

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TANI FARMS,)	
)	
Employer,)	Case No. 83-UC-3-OX(SM)
)	
and)	
)	
INTERNATIONAL UNION OF)	10 ALRB No. 5
AGRICULTURAL WORKERS,)	
)	
Petitioner.)	
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DECISION AND ORDER CLARIFYING BARGAINING UNIT

On September 25, 1978, the International Union of Agricultural Workers (IUAW) was certified by the Agricultural Labor Relations Board (ALRB or Board) as the exclusive bargaining representative of the agricultural employees of Tani Farms, the Employer herein. On April 21, 1983, the IUAW filed a unit clarification petition requesting clarification of the status of the driver-loaders and stitchers and the secretaries as bargaining unit members.

In a report issued on September 14, 1983, the Acting Regional Director (ARD) for the Oxnard Region found that the driver-loaders are engaged in activities incidental to farm work and are therefore agricultural employees under Labor Code section 1140.4 (b) . He therefore recommended that the driver-loaders be included in the certified bargaining unit. The ARD also found that the Employer no longer employs stitchers. No exceptions were filed as to these findings and conclusions and we hereby adopt them.

The ARD also concluded that the two secretaries were agricultural employees and that they were not confidential employees. The Employer timely filed exceptions to these conclusions along with a supporting brief and declarations.

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 recommendations, in light of the exceptions, brief, and declarations and has decided to adopt the ARD's report.

ORDER

It is hereby ordered that the unit of all agricultural employees of Tani Farms is clarified to include any employees referred to as driver-loaders and the two office secretaries.

Dated: February 8, 1984

ALFRED H. SONG, Chairman

JOHN P. MCCARTHY, Member

PATRICK W. HENNING, Member

CASE SUMMARY

Tani Farms
(IUAW)

10 ALRB No. 5
Case No. 83-UC-3-OX(SM)

REGIONAL DIRECTOR'S REPORT AND RECOMMENDATION

The International Union of Agricultural Workers (IUAW) filed a petition for unit clarification requesting clarification of the unit as it relates to the driver-loaders, stitchers, and the two secretaries. After conducting an investigation the Acting Regional Director (ARD) issued his report wherein he found that the driver-loaders are agricultural employees within the meaning of the Act. He thus recommended their inclusion in the certified bargaining unit. In addition, the ARD found that the employer no longer employs stitchers. Finally the ARD concluded that the secretaries were agricultural employees within the meaning of the Act and that they were not confidential employees under the test approved by the U.S. Supreme Court in NLRB v. Hendricks (1981) 454 U.S. 170 [108 LRRM 3105]. As such, he recommended that they also be included in the certified bargaining unit.

BOARD DECISION

The Board adopted the ARD's report and recommendations in their 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



In the Matter of:

TANI FARMS,

Employer,

and

INTERNATIONAL UNION OF
AGRICULTURAL WORKERS,

Petitioner.

CASE NO. 83-UC-3-OX(SM)

REGIONAL DIRECTOR'S
RECOMMENDATION ON UNIT
CLARIFICATION PETITION

I. ISSUES

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

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

C. If the clerical employees are agricultural employees, whether they are confidential employees.

D. Whether the drivers-loaders of the Employer's lettuce and cabbage crew are agricultural employees.

II. BACKGROUND

A. Petition

The petition of the International Union of Agricultural Workers (IUAW) was filed on April 14, 1983 requesting clarification of the existing bargaining unit, 1) of the Employer's driver-loaders alleging them not to be commercial employees

because they are working for only one employer and 2) of the Employer's "secretaries," alleging that they are not confidential employees.

B. Past Representation by Teamster Local 865

Although the IUAW in its Petition failed to serve the Food Packers, Processors and Warehousemen's Local 865 (hereafter Teamster Local 865) with a copy of the Petition, the Regional Office mailed a copy of same to Teamster Local 865 at Santa Maria, with a copy dated June 23, 1983, to Teamster attorney Barry J. Bennett at Fresno with request that the Teamsters state their position no later than June 29, 1983. Numerous telephone requests were 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 Region has elicited no response 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 Teamster Local 865 with the Committee comprised solely of two grower-shippers, i. e. , Apio, Inc. and Point Sal Growers and Packers. Note, too, is taken of Teamster Local 865's Brief on Exceptions to the Regional Director's Recommendation on Unit Clarification Petition in Security Farms,

82-UC-2-0X(SM), and statement therein on page 4 (under substantially the same facts of job description as present in the instant Petition) 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 present claim to represent the subject employees is made by Teamster Local 865 and that to date, no unfair labor practice charge has been filed regarding this matter.

