San Marcos, California
Potrero, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PROHOROFF POULTRY FARMS, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	Case No. 83-RC-3-SD 9 ALRB No. 68

DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW or Petitioner) on March 11, 1983, a representation election was conducted among the agricultural employees of Prohoroff Poultry Farms (PPF or Employer). The official Tally of Ballots was representative of the segregation of ballots into two groups, one group comprised of all PPF agricultural employees located in San Marcos, California (Tally I) and the other comprised of all PPF agricultural employees located in Potrero, California (Tally II). These tallies showed the following result:

Tally I

UFW	61
No Union	5
Challenged	2
Total	68 (There was one void ballot)

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Tally II

UFW	2
No Union	14
Challenged	1
Total	17

The Employer timely filed post-election objections, and the following objection was set for hearing:

> Whether the unit petitioned for is appropriate, and if not appropriate, whether San Marcos and Potrero operations constitute two separate appropriate bargaining units.

The hearing on objections was held on June 6 and 7, 1983, before Investigative Hearing Examiner (IHE) Charles Landau, who issued the attached proposed Decision on August 2, 1983. The IHE concluded that the unit petitioned for was inappropriate but that the San Marcos and Potrero operations constitute two separate appropriate bargaining units.

Petitioner timely filed exceptions to the IHE's Decision and a supporting brief, and the Employer timely filed a response to Petitioner's exceptions.

Pursuant to the provisions of Labor Code section 1146,[1/] the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached IHE Decision in light of the exceptions and briefs of the parties and has decided to affirm the IHE's ruling, findings and conclusions to the extent consistent herewith and to certify the Petitioner in the

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

single unit for which it has petitioned.

PPF is a partnership engaged in poultry farming. Since 1980, Paul Miller has acted as the general manager for PPF. Under Miller are two division managers; Don Hein supervising the Potrero operations, called Oak Valley Ranch (OVR), and Derek Scallet, the chief financial officer. Miller himself acts as division manager for PPF's San Marcos operations, relying on Pancho Perez, the assistant production manager at San Marcos. The other members of the PPF management team are Loren Hill, feed mill manager and commodity buyer, and Phil Peterie, security supervisor. All clerical and administrative operations are centralized in San Marcos.

OVR is located in a 700-acre valley in a ranch of several thousand acres owned by PPF near Potrero, California and is involved in pullet production, raising up to 600,000 birds from an age of one day to twenty weeks. The employees at OVR engage in husbandry activities, including debeaking, vaccination, and maintaining water and feed systems. OVR is a relatively new operation and enclosed passageways connect the various buildings so employees need not venture outside when moving from site to site.

When the birds at OVR reach twenty weeks of age, they are transported by J & D Trucking to San Marcos.2/ The employees at OVR load the birds on trays and J & D employees load the trucks. They are unloaded by PPF employees on arrival at San Marcos.

2/ OVR also raises birds for other poultry ranches but the vast majority are grown for San Marcos. San Marcos is located approximately 90 miles to the northwest, near Escondido. Potrero is nearly due east of San Diego, located very near the Mexico-California border.

At San Marcos, most of the duties revolve around egg gathering, though employees do engage in some poultry husbandry. The birds are vaccinated and trained, and culls or otherwise unproductive birds (mortality handling) are excluded.

PPF's San Marcos ranch was built in 1946 and employees must engage in the repair of the facilities and fly control. San Marcos handles from 600,000 to 1.9 million birds, and produces through its feed mill, feed mix for both San Marcos and OVR facilities.

Up until 1979, all the OVR functions were performed at San Marcos. However, because chickens transmit disease from the older birds to the younger, a disease control policy was implemented and the pullet growing operation was severed. Equipment, such as debeaking machines, tractors and other rolling stock was transported from San Marcos to OVR over a period of a year to year and a half. To reduce disease transmission, J & D trucks are cleaned before returning to OVR from San Marcos, and visitors are restricted in their entry to OVR if they have recently visited another poultry facility.

OVR depends to a large extent on orders from San Marcos. At the time of the hearing, because San Marcos needed no new birds, OVR had reduced operations to three employees and Hein was spending every day at San Marcos working with Perez on fly control. When OVR is in full operation, Hein still makes nearly daily visits to San Marcos on his way to OVR to pick up mail and check in with Miller.

To reduce the likelihood of disease transmission, no

interchange of employees occurs between OVR and San Marcos. Hein estimated that over twenty percent of the duties performed by employees at OVR were similar to San Marcos functions, and Miller estimated that eighty percent of the work at San Marcos was unique to San Marcos. These estimates represent the differing operations, one to raise birds and the other to collect eggs. Employees come from separate labor pools and Miller testified that, because of scarcity of labor at San Marcos, slightly higher wages are offered than are available at OVR. (However, three employees at San Marcos are paid the minimum wage while no employees at OVR are paid at that level.) The basic wage rate, an hourly wage, derives from a former piece rate based on one's ability to gather eggs.

Day-to-day operations are managed by Hein at OVR and Miller at San Marcos. Miller delegates most of his routine responsibilities to Perez, Peterie and Hill. Hiring is done by Hein at OVR and by Perez and Hill at San Marcos, subject to review by Miller. Miller could not recall denying a proposed hire. Wage rates are determined by Hein at OVR and Miller at San Marcos. Discipline is ordered by Hein at OVR and Perez, Peterie and Hill at San Marcos, subject to review by Miller. Miller is more closely involved in daily operations at San Marcos. Benefits are uniform at both OVR and San Marcos and are described in an employee pamphlet distributed to each new PPF employee. Separate seniority lists are maintained for OVR and San Marcos, and payroll for both ranches is handled by the same outside service.

At a preelection conference in 1980 concerning an earlier petition for certification, PPF agreed to a unit of San Marcos, OVR

and Protein Resources, Inc. (an entity not otherwise identified on this record). The parties have stipulated that no changes in wages, hours or working conditions or other changes in the bargaining unit have caused PPF to now object to a single unit of both OVR and San Marcos.

Finally, PPF utilizes a labor relations consultant from Farm Employers' Labor Services of Sacramento for advice on labor relations. While visits from the consultant to San Marcos have been frequent, only introductory visits have occurred at OVR.

The IHE determined that because OVR and San Marcos are not in a single definable agricultural production area, the appropriate focus should be on the nature of the operations. (See Eggers & Ghio Company, Inc. (1975) 1 ALRB No. 17; John Elmore Farms (1977) 3 ALRB No. 16; Napa Valley Vineyards Co. (1977) 3 ALRB NO. 22; Tenneco West, Inc. (1977) 3 ALRB No. 92.) The IHE determined that employees at OVR had insufficient community of interest with San Marcos employees to justify a single unit. (See Bruce Church, Inc. (1976) 2 ALRB No. 38 and Mike Yurosek & Sons, Inc. (1978) 4 ALRB No. 54.) A principal and critical element in the IHE analysis was the segregated responsibility for personnel and daily operations at the two sites.

The UFW excepted to the IHE's Decision on the basis that the central issue here is to determine which unit would be the most appropriate one for stable collective bargaining. The UFW states the IHE's analysis is not applicable for a poultry ranch, being designed for seasonal and the more common crop farming situations we have previously addressed. The UFW also states the Employer

failed to meet its burden of showing the unit inappropriate in light of this Board's preference for larger, more cohesive units.

The Agricultural Labor Relations Act (ALRA or Act) provides, in section 1156.2, that:

> The bargaining unit shall be all the agricultural employees of an employer. If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted.

