

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

INTERNATIONAL UNION OF	)	
AGRICULTURAL WORKERS,	)	
	)	Case Nos. 83-UC-2-OX( SM)
Petitioner,	)	83-UC-4.-OX
	)	
and	)	
	)	
KOYAMA FARMS,	)	
	)	10 ALRB No . 4
Employer.	)	
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KOYAMA FARMS,	)	
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Petitioner,	)	
	)	
and	)	
	)	
INTERNATIONAL UNION OF	)	
AGRICULTURAL WORKERS,	)	
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Union.	)	
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DECISION AND ORDER CLARIFYING BARGAINING UNIT

On November 6, 1978, the International Union of Agricultural Workers (IUAW or Union) was certified by the Agricultural Labor Relations Board (ALRB or Board) as the exclusive bargaining representative for the agricultural employees of Koyama Farms, the Employer herein. On April 14, 1983, the Union filed a unit clarification petition, requesting clarification of whether two groups of employees, the office clericals and the drivers, loaders, and stitcher-glueers , were included in the unit of agricultural employees certified on November 6, 1978. On June 14, 1983, the Employer filed a unit clarification petition, asking that its drivers, loaders, and

stitcher-glueers be included in the certified unit.

In a report issued on September 12, 1983, the Acting Regional Director (ARD) for the Oxnard Region found that the drivers, loaders, and stitcher-glueers are engaged solely in activities incidental to farm work and are therefore agricultural employees under Labor Code section 1140.4 ( b ) . He therefore recommended that these employees be included in the unit certified on November 6, 1978. As no exceptions were filed to this conclusion, we hereby adopt the ARD's recommendation.

The ARD also concluded that the two office clericals are agricultural employees as their work is incidental to the Employer's agricultural operations. No exceptions were filed to this conclusion and we therefore adopt it as well. The ARD concluded that the two office clericals are not confidential employees and recommended that they be included in the certified unit. The Employer filed timely exceptions to this conclusion, along with a supporting brief, declarations, and exhibits.

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

The Board has considered the record and the attached ARD's recommendation in light of the exceptions, brief, declarations, and exhibits, and has decided to adopt the ARD's recommendations as modified herein.

We adopt the ARD's conclusion that office clerical Angela Clavert is not a confidential employee.

The National Labor Relations Board's (NLRB) definition of confidential employee includes only those employees who assist

and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. (Ford Motor Company (1946) 66 NLRB 1317, 1322 [17 LRRM 394]; B. F. Goodrich Company (1956) 115 NLRB 722 [37 LRRM 1383].) The national board's test and labor-nexus requirement were upheld by the United States Supreme Court in NLRB v. Hendricks County Rural Electric Membership Corporation (1981) 454 U.S. 170 [108 LRRM 3105]. In addition, the ALRB has previously adopted the NLRB's test. (Hemet Wholesale (1976) 2 ALRB No. 24.)

We find that Angela Clavert does not fall within the definition of confidential employee approved in NLRB v. Hendricks, supra, 454 U.S. 170. In addition, while Clavert can overhear all conversations that take place in the office, there is no showing that she has access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. (Pullman Standard Division of Pullman, Inc. (1974) 214 NLRB 762, 763 [87 LRRM 1370].) Contrary to the Employer's contentions, Miranda Mushroom Farms, Inc. (1980) 6 ALRB No. 22 is limited to its specific facts. (See also Firmat Manufacturing Corp. (1981) 255 NLRB 1213, enf. (3rd. Cir. 1982) 681 F.2d 803 [110 LRRM 2290].)

We find merit in the Employer's contention that office clerical Holly Hanna is a confidential employee and thus excluded from the bargaining unit. Based on the declarations of Hanna, Steve Koyama, and Richard Quandt, we conclude that Hanna assists in a confidential capacity persons who formulate, determine,

and effectuate the Employer's policies in the field of labor relations. Hanna actively participates in the resolution of employee complaints and grievances along with management personnel who exercise discretion in labor relations matters.