C. Unit Certification of the IUAW

As a result of the election held at Tani Farms, 78-RC-9-SM on August 11, 1978, the IUAW was certified by the Board on September 25, 1978, in the following unit:

All Agricultural employees of the
Employer in the State of California.

Included on the Employer's eligibility list at Tani Farms were driver-loaders and stitchers. 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. Bargaining History With IUAW

Tani Farms is 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 or federal law. Thus, it is seen

that the clericals at Tani Farms are not represented by a labor organization.

III. THE EMPLOYER'S REQUEST FOR
DISMISSAL OF THE IUAWS PETITION

A. Facts

In the IUAW's Petition, attorney Richard Quandt alleges that said Petition should be dismissed for the following reasons:

1. Pursuant to ALRB Regulation section 20385, the IUAW's Petition for Unit Clarification was not timely filed because the issue of the status of the clericals was not unresolved at the time of the Certification and no changed 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 clericals from coverage under the agreement. The Employer asserts that because the union agreed to the 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.

Moreover, the Employer states that it would be unfair for the union to agree to exclude certain groups of employees at the outset for voting purposes, and later seek their inclusion in the unit for dues 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 the right 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) , (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 IUAWs coffers at the the expense of the clericals.

3. It is alleged that the complete lack of community of interests between the 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 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 office 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 dis-

cussions 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 clericals 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, the Union President, Mr. Art Castro, attempted, to the extent of his knowledge and understanding, to describe the names and duties of the clericals involved.

A Petition of 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 the same 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 clericals from the eligibility list and by the IUAWs 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 these 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 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 clericals at issue in the IUAW's 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 STATUS OF THE EMPLOYER'S
OFFICE CLERICALS AS AGRICUL-
TURAL EMPLOYEES

A. Facts

The Employer's two office clericals, Sara Wygall and Vickie Bracken, together with the Office Manager, Kaye M. Raul, occupy an open office area at the entrance to the Employer's office located in a mobile home. The Office Manager is in charge of the day to day operations of the office, and directs the two office clericals in the exercise of her independent judgment. She is a supervisor within the meaning of the Act. Kai Francisco, the Employer's Personnel Manager, is the person responsible for formulation, determination, and effectuation of the labor relations policies of the Employer with prior consultation with Employer's principals. He occupies an office that is separate and removed from the office area occupied by the office force.

Sara Wygal has been employed as such since February 1980. She earns slightly more than the other clerical due to her longer length of service. She performs general office clerical and bookkeeping functions, as follows: handles office mail, has responsibility for correct harvesting records including sales and receipts, monthly dues reports and records, payroll duties including handling time sheets, entry and run on computer sheets, balances, employee garnishments, union dues, seniority lists and reconciling bank statements; personnel files and employment verification.

Vickie Bracken has been employed as a clerical since April 1983. This office clerical likewise performs general office clerical and bookkeeping functions, as follows: answers the telephone and radio; acts as receptionist; handles office mail; responsible for accounts payable such as incoming invoices; codes general ledger entries with proper numbers; enters invoices in computer and runs checks; she is responsible for general bank statements and reconciliation; and she has payroll duties which include handling time sheets and rates, and entry and run on computer sheets.

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 a bookkeeper, or otherwise performed office clerical functions, showed that their duties were incident to and in conjunction with the employer's agricultural operation and the said 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 clericals work is incidental to the Employer's agricultural operations. Therefore the two office clericals are agricultural employees. (Dairy Fresh Products Co., Supra.).

V. THE STATUS OF 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 under the Office Manager, Kaye M. Raul. To date, there has been a lack of involvement by the two clerks in any contract negotiations.

Besides having some common duties, among which is typing, the two clericals also assist each other and substitute for each other in the absence of one or the other.

In the area of grievances, management points out that the two clericals accumulate information as to liability and possible disciplinary action to be used by the Employer in arbitration. The instructions from the Personnel Manager as to what information is needed for presentation in arbitration is said by management to indicate what tact or direction is to be given by the Employer in the proceeding.

