Santa Maria, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

POINT SAL GROWERS AND PACKERS Employer, and INTERNATIONAL UNION OF AGRICULTURAL WORKERS, Petitioner.	)	Case No. 83-UC-1-OX(SM) 9 ALRB No. 57

DECISION AND ORDER CLARIFYING BARGAINING UNIT

On December 26, 1978, the International Union of Agricultural Workers (IUAW) was certified by the Agricultural Labor Relations Board (Board) as the exclusive bargaining representative for the agricultural employees of Point Sal Growers and Packers, the Employer herein. On April 7, 1983, the IUAW filed a unit clarification petition, asking that four clerical employees be included in the unit of agricultural employees certified on December 26, 1978.

In a report issued on August 5, 1983, the Regional Director for the Oxnard Region found that three of the clerical employees are not engaged in activities incidental to farm work and are therefore not agricultural employees under Labor Code section 1140.4(b). He therefore recommended that those three clerical employees be excluded from the unit certified on December 26, 1978. No exceptions were filed as to these findings or recommendations. The Regional Director also found that the fourth clerical employee, Vivian Garrett, is an agricultural employee under Labor Code section

1140.(b) because the bulk of her clerical activities is incidental to the Employer's farming operation. The Employer filed timely exceptions to the Regional Director's recommendation that Ms. Garrett be included in the unit of agricultural employees.

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

The Board has considered the record, and the attached Regional Director's recommendation, in light of the exceptions and briefs and has decided to adopt the Regional Director's recommendation.

ORDER

It is hereby ordered that the unit of all the agricultural employees of Point Sal Growers and Packers is clarified to include Vivian Garrett.

Dated: September 29, 1983

Jerome R Waldie

JEROME R. WALDIE, Member

Jorge Carrillo

JORGE CARRILLO, Member

Patrick W. Henning

PATRICK W. HENNING, Member

CASE SUMMARY

Point Sal Growers and Packers (IUAW)

9 ALRB No. 57
Case No. 83-UC-1-OX(SM)

Regional Director's Report and Recommendation

After investigating the IUAW's petition for unit clarification, the Regional Director (RD) determined that a clerical employee is an agricultural employee, included in the unit of all the Employer's agricultural employees certified by the ALRB.

Board Decision

The Board adopted the RD's report and recommendation in its entirety.

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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
AUG 1 1 1983
RECEIVED
Exec. Secretary

In The Matter Of: POINT SAL GROWERS AND PACKERS, Employer, and INTERNATIONAL UNION OF AGRICULTURAL WORKERS, Petitioner.	CASE NO. 83-UC-1-OX(SM) REGIONAL DIRECTOR'S RECOMMENDATION ON UNIT CLARIFICATION PETITION

ISSUE

The issue presented herein is whether or not the four secretaries employed by Point Sal Growers and Packers should be included in the Agricultural bargaining unit represented by the International Union of Agricultural Workers (herein IUAW).

BACKGROUND

The IUAW filed a petition for Unit Clarification in the above-captioned case on April 14,1983 requesting that the Agricultural Labor Relations Board (herein ALRB or Board) clarify the status of the secretaries since it was the IUAW's belief that they were not confidential employees and thus should be included in the Agricultural unit.

FACTS

The IUAW was certified as the bargaining representative of all the agricultural employees of Point Sal Growers and Packers on December 26,1978. No secretaries (clericals) were on the elegibility list for the election,nor is there any showing that any voted in the election. None of the clericals has ever been represented by any labor organization while employed by the employer.

Point Sal Growers and Packers is a signatory to the IUAW's present area contract with the valley growers, i.e. the "Santa Maria area Field Labor Agreement, 1982-85" which was executed on August 18,1982. In Article III-Scope of Employment, the above-referenced agreement states that the contract covers "all field agricultural employees...." It further states that the article excludes "... office-clerical employees, security guards..." from the unit. However, Article XIII of the agreement on "separability" states that the provisions of the agreement are subject to limitations of any applicable state or federal law, and that in the event any portion of such law affects the validity of any portion of the agreement, that portion of the agreement so affected is no longer legal or applicable and the rest of the agreement is saved.

Point Sal Growers and Packers is a cooperative comprised of three valley grower members, i.e. Job Farms, Eisner Farms, Donati Farms, and Point Sal Farming Company (a part of Job Farms). The agricultural aspect of the cooperative's operation, as it relates to the clericals, pertains to the field labor of the grower members, e.g. performing work relating to payrolls, insurance claims, grievances, contract negotiations, personnel actions, etc. The non-

agricultural aspect of the clerical work relates to the clerical and bookkeeping operations performed on behalf of the shed operation of the employer, i.e. the packing and shipping of the produce of grower-members. As discussed below, the bulk of the clerical and bookkeeping work performed by the clericals relates to the packing shed, or commercial, operation of the employer.