This section of the ALRA, unlike many others, is not drawn from the National Labor Relations Act (NLRA).[3/] The NLRA provides:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.
> (29 U.S.C. § 159(a).)

This language gives the National Labor Relations Board (NLRB) broad discretion in the selection of appropriate bargaining units, for it need only find that the unit requested is an appropriate unit, even if the employer or other objecting party suggests a more appropriate unit. (Federal Electric Corporation (1966) 157 NLRB 1130 [61 LRRM 1500].) The express language of the ALRA, however, severely limits our discretion in this area. While we exercise some discretion in the naming of agricultural employers so as to effectuate the purposes of the Act and provide for stable collective bargaining relations (see San Justo Farms (1981) 7 ALRB

[3/] 29 U.S.C. §§ 151-168

No. 29; Robert H. Hickam (1982) 8 ALRB No. 102) once the parameters of the employing entity are determined, all agricultural employees working on geographically contiguous operations must be included in the appropriate collective bargaining unit. (Bruce Church, supra, 2 ALRB No. 38; Pioneer Nursery (1983) 9 ALRB No. 38.) Only when an agricultural employer operates in two or more noncontiguous geographical locations did the Legislature grant to this Board some discretion in selecting appropriate bargaining units, and even then limiting that discretion to the designation of "the appropriate unit or units" rather than giving this Board the discretion to select "an" appropriate bargaining unit. (Compare, for example, Dixie Bell Mills, Inc. (1962) 139 NLRB 629 [51 LRRM 1344] with Mike Yurosek & Son, supra, 4 ALRB No. 54, and Tenneco West, supra, 3 ALRB No. 92.)

Turning to the matter before us with this legislative model in mind, we must first determine whether the Employer's San Marcos and Potrero operations are geographically contiguous.[4/] The IHE found them not to be contiguous within the meaning of the ALRA and we agree. They are not literally contiguous, being ninety miles apart, and the analysis concerning whether they are within a single definable agricultural production area (SDAPA) is more properly applied to relatively close crop operations subject to geographically similar growing conditions because of such factors as water, climate, soil conditions and labor pools. Since such

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[4/] Absent an express finding by the Board that OVR and San Marcos are in noncontiguous geographical areas within the meaning of Labor Code section 1156.2, Member McCarthy believes the Board lacks discretion to designate other than a single bargaining unit. (Bruce Church (1976) 2 ALRB No. 38.)

factors are, as the IHE pointed out, relatively insignificant to PPF's poultry operations, the SDAPA factors are not of material assistance here in the unit question. Rather, we turn to the more traditional community of interest criteria in selecting the appropriate unit.

In determining the appropriate unit, all relevant factors must be considered and what is determinative in one situation may be inconsequential in another. (Bruce Church, supra, 2 ALRB No. 38.) We must specifically consider those factors having a direct relevance to the circumstances within which collective bargaining is to take place. (John Elmore Farms, supra, 3 ALRB No. 16, at pp. 3-4; Kalamazoo Paper Box Corp. (1962) 136 NLRB 134, 137 [49 LRRM 1715].) Specific factors which we will consider include the method of figuring wages; number of working hours; the benefits received; the methods of supervising; the quality and degree of skill necessary; the degree of contact and interchange between employees at the different sites; the nature of the work at each site; the history of bargaining; the desires of the employees; the nature and organization of the business and its personnel policies; and statutory considerations which prohibit a proliferation of separate bargaining units. (Bruce Church, supra, 2 ALRB No. 38; Kheel, Labor Law; Appropriate Bargaining Units, Chap. 14; NLRB 15th Annual Report.)

Supporting a finding that a single unit is appropriate here are the following factors: (1) centralization of the business in San Marcos; (2) uniformity of benefits received; (3) some overlap of job functions; (4) prior certification of election results twice

previously (with "no union" winning both times) in a unit that included the pullet growing operations once following severance of those operations (see Prohoroff Poultry Farms, case numbers 75-RC-37-R and 80-RC-6-SD); (5) the high integration of the business; (6) the fact that no labor organization seeks representation of the smaller unit and (7) a legislative preference for comprehensive bargaining units.

In finding a single unit is the appropriate bargaining unit, we are not unmindful of the lack of interchange of employees due to the necessity of limiting the transmission of disease, nor are we ignorant of the degree of local autonomy exercised by Hein at OVR, the difference in job functions, the geographical separation, and the expression of employee sentiment at the different operations. However, unlike the NLRB's presumption favoring single site units for collective bargaining purposes, the legislative presumption underlying the ALRA favors comprehensive units. (See, e.g., Peterie Stores (1983) 266 NLRB No. 13 [112 LRRM 1233]; Friendly Ice Cream Corp. v. NLRB (1st Cir. 1983) ___ F.2d ___ [113 LRRM 2409].) We, therefore, find that the appropriate bargaining unit is a single unit including all of the Employer's agricultural employees.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all agricultural employees of Prohoroff Poultry Farms in the State of California for the

purposes of collective bargaining, as defined in section 1155.2(a) concerning employees' wages, hours and terms and conditions of employment.

Dated: December 5, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

CASE SUMMARY

Prohoroff Poultry Farms
(UFW)

9 ALRB No. 68
Case No. 83-RC-3-SD

IHE DECISION

Prohoroff Poultry Farms (PPF) engages in poultry farming in Southern California. Sometime during 1980, PPF severed its hatchery business from its egg gathering business. The former is now conducted in Potrero, California at Oak Valley Ranch (OVR), 90 miles southeast from the major site of PPF at San Marcos, California. The UFW petitioned for certification at PPF, and an election was held on March 22, with the ballots and tally segregated at the two sites. PPF objected to the election, alleging that the San Marcos and Potrero operations constitute two separate appropriate bargaining units.

After a hearing, the IHE determined that because OVR and San Marcos are not in a single definable agricultural production area, the appropriate focus was on the nature of the operations. He then concluded that two separate bargaining units were appropriate due to the degree of autonomy granted personnel practices and operations at OVR.

BOARD DECISION

The Board decided to certify the UFW at PPF in one single unit including OVR and San Marcos operations. The Board determined that unless OVR and San Marcos were noncontiguous geographical areas, the Board had no discretion in the establishment of the appropriate bargaining unit(s). The Board then concluded that the appropriate unit for collective bargaining purposes was one single unit based upon the following factors: (1) centralization of the business, (2) uniformity of benefits, (3) prior elections held in the same unit, (4) overlapping job functions, (5) an integrated business relationship between OVR and San Marcos, (6) the nature of the unit petitioned for, and (7) legislative preference for comprehensive bargaining units.

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

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Agricultural Labor Relations Board
AUG 2 1983
RECEIVED
Exec. Secretary

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

PROHOROFF POULTRY FARMS,

Employer,

Case No. 83-RC-3-SD

and

UNITED FARM WORKERS
OF AMERICA, AFL-CIO,

Petitioner.

Carl G. Borden, for
Prohoroff Poultry Farms.

Ellen J. Eggers, for
United Farm Workers
of America, AFL-CIO.

DECISION

CHARLES LANDAU, Investigative Hearing Examiner: This case was heard before me on June 6 and 7, 1983, in Escondido, California.

