

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SUTTI FARMS,)	
Respondent,)	Case No. 80-CE-31-OX(SM)
and)	
INTERNATIONAL UNION OF)	7 ALRB NO. 42
AGRICULTURAL WORKERS,)	
Charging Party)	
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SUPPLEMENTARY DECISION AND ORDER VACATING PRIOR
DECISION AND REVOKING CERTIFICATION

On July 16, 1979, the International Union of Agricultural Workers (IUAW) filed a Petition for Certification as the collective bargaining representative of the agricultural employees of Sutti Farms.^{1/}

At the representation election which was held on July 23, 1979, Respondent challenged the ballots cast by the 62 harvest workers supplied by Felipe Zepeda on the grounds that they were the employees of Zepeda, an alleged custom harvester, rather than employees of Sutti Farms. As the challenged ballots were sufficient in number to determine the outcome of the election, the Acting Regional Director conducted an investigation and, on October 16, 1979, issued her Report on Challenged Ballots in which she concluded that Zepeda was a labor contractor within the meaning of Labor Code

^{1/}The original Petition also named Flying "S" Cattle Company and Sutti Dairy as the employer. However, based on her investigation, the Acting Regional Director concluded that only Sutti Farms was the agricultural employer covered by the Petition and no exception was taken to that conclusion.

section 1140.4(c) and that the 62 workers he provided were therefore employees of Respondent. Accordingly, she recommended that the challenges to their ballots be overruled. Respondent timely filed exceptions to the Report on Challenged Ballots with a sworn declaration and a brief in support of the exceptions. After the Board reviewed the Report in light of the exceptions and supporting material, it affirmed the Acting Regional Director's conclusion that the harvest workers provided by Zepeda were Respondent's employees, adopted her recommendation that the challenges be overruled, and ordered that the ballots be opened and counted and that a Tally of Ballots be issued. Sutti Farms (Feb. 19, 1980) 6 ALRB No. 11.

Respondent previously had timely filed, pursuant to Labor Code section 1156.3(c), post-election objections, in which it renewed its contention that the harvest workers were Zepeda's employees. On the basis of the Board's resolution of that issue in Sutti Farms, supra, 6 ALRB No. 11, and the results shown in the Tally of Ballots, the Acting Executive Secretary dismissed the Objections Petition and certified the IUAW as the exclusive collective bargaining representative of Respondent's agricultural employees, including the workers provided by Zepeda. Respondent's Request for Review of the dismissal, filed pursuant to 8 California Administrative Code section 20393(a), was denied by the Board on April 8, 1980.

Respondent thereafter notified the IUAW that it would not meet and bargain because it intended to seek judicial review of the Board's decision to certify the IUAW as the collective bargaining representative of its employees. Nishikawa Farms, Inc. v. Mahoney, et al. (1977) 66 Cal.App.3d 781. Based on an unfair labor practice

charge filed by the IUAW, the General Counsel issued a complaint in which it was alleged that Respondent had refused to meet and bargain with the certified representative, in violation of Labor Code section 1153(e) and (a). The parties agreed to waive an evidentiary hearing in the unfair labor practice matter and entered into a stipulation of facts, which was referred directly to the Board for a decision.

Respondent has stipulated that it refused to bargain with the IUAW in order to obtain judicial review of the findings and conclusions of the Board in its Decision and Order in Sutti Farms, supra, 6 ALRB No. 11, and the certification which issued thereafter. Pursuant to J. R. Norton Co. v. Agricultural Labor Relations Board (1977) 26 Cal.3d 1, and J. R. Norton Co. (May 30, 1980) 6 ALRB No. 26, the Board is required to determine whether Respondent has sought judicial review based on a reasonable good-faith belief that the Board erred in concluding that Zepeda is a labor contractor rather than a custom harvester.

In evaluating Respondent's litigation posture under the Norton standards, we have noted that the record contains certain factual allegations posed by Respondent which were not addressed in the Acting Regional Director's Report on Challenged Ballots, As the Board's Decision in Sutti Farms was based only on the Report, we now find that our conclusion regarding Zepeda's status in that case was based upon an inadequate record.

Respondent argues that the Board's Decision in Jack StowelIs (Dec. 19, 1977) 3 ALRB No. 93, compels the conclusion that Zepeda is a custom harvester. In that case, the Board found the

alleged labor contractor, Stowells, to be a custom harvester. In rejecting Respondent's contention, the Board, in Sutti Farms, distinguished Jack Stowells, in part on the basis that Stowells was actually paid for the exercise of managerial judgment and that Stowells made managerial decisions in the absence of the agricultural employer. The declarations in support of Respondent's Request for Review of the dismissal of its post-election objection allege in part that Edward Sutti, owner of Sutti Farms, considered Zepeda's expertise in agriculture when determining his compensation, and that Zepeda exercised substantial managerial discretion as to the utilization of his crew.