ORDER

It is hereby ordered that the unit of all agricultural employees of Koyama Farms is clarified to include all employees referred to as drivers, loaders, and stitcher-glueers. In addition, such bargaining unit shall also include office worker Angela Clavert.

Dated: February 8, 1984

ALFRED H. SONG, Chairman

JOHN P. MCCARTHY, Member

PATRICK W. HENNING, Member

CASE SUMMARY

Koyama Farms  
(IUAW)

10 ALRB No. 4  
Case Nos. 83-UC-2-OX(SM)  
83-UC-4-OX

REGIONAL DIRECTOR'S REPORT AND RECOMMENDATION

Both the Union and the Employer filed unit clarification petitions in the instant matter. After investigating those petitions, the Acting Regional Director (ARD) concluded that the class of employees known as the drivers, loaders, and stitcher-glueers are agricultural employees within the definition of the Act. He thus recommended that they be included in the certified bargaining unit. The ARD also concluded that the two office clericals were agricultural employees. Finally, the ARD concluded that the office clericals were not confidential employees and thus he recommended their inclusion in the bargaining unit.

BOARD DECISION

As no exceptions were filed concerning the drivers, loaders, and stitcher-glueers, the Board adopted the ARD's recommendation to include them in the unit. In addition, the Board applied the National Labor Relations Board's test (See NLRB v. Hendricks County Rural Electric Membership Corp. (1981) 454. U.S. 170 [108 LRRM 3105]) for determining confidential status and concluded that clerical Angela Clavert was not a confidential employee. However, based on the Employer's supporting declarations, the Board concluded that clerical Holly Hanna was a confidential employee and excluded from the bargaining unit.

\* \* \*

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

In the Matter of: )  
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 KOYAMA FARMS, )  
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 Employer, )  
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 and )  
 )  
 INTERNATIONAL UNION OF )  
 AGRICULTURAL WORKERS, )  
 )  
 Petitioner. )  
 )  
 KOYAMA FARMS, )  
 )  
 Employer-Petitioner, )  
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 and )  
 )  
 INTERNATIONAL UNION OF )  
 AGRICULTURAL WORKERS. )  
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CASE NO. 83-UC-4-OX(SM)



CASE NO. 83-UC-4-OX(SM)

REGIONAL DIRECTOR'S  
 RECOMMENDATION ON UNIT  
CLARIFICATION PETITIONS

I.

ISSUES

A. Whether the LUAW's Unit Clarification Petition should be dismissed because of its failure to comply with section 20385 of the Board's Regulations.

B. Whether the Employer's request for an Order that the Employer has no obligation to bargain with Teamster Local 865 is appropriate in the context of a Unit Clarification Petition.

C. Whether the Employer's clerical employees are agricultural employees.

D. If the clericals are agricultural employees, whether they are confidential employees .

E. Whether the drivers, loaders, and stitcher-gluers who work in the Employer's loading unit in the lettuce and cabbage harvesting crew are agricultural employees.

## II.

### BACKGROUND

#### A. Petitions

The Petition of the International Union of Agricultural Workers (IUAW) in Case No. 83-UC-2-OX (SM) was filed on April 14, 1983 and requested clarification, 1) of the driver, loader and stitcher-gluers unit, alleging that they are not commercial employees because they work for only one employer, and 2) of the clericals, alleging that they are not confidential employees.

The Petition of the Employer in Case No. 83-UC-4-OX (SM) was filed on June 14, 1983, and requested clarification solely as to the Employer's drivers, loaders and stitcher-gluer employees of its lettuce and cabbage harvesting operation. The Employer alleges that the Food Packers, Processors and Warehousemen's Local No. 865 (affiliated with the International Brotherhood of Teamster hereinafter referred to as Teamster Local 865). claims to represent said employees. Koyama Farms seeks an Order clarifying that it is under no obligation to bargain with Teamster Local 865 with respect to this group of employees.

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B. Past Representation by Teamster Local 865:

Although the IUAW in its petition failed to serve Teamster Local 865 with a copy of the petition, the Regional Office mailed a copy of same to Teamster Local 865 in Santa Maria, with copy dated June 23, 1983 to Teamster attorney Barry J. Bennet in Fresno, and requested that the Teamsters state their position no later than June 29, 1983. There were numerous telephone requests made to both parties as well, but the only reply in the matter has been from attorney Bennett stating that Teamster Local 865 has no evidence to present and for the Board to proceed in this matter on the basis of the present record. Other than the foregoing, the Regional Office has received no other response from the Teamsters to its inquiry as to whether Teamster Local 865 claims to represent the subject employees.

In this respect, note is taken of the terminated "1979-1981 Driver-Stitcher-Loader Agreement" of Teamster Local 865 with the Shippers Labor Committee to which the Employer had been a signatory; of the withdrawal of the employer and other employers from said Committee; and of the present renegotiated Agreement of the Teamster Local 865 with the Committee comprised solely of two grower-shippers, Apio, Inc., and Point Sal Growers and Packers. Note, too, is taken of Teamster Local 865's Brief of Exceptions to the Regional Directors recommendation on Union Clarification Petition in Security Farms, Case No. 82-UC-2-OX(SM), and statement therein on page 4 (under substantially the same facts of job description as present in the instant petitions), that ". . . . the driver stitcher-loaders in question herein are agricultural employees



as that term is used in the Act . . . . . "

Finally, there is noted the fact that the Employer states that no claim to represent the subject employees has been made by Teamster Local 865 since March, 1983, and that to the Employer's knowledge no present or ongoing claim is now made by Teamster Local 865, nor has a ULP charge been filed to date.

C. Unit Clarification of IUAW

There was an election held at Koyama Farms in Case No. 78-RC-8-SM on August 11, 1978, for in the following unit:

All the agricultural employees of the Employer working the County of San Luis Obispo and Santa Barbara.

Included in the Employer's eligibility list at Koyama Farms were drivers, loaders and stitchers-gluers. However, no office clericals were on the list. There is no showing that any employees in the aforementioned job classifications appeared to vote in the election.

D. Collective Bargaining History

Koyama Farms is a signatory to the IUAW's present area contract with the valley growers, "Santa Maria Area - Field Labor Agreement, 1982-1985," executed on August 18, 1982 effective from July 16, 1982, through July 15, 1985. In its Article II - Scope of Employment, the contract covers "all field agricultural employees . . ." This article excludes ". . .office-clerical employees..." from the unit. Article XLII - Separability, saves the remaining part of the Agreement from any portion that may be found invalid under state of federal law. Thus, it is seen that the office clericals at Koyama Farms are not represented by a labor

organization; that as to the driver, loader and stitcher-gluer employees at Koyama Farms, as noted previously, Teamster Local 865 has in the past represented said employees at Koyama Farms, but for the purposes of the present petitions it indicates no interest in representing them.

### III.

#### THE EMPLOYER REQUEST FOR DISMISSAL OF THE IUAWS PETITION

##### A. Facts

In reference to the "secretaries" in the IUAWS petition, attorney Quandt alleges that said petition should be dismissed for the following reasons:

1. Pursuant to ALRB Regulations section 20385, the IUAWs petition for Unit Clarification was not timely filed because the issue of the status of the clericals was resolved at the time of the Certification and no new circumstances have occurred that would justify the filing of such a petition at this time. The Employer further states that the names of the clericals were excluded from the eligibility list submitted and used in the Certification Election of 1978. 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 office clericals from coverage under the agreement. The Employer asserts that because the Union agreed to exclusion of the office 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.

The Employer further states that it would be unfair for the Union to agree to exclude certain groups of employees at the outset for voting purposes. Since the clericals 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 to participate by the Union.

2. The Union's Petition is procedurally deficient and fails to conform with the Board's Regulations (section 20385(b) (2), (3)), 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 office 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 IUAWs coffers at the expense of the clericals.

3. The complete lack of a community of interests between the office clericals 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 office 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 the office clericals are privy to

contract negotiations and the adjustment of grievances and complaints. It is alleged that some are present during 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.

B. 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 question 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-mentioned 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 in 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, the Union's President, Mr. Art Castro, attempted to the extent of his knowledge and understanding, to describe the names and duties of the office clericals involved.

A Petition for Certification shall be liberally construed to avoid dismissal. (Board's Regulations, section 20305(b).) A petition seeking clarification of an existing bargaining unit, also under Part 3 of the Regulations, (20385(a)), certainly is to be treated in a similar manner. Since there was no material prejudice to the employer, this petition will be considered by the Regional Office.

Furthermore, 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 office clericals from the eligibility list and by the IUAW's acquiescing to the omission. The fact that the parties agreed to

exclude the office clericals from coverage under the collective bargaining agreement cannot constitute a waiver by the union of its right to later represent the office clericals found to be agricultural employees within the meaning of the Act, because of the Legislative mandate under Labor Code section 1156.2 that the bargaining unit be composed 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 office clericals at issue in the IUAW Petition must therefore be determined pursuant to applicable NLRB and ALRB precedent.

C. Conclusion

Pursuant to the above discussion, the Employer's request to dismiss the IUAW petition must be denied.

IV.

THE EMPLOYER'S REQUEST FOR AN ORDER THAT  
THE EMPLOYER IS UNDER NO OBLIGATION TO  
BARGAIN WITH TEAMSTER LOCAL 865

A. Facts

The Employer asserts in its Petition that the employees in its driver, loaders and stitcher-gluer unit are all agricultural employees because over 95% of all produce handled is grown and owned by the Employer, Koyama Farms,

Attorney Quandt requests an order that the Employer is under no obligation to bargain with Teamster Local 865 as to the subject employees.

B. Analysis

This request by the Employer is patently inappropriate in a Unit Clarification Petition, the only purpose of which is to resolve questions of union composition which were left unresolved at the time of Certification or were raised by changed circumstances since Certification. (ALRB Regulations section 20385 ( a ) . ) The unresolved questions of unit composition in the instant Petitions of the IUAW and the Employer are addressed herein and conclusions and recommendations of the Regional Director are made accordingly. There remains nothing more within the purview of the aforementioned ALRB Regulations.

C. Conclusion

Based on the foregoing, the Employer's request for an Order that the Employer has no obligation to bargain with Teamster Local 865 must be denied.

V.

THE STATUS OF THE EMPLOYER'S OFFICE  
CLERICALS AS AGRICULTURAL WORKERS

A. Facts

The Employer has two clericals Holly Hanna and Angela Calvert, working the office under an Office Manager, Chris Koyama Harton. The latter is married to the Sales Manager, Robert Harton, who shares with the General Manager, Steve Koyama, the responsibility for the formulation and effectuation of labor relations policies. The Office Manager hires, fires and supervises the clericals, exercising her independent judgment. The two clericals and the Office Manager all share open office

space in a small area approximately 20 x 15 feet in a small wooden-frame building. The General Manager occupies one corner of the office area, behind two open partitions near shoulder height, with a small, open window atop one partition overlooking the open area of the office. There is a computer room nearby. The Sales Manager occupies a nearby office. All conversations including the General Manager in his office, can readily be overheard by the other occupants of the office.

Angela Calvert works in the front of the office. She spends approximately one-half of her working time in the office and the other half in the computer room. She performs the regular duties of a bookkeeper and office clerical pertaining to accounts payable and receivable, sharing with the other clerical responsibility for accounts payable; she maintains journals and ledgers; responsibility for bank deposits; maintains different corporation accounts and grower reports; she opens the mail, and types memos, correspondence and personnel warnings. Her desk is a few feet from Holly Hanna's.

Holly Hanna's work station faces the Office Manager and their two desks touch each other. She acts as receptionist and answers the telephone. She handles all insurance, i.e. all medical and workers compensation claims; she does inventory, job verifications and credit ratings; type letters and reports; prepare bills in accounts payable; maintain payroll records and processes same on computer including taxes; maintains equipment; authorizes employees to purchase parts and repair work; and processes outgoing mail and takes it to post office.



B. Analysis

In Dairy Fresh Products Co., (1976) 2 ALRB No. 55, the Board held that the job description and duties of three challenged office clericals who performed duties as bookkeepers or otherwise performed clericals functions, showed that their duties were incidental to and in conjunction with the Employer's agricultural operations and that these office clericals were thus agricultural employees within the meaning of the ALRA, and were entitled to vote in the unit of all agricultural employees.

C. Conclusion

It is clear from the foregoing that the office clericals work is incidental to the Employer's agricultural operations. Therefore the two office clericals are agricultural employees. (Dairy Fresh Products Co., supra).

VI.

THE STATUS OF THE EMPLOYER'S CLERICALS  
AS CONFIDENTIAL EMPLOYEES

A. Facts

In the area of assistance and acting in a confidential capacity to a person who formulates, determines and effectuates management policies in the field of labor relations, the following is noted. As mentioned previously, both clericals work directly for the Office Manager, Chris Koyama Harton. To date, there has been a lack of involvement by the two clerks in any contract negotiations.

However, the Employer alleges that both clericals

knew of certain contingent personnel actions that management would have taken had Teamster Local 865 pursued its claim to represent the drivers, loaders, and stitcher-glueers. Clerical 'Angela Calvert is alleged to have had direct involvement in certain actions taken by the employer in regards to the claim, preparing for contingencies,

In addition, it is alleged that due to the close proximity of working quarters, conversations of all, including the Office Manager, the Sales Manager and the General Manager, can be readily overheard by all persons in the office.

Moreover, both clericals acquire knowledge of the receipt of written grievances. Holly Hanna, as receptionist, also takes employee complaints relating to contract benefits. She interprets the IUAW contract in this respect and at times consults attorney Quandt as to eligibility, payment, etc. Management emphasized that both clericals, due to the peculiar working conditions as described above, become aware of all discussions had by the General Manager and the Office Manager in the matter of grievances.

In the area of personnel actions, Holly Hanna keeps abreast of all personnel actions, including warnings, prospective terminations, etc., and reports sent to the Office Manager for discussion. She keeps and files all such matters, as well as personnel records in general. In management's view this incumbent is said to possess prior knowledge of what could be prospective terminations, layoffs, etc. Both Holly Hanna and Angela Calvert type the memos as to these matters.

#### B. Analysis

The NLRB has held that the determination of whether an employee is a confidential employee involves a two prong test.

First the employee must assist in a confidential capacity and second, the persons assisted must be responsible for the formulation and effectuation of the Employer's labor relations policies (Hendricks City Rural Electric Membership Corp., (1981) 108 LRRM3105; Westinghouse Electric Corp., (1962) 138 NLRB No. 90; B.F. Goodrich Company (1959) 115 NLRB 722). In the present case Robert Harton, the Sales Manager and Steve Koyama, the General Manager, are in charge of formulating and effectuating the Employer's labor relations policies.

In California Inspection Rating Bureau, et al. (1979) 215 NLRB 145, the Board found that two accounting clerks were not confidential employees because they did "not work under an official who is directly involved in personnel decisions but under a supervisor who reported to the administrative division manager." (California Inspection Rating Bureau, et al., supra at p. 783). The Board made that finding despite the fact that the accounting clerk had access to personnel files and confidential material and that they frequently had knowledge of various personnel decisions made by the Employer before the employees who were affected by these decisions.

In Weverhauser Co., (1968) 173 NLRB 1171, the Board held that four clericals one who was assigned to the personnel secretary to the of the maintenance department and three who were assigned to management personnel who were involved in the handling of grievances, were not confidential employees. In so holding, the Board voted that the Employer made no showing that in performing grievance related duties, the clericals acquired access to information which was not available or ultimately made available to Union representatives. (Weverhauser, supra, at p. 1173).

In Chrysler Corporation (1968) 173 NLRB 160, the Board found that eleven superintendent clericals who were assigned to various superintendents who supervised foremen and had control over 150 to 600 production and maintenance workers, were not confidential employees in spite of the fact that the clericals typed grievances, recommendations with respect to promotions of bargaining unit employees (information which was not available to the union), and superintendent appraisals and recommendations to the labor relations department with respect to matters which were the subject of the collective bargaining agreement. They also attended meetings where they were informed as to plant reductions in work force and meetings where they were instructed as to the Employer's interpretation of the new collective bargaining contracts with the Union. Furthermore, in some instances, they had access to information which was not accessible to the Union.

The ALRB has similarly held that an employee will only be held to be confidential employee if they act in a confidential capacity to a person who is responsible for the formulations and effectuation of the Employer's labor relations policies. (Hemet Wholesale (1976) 2 ALRB No. 24, Miranda Mushroom Farms, Inc., and Ariel Mushroom Farms, (180) 6 ALRB No. 22).

In Miranda, a secretary to the General Manager who was responsible for labor relations matters was found to be a confidential employee as a result of the general manager allowing her to remain present during discussions of labor relations and Union matters. Miranda is distinguishable from the instant case because in Miranda the clerical was the Employer's only clerical and as such was assigned directly to the General Manager. In the instant case, the

Employer's two clericals work directly under the Office Manager, not the persons responsible for the Employer's labor relations matters.

In addition, NLRB cases which have found employees to have been confidential employees, involved situations where the subject worked in a one-on-one situation with the person responsible for the employer's labor relations policies and they were assigned directly to that person. (See e.g. Raymond Baking Co., and Bakery (1980) 249 NLRB 1100; Siemens Corporations, (1976) 224 NLRB 1579; West Chemical Products, Inc., (.1975) 221 NLRB 205; Betchel Incorporated, (1974) 215 NLRB 906; Grocers Supply Co., Inc., (1966) 160 NLRB 485).

### C. Conclusion

In the instant case the two clericals work directly under the Office Manager, who is not responsible for the formulation and implementation of the Employer's labor relations policies. Although the two clericals type some forms relating to grievances and personnel matters and are aware of some conversations relating to labor relations matters, this is not sufficient to warrant a finding of confidential status. The Employer's contention that these two clericals will be involved in future contract negotiations does not change this finding. To date there has been no negotiations and none can be expected until around July 1985 when the current IUAW contract expires thereby making this contention speculative. ITT Grimenll (1980) 253 NLRB No.77). Therefore since the two clericals do not act in a confidential capacity to persons who formulate and effectuate the Employer's labor relations policies,

they are not confidential employees and must be included in the bargaining unit comprised of all agricultural employees of the Employer.

## VII.

### THE STATUS OF THE DRIVERS, LOADERS AND STITCHER-GLUERS AND LOADERS AS AGRICULTURAL EMPLOYEES

#### A. Facts

The Employer's lettuce-cabbage crew employees work together in the field to be harvested. The crew is comprised of cutters, packers, closers, stitchers-gluers, loaders and drivers. The four (4) stitcher-gluers make the cartons into which the lettuce is packed by the packers. The six (6) loaders put the packed cartons onto a flatbed (Fabco) truck. The four (4) drivers haul the loaded cartons to the cooler for unloading and then return immediately to the field. In 1981 over 99% and in 1982 over 97% of all the lettuce and cabbage handled by the aforementioned employees was agricultural produce grown and owned by Koyama Farms. Said employees, then, spend most of their working time in the Employer's fields except for the time consumed in hauling the produce to the cooler and returning to the fields.