The United Farm Workers of America, AFL-CIO (UFW) filed a Petition for Certification dated March 11, 1983, seeking to represent the agricultural employees of Prohoroff Poultry Farms (Employer) at its San Marcos, California and Potrero, California locations.[1/] On March 17, 1983, the Employer filed a response

[1/] The UFW stipulated that it is a labor organization within the meaning of the Agricultural Labor Relations Act (ALRA or Act) and Prohoroff Poultry Farms stipulated that it is an employer within the meaning of the ALRA.

to the Petition, contending that the unit sought was not appropriate. An Agricultural Labor Relations Board (ALRB or Board) representation election was conducted among all agricultural employees of the Employer in San Marcos and Potrero on March 22, 1983. The ballots cast at each of the locations were tallied separately. The official tallies of ballots showed the following results: at San Marcos: UFW - 68, No union - 5, unresolved challenged ballots - 2; at Potrero: UFW - 2, No union - 14, unresolved challenged ballots - 1.

On March 28, the Employer filed timely post-election objections, and the ALRB Executive Secretary subsequently noticed for hearing the following issue:

> Whether the unit petitioned-for is appropriate, and if not appropriate, whether the San Marcos and Potrero operations constitute two separate appropriate bargaining units.

THE EMPLOYER'S OPERATIONS

The Employer's separate poultry business operations at San Marcos and Potrero, California are about ninety miles apart. At the Potrero operation, known as Oak Valley Ranch (OVR), pullets are raised from the age of one day to approximately twenty weeks, after which they are shipped to the egg-production operation at San Marcos, where they are kept until they become unproductive, usually in a year or two, and are disposed of. At San Marcos, where most of the employees are directly or indirectly involved in egg production, are: a feed mill which produces feed for birds there and at OVR; a mechanic shop; and Prohoroff's administrative offices. At OVR, most employees are

involved with the general tasks of bird husbandry. At peak employment, there are about twenty-eight workers at OVR, and about ninety at San Marcos.

Prohoroff Poultry Farms was established in 1946. Until 1979, both pullet-raising and egg-production operations were located at San Marcos. However, a disease problem led to the cessation of pullet raising there; the brooding facilities at San Marcos were last used in late 1977 or early 1978. New facilities at OVR were built in 1979-1980, and the pullet-raising operation was established at that site. (TR I:28-29, 43.)[2/]

Some equipment which had been at San Marcos was transferred to OVR (TR I:60), including two to three dozen debeaking machines costing approximately $200-300 each, a bulldozer, a forklift, a grader, two small tractors and a loader. (TR I:60; TR II:89.) Some of the cages at San Marcos were modified and are now used at OVR. Wooden boxes at San Marcos were reconstructed and transferred to OVR. (TR I:60.)

Dr. Paul C. Miller is General Manager of Prohoroff and functions as its chief operations officer; he has general responsibility for operations at both OVR and San Marcos, including business with government agencies, other poultry businesses, etc. (Ex. A; TR II:35, 40-44.) Directly below Miller are two division managers, Derek Scallet and Don Hein. Scallet is the administrative and financial officer. (TR II:35.) Don

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[2/] Reference to exhibits will be as follows: Board Exhibits - BX; Employer Exhibits - EX; Petitioner Exhibits - PX. In addition, references to the transcripts will be cited as "TR volume:page number."

Hein is Division Manager of OVR. Loren Hill is the feed-mill manager and commodity buyer at San Marcos. Pancho Perez is Assistant Productor Manager at San Marcos. Dr. Miller, who was production manager at San Marcos before he became General Manager, has continued in that position since his promotion.

In addition to the young birds raised at OVR for the San Marcos production operation, OVR raises young birds for other entities as well. While the percentage fluctuates, depending on San Marcos' need for birds, in the year prior to the hearing about 30 percent of the birds raised at OVR were not Prohoroff's. OVR charges a fee for raising birds for other entities. Approximately 1,125,000 birds are raised each year at OVR, (about 5.6 broods, one each nine weeks). (TR I:80-81; TR II:81.) The total number of birds at OVR at any one time does not exceed 600,000. Prohoroff birds at OVR use feed prepared in the feed mill at the San Marcos location.

San Marcos

The San Marços operation consists of several poultry buildings on approximately 150 acres. (TR I:27) Several hundred acres of hills, rock, grass, shrubs, and trees extend out away from the poultry buildings. The poultry buildings are generally in a state of physical deterioration. (TR I:12, 13; TR II:52.)

Of approximately 85 workers at the San Marcos location, about 35 have been employed for ten years or longer. (TR I:17.) There are some eight or nine job classifications or subclassifications. Approximately 85 percent of the employees work in the egg hauling, egg gathering, and labor

classifications. Four or more employees work in the mechanic shops (TR I:11); about four work in the feed-mill operation, and about four or five clerical employees work in the administrative office. (EX:B.)

A variety of work functions are performed at San Marcos in addition to egg-gathering and hauling. Feed mill work involves running a computer, driving feed trucks, unloading commodities and putting them into the feed mill. Employees at the San Marcos mechanic shop maintain and repair dozens of pieces of specialized machinery and equipment. (TR I:11.) Maintenance employees at San Marcos deal with drainage problems and roof repairs and also perform weed-control and rodent-control work. (TR I:12.)

Laborers at San Marcos perform a wide variety of duties, including shoveling manure, moving birds into racks, checking water cups, cleaning feed tanks, checking feeder systems, weed control, repairing buildings, road repair, digging drainage ditches, washing cages, changing light bulbs, collecting loose birds at night, spraying birds for mites and Newcastle disease, and weighing birds. (TR I:10, 25, 26, 78.)

Oak Valley Ranch

OVR, which is located on the Employer's Potrero property consisting of several thousand undeveloped acres, is situated in a valley of 700 acres. OVR itself is about 80-100 acres in area. (TR I:28.) There are 28 poultry buildings, a barn, one or two sheds and a small number of residences. All buildings were built over a period of one to one and one-half years in 1979-80.

The poultry buildings all have concrete floors and large walkways enabling employees to walk from one end to the other to take care of 25,000 birds without being exposed to the elements. (TR I:13.)

Feed is shipped from San Marcos to OVR by truck. Prohoroff Poultry Farms own its own racks and trailers, but utilizes JD Trucking Co., which supplies the drivers and tractors for transportation of birds and feed between the two locations. Feed is on-loaded by San Marcos employees and off-loaded by the JD drivers. (TR II:52.) JD, which has a yard in San Marcos, cleans the tractor trailers.

The principal job classification at OVR is "service crew," in which sixteen employees worked during a pay period in February 1983, in addition to two housepersons and one clerical. (EX:B.)

A variety of bird husbandry tasks and maintenance work are performed at OVR, including cleaning and disinfecting, moving of birds, debeaking, mass and individual innoculating, cleaning manure, and some repairs of light machinery. (TR I:43; TR II:68-75.)

Disease - Prevention and Control

Poultry disease is a major concern in the Employer's business, and there was testimony covering various aspects of such disease, its prevention and control. (TR I:29-32, 39-40.)

As noted, bird disease which is prevalent in multi-age flocks, passing from older birds to younger birds, caused reduced egg production when the raising/growing of pullets and the

egg-production operations were both located at San Marcos. That was the reason the Employer discontinued pullet raising at San Marcos and transferred that operation to OVR.

A principal source of transmitting poultry disease is the transportation of the birds' fecal matter. (Airborne diseases are not common.) In general, the microorganisms that might cling to the trucks and tractors are killed because of the ninety-mile journey over hot road surfaces at sixty miles per hour. (TR I:32.)

The birds at San Marcos have undergone some vaccination prior to their arrival but receive additional vaccination there. (TR I:26.) When the birds arrive, they are administered live coryza. About once every twelve weeks thereafter they are administered Newcastle vaccine. Both are administered by general laborers. (TR I:27.) According to Don Hein, Division Manager at OVR, mass vaccination programs are effected either by spraying the birds from a tractor, or by putting the vaccine into the birds' water supply. Vaccination is effected at OVR by a hand held sprayer. (TR II:20-21.)