The responsibility for the formulation and effectuation of the employer's labor-relations policy resides solely with Mr. Kenneth Belier, the company General Manager, who occupies an enclosed office contiguous to the open space occupied in common by the four clericals that are the subject of the instant petition. The sales of the cooperative are handled by J.B. Distributing Co., a separate entity.

EMPLOYER'S POSITION

Through its letter of July 25,1983 to the Oxnard Regional Director, the employer sets forth the following positions:

1. Pursuant to ALRB regulation section 20385, the instant petition for unit clarification was not timely filed because the issue of the status of the secretaries was not unresolved at the time of the certification and no changed circumstances have ocurred that would justify the filing of such a petition at this time. The employer further states that the names of the secretaries were excluded from the eligibility list submitted and used in the certification election of 1979. The IUAW did not object to such exclusion. In fact, through the collective bargaining agreement signed between the parties, the IUAW agreed to exclude all clericals from coverage under the agreement. The employer asserts that because the union

agreed to the exclusion of the clericals from the bargaining unit at the time of the certification, and at all times thereafter, it has waived its right to seek a Petition for Unit Clarification unless it can show changed circumstances, which it has not done.

Moreover, the employer states that it would be unfair for the union to agree to exclude certain groups of employees at the outset of voting purposes, and later seek their inclusion in the unit for dues purposes. Since the secretaries did not have an opportunity to vote in the election, it would be unfair for the Board to impose upon these employees the results of the very election in which they were denied the right to participate by the union.

2. The union's petition is procedurally deficient and fails to conform with the Boards' regulations (section 20385(b)(2), (3),(4)) in that it does not set forth a statement of reasons as to why the IUAW seeks clarification. The employer states that the IUAW has never made a claim to represent said clericals and does not even identify them by name in the petition. It is further alleged that the petition is simply a form of harassment and an attempt to enlarge the IUAW's coffers at the expense of the clericals.

3. It is alleged that the complete lack of community of interests between the secretaries and field laborers requires that the ALRB not apply mechanically the secondary definition of agriculture as developed under federal precedent so as to automatically include such a group of employees within the definition of agricultural employees and therefore within the bargaining unit in each and every case.

4. The employer states that the clericals are expressly

Exempted from the Act in that they are allegedly supervisors, confidential employees, or do not perform activities incidental to the employer's agricultural operations. The employer alleges that most of the clericals are privy to contract negotiations and the adjustment of grievances and complaints. It is alleged that some are present at discussions by management, while others allegedly overhear confidential discussions of management in these matters and have access to personnel files, and type or read memorandums of management relating to labor matters.

ANALYSIS

ALRB Regulations section 20385 provides that a Petition seeking clarification of an existing bargaining unit in order to resolve questions of unit composition which were left unresolved at the time of the certification or were raised by changed circumstances since certification may be filed by a labor organization where no questions concerning representation exists. The section further provides that a Petition for Unit Clarification should contain the following:

(1) the name and address of the petitioner;

(2) the name and address of the employer, the certified bargaining representative, and any other labor organization which claims to represent any employees affected by the proposed clarification or amendment;

(3) a description of the existing certification, including job classifications of employees and location of property

covered by the certification;

(4) a description of the proposed clarification or amendment and a statement of reasons why petitioner seeks clarification or amendment; and

(5) any other relevant facts.

The IUAW's Petition is technically deficient in that it does not include: 1) the address of the employer or 2) a description of the existing certification (including job classifications of employees and location of the property covered by the certification. The above-referenced regulation section further requires a statement of reasons as to why the petition seeks clarification). The IUAW states that it seeks clarification because of its belief that the secretaries are not confidential employees and thus should be included on the unit.

Despite the above technical deficiencies, the IUAW representatives promptly answered all requests for additional information by the ALRB Regional office and promptly submitted copies of all pertinent documents requested, e.g. eligibility lists, election details, and certifications. Moreover, Mr. Art Castro attempted, to the extent of his knowledge and understanding, to describe the names and duties of the clericals involved. Since there was no material prejudice to the employer, this petition will be considered by the regional office.

Contrary to the Employer's position, the instant petition does present questions of unit composition that were unresolved at the time of the election and subsequent certification as a result of

the Employer's conduct in omitting the clericals from the eligibility list and by the IUAW in acquiescing to the omission. The fact that the parties agreed to exclude the clericals from coverage under the collective bargaining agreement cannot constitute a waiver by the union of its right to later represent the clericals found to be agricultural employees within the meaning of the Act. This is so because of the Legislative mandate under Labor Code section 1156.2 that the bargaining unit be compossed of all agricultural employees. The act imposes upon the union more than a right to represent all agricultural employees of an employer for which it is the certified bargaining representative, it imposes a legal obligation. The status of the clerical employees at issue must therefore be determined pursuant to applicable ALRB precedent.

