680012
13	1978	White Tractor	1992232
14	1979	White Tractor	2020140
15	1981	White Tractor	2509772
16	1981	White Tractor	2509772
17	1980	White Tractor	1975536
18	1980	White Tractor	2076224

Exhibit C

10-8-Ec

JORDAN BROTHERS RANCH
736-6529

P.O. BOX 371
LOMPOC, CA 93436

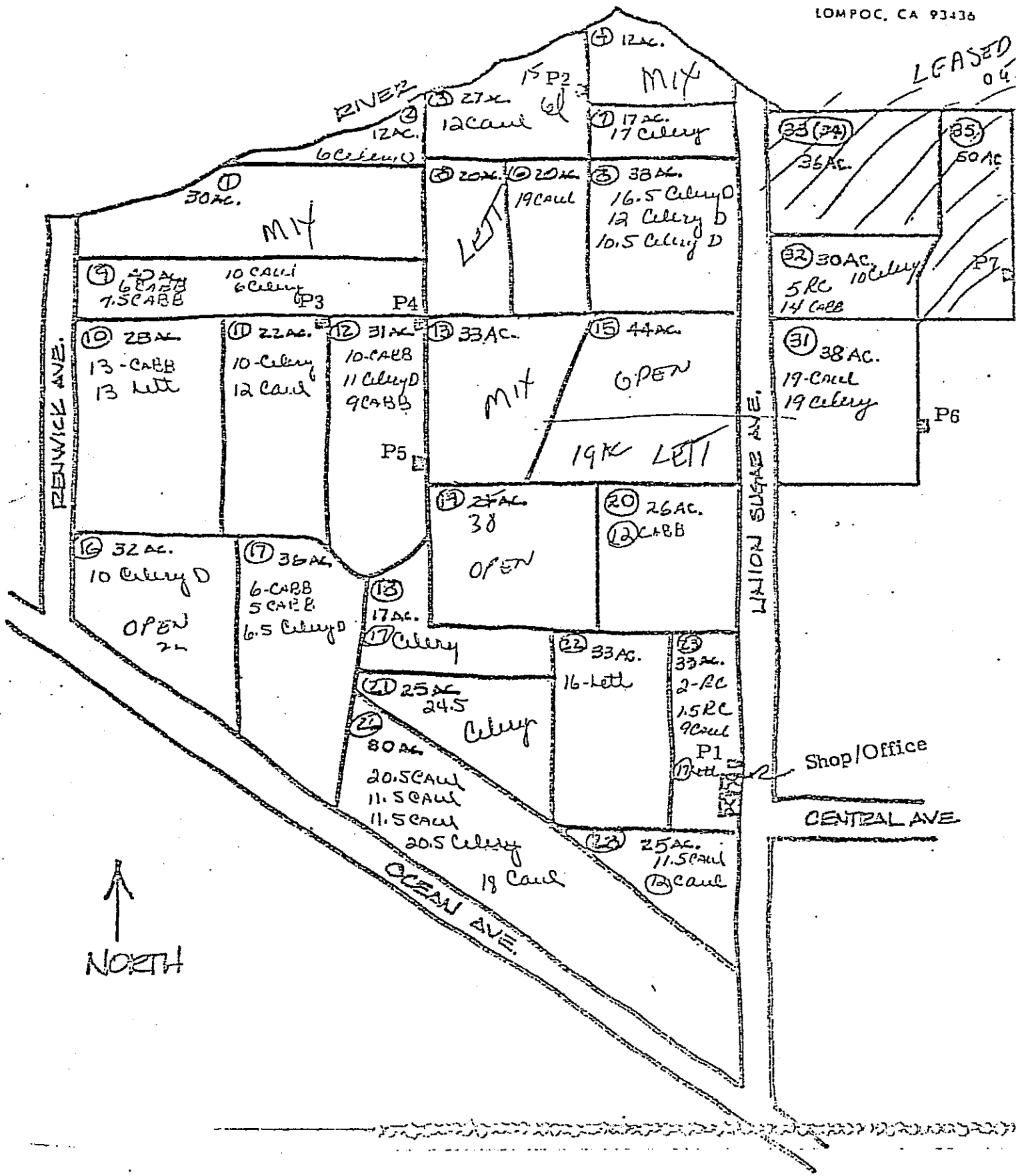

Exhibit D

TO: Jordan Brothers

September 23,1982

9 Blocks of ice	$65.25
20 Packs of rubber bands at $6.52 ea.	130.40
26 Boxes of rubber bands at 1.95 ea.	50.70
12 Boxes of crayon at $5.75 ea.	69.00
2 files at $4.15 ea.	8.30
1 knife at $7.69 ea	7.69
12 knives at 2.99 ea.	35.88
	367.22
6% sales tax	22.03
Total Amount Due	$389.25

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE BY MAIL
(1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Ventura. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 528 South A Street, Oxnard, CA 93030.

On February 24, 1983 I served the within CHALLENGED BALLOT REPORT 82-RC-6-OX(SM), JORDAN BROTHERS RANCH

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oxnard, California addressed as follows:

CERTIFIED MAIL

International Union of
Agricultural Workers
1206 West Cook Street
Santa Maria, CA 93454

Littler, Mendleson, Fastiff & Tichy
1900 No. Gateway Blvd., Suite 101
Fresno, CA 93727

REGULAR MAIL

Jordan Brothers Ranch
P.O. Box 371
Lompoc, CA 93438

ALRB-Executive Secretary
General Counsel
Operations
915 Capital Mall, 3rd Floor
Sacramento, CA 95814

Agricultural Labor Relations Board
MAR 1 1983
RECEIVED
Exec. Secretary

Executed on February 24, 1983 at Oxnard, California.

I certify (or declare), under penalty of perjury that the foregoing is true and correct.

REBA REDFEARN

ALRB 64a (Rev. 5/80)