Burcine, N/B and L/T are other vaccines administered at OVR by a spray method (performed by laborers) similar to that used at San Marcos. BIVAX and AE/POX vaccines are administered at OVR by needle, the former in the neck and the POX in the wing and web. (TR II:71-72.) Other vaccines at OVR are administered through drops in the birds' eyes. (TR II:73.)

Various precautions are taken to prevent spread of poultry disease. In addition to prohibiting employees from

interchanging between the two locations, the trucks in which birds are transported are washed regularly. Also, at OVR, visitors must stop at an initial checkpoint before they can reach the bird houses. (TR I:30-31.) Persons who have been to another poultry farm are not permitted access to the Employer's bird houses on the same day.

Labor Relations and Personnel Policies

Each new Prohoroff employee at the San Marcos and OVR locations receives a copy of the same employee handbook (PX:1; TR I:62.) The handbook covers briefly such matters as performance reviews, vacation and leave policy, holidays, grounds for discipline and procedures relating thereto, and related company policies. (TR I:66.)

The handbook consists of fourteen pages of text and several supplemental pages. Some of the supplements apply to employees only at one location, and are sent only to the affected employees. For example, Dr. Miller testified that a supplement dated May 20, 1983, although addressed to "all employees," was sent only to San Marcos employees; the safety committee which sent the memo exists only at San Marcos, and the communication concerned a current problem at San Marcos. Another handbook supplement dated April 4, 1983, concerned a gate that had been left open at San Marcos. Other supplements, such as the January 28, 1983, memo cancelling paid or time and a half holidays, was sent to employees at both locations. (PX:1, page 32.)

Except for disciplinary procedures, (PX:1 pp. 20-22, 27)

the employee handbook was not discussed in great detail by witnesses. In general, the handbook states that wages are established on an individual basis, and that salaries are reviewed twice a year. (PX:1 p. 2) (In fact, there has been a company practice of granting a cost-of-living increase twice each year, in February and September. (TR I:65, 69.))

In his sworn declaration, which was admitted into evidence (EX:A), Dr. Miller stated that the regular workweek at OVR consists of five eight-hour workdays; the regular workweek is from 7:30 a.m. to 4:00 p.m., with a 30 minute lunch break between noon and 12:30. The regular workweek at San Marcos consists of six eight-and-one-half-hour workdays, from 7:00 a.m. to 4:30 p.m., with a one-hour lunch break between noon and 1:00 p.m.

Each year since 1978, except for 1982, the Employer has provided a Christmas party and dinner for the San Marcos employees, and an annual fall picnic and Christmas lunch for the OVR employees each year since that operation opened.

Employees at both locations are permitted to purchase eggs at discount; OVR employees are limited to four flats per week but discount puchases for San Marcos employees are unlimited.

A labor relations specialist visits the San Marcos operation regularly, on a weekly basis, but he visits the OVR location only infrequently, when requested (about twice a year). (EX:A, p. 3.) The labor relations specialist assists employees in their dealings with governmental agencies on such matters as social security and income tax. Such assistance may entail

translation. At OVR, because one of the other employees is able to assist employees with translation problems, the labor relations specialist visits OVR infrequently and only when requested. (TR I:75; II:48.)

There are written work-performance standards for each employee at the San Marcos location and each employee's performance is reviewed frequently against those standards, in view of the productivity/quality based hourly wage rate. OVR utilizes for each employee unpublished work standards, which are used in connection with twice-yearly employee evaluations and for frequent monitoring by OVR supervisors and Don Hein. (TR II:86, 87.)

HIRING, DISCIPLINE, SUPERVISION and EXCHANGE of EMPLOYEES

San Marcos

Hiring

Miller testified that hiring at San Marcos begins with recommendations by the production foreman, Pancho Perez, for egg-production employees, and by the feed-mill manager and administrative and financial officer, Derek Scallet, for the feed mill and office personnel.

For the production/field employees, supervisor Perez customarily tells Miller when, and how many, additional workers are necessary for his operation. If Miller approves, Perez reviews available applications, makes selections, and then goes to Miller for final approval with a form which is partially filled out by the selected applicant(s) and signed by Perez. In his testimony, Miller could not recall ever having refused to hire

an applicant recommended by Perez.(TR II:39, 41.)

Discipline

Miller testified that each supervisor at San Marcos has authority to issue an oral warning, and the first written warning, to an employee without consulting Miller, but that a supervisor discusses a proposed second or third written warning with Miller.

When a supervisor notifies Miller that he wants to terminate a worker's employment, he first has a "very extensive discussion" with Miller, and they consult with the affected employee and other supervisors, and review personnel records and other sources of information relative to the proposed discharge. (TR II:39, 41.)

OVR

Hiring and Discipline

Division Manager Don Hein has autonomous authority to hire employees at OVR, and he has the primary role in personnel decisions. Dr. Miller, who is Personnel Director as well as General Manager of Prohoroff, testified that he has never been involved in the initial decision to discharge an employee at OVR, but described his limited involvement. According to Miller, Hein has come to him on occasion to report that he wanted to discharge an employee and to ask Miller whether there was sufficient documentation to justify the action "so that we don't get into difficulty later on." On such occasions, they would review the employees' personnel file, and Miller would indicate whether the "evidence and paperwork was sufficient, or conversely,

that in fairness to the employee more notice is necessary and the documentation is insufficient." (TR II:42.) Miller also testified that he makes sure that Don Hein has followed procedures, including talking with the employee's direct supervisor, listening to both sides of the story and suspending an employee for five days, presumably in order to have adequate time to investigate. (TR II:43.)

Miller viewed his consultations as "purely from the legal point of view." He stated that before Hein proposes a discharge, he (Miller) usually has never even heard of the employee involved.

Don Hein testified that the most common reason for his discharge of OVR employees has been unreliability in reporting to work. On a few occasions, according to Hein, he consulted Dr. Miller "...to get advice to make sure I am going about it in the proper manner." Hein stated that "at no time have we ever discussed whether it should be done, just how it should be done; if I've done,it in the proper way." Hein testified that he does not go to Miller for approval, and stated that he has terminated an employee's employment without consulting Miller. (TR II:94-96.)

Extent of Common Supervision

OVR employees are supervised only by Don Hein and his subordinate supervisors. Dr. Miller has visited OVR only four or five times since 1979 and has no direct contact with OVR employees.

Don Hein testified that he has worked at the San Marcos

location on only two occasions, once for a few months in 1981-82, and at the time of the hearing in this matter. He added that a job description for him entitled "Duties in San Marcos since December 1982" (PX:3 - last page) was incorrectly titled, explaining that that description reflected a list of his responsibilities as of December 1981, when he had been asked by John Prohoroff (who was General Manager at the time) to assume certain management responsibilities at San Marcos. According to Hein, he prepared the list in late January or early February 1982, and that is why he mistakenly said "since December 1982" instead of December 1982. Hein stated that he has not had any supervisory functions at San Marcos since that three-to-four-month assignment ended in early 1982. (TR II:68.)

In the weeks just prior to the hearing in this matter, Hein was given various assignments at San Marcos because OVR had no birds at the time and only two employees were there performing maintenance tasks. During that period, Hein, who lives near San Marcos, visited OVR only twice a week to check up on things. According to both Miller and Hein, Hein does not supervise any San Marcos employees, but has been assigned to work with government agencies on license renewals and problem matters involving housing, fire protection, fly-control, etc. He has also used the San Marcos office to facilitate the OVR program work with potential buyers for the product. (TR II:65-67.)