In Prohoroff Poultry Farms 2 ALRB No. 56 (1976), a case involving a resolution of the challenged ballots of five clerical employees who performed work incidental to both agricultural and non-agricultural operations, the Board held that the ballots of the five workers should be counted, and thus included in the bargaining unit, so long as the clerical was not a confidential employee and the bulk of the office's work was incidental to the agricultural unit.

Under NLRB precendent, only those employees acting in a confidential capacity to persons involved in the formation, determination, and effectuation of the employer's labor relations polocies are excluded, West Chemical Products, 221 NLRB No. 45; BF Goodrich Co. 115 NLRB No. 22. The ALRB has similarly held that office workers who participate directly in management decisions, or assist and

act in a confidential capacity to persons responsible for an employer's labor-management policy, can be managerial or confidential employees. Hemet Wholesale (1976) 2 ALRB No. 24. Finally, the ALRB has further held that confidential status, rather than the type of work done, is the determining factor. Miranda Mushroom Farm, Inc. and Ariel Mushroom Farms (1980) 6 LARB No. 22. In the Miranda case, a secretary to the general manager responsible for labor matters was found to be a confidential employee as a result of her presence during discussions of labor relations and union matters, and not as a result of her specific duties as a seceretary.

THE CLERICALS

There are four clericals working at the employer's office located at its large packing shed in Guadalupe, California. The four clericals are Barbara Overly, Myrna Le Claire, Miriam Henderson, and Vivian Garret. None of the four clericals has an official job description. They occupy an open office area in the front part of the office. The General Manager's office is at the rear of the office space.

Clerical position occupied by Barbara Overly

Ms. Overly's duties are virtually all unrelated to the Employer's agricultural operation. She performs work on 1) sales invoices; 2) bank statements and journals and accounts pertaining thereto; 3) preparation of invoices relating to sales and shipping of the grower-member procedure; 4) assisting in typing miscellaneous reports and statements; and 5) assisting in preparing payments to

grower-members for produce packed, shipped and sold. These tasks are all solely related to the commercial shed operation. Ms. Overly also assists in the supervision, if and when needed, of the two clerks who respectively prepare the agricultural and non-agricultural payrolls. The greater part of this asistance pertains to the non-agricultural payrolls. Thus, the bulk of Ms. Overly's work is not incidental to the agricultural aspect of the employer's operation, but rather to the commercial shed operation. Thus, Ms. Overly is not to be included in the bargaining unit. Prohoroff Poultry Farms, 2 ALRB No. 56 (1976).

Clerical position occupied by Vivian Garrett

The duties of the position occupied by Ms. Garrett are related to the agricultural aspect of the Employer's operation in that Ms. Garret: 1) prepares and issues invoices to the grower members for labor charges, admitted by the Employer to be mostly an agricultural function; 2) assists in the preparation of health insurance reports, estimated to be approximately fifty percent agricultural and fifty percent non-agricultural; 3) most importantly, prepares the agricultural payroll and assists in the operation of the computer shed, and 4) assists in the payment and filing of all invoices, estimated to be about 2/3 non-agricultural. Ms. Garrett also answers the telephone and provides information requested. These calls are usually non-agricultural in nature. The clerk also prepares and types memorandums, reports and correspondence, and assists other clerks when needed. The present incumbent's perception of her work time is that she spends about 1/2 of her weekly work (2 1/2 days) on the

agricultural payrolls. If one adds to this her work in the invoicing of member growers for labor charges, plus her assistance relating to health insurance reports and the payment and filing of all invoices, it is reasonably concluded that the major part, if not the bulk, of the work in this position pertains to the agricultural aspect of the Employer's operation. Prohoroff Poultry Farms, 2 ALRB No. 56. Since the bulk of her work pertaining to the agricultural operations, it must be determined if she is a confidential employee.[1/]

The employer states that the areas of clerical work performed by Ms. Garrett which relate to the labor relations area are:

1) As to grievances, the General Manager may have discussions with her as to whether there was a prior grievance or other record in the matter, 2) the incumbent keeps the personnel files and "stays on top" of personnel actions for the purpose of notifying the General Manager of any warranted prospective disciplinary action (absences, etc.) and types same. As to prospective changes in labor matters, the General Manager speculates that the former incumbent of this position "may" have typed some contract proposals (but no proof of such was presented.) In summing up Ms. Garret's"assistance in labor relations," the General Manager stated

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1. The focus of inquiry in investigating this aspect is placed on the assistance, if any, given the General Manager in his formulation and effectuation of labor relations policy as relates to anticipated changes in collective bargaining, or future labor policy. (NLRB v. Hendricks Cty. Rural Elec. Membership Corp., (1981) 108 LRRM 1105; Westinghouse Elec. Corp., NLRB, 1962, 51 LRRM 1172; not whether the clerk merely has access to written grievances, or disciplinary personnel actions, or labor contracts, etc.

that she has nothing to do with grievances, nor contract negotiations. Finally, none of the four clerks is in a position to overhear the General Manager in any discussions that he may have in his office pertaining to the formulation and effectuation of labor relations policy.