We are now of the view that a substantial and material issue exists as to whether Zepeda is a labor contractor or a custom harvester. This question may more appropriately be resolved after a hearing on the related post-election objection pursuant to Labor Code section 1156.3(c), and the taking of evidence concerning the totality of Zepeda's and Sutti's operations and the manner in which the whole of their activities relates to the employees supplied by Zepeda to work at Respondent's operations.^{2/}

^{2/}Although Respondent timely filed a post-election objection to the election in which it renewed its challenge to the inclusion in the unit of harvest workers supplied by Zepeda, it did not appear at that time that an evidentiary hearing on the objection pursuant to Labor Code section 1156.3(c) would be required. The objection corresponded to the issue which was before the Acting Regional Director and the Executive Secretary properly dismissed the objection on the basis of the Board's resolution of Zepeda's status in Sutti Farms (Feb. 19, 1980) 6 ALRB No. 11. As discussed previously, we now recognize that the then-existing precedent upon which the Executive Secretary relied may have been defective. In support of its Request for Review of the dismissal, Respondent made

(fn. 2 cont. on p. 5)

Accordingly, we shall vacate the Decision in Sutti Farms, supra, 6 ALRB No. 11, revoke the certification heretofore granted to the IUAW, and dismiss the complaint in the instant case.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby vacates its Decision and Order in Case No, 79-RC-6-OX(SM), Sutti Farms (Feb. 19, 1980) 6 ALRB No. 11, revokes the certification of the IUAW heretofore granted in that case, dismisses the complaint in Case No, 80-CE-31-OX(SM), and directs the Executive Secretary of the Board to Notice for Hearing Respondent's post-election objection in Case No. 79-RC-6-OX(SM) in which it alleged that Zepeda was a custom harvester and therefore the sole employer of the harvest workers which he supplied to Sutti Farms.

Dated: November 23, 1981

HERBERT A. PERRY, Acting Chairman,

JOHN P. McCARTHY, Member

ALFRED A. SONG, Member

JEROME R. WALDIE, Member

(fn. 2 cont.)

certain additional statements in support of its contention that Zepeda is not a labor contractor. While Labor Code section 1156.3(c) and 8 Cal. Admin. Code section 20365 prohibit consideration of election objections and/or declarations in support of objections which are filed beyond the statutory five-day period, the Board is not unmindful of its obligation under Labor Code section 1140.2 "to encourage and protect the right of agricultural employees to full freedom of association ..." in the designation of a collective bargaining representative. See Perry Farms, Inc. v. Agricultural Labor Relations Board (1978) 86 Cal, App.3d 448. We find that this legislatively declared policy, in light of the unusual circumstances of this case, requires that we deem Respondent's declarations in support of its Request for Review as clarification of its timely filed declarations in support of its post-election objections.

CASE SUMMARY

Sutti Farms

7 ALRB No. 42

Case No. 80-CE-31-OX(SM)

BOARD DECISION

On February 19, 1980, the Board dismissed Sutti Farms's (Respondent's) challenges to the ballots of 62 harvest workers who had participated in a representation election which was held at Sutti Farms on July 23, 1979, pursuant to a petition for certification filed by the International Union of Agricultural Workers (IUAW). Sutti Farms (Feb. 19, 1980) 6 ALRB No. 11. In that Decision, the Board rejected Respondent's contention that Felipe Zepeda, the provider of the harvest crew, was a custom harvester rather than a labor contractor and thus the employer of the disputed employees. Thereafter, on the basis of the Board's Decision in Sutti Farms, supra, the Board's Executive Secretary dismissed Respondent's post-election objection based on the same grounds as its ballot challenges. No hearing was held. Upon receipt of a revised Tally of Ballots which showed that the IUAW had received a majority of the votes cast in the election, the Executive Secretary certified the IUAW as the exclusive bargaining representative of all of Respondent's agricultural employees, including the harvest workers supplied by Zepeda.

Upon receipt of the IUAW's invitation to commence negotiations, Respondent notified the union that it would not meet and bargain because it intended to seek judicial review of the Board's Decision to certify the IUAW as the collective bargaining representative of its employees. An unfair labor practice charge and complaint issued in which it was alleged that Respondent had refused to meet and negotiate with the IUAW in violation of Labor Code section 1153(e) and (a). The parties agreed to waive an evidentiary hearing in the unfair labor practice matter and entered into a stipulation of facts. The matter was transferred directly to the Board for a Decision and Order.

In evaluating the appropriate remedy for Respondent's refusal to bargain in light of its litigation posture, the Board noted that the record contains certain factual allegations posed by Respondent which were not addressed in the Acting Regional Director's Report on Challenged Ballots, the basis for the Board's Decision in 6 ALRB No. 11 in which it held that Zepeda was a labor contractor and ordered that the challenged ballots be opened and counted. In view of this development, the Board concluded that its findings regarding Zepeda's status were based upon an inadequate record. Accordingly, the Board vacates its Decision and Order in Sutti Farms (Feb. 19, 1980) 6 ALRB No. 11, revokes the certification of the IUAW heretofore granted, dismisses the complaint in the instant case, and directs the Executive Secretary of the Board to Notice for Hearing Respondent's post-election objection in which it alleged that Zepeda was a custom harvester.

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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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