The clerical employee at OVR, Charlotte Northington, relays business information by telephone to Derek Scallet or

other San Marcos office personnel but, according to Dr. Miller, she does not receive instructions from San Marcos personnel. Northington did not testify. (TR II:13.)

Interchange of Employees

There is, and has been, virtually no interchange between OVR employees and San Marcos employees. The principal reason for the separation of employees at the two operations is disease control. As previously noted, poultry disease is passed from older birds to younger birds, and disease is a major problem in multi-age flocks. Dr. Miller testified that interchange of employees between the operations would be contrary to good poultry-raising business standards and practices. (TR I:40.) This testimony was uncontradicted.

When OVR was established, only one employee was transferred to OVR from the San Marcos operation. That employee, who was laid off two and one-half years ago, was a supervisor who transferred in order to become the brooder manager. Dr. Miller testified that he had been transferred at the special request of the owners. (TR II:34.)

In the three or four months prior to the hearing, according to Dr. Miller, there was no employee at OVR who had ever worked at San Marcos, and vice-versa. (TR II:33.) Because of the lack of contact and/or interchange of employees at the two locations, there are separate seniority lists for OVR and San Marcos.

Because another entity, JD Trucking, transports birds and feed between OVR and San Marcos, there are no instances in

which any employee(s) at either operation performs duties at the other site.

WAGES

San Marcos

Egg gatherers at San Marcos are paid an hourly wage based on the individual worker's productivity. In years past, they had been paid on a straight piece-rate basis, i.e., per case of eggs gathered (30 flats per case). Approximately two and one-half years ago, the piece rate was converted to an hourly basis. The historical egg-collection rate for each collector was used as the basis in establishing the hourly rate. (TR I:24.) Dr. Miller and each employee then agreed that the employee would receive that hourly rate if the worker maintained his or her collection rate and maintained a certain quality standard, i.e., minimum egg shell damage. Some employees have a standard of 13 cases per hour, others 14, 15, or 16, and several have a standard of 17 cases per hour. The hourly wage rate for February 1983 for employees identified as egg gatherers in Exhibit B ranged from $3.88 to $6.41, averaging $5.44. (EX:A, B.)

Although laborers don't generally do egg gathering, some laborers were given the opportunity to do so and, if they demonstrated high productivity, their base wage was adjusted accordingly. (TR II:30.) Hourly wage rates for February 1983 for the approximately 25 employees identified in Exhibit B as laborers ranged from $3.35 to $8.23, averaging $5.09.

The hourly wage rates of several egg haulers were also adjusted as a result of demonstrated skill at egg gathering.

The hourly wage for February 1983 for the three employees identified as egg haulers ranged from $5.36 to $5.80, averaging $5.58.

The hourly rates for San Marcos mechanic-shop employees at San Marcos for February 1983 ranged from $4.50 to $6.56, averaging $5.97.

The hourly wage for feed-mill employees ranged from $5.65 to $7.51, averaging $6.50.

The hourly wage for clerical employees for February 1983 ranged from $5.00 to $6.70, averaging $5.76. (EX:A B.)

Miller testified that the wage rates are not based on seniority, and that some employees who have worked at San Marcos for a year or two have earned as much as some workers with fifteen years seniority. Thus, some San Marcos employees earn more than other employees there who have greater seniority. (TR II:16.)

Oak Valley Ranch

Each OVR employee receives an individualized hourly wage. Average hourly wages during February 1983 for OVR classifications are: House persons - $4.00. Service Crew - $4.15, and Clerical - $5.76. The hourly wage of OVR employees is established by Division Manager Don Hein. (EX:A.) The normal procedure is to start new service crew employees at the minimum wage. Merit increases are granted when Hein feels they are warranted. (TR II:93, 94.)

Labor Force

Dr. Miller testified that, in his opinion, the wage

rates at OVR were generally lower than the San Marcos wage rates for three reasons: (1) a difference in employee skills; (2) proximity to a labor force; and (3) a consideration of prevailing wage rates in the area.

Miller explained that the Potrero (OVR) location is very close to the Mexican border and an ample labor supply is readily available. By contrast, at San Marcos there has been occasional difficulty in obtaining workers. Miller stated that, based on the Employer's experience with employees coming to work for a day or two and then leaving, there is a need to pay a wage high enough to induce employees to continue working at the San Marcos site.

Miller further testified that the prevailing wage rate in the San Marcos area is higher than wage rates at industries in the Potrero (OVR) area, particularly across the border in Mexico. (TR II:15, 16.)

WORKING CONDITIONS

San Marcos

According to Dr. Miller, employees at the San Marcos location encounter logistical difficulty in moving materials because of the relatively poor road condition and the physical layout of the operation. Moreover, he testified it is very common for employees at the San Marcos operation to get wet during the winter, as San Marcos is an older facility with very small buildings which provide little protection for the employees when they are working. Miller stated that within the chicken houses, there are many areas where the roads are not paved, and that

because ground holes often make it difficult for employees to utilize the electric egg carts, it sometimes is necessary for them to walk through and pick the eggs by hand. (TR I:12, 13.)

OVR

The physical plant at OVR is relatively new; the buildings are between three and four years old and were designed to accomodate the purposes for which they are being used. Employees can walk from one end of a building to another and take care of 25,000 birds without being exposed to the elements. (TR I:13.)

FINDINGS

The San Marcos and Potrero Locations are not Within a Single Definable Agricultural Production Area for Poultry.

The Board has issued several decisions involving Labor Code section 1156.2, holding that a combined unit was appropriate although the agricultural employees were employed at physically separate, noncontiguous locations.[3/] (See Bruce Church, Inc. (1976) 2 ALRB No. 38; Egger & Ghio Company, Inc. (1975) 1 ALRB No. 17; John Elmore Farms (1977) 3 ALRB No. 16; Napa Valley Vineyards, Co. (1977) 3 ALRB No. 22; J. R. Norton (1977)

[3/] Labor Code section 1156.2 provides:

> The bargaining unit shall be all the agricultural employees of an employer. If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted.

3 ALRB No. 66; Pioneer Nursery/River West, Inc. (1983) 9 ALRB No. 38; Tenneco West, Inc. (1977) 3 ALRB No. 92; and Mike Yurosek & Sons, Inc. (1978) 4 ALRB No. 54.) Where the employer's separate locations were clearly in noncontiguous geographic areas, the Board has in several cases nonetheless found that the geographically separate locations were within a "single definable agricultural production area." In Egger & Ghio Co., Inc. (1976) 1 ALRB No. 17, the Board found that two ranches, situated 10 miles apart and at elevations 600 feet apart, were "within the same geographical area due to the similarity of such factors as water supply, labor pool, climactic and other growing conditions."[4/]

In John Elmore Farms (1977) 3 ALRB No. 16, the Board found appropriate a unit including employees working on the employer's two ranches situated in two valleys separated by a small range of hills on the Central California Coast and 30 miles apart by highway. Noting that an employer's operations do not have to be in contiguous geographical areas to be in a single definable geographic production area, the Board decided "under the power granted .... in Labor Code section 1156.2 to 'determine the appropriate unit or units,'" that the fact that (noncontiguous operations) are in a single definable agricultural production area will be a significant factor in the unit determination. The Board found that the two valleys were in a single definable

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[4/] The Board noted that the employees shared the same supervisor(s), that there was some interchange of personnel, similar skills, rates of pay, hours and working conditions among many workers at the separate locations.

agricultural production area and that a single unit was appropriate.

Board decisions on this issue are only partially instructive, since all have concerned the growing and harvesting of crops and not poultry operations.

On the basis of the evidence presented, I find that the Employer's San Marcos and Potrero (OVR) operations are not in a single definable agricultural production area in which the agricultural activity is poultry raising and egg production. This finding is based on the fact that the operations are a substantial distance apart (90 miles) and $1\frac{1}{2}$ - $2\frac{1}{4}$ hours distant in time.[5/]

Also according to uncontroverted testimony, the operations are in different labor markets, affecting both the cost and availability of workers. (TR II:15, 16.)

Terrain and water supply are factors of only minor significance in the Prohoroff operation; climate also is a relatively minor factor in comparison with crop operations, where climate influences what crops will be produced and the growing and harvesting seasons.

Regarding peak employment, it is not established that peak at both operations would tend to coincide. Birds for the

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[5/] The most recent Board Decision referring to this issue is Pioneer Nursery, supra, a case involving the issue of separate or single employer status. Regarding the contiguous geographical area issue, the Board stated that it "will generally presume that operations in close geographical proximity are in a 'single definable agricultural production area.'" Since I find that the San Marcos and Potrero operations are not in close geographical proximity, this presumption does not apply.

San Marcos egg production operations are raised at OVR in advance of their productive life at San Marcos. Thus, unless there is a constant need for layers, employment at OVR will be reduced after the pullets it raises are shipped to San Marcos. Indeed, at the time of the hearing, there was no pullet raising at OVR, and there were only two workers employed there (out of 28 at peak).

Thus, I conclude that, without more, the mere presence of two operations in San Diego County is not a sufficient basis to find that both operations are in a single definable agricultural poultry raising and egg production area.

Beyond the single definable agricultural production area factor, the Board has looked for guidance in determining the appropriate unit to decisions of the National Labor Relations Board (NLRB) which determine whether employees who work at separate locations of an employer constitute an appropriate single bargaining unit.

The Board noted that the NLRB has relied on a number of factors, which are indicia of a strong community of interest among employees at separate locations, and, in its initial decision on this subject, the Board identified seven such factors. (See Bruce Church, Inc. (1976) 2 ALRB No. 38.) The factors are: (1) geographical location of the two operations; (2) extent of centralized administration, particularly with respect to labor relations; (3) extent of common supervision; (4) extent of interchange among employees; (5) nature of work and similarity of skills; (6) similarity of wages, hours and

other terms and conditions of employment; and (7) pattern of bargaining history.[6/]

The Separation Between the Physical or Geographical Locations of the San Marcos and OVR Operations is Substantial.

The respective physical locations of OVR and San Marcos do not represent a highly significant factor in this case, except as regards labor markets, see p. 16, supra. Nevertheless, I find that, as the two locations are 90 miles apart and $1\frac{1}{2}$ - $2\frac{1}{4}$ hours by car, the physical separation is substantial, and renders nonwork related contacts between OVR and San Marcos highly unlikely.

Some Aspects of the Employer's Administration are Centralized, but its Administration of Labor Relations is Predominantly Local.

Certain administrative operations are centralized. The Employer's administrative office is at the San Marcos location. Payroll checks are prepared by an outside computer payroll firm for all of the Employer's employees. Its

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[6/] The Employer urges that the employee expression of preference for or against union representation should be a factor in this unit determination. I decline to apply this consideration here. I note that the Board has not considered employee preference in its unit appropriateness decisions thus far. Furthermore, while the employee self-determination concept is utilized by the NLRB in certain elections, its use is generally limited to situations where two possible units are equally, or at least both, appropriate. Employees at each location may then decide whether they desire union representation and, if so, whether they wish representation in a separate unit. In the instant case, however, I do not find a single unit of all the Employer's agricultural employees to be appropriate. Both possible unit configurations are therefore not equally appropriate. (See Morris, Developing Labor Law, p. 220.)

Administrative/Financial Officer and his staff are also located at the San Marcos office.- The Employer's overall budget is prepared at its San Marcos office, although the OVR Division Manager prepares separate budget and cost data for the OVR operation.

Labor relations policy, however, is largely decentralized; for it is administered separately and independently at San Marcos and OVR. I find that OVR Division Manager Don Hein possesses and exercises a high degree of autonomy in employee relations and personnel matters at the OVR operation.

It is significant that the wage rate for OVR employees is determined by the OVR Division Manager, and that wages for San Marcos employees are determined by management at San Marcos. Although both operations are visited by a labor relations specialist from the same labor relations consultant service, the basis and frequency of visits differs substantially. Although the specialist visits San Marcos on a regular, weekly basis, he visits OVR only when specifically called in, and has visited there only twice in the past year.

The Employer's pre-discharge procedures at both locations state that an employee at either location must receive one oral warning and at least two written warnings before he/she may be discharged.[7/] Dr. Miller testified that, concerning any employee discharge matter at San Marcos he thoroughly reviews

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[7/] Although the employee handbook lists certain employee conduct which will result in immediate discharge rather than a warning, there was no testimony regarding any such event or employee conduct.

the supervisor's recommendation to discharge an employee, and has consultations with the employee and other supervisors before approving the recommendation.

Miller is also involved in employment terminations at OVR, but to a lesser extent. That involvement concerns making certain that appropriate procedures are followed in the disciplinary action, rather than reviewing the substantive grounds for discipline. Miller and Hein both testified that Miller's review of an OVR discharge proposed and effected by Hein was to check that all proper procedures had been followed.[8/]

There is Virtually no Interchange Among Employees Between San Marcos and Oak Valley Ranch.

There is currently no interchange of employees between San Marcos and OVR. The one person (not an agricultural employee) who transferred from San Marcos to OVR when OVR went into operation was the manager of an operation who was laid off two years ago, and no employee has worked at both locations at any time since OVR commenced operations.

The Employer's policy prohibits employees at each operation from working at the other location. Disease prevention is the major reason for that policy. As noted, poultry diseases

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[8/] Although he did not cite specific instances, Dr. Miller's testimony suggested he generally consulted with Hein on OVR employee discharges. Hein testified, however, that he had, on occasion, discharged employees at OVR without first notifying or consulting with Dr. Miller. I find that Dr. Miller's involvement in OVR employee discharges was for procedural review only and not sufficient to amount to centralized control or administration of employee discharge decisions. There was no instance cited in which Miller overruled a decision or recommendation of Hein.

communicated between multi-age flocks had existed in the past and led to the cessation of pullet raising at San Marcos and the establishment of the OVR operation at Potrero.

The separation is further maintained by the fact that transporation of birds and feed from one location to the other is performed by an independent trucking company, and no rank-and-file employees of the Employer ever travel between the two sites as part of their work duties.

The Nature of the Work Peformed at San Marcos and OVR is Similar for Operations other than Production Feed Mill.

A major portion of the testimonial and documentary evidence adduced at the hearing concerned the similarity or dissimilarity between work at San Marcos and at OVR and the employee skills necessary to perform such work. The Employer stresses the differences, and the Union emphasizes how similar the jobs are. Both parties make valid points. Both similarities and differences do exist, and a given assignment may be similar in function yet different in procedure. For example, vaccination of birds is performed at both locations, but vaccinations are performed on a mass basis, by water or spray, at San Marcos, whereas birds are innoculated against certain diseases individually at OVR. Also, some vaccines are administered at one location and not the other.