In view of the foregoing, it is evident that Ms. Garrett performs clerical duties which are for the most part incidental to the agricultural operation of the Employer's business and that she is therefore an agricultural employee within the meaning of the Act. Proboroff Poultry Farms, 2 ALRB No. 56. Furthermore, this agricultural employee does not act in a confidential capacity to the person responsible for the Employer's labor-management policy, and that the incumbent Vivian Garrett is therefore not exempted from inclusion in the bargaining unit of all agricultural employees of Point Sal Growers and Packers. Hemet Wholesale, 2 ALRB No. 24.

Clerical position occupied by Miriam Henderson

The General Manager estimates that over 90% of the work in the position occupied by Miriam Henderson is non-agriculture in nature. In the invoicing for all produce sold, and in the handling of the accounts receivable, the work relates totally to the shed operation. It is estimated that ninety-five percent of the work performed by Ms. Henderson relating to the preparation and issuance of payroll checks relates to non-agriculture employees. The remaining five percent relates to the foremen of the agricultural field labor force. Accountability of all disbursements in journals pertains mostly to the shed operation. Typing of correspondence does not

touch upon contract negotiations, nor grievances, nor personnel actions. Assistance in payment of outstanding invoices, preparation of insurance reports and pension plans, and other clerical duties, all relate solely to the shed employees. It is concluded that the great bulk of the clerical work of this position is not incidental to the field labor, but rather relates to the non-agricultural aspect of the Employer's operation. Prohoroff Poultry Farms, supra. Thus, Miriam Henderson should not be included in the certified bargaining unit.

Clerical position occupied by Myrna Le Claire

The General Manager estimates that over 95% of the work in this clerical position is non-agricultural in nature. The bulk of the work performed in this position is that of bookkeeping relating to the shed operation. This work included the following: 1) bookkeeping relating to produce packed and shipped, 2) depreciation of shed equipment and autos, 3) supplies, 4) payment of outstanding invoices, 5) bank deposits, 6) keeping track of shipments invoiced, 7) financial statements once a month, and 8) typing minutes of the Board of Directors' monthly meetings. Duties touching upon the agricultural aspect of Employer's shed operation are: 1) preparation of compensation reports one hour a month for both agriculture and non-agriculture employees, 2) preparing quarterly computerized wages for all employees, 3) preparing a weekly report on payroll taxes, 4) filing. As to the position occupied by Ms. Le Claire, the General Manager speculates that the clerk "possibly" typed some contract

negotiations or "may" have overheard contract discussions but no evidence in this respect was offered. It is clear that the bulk of the clerical work of this position relates to the shed operation and that the incumbent therefore is not an agricultural employee within the meaning of the Act. Prohoroff Poultry Farms, supra. It is therefore concluded that the incumbent Myrna Le Claire is not included in the certified bargaining unit.

CONCLUSION

Based on the foregoing the Oxnard Regional Director concludes that Barbara Overley, Mirian Henderson, and Myrna Le Claire are not agricultural employees under the Act and are therefore to be excluded from the bargaining unit represented by the IUAW at Point Sal Growers and Packers. The Oxnard Regional Director has further determined that Vivian Garrett is an agricultural employee for the reasons stated above, and that she is not a confidential employee. See Hamet, supra. Thus, the position occupied by Ms. Vivian Garrett is part of the bargaining unit at Point Sal Growers and Packers represented by the IUAW.

It is further determined that the objections of the Employer to this petition are without merit, i.e., as noted, there are composition questions; there can be no waiver in the face of legislative mandate; the vote of the one clerical eligible to have voted would have had no impact on the election results;[2/] the deficiencies

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2. The certification election results: IUAW 82 votes; UFW 40 votes; non-union 12 votes; 12 challenged ballots; and one void ballot.

of the petition in large part are due to lack of knowledge by the union as to information peculiarly within the knowledge of the Employer, and said deficiencies have not operated to the prejudice of the Employer.

In view of the foregoing it is recommended that the clerical position of "agriculture payroll clerk" be included within the certified bargaining unit as follows:

> All agricultural employees of Point Sal Growers and Packers including the "agriculture clerk" and other clerical employees not excluded by the Act.

Dated this 5th day of August, 1983 at Oxnard, California.

TONY SANCHEZ
Acting Oxnard Regional Director
Agricultural Labor Relations Board
528 South "A" Street
Oxnard, California 93030