The Employer indicates that both secretary-bookkeepers have been involved in recent weeks in typing declarations and other

confidential matter under investigation and analysis at the time for utilization in court in the injunctive proceeding against the Employer in cases numbers 83-CE-128-OX(SM) and 83-CE-138-1-OX(SM), and in their clerical duties in recent weeks both have acquired confidential information of varying breakdowns of figures before ultimate settlement on figures for possible make whole in any settlement discussions in the cases.

Additionally, in drafting proposed changes by management in its operations, under Article XIX - New Operations, of the present agreement with the IUAW, drafts of proposals still in the tentative stage for presentation by the Personnel Manager to his principals were typed for the latter's approval, etc. by both clericals as one or the other was available at the time.

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 LRRM 3105; Westinghouse Electric Corp., (1962) 138 NLRB No. 90; B.F. Goodrich Co., (1956) 115 NLRB 722).

In the present case, Kai Francisco, the Personnel Manager, is in charge of formulating and effectuating the Employer's labor relations policies. Neither of the two clerks work directly for the Personnel Manager. Instead, they work directly under the Office Manager, who is not involved in the formulation and effectuation of 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 this finding despite the fact that the accounting clerks 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 Weyerhauser Co., (1968) 173 NLRB 1171, the Board held that four clericals, one who was assigned to the personnel secretary to the head of the maintenance and engineering 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 noted 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. (Weyerhauser, supra, at p. 1173) .

In Chrysler Corp. (1968) 173 NLRB 160, the Board found that eleven superintendent clericals who were assigned to various superintendents who supervise foremen and had control over 150 to 600 production and maintenance workers, were not confidential employees inspite 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 a confidential employee if they act in a confidential capacity to a person who is responsible for the formulation and effectuation of the employer's labor relations policies. (Hemet Wholesale, (1976) 2 ALRB No. 24; Miranda Mushroom Farm, Inc., and Ariel Mushroom Farms, (1980) 6 ALRB No. 22). In Miranda, a secretary to the General Manager who was responsible for labor relations matter 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 person 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 employees 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 Corp., (1976) 224 NLRB 1579; West Chemical Products, Inc., (1975) 221 NLRB 250; Betchel Inc., (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 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 Grinnell, (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 of all of the Employer ' s agricultural employees.

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VI. THE STATUS OF THE DRIVER-LOADERS
AS AGRICULTURAL EMPLOYEES

A. Facts

Under the Unit Certification of the IUAW, the Employer included driver-loaders and stitchers on its eligibility list in the election resulting in the certification of the IUAW to represent the agricultural employees of the Employer. The Employer no longer employs stitchers, as it now uses pop-out cartons (pre-glued). The Employer has eight driver-loaders working with the lettuce and cabbage harvesting crew. They load the packed cartons onto a flatboard truck (Fabco) and haul them to the cooler for unloading and then return immediately to the field. During the years 1981 and 1982, 100 percent of the lettuce and cabbage loaded and hauled by the aforementioned employees was agricultural produce grown and owned by Tani Farms.

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 1140.4(a) of the Act; and as excluded from coverage under the NLRA 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-members of a multi-employer bargaining unit of said job classifications were agricultural laborers within the meaning of section 2(3) of the LMRA 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., per-

formed "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 five to ten percent. (Employer-Members of Grower-Shipper Vegetable Association of Central California, 230 NLRB 1011, 96 LRRM 1054 (1977); 626 F.2d 5801).

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

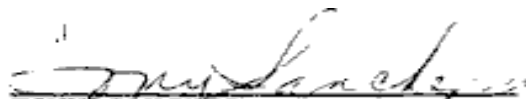
Clearly, the Employer's driver-loaders perform duties directly incidental to and in conjunction with the Employer's primary function of growing, packing, and hauling its own produce. They are therefore excluded by federal precedent from coverage under the NLRA as agricultural laborers and pursuant to 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, supra) .

RECOMMENDATION

In view of the foregoing conclusions it is recommended that the Board deny the Employer's request to dismiss the Petition of the IUAW; that the two office clericals of the Employer be included in the existing bargaining unit because they are not confidential employees within the meaning of the Act; and that the driver-loaders of the Employer be included in the unit, the same being amended accordingly as follows:

All agricultural employees of the Employer in the State of California, including the driver-loaders and the two office clericals.

Dated this 14th day of September 1983, at Oxnard,
California.



TONY SANCHