

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

CREAM OF THE CROP,	)	
	)	Case No. 84-RC-3-SAL
Employer,	)	
	)	
and	)	
	)	10 ALRB No. 43
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	
Petitioner.	)	
_____	)	

DECISION AND ORDER ON CHALLENGED BALLOTS

On March 8, 1984, the United Farm Workers of America, AFL-CIO (UFW) filed a petition for certification as the exclusive bargaining representative of all the agricultural employees of Cream of the Crop (Employer) in Monterey County, California.

On March 14,<sup>1/</sup> a representation election was conducted among the agricultural employees of the Employer. The official Tally of Ballots served upon the parties revealed the following results:

UFW	30
No Union	16
Challenged Ballots	<u>42</u>
Total	88

As the Challenged Ballots were sufficient in number to determine the outcome of the election, the Salinas Regional Director (RD) of the Agricultural Labor Relations Board (Board)

<sup>1/</sup> All dates are 1984.

conducted an investigation. On June 4, the RD issued his Report on Challenged Ballots. The Employer timely filed exceptions to the RD's Report and an accompanying brief.

Pursuant to the provisions of Labor Code section 1146,<sup>2/</sup> the Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Report on Challenged Ballots in light of the exceptions and brief and has decided to reject the recommendations of the RD. We therefore direct that the RD open and tally the 34 Challenged Ballots cast in the Imperial Valley and thereafter, serve a revised Tally of Ballots upon the parties.

During the relevant times, Cream of the Crop grew and harvested broccoli and carrots in Monterey County and carrots in the Imperial Valley. The Employer operated year-round in Salinas and from approximately December through April, in the Imperial Valley. One supervisor, Humberto Felix, supervised the carrot harvesting crews in both Salinas and the Imperial Valley. Some employees also travelled with Felix between the two carrot harvesting locations.

In its exceptions to the RD's Report on Challenged Ballots, the Employer has excepted to certain of the RD's factual findings and has submitted declarations and exhibits in support of its objections. Although some of these exceptions raise material questions of fact that would require an investigative

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<sup>2/</sup> All code references are to the California Labor Code unless otherwise specified.

hearing to resolve, we find it unnecessary to order an investigative hearing in order to rule on the Employer's exceptions since we have concluded that the facts as determined by the RD support our finding that the appropriate bargaining unit herein must include the Employer's Imperial Valley operations.

All parties agree that the Employer has operations in noncontiguous geographical areas. Therefore, under section 1156.2<sup>3/</sup> of the Agricultural Labor Relations Act (ALRA or Act) we are required to determine the appropriate unit or units of agricultural employees.

When determining the appropriate bargaining unit where, as here, an employer has multiple, noncontiguous operations, we will consider all relevant factors including the geographical proximity of the various locations; the extent to which administration is centralized, particularly with regard to labor relations, for all locations; the degree of common supervision at the different work sites; the extent of interchange among employees from location to location; the nature of the work performed at the various locations and the similarity or dissimilarity of the skill involved; similarity or dissimilarity

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<sup>3/</sup> 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.

in wages, working hours, and other terms and conditions of employment; and the pattern of bargaining history among employees. (See for example, Bruce Church, Inc. (1976) 2 ALRB No. 38.) We will also consider the fact that the Union has petitioned for and organized on the basis of a smaller unit (Napa Valley Vineyards (1977) 3 ALRB No. 22; Federal Electrical Corporation (1966) 157 NLRB 1130 [61 LRRM 1500]) and a legislative presumption favoring broad "wall-to-wall" bargaining units (Prohoroff Poultry Farms (1983) 9 ALRB No. 68; see also Pioneer Nursery/River West Farms (1983) 9 ALRB No. 38; Vista Verde Farms v. ALRB (1981) 29 C.3d 307, 322-323 [172 Cal.Rptr. 720]). However, we caution the parties that no one factor is critical and the analysis will vary from situation to situation, even from year to year. (See, e.g., Peterie Stores (1983) 266 NLRB No. 13 [112 LRRM 1233].)

We agree with the RD that the geographical locations of the Employer's operations have been widely separated, that there has been relatively small interchange of employees between those geographically separate locations (considering the entire operations of the employer) and that no bargaining history favors a broad, employer-wide unit. We also agree with the RD that supervision of the Employer's workers has been locally managed by the crew supervisors and that differences in skill and the nature of work distinguish the broccoli and carrot crews. However, significant similarity exists between the carrot operations in Salinas and the Imperial Valley. Not only was there substantial similarity in skills and working conditions,

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common supervision, and some employee interchange, but control of labor relations appeared to exist in the same person, Humberto Felix. (Compare, for example, Mike Yurosek & Sons (1978) 4 ALRB No. 54, where the locally managed supervision of the work forces and the regional differences in the skills of employment mandated separate bargaining units.)

Although we view this matter as a close question partially because of the relative newness of the Employer's operations, we are persuaded by the similarity of the regionally diverse carrot harvests that the appropriate unit should be all the Employer's agricultural operations.

ORDER

The Challenges to the 34 ballots cast in the Imperial Valley are hereby overruled. The Regional Director is directed to open the above-referred to Challenged Ballots and thereafter prepare and serve upon the parties a revised Tally of Ballots. Should the remaining challenges be outcome determinative, the Regional Director shall prepare and serve upon the parties an amended Report on Challenged Ballots.

Dated: October 10, 1984

JOHN P. McCARTHY, Member

PATRICK W. HENNING, Member

MEMBER WALDIE, Dissenting:

I dissent. This employer harvests 800-1200 acres of carrots and 800-1200 acres of broccoli in Monterey County, the unit encompassing this petition for certification. There, two crews (approximately 60 workers) are employed for a year-round broccoli operation and an additional crew of 20-25 workers for the carrot season, which runs from April to November or December. The one foreman of the carrot crew travels to Imperial County to supervise the harvesting of 400 acres of carrots by one crew of 30-35 workers. There is absolutely no employee interchange between the broccoli and either of the carrot operations; the only interchange of employees occurs in the carrots, and that interchange is meager indeed and itself subject to question, as the Regional Director's Report indicates. Before the election six (6) carrot workers went from Monterey to work in the Imperial carrots, only three (3) of whom worked the entire Imperial season. The majority relies upon the employer's representation that after the election seventeen (17)

of the Imperial carrot workers came north to work in the Monterey carrots. As the Regional Director cautions, however, this alleged increase in interchange is without documentation and may have been initiated by the employer as a means to buttress its argument in support of a state-wide unit. The majority ignores the clear warning from the Regional Director that this increase in interchange should not be relied upon by the Board without further investigation (see RD report, footnote 3).

I believe the majority has misconstrued the Board's earlier pronouncements regarding state-wide units. Bruce Church, Inc., (1976) 2 ALRB No. 38 involved one of the largest lettuce companies in the state with a long-established pattern of seasonal operations involving the interchange of thousands of workers statewide. That precedent does not condone adopting a state-wide unit, involving non-contiguous geographical areas and separate agricultural production areas 470 miles apart, in the absence of any pattern of interchange, and with evidence only that six (6) workers from one area traveled once to the other. Such was not the intent of the analysis applied to the highly sophisticated operation in Bruce Church, supra, nor the comprehensive unit analysis adopted in Prohoroff Poultry Farms (1983) 9 ALRB No. 68. At the time of the election, this was a new employer with no company-wide rules, no established employment policies or practices, and no policies of seniority, hiring, firing, vacations, etc. Simply because carrots are grown in both locations does not make this employer "highly integrated," and it strains reason to conclude, as does the majority, that because Humberto Felix, the sole carrot foreman,

hires carrot workers in both locations, this employer has a "centralized labor relations" policy. (See Exeter Packing Inc., (1983) 9 ALRB No. 76.) I would adopt the Regional Director's Report and certify the unit petitioned for herein.

Dated: October 10, 1984

JEROME R. WALDIE, Member



CASE SUMMARY

Cream of the Crop  
(UFW)

Case No. 84-RC-3-SAL  
10 ALRB No. 43

Regional Director's Report on Challenged Ballots

As the challenged ballots in an election conducted among the Employer's employees were sufficient in number to affect the outcome, the Salinas Regional Director (RD) prepared a Report on Challenged Ballots recommending the challenges to the 34. ballots cast among the employer's Imperial Valley carrot harvesting crew be sustained. The RD found that the appropriate bargaining unit in this matter should be confined to Monterey County.

Board Decision

The Board reversed the RD and directed that the challenges be overruled and the ballots tallied. The Board found that while the matter was a close one, presenting a difficult policy determination, that the appropriate unit here included all the employer's operations.

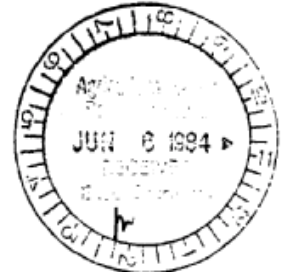
Dissent

Member Waldie dissented, stating the majority had misconstrued the sophisticated analysis derived from Bruce Church (1976) 2 ALRB No. 38, and had erroneously found an integrated operation with centralized labor policies based on evidence that one foreman hired carrot workers in both locations and that six (6) of those workers "interchanged" once by traveling from the Monterey to the Imperial carrot harvest.

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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

In the Matter of: )  
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UNITED FARM WORKERS )  
OF AMERICA, AFL-CIO, ) Case No. 84-RC-3-SAL  
 )  
Petitioner, )  
 ) CHALLENGED BALLOT REPORT  
and )  
 )  
CREAM OF THE CROP, )  
 )  
Employer. )  
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A petition for certification was filed by the United Farm Workers of America, AFL-CIO (hereafter "UFW" or "Union") on March 8, 1984, seeking to represent all the agricultural employees of Cream of the Crop (hereafter "Employer") in Monterey County. In its response to the petition for certification, the Employer objected to the scope of the unit sought in the petition, asserting that it also employed agricultural employees in Imperial County and that the appropriate unit was a state-wide unit.

The Regional Director of the Salinas Regional Office of the Agricultural Labor Relations Board decided to conduct the election in both Monterey County and Imperial County and to challenge the voters at the Imperial County site under 8 Cal. Admin. Code section 20355(a)(2) on the grounds that they were not employed in the appropriate bargaining unit.

An election was conducted at sites in both counties

on March 15, 1984. The tally of ballots at the Monterey voting site was as follows:

UFW	30
No Union	16
Unresolved Challenged Ballots	8

The ballots at the Imperial County voting site remained uncounted, pending investigation and determination of the unit issue by the Regional Director. A total of 34 voters voted at the Imperial County location. All of the voters were challenged by the Board agent on the grounds that they were not employed in the appropriate unit. Two of the voters were also challenged on the additional grounds that their names did not appear on the eligibility list.

The challenged ballots of the employees voting at the Imperial County site are outcome-determinative. An investigation on those challenges was conducted and the parties were given an opportunity to present evidence on the challenges.

This Challenged Ballot Report contains conclusions and recommendations only on the ballots challenged on the grounds that the voters were not employed in the appropriate unit. The remaining challenges will be investigated and resolved in the event that they are outcome-determinative after a final decision on the unit issue has been made.

STATEMENT OF FACTS

The Employer is a "California corporation formed in October 1982.<sup>1/</sup> It actually began agricultural operations in January 1983. The Employer contracts with individual growers for the growing of broccoli and carrots, which it harvests, packs, and sells. The Employer also harvested 200 acres of cauliflower in 1983, but has planted no cauliflower since then and does not intend to produce that crop in the future. The Employer has agricultural operations in both Monterey and Imperial Counties. In Monterey County, the Employer harvests broccoli and carrots. Its operations are located in south Monterey County between Gonzales and San Ardo. In Imperial County, the Employer has only a carrot harvesting operation, which is located in the Westmoreland area.