#### B. Analysis

The term "agricultural employee" is defined by Labor Code section 1140.4(b) as an employee engaged in agriculture as that term is defined by section 1140 (a) of the Act; and as excluded from coverage under the NLR Act pursuant to section 2(3) of the Labor Management Relations Act (LMRA). The NLRB has determined that drivers, driver stitchers, stitchers, and folders of certain employer member of a multi-employer bargaining union of said job

classification were "agricultural laborers" within the meaning of section 2(3) of the NLRA and were excluded from the bargaining unit of said job classifications found appropriate as to other employer members in the unit. Their work was found to fall within the secondary meaning of agriculture, i. e. , performed "by a farmer or on a farm" as an incident to or in conjunction with their respective employer's primary function of growing, packing and shipping their own produce.

This finding was based on the amount of their employers' work with respect to the crops of independent growers which was insubstantial and was therefore deemed incidental to the employers primary function of growing, packing and shipping their own produce since the work performed for other growers varied from only 5 to 10 percent. (Employer-members of Grower-Shipper Vegetable Association of Central California, 230 NLRB No. 1011, 96 LRRM 1054 (1977); 626 F2d 580).

Moreover, in Mr. Artichoke Inc. , 2 ALRB No. 5, (1976) the State Board defined an agricultural employee as one who does work incident to or in connection with farming only if it is performed by the farmer or on the farm and is incidental to that farming operation.

### C. Conclusion

Clearly, the Employer's drivers, loaders, and stitchers-glueers perform duties directly incidental to and in conjunction with the Employer's primary function of growing, packing and shipping its own produce, the work performed by them with respect to the crops of other growers being of an insubstantial amount. They are therefore excluded by federal precedent from coverage under

the NLRA as agricultural laborers and pursuant to ALRB precedent, are thus agricultural employees within the meaning of the Act and are included in the bargaining unit of all agricultural employees of the Employer.

(Employer-members of Grower-Shipper Vegetable Association of Central California, supra, Mr. Artichoke Inc., supra.

## VIII.

### RECOMMENDATION

In view of the foregoing it is recommended that the two Petitions herein be consolidated for decision by the Board; that the Board deny the Employer's request to dismiss the Petition of the IUAW; that the Board deny the Employer's request that an order be issued that the Employer has no obligation to bargain with Teamster Local 865; and 1) that the Employer's two office clericals are agricultural workers and they are not to be excluded from the unit as being confidential employees within the meaning of the Act and, 2) as to the composition of the existing bargaining unit it be held that the Employer's drivers, loaders and stitcher-glueers be included in the unit as agricultural employees under NLRB and ALRB precedent. Furthermore, the existing bargaining unit should be amended as follows:

All agricultural employees of the Employer, including, drivers, loaders and stitcher-glueers, and the two office clericals in the counties of San Luis Obispo and Santa Barbara.

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DATED this 12<sup>th</sup> day of September, 1983, at  
San Diego, California.



TONY SANCHEZ  
Acting Regional Director  
AGRICULTURAL LABOR RELATIONS  
BOARD 1350 Front Street, Room  
2062  
San Diego, California  
92101 (619) 237-7119

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

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

I am a citizen of the United States and a resident of the County of SAN DIEGO. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 1350 Front St., Room 2062, San Diego, CA 92101.

On September 8, 1983 I served the within \_\_\_\_\_  
\_\_\_\_\_ REGIONAL DIRECTOR'S RECOMMENDATION ON \_\_\_\_\_  
\_\_\_\_\_ UNIT CLARIFICATION PETITIONS \_\_\_\_\_

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

CERTIFIED MAIL

Richard S. Quandt, Esq.  
P.O. Box 625  
Guadalupe, CA 93434

Art Castro  
International Union of  
Agricultural Workers  
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Sacramento, CA 95814

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Executed on September 8, 1983 at San Diego, California.

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

Norma M. Ballesteros