Paul Miller estimated that 80 percent of the work time at San Marcos involves duties not performed by OVR employees. This seems to follow from the obvious fact that many employees at San Marcos are engaged in egg collection and hauling, whereas

no OVR employees are so engaged. Similarly, four or five employees at San Marcos work in feed-mill operations, whereas OVR has no feed mill, and more clericals work at San Marcos than at OVR, since the Employer's main office is at San Marcos.

Both Don Hein and Don Miller testified that most of the tasks at each location differed significantly and that specialized skills were needed at each location, and that retraining would be necessary before employees at one location could perform satisfactorily at the other location.

Recognizing that many of these differences are real ones, such as the difference in the manner of administering vaccines to the birds, the signficance of such differences should not be exaggerated. In agricultural operations there are typically a variety of tasks to be performed by workers in the same bargaining unit. Such units are comprised of <u>all</u> agricultural employees in a single or contiguous geographic areas, and the Board apparently has no discretion to divide them, even where the unit is one of two or more noncontiguous geographic areas. At San Marcos, for example, the egg collectors may not be placed in one unit and clerical employees in another unit, no matter how different their job training and the skills required are.

A signficant portion of the activities at both locations concerns poultry husbandry, i.e., caring for very large numbers of birds. This includes cleaning functions, feeding, administration of vaccines, removal of dead birds, and maintenance of the physical plant and equipment utilized.

For the reasons discussed above, I find that the egg-collection and feed-mill jobs at San Marcos are functionally and substantially different from jobs at OVR, but that other tasks and skills involved with caring for flocks of birds and maintaining the physical plant, differ between the two operations only in minor ways.

There is No History of Collective Bargaining at Prohoroff.

Although there have been ALRB elections at Prohoroff Poultry Farms, there is no record history or pattern of collective bargaining with a union.

There is Virtually No Common Supervision of San Marcos and OVR Employees.

I find that supervision of San Marcos and OVR employees is separate.

Although Don Hein stops regularly at the San Marcos office to pick up mail and materials, he has not regularly worked or had supervisorial responsibilities there. His current assignment at San Marços is temporary, and both he and Dr. Miller. testified that he was working in a "consulting capacity" on problems with governmental agencies and not directing San Marcos employees in their work.

The three or four month period from late 1977 to early 1980, when Hein had management responsibilities at San Marcos, was an isolated and brief assignment during a time of transition in company management.

Based on uncontroverted testimony, I find that Charlotte Northington's phone calls from OVR to the San Marcos office are

for reporting or relaying information rather than for receiving instructions. On the contrary, she receives her instructions from Don Hein.

Similarity in Wages, Hours and Other Terms and Conditions of Employment.

In many respects, employees at both San Marcos and OVR enjoy similar fringe benefits and terms of employment. Medical insurance, vacation, bereavement leave and leave of absence policies of the Employer are identical for employees at both locations. Also, the Employer had a practice of granting semi-annual increases to all of its employees and its recent cancellation of paid holidays affected all its employees equally. Similarly, none of its agricultural employees receive pension benefits. The employees' work day at OVR, compared to that at San Marcos, differs slightly in duration and length of noon break.

There is a significant difference in working conditions because, due to the older and comparatively deteriorated condition of the San Marcos structures, many of the employees there must perform a portion of their duties in the rain or other unfavorable weather. Because OVR is a newer facility, employees there work in locations protected from the elements. Also significant is the fact that employee wages at San Marcos differ from employee wages at OVR with respect to both the average wages and the wage basis.

While all the employees' wages are to some extent individualized and are based on an appraisal of their respective job performances, the current hourly wages paid to employees

who gather eggs are based on their previously measured productivity. This includes all the egg gatherers and those laborers who gather eggs.

The UFW argues that, despite the fact that the employees' wage rates are not based on seniority, seniority impacts very directly on wages, and the data show a direct relationship. It points out that the average hourly wages for the after-1980 hires at OVR is $4.17, and the average hourly wage for the after-1980 hires at San Marcos is $4.25, almost the same. It further notes that since OVR was not established until 1979, "it is not surprising that OVR wages would be lower."[9/]

I find this argument to be unpersuasive. The explanation presented by the Employer, supported by testimony, is more persuasive. That is, that San Marcos wage rates are higher because the general prevailing wage in the San Marcos labor market is higher than it is at Potrero, which draws on the labor pool from across the nearby Mexican border, and that the Employer had experienced employee turnover problems at San Marcos and found that it was necessary to pay a higher wage in order to retain experienced employees.

In sum, I find significant differences between the wages of OVR employees and the wages of San Marcos employees:

[9/] It is noted that one of the OVR employees with 1979 seniority earns $3.85 per hour, which is less than all but one of the 1980 hires, that one of the 1980 hires earns more per hour than any of the 1979 hires, and that one of the 1981 service-crew hires earns $4.68 per hour, more than all but two of the 1980 or 1981 hires.

1) Wages are determined separately and independently at each location: OVR wages are determined by OVR Division Manager Don Hein, while San Marcos wages are established by San Marcos management;

2) San Marcos and OVR are in different labor markets, and as a result, San Marcos wages are higher; and

3) The hourly wage of a substantial portion of the San Marcos workforce is based on measurable productivity, i.e., flats of eggs collected per hour, whereas OVR wages are based on the employees' general proficiency.

ANALYSIS AND CONCLUSION

The UFW contends that because the Employer agreed to a single-unit election in 1980 among employees at both the San Marcos and OVR operations, the Employer is now precluded, or estopped, from asserting that a single unit of all its agricultural employees is not appropriate. As a basis why estoppel should operate against the Employer, the UFW reasons that, because it assumes there was no change in the Employer's operations since the 1980 election "it can be assumed that the UFW carried out its organizational campaign with the knowledge that all employees belonged to one unit...."

I find no basis for such estoppel. The UFW failed to present evidence that it actually did operate under the assumption that the Employer would continue to take its 1980 position on units or that any such reliance operated to the UFW's detriment. Furthermore, the Employer's Response to the UFW's Petition for Certification, filed several days before the

election, stated its position that a combined unit of employees at both locations was inappropriate. Moreover, the single unit in which the 1980 election was conducted was not a Board-determined unit. Pursuant to section 1156.2, the Board must determine "the appropriate unit or units" in each case where the employer has two or more operations in noncontiguous geographical areas, and no private agreement of the parties can deprive the Board of its power and responsibility to make such a determination. I note that, owing to the passage of time, the separateness of the OVR operations in 1980 was not as marked and distinct as it now is. Finally, any party is free to take any position in this or any legal proceeding before this agency. This includes a change from a previous position. No provision of the ALRA, Board's regulations or Board decisions has been cited to the contrary.

The UFW also argues that there is a statutory presumption that a single employer-wide unit is the "most appropriate" for farmworkers because such a unit normally best promotes efficient and stable collective bargaining.

I find no such presumption to exist, either in the ALRA or in Board decisions. Section 1156.2 simply defines the bargaining unit (as "all the agricultural employees of an employer") and provides that the Board is required to "determine the appropriate unit or units of employees" only where the employees of the employer work in "two or more noncontiguous geographical locations."

In Bruce Church, Inc. (1976) 2 ALRB No. 38, the Board

indicated it would determine the unit appropriate for collective bargaining by analyzing the extent to which a community of interest was shared by the separate groups of employees. The Board there indicated it would consider several community-of-interest factors, identified by the NLRB in unit determinations involving multi-plant operations of employers, but none of the Board decisions has even suggested that there is a presumption for an employer-wide unit of employees at separate worksites based on those factors. (However, the Board has indicated that if an employer's noncontiguous geographical operations are within a "single definable agricultural production area," that factor will be a significant influence on the Board's determination of the appropriate unit or units. See discussion at p. 17, supra.)

In Bruce Church, Inc. (1976) 2 ALRB No. 38, the Board found that all of the employer's agricultural employees in California constituted an appropriate single bargaining unit. The employer had farming operations throughout California in the Santa Maria, Salinas, San Joaquin, and Salinas Valleys and in parts of Arizona. The Board found that the company's operations were highly centralized at its main office, and that management at the central office had conducted collective bargaining on a company-wide basis and had ultimate responsibility for decisions on promotions and dismissal of employees. The Board found that a large percentage of the employees worked at more than one of the employer's locations, moving from valley to valley with the season, that there was a high degree of mobility among the

employer's supervisors, that more than fifty percent of the employer's management, supervisors and administrative personnel exercised responsibility at each of the four locations, and that the employer's agricultural equipment was also used at various of its locations. Moreover, the wages paid for each job classification at each location were identical, and seniority was companywide, as were a uniform health insurance and pension system, leave of absence policy, vacation and overtime provisions, and grievance procedures.

In J. R. Norton (1977) 3 ALRB No. 66, the Board upheld the Investigative Hearing Examiner's (IHE) conclusion that a single bargaining unit of agricultural employees working at the employer's two operations, in separate valleys 70 miles apart, was appropriate. The IHE noted that the employer's administrations were highly centralized, the lettuce harvesting operations in both locations were identical, and "the interchange of lettuce harvesting employees was total." (The harvesting crews traveled as self-contained units, with their own supervisors and equipment.)

In Bud Antle (1977) 3 ALRB No. 7, the Regional Director conducted an election in a statewide unit, covering at least five areas within the state, ranging from Salinas to the Imperial Valley. In finding that unit appropriate, the Board noted that varying production schedules among the major growing areas permitted year-round interchange of most employees, supervisors and equipment, and that hoeing-and-thinning crews, each with its own supervisor and equipment, traveled from area to area.

The Board also noted that there had been company-wide contracts for all the employer's agricultural employees since 1961.

In another unit determination involving an employer's geographically noncontinguous operations, the Board affirmed the IHE's conclusion that the appropriate unit consisted of the employer's Imperial Valley employees only, despite the fact that the employer had operations in the Bakersfield, Saugus, Cuyama and Santa Maria areas as well. (Mike Yurosek & Sons, Inc. (1978) 4 ALRB No. 54.)

In Mike Yurosek, the IHE found that the employer's management personnel and primary bookkeeping and clerical staff worked out of the employer's central office in Lamont, near Bakersfield, and that all crop production, sales and marketing, and investment and land leasing decisions were made at the central office. However, accounting, payroll, and recordkeeping functions were separate for the employer's Imperial Valley and northern operations, although those functions for the northern operations were administered centrally. Yurosek's labor relations, including authority to hire, fire and set wage rates, for the northern operations and the Imperial Valley, were divided. The general farming superintendent was responsible for labor relations in the Imperial Valley and the Vice-President was responsible for northern labor relations. The Vice-President, however, oversaw operations in the Imperial Valley, spending part of each week there. Also, the general farming superintendent assumed some authority for northern labor relations in the absence of the Vice-President.

Only two of Yurosek's eight supervisors worked in both Bakersfield and El Centro, and only a few of its workers voluntarily moved from the Imperial Valley to Bakersfield, as the employer's general policy was not to transfer employees. At El Centro, employees did only harvesting work, whereas in the northern area employees performed a full range of farming activities. Yurosek paid different wages in the northern and southern operations and hours of work differed substantially in those areas. Other working conditions varied; e.g., in the southern area the employer provided transportation but not housing, but in the northern area, the employer provided housing but not transportation.

The facts of the instant case regarding each of the seven community of interest criteria are closer to the facts in Yurosek than Bruce Church or Norton.

A principal, and critical, element is that responsibility for operations and personnel is separate and independent at San Marcos and OVR. OVR Division Manager Don Hein has virtually sole responsibility for those functions at OVR, subject only to a very general and remote oversight, or monitoring, by General Manager Miller. Miller functions as autonomous manager for those functions at San Marcos. Consistent with the organizational separation is the fact that Miller has visited OVR only four or five times since 1979. In Yurosek, although the vice-president and manager for the employer's northern operations regularly and frequently spent time in the southern (Imperial Valley) operations, the IHE found a definite

separation of responsibilities between the northern and southern operations. The separation in the instant case is clearly sharper than that in Yurosek.

A second significant factor, and consistent with the separation of authority in the instant matter, is the total lack of interchange among employees and the absence of common employee supervision, and also, of course, the separate seniority for each location. While several terms and conditions of employment, such as health insurance, paid holidays or lack thereof, leave policy, and vacations are the same for both San Marcos and OVR employees, wages differ markedly in two important respects: (1) San Marcos employees' wages are, on the average, substantially higher than average hourly wages at OVR; this is attributable, at least in part, to the fact that the two operations are located in different labor markets; and (2) the wage basis for a large portion of San Marcos employees differs from that of OVR employees because the hourly wage of the San Marcos egg production employees is based, to varying degrees, on a former "piece rate" productivity formula.

The facts of the instant case are also similar in important respects to those of Associated Grocers and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 310 (1977) 227 NLRB 798. The National Labor Relations Board (NLRB) found a separate unit of Tucson, Arizona-based bakery drivers and warehousemen, rather than a division-wide unit including Phoenix employees, to be appropriate. In that case, the general sales manager at the

Phoenix location was directly involved with the Phoenix sales force but visited the Tucson location, 120 miles away, only once a month, although he was in daily contact by telephone. The Tucson sales manager, like Hein in the instant matter, was substantially autonomous in the management of the daily activities of drivers and warehousemen in Tucson. Notwithstanding the centralized bookkeeping and recordkeeping in Phoenix, the general sales manager's overall responsibility for all drivers, and the fact that drivers at both locations shared uniform working conditions, wages and seniority, the NLRB concluded that a separate Tucson unit was appropriate for collective bargaining. The NLRB, in making that unit determination, emphasized the significance of local autonomy, the geographic separation of 120 miles and the lack of employee interchange.

In summary, I find that the high degree of local autonomy at OVR as to both day-to-day operations and labor relations administration, the absence of common supervision, the complete lack of employee interchange, the unlikelihood of off-duty contact between the employees at the two locations, and the differences in wages between San Marcos and OVR establish the appropriateness of two units. I therefore recommend that the Board: (1) certify the UFW as exclusive collective bargaining representative of all the Employer's agricultural employees at its San Marcos California operations; and (2) since the Employer's employees at OVR have by a majority rejected the UFW

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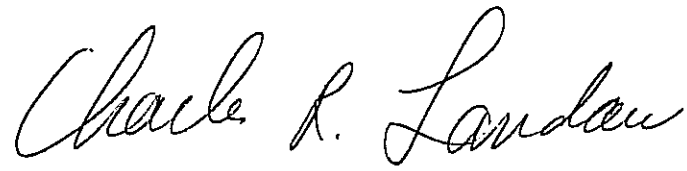
as their collective bargaining representative, the UFW not be certified as the exclusive collective bargaining representative of the separate unit at the OVR location.[10/]

Dated: August 2, 1983



CHARLES R. LANDAU
Investigative Hearing Examiner

[10/] The UFW indicated that it is interested in representing the Employer's San Marcos employees only should it be determined that an Employer-wide unit, which it had petitioned for, is not appropriate for collective bargaining. (TR II:97-98.)