Charles Watts is the president and general manager of the company. Watts oversees the entire operation. Watts supervises the management and supervisory personnel, as well

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1. During the investigation, general manager Charles Watts stated that the name of the corporation was Cream of the Crop and that the officers were Charles Watts, President; Cliff Kirkpatrick, Vice President; and Lisa Dill, Secretary. However, according to the Articles of Incorporation, dated September 29, 1982, and the Statement of Domestic Stock Corporation, dated October 20, 1982 and filed with the Secretary of State on November 21, 1982, the name of the corporation is Charles G. Watts, Inc. and the officers are Charles G. Watts, Executive Officer; Lisa Dill, Secretary; and Howard H. Leach, Chief Financial Officer. I find that the correct facts are those set forth in the above-mentioned documents.

as the company sales person, Charles Lloyd, and establishes the wages and benefits for all the employees. Watts also retains final approval on all the company's growing contracts.

Cliff Kirkpatrick is in charge of the growing operation. He negotiates contracts with individual growers to grow the broccoli and carrots. Although the land preparation is performed by the grower, Kirkpatrick is responsible for planting the seed, which is then charged, along with the cost of the seed, to the grower. After planting is completed, the Employer has no hand in, nor control over, the growing operation. Kirkpatrick makes periodic visits to the fields and gives advice to the growers if requested. The irrigation, cultivation, fertilization, and pest control of the crop are performed by, and are the responsibility of, the growers with whom the Employer has contracted. The Employer has 22 contracts with growers in Monterey County and 18 contracts with growers in Imperial County. Kirkpatrick also oversees the work of the Employer's two harvesting supervisors, Dave Ketchum, who supervises the broccoli operations, and Humberto Felix, who supervises the carrot operations.

The Employer's broccoli harvesting operation is located only in Monterey County. The Employer plants and harvests approximately 800 to 1200 acres of broccoli per year. The broccoli harvest season is basically year-round, with slow periods in the winter months. The Employer employs two broccoli harvest crews of approximately 30 workers each.

During the slow periods, the Employer on occasion lays off one crew. Each crew is run by their own harvesting foreman, who is in turn supervised by Dave Ketchum on a daily basis.

The Employer uses a field pack system for harvesting broccoli. The cutters cut and put the broccoli into wire-framed canvas bins strapped to their backs. They dump the full bins onto a packing table, which is on wheels and is pulled by a tractor through the rows. The packers bunch and pack the broccoli into boxes. The loaders load the boxes onto a flat bed trailer which, when full, is hauled out of the field and subsequently hauled to the company's cooler in Salinas where the broccoli is iced and shipped.

The Employer plants and harvests 800 to 1200 acres of carrots per year in Monterey County. It employs one carrot bunching crew of 20 to 25 employees. The carrot harvest season in Monterey County is from April to the end of November. The Employer also plants and harvests about 400 acres of carrots in Imperial County. It employs one carrot bunching crew of 30 to 35 employees there. The carrot harvest season in Imperial County is from December to April. Humberto Felix supervises the carrot crews in both locations.

The carrots in both locations are primarily harvested by hand. The carrots are sorted out and graded by size, a dozen carrots are bunched together, and then a dozen bunches

are joined together. The carrots are then loaded on a truck and shipped to the packing shed. In Monterey County, the carrots are packed by the Employer at its own non-commercial packing shed in Greenfield. In Imperial County, the carrots are packed by the Employer at night in a packing shed rented from Mario Saikhon, Inc.

There is very little interchange of employees between the Employer's various harvesting operations. There has been no interchange at all of employees between the broccoli operations and either of the carrot operations. The broccoli workers come from the general labor pool of residents in the King City area of Monterey County. None of these employees travel to Imperial County to work in the Employer's carrot operations. Furthermore, none of them work in the Employer's Monterey County carrot operations.

There was very little interchange between the employees in the Employer's two carrot operations before the election which is at issue here. After the election, the rate of employee interchange increased. The Employer's first carrot harvest season in Monterey County was from April through November 1983 and its first carrot harvest season in Imperial County was from December 1983 to April 1984. The Employer's second season in Monterey County just began in April 1984, after the election. Only six employees who had worked in the first Monterey County harvest in 1983 subsequently worked in the following Imperial County harvest.

Of these six employees, only three - Alberto Felix, Martin Carrillo, and Ramon Robles - worked during the entire Imperial County harvest season. These three workers were loaders.<sup>2/</sup> However, in the current Monterey County carrot harvest, 17 of the 30 carrot workers had worked in the Employer's previous (first) Imperial County carrot harvest.<sup>3/</sup>

According to Charles Watts, the Employer's operation is run exclusively from the company office in Salinas; there is no office in Imperial County. However, the Employer does in fact maintain an office in Holtville in Imperial County.<sup>4/</sup> It is unclear what work is actually done from the two offices. However, according to Watts, he travels twice a week from Salinas to the Imperial Valley on company business. He resides in Monterey. Cliff Kirkpatrick also travels to the Imperial Valley in order to negotiate contracts and maintain contact with the growers during the carrot growing

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2. As to the other three employees, Jesus Blanco only worked during three payroll periods at the start of the Imperial County harvest in 1983. Ramon Blanco worked during the first payroll period and returned to work during one other payroll period which ended on December 24, 1983. Eddie Felix, who had left the Employer's Monterey County harvest during the payroll period ending on September 10, 1983, worked during the first payroll period in Imperial County and returned apparently at the end of the payroll period ending on December 17, 1983.

3. This information was submitted by the Employer on April 9, 1984 in support of its position on the unit issue. This information consisted of a list of names of 30 employees employed, according to the Employer, in the current Monterey County carrot harvest and a statement by the Employer that 17 of those employees had worked in the previous Imperial Valley carrot harvest. This information was not accompanied by any documentation.

4. The address of the Employer in Imperial County is: Cream of the Crop, 570 Holt Avenue, Holtville, CA 92250. The phone is (619) 356-5559.



operations.

According to Watts, all payroll work is performed at the Salinas office. The foremen of the broccoli crews turn in the time sheets to Dave Ketchum who delivers them to the payroll office in Salinas. Humberto Felix turns in the time sheets for the carrot crew during the carrot harvest in Monterey County and calls the time in to the Salinas office during the carrot harvest in Imperial County. The payroll period is the same for all employees. The payroll period is weekly, from Monday through Sunday, with checks distributed on Friday. During the carrot harvest in Imperial County, Watts delivers the checks on his biweekly trips. The checks are all drawn off the same account.

As mentioned before, Watts sets the wages and benefits of all employees. The broccoli harvesting employees are paid at an hourly rate of \$5.25 per hour. The carrot harvesting employees in both locations are paid at a piece rate of \$.42 per dozen bunches. On the rare occasions that carrot harvesters are paid at an hourly rate, that rate is also \$5.25 per hour. The broccoli employees work from 20 hours per week during slow periods to more than 50 hours per week during peak periods. According to Kirkpatrick, the carrot employees in both locations work an average of 30 hours per week.

The Employer asserts that it maintains a medical plan through a company called Pan American Insurance which

covers all its employees and that it pays the premiums on the plan. The investigation revealed that the Employer instituted this medical plan, at least as to its broccoli employees, near the start of the election campaign, when it enrolled employees who met the plan's 80-hour eligibility requirement. It is not apparent that the Employer has enrolled any employees since that time.

According to Watts, the Employer also gives five paid holidays to all its employees: Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas. In order to qualify the employee must work the last scheduled work day before the holiday and the first scheduled work day after the holiday. However, the payroll records do not support Watts' statement. According to the records, the broccoli harvesting employees have received no holiday pay at all.<sup>5/</sup> The carrot harvesting employees in Monterey County received holiday pay for Memorial Day and the Fourth of July. In addition, a number of those employees received holiday pay for Labor Day; however, it is not apparent from the records why some received such pay and others did not. The only employees to receive holiday pay for Thanksgiving were the loaders of the carrot crew in Imperial County - Ramon Blanco, Martin Carrillo, Albert Felix, Ramon Robles - and an

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5. The investigation revealed that, during the election campaign, the Employer promised the broccoli workers that they would receive holiday pay.

employee named Eddie Felix. Most of the carrot harvesting employees in Imperial County received holiday pay for Christmas.

The Employer has no other employee benefits. It does not have a vacation plan or any vacation benefits. The Employer provided housing for carrot harvesting employees in Monterey County during the 1983 season. However, it has not provided such housing in the current 1984 season and it has never provided housing for broccoli harvesting employees or for carrot harvesting employees in Imperial County. The Employer does not provide transportation at any location.

The Employer has no established labor relations or employment policies. There are no set company rules and regulations and no set policies regarding hiring, discipline, discharge, leaves of absence, etc. These decisions are the responsibility of the individual foremen. Hiring is done through the foremen; the Employer has no seniority system. Similarly, individual decisions regarding discipline of an employee, discharge of an employee, and the granting of leaves of absence are left to the discretion of the foremen, with some supervisory control by the field supervisors, Cliff Kirkpatrick and Dave Ketchum. The Employer has hired foremen who it believes have sufficient experience to perform this type of supervisory work.

LEGAL ANALYSIS

Under Labor Code section 1156.2, the Board must determine the appropriate unit or units of employees in cases where employees of a single agricultural employer are employed in noncontiguous geographical areas.<sup>6/</sup> In order to make this determination, the Board takes into consideration several factors, including: (1) the location of the operations in relation to each other; (2) the extent to which administration is centralized, particularly with regard to labor relations; (3) the extent to which employees at different locations share common supervision; (4) the extent of interchange among employees from location to location; (5) the nature of the work performed at the various locations and the similarity or dissimilarity of the skills involved; (6) the similarity or dissimilarity in wages, hours, and other conditions of employment; and (7) the pattern of bargaining history among the employees. Bruce Church, Inc. (1976) 2 ALRB No. 38; Exeter Packers, Inc. (1983) 9 ALRB No. 76. However, unit issues are analyzed on a case-by-case basis; what is determinative in one situation may be inconsequential in another. Bruce Church, Inc., supra.

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6. Labor Code section 1156.2 reads:

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.

at 4 of slip opinion.

In the instant case, there is no question that the Employer's two operations, one in Monterey and one in Imperial County, 450 miles apart, are in noncontiguous geographical areas. The only issue to determine is whether the appropriate unit is the petitioned-for unit of Monterey County employees or rather a state-wide unit. It is therefore necessary to analyze the Employer's operations in light of the factors set forth in Bruce Church, Inc., supra.

(1) Location of operations: As stated previously, the operations are 450 miles apart. One is in the Westmoreland area of Imperial County and the other is in the Gonzalez-San Ardo area of Monterey County.

(2) Centralization of administration, particularly labor relations: Payroll and bookkeeping are all done out of the company office in Salinas, according to the Employer. Charles Watt establishes the wages and benefits for all employees, and all wages are paid from one account. They administration is therefore centralized in terms of paperwork.<sup>7/</sup>

However, the administration is not centralized in terms of labor relations. There is no centralized personnel

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7. It should be noted, however, that this conclusion is based on the Employer's assertions and does not take into account the existence of the Employer's office in Imperial County, which the Employer has not acknowledged. In the event that this conclusion becomes a significant factor in any challenge to this Report, further investigation is necessary.

office or officer. Furthermore, the Employer has no established company-wide rules and regulations and no established employment policies and practices. There are no policies regarding hiring, discipline, discharge, seniority, vacations or leaves of absence. The individual crew foremen are responsible for the decisions in all of these areas. Supervisors may on occasion intervene in a particular case, but that is not the general practice.

(3) Extent of common supervision of employees: Virtually all of the daily supervision of employees is done by individual crew foremen. The only common supervision of employees at different locations is the supervision by Humberto Felix of employees in the carrot harvesting operations in both Monterey and Imperial Counties. Two other foremen, supervised by Dave Ketchum, supervise the employees in the broccoli operations in Monterey County. Neither these foremen nor Ketchum have any connection with the carrot operations or the Imperial County site.

(4) The extent of interchange among employees from location to location: The extent of interchange among employees before the election was minimal; however, it has increased somewhat since the election. The bulk of the Employer's workforce, the broccoli harvesting employees in Monterey County, do not work in the carrot operations and do not travel to the Imperial County. In addition, only six employees from the first Monterey County carrot harvest in 1983 subsequently

worked in the Imperial County carrot harvest. Of those six employees, only three worked steadily during that operation. Therefore, the interchange of the Employer's employees before the election was, at most, six out of 80 employees,<sup>8/</sup> or 7.5%.

The Employer's next carrot harvest in Monterey County began in April 1984 after the election. Seventeen of the employees working in the Monterey County operation had previously worked in the Imperial County operation.<sup>9/</sup> Therefore, the amount of interchange of employees was 17 out of 80, or 21.25%.

(5) Similarity of dissimilarity of skills involved in the work at both locations: The work performed in Monterey County is both broccoli harvesting and carrot harvesting, while the work performed in Imperial County is exclusively carrot harvesting. The skills involved in carrot bunching are somewhat different than those in broccoli harvesting, since the carrot workers must be able to grade and sort the

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8. The figure of 80 employees includes the two broccoli crews of approximately 30 employees each and a carrot crew of 20 employees each. The Employer also employs a few packing shed employees who are agricultural employees. Therefore, the 80 employee figure is conservative. The eligibility list included 92 eligible voters; however, turnover may account for some of the additional employees.

9. As noted in footnote 3, the Employer submitted these figures without supporting documentation. Furthermore, this employee interchange occurred after the election and after the unit issue had become a hotly disputed matter. This Report assumes that this increased employee interchange in fact occurred and was not in any way the result of the Employer's position on the unit issue. In the event that this assumption becomes a significant factor in any challenge to this Report, further investigation is necessary.

carrots for bunching while the broccoli workers must be able to select and cut the mature broccoli properly. The skills involved in the two carrot operations are the same.

(6) Similarity or dissimilarity in wages, hours, and working conditions: The Monterey County broccoli employees are paid at an hourly rate while the Monterey County carrot employees as well as the Imperial County carrot employees are paid by piece rate. While the records show that the broccoli employees worked between 20 to 50 hours per week, the records did not reveal the number of hours worked by carrot employees in either location; therefore no conclusion can be drawn as to the dissimilarity or similarity of hours worked in the two locations. The employees may receive the same medical benefits but do not receive the same holiday benefits: the broccoli employees receive no holiday benefits, while Monterey County carrot employees receive pay for Memorial Day and Fourth of July and some receive pay for Labor Day. Imperial County carrot employees receive holiday pay for Christmas; however, only carrot loaders receive pay for Thanksgiving. As to other fringe benefits, the Employer provided housing during one season for its Monterey County carrot employees; however, it provided no housing for any other employee.

The employment conditions of all the employees are basically at the discretion of the individual foremen; there is no company-wide policy regarding working conditions. Since the



conditions are set individually, it is difficult to determine whether such conditions are in fact similar or dissimilar.

(7) The pattern of bargaining history: There is no such bargaining history, since the Employer is a newly formed company which has not had any previous experience with unions.

In sum, in scrutinizing the Employer's operation in light of Bruce Church, Inc., supra, I find that the appropriate unit is the unit of agricultural employees in Monterey County. Except for the performance of payroll and bookkeeping functions,<sup>10/</sup> there is no centralized administration of the operation, particularly concerning labor relations. There are no company-wide employment policies and practices nor are there company rules and regulations. The Employer's operations in the two locations do not represent a singled integrated enterprise, such as that found in Prohoroff Poultry Farms (1983) 9 ALRB No. 68. On the contrary, the Employer's carrot operation In Imperial County, where the Employer has separate growing contracts with Imperial Valley growers as well as a separate harvesting operation, functions independently from the carrot and broccoli harvesting operations in Monterey County. The bulk of the Employer's workforce, the broccoli harvesting employees in Monterey County, are paid by a different method of compensation than the rest of the employees and work in an entirely different operation, requiring somewhat different skills, than the others. The holiday pay benefits are not the same for broccoli employees and carrot

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10. See footnote 7.

employees and are also not the same for employees in Monterey County and employees in Imperial County. The employee interchange between locations is low, ranging from 8% to 21.25%.<sup>11/</sup>

The factors urged by the Employer in support of its position for a state-wide unit focus on the carrot harvesting operations in both locations. The two carrot harvesting crews share a common supervisor, Humberto Felix, are paid at the same rate, and have the same skills in both locations. The only interchange of employees has occurred in the carrot harvesting operations, where there was an interchange of six employees in the first location switch and an interchange of 17 employees in the second location switch after the election. These factors must be taken into account in considering the appropriate unit; however, they are not determinative. To focus solely on the Employer's carrot operations does not comport with a Bruce Church analysis which requires an examination of the entire scope of the Employer's agricultural operations.

The conclusion that the appropriate unit is comprised of the agricultural employees in Monterey County is in line with Board precedent. In Bruce Church, Inc., supra, the Board found that the appropriate unit was a state-wide unit, on the grounds that, in different locations, the employer had common supervision, common employment and labor relations

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11. See footnote 9.

practices, common equipment, and an extremely high percentage of employee transfers between areas. In the instant case, unlike Bruce Church, the Employer has no such common employment and labor relations practices, has low employee interchange, and has common supervision only in the two carrot crews.

The instant case bears a certain resemblance to the case in Exeter Packers, Inc. (1983) 9 ALRB No. 76, one of the Board's most recent decisions regarding the unit issue. In Exeter, the employer had two tomato harvesting operations, one in Fresno County and the other about 100 miles away in Monterey County. Both operations required similar skills and both used a single labor contractor to hire and supervise the employees in both locations. The harvest and planting seasons in the two locations occurred at different times of the year. There was, however, very little employee interchange: about 21 of 600 employees worked in both locations during the season before the election. The Board, reversing the Investigative Hearing Examiner's decision, found that separate units were appropriate, since there was no history of collective bargaining including both locations and there was little evidence of supervisor or employee transfers.

In the instant case, since the Employer produces two different crops, there is more diversity of skills, operations, and supervision than that appearing in Exeter, as well as low employee interchange, militating even more strongly for a finding of separate units.

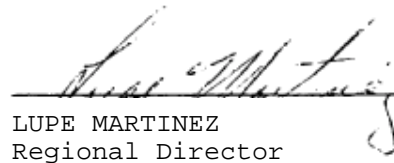
In conclusion, I find, after analyzing the Employer's operations in light of applicable ALRA precedent, that the appropriate unit is the unit of all agricultural employees of the Employer in Monterey County.

III

CONCLUSION

The challenges to the ballots of all the voters who voted at the Imperial County site are hereby sustained, on the grounds that the voters were not employed in the appropriate unit.

Dated: *June 9, 1984*

  
LUPE MARTINEZ  
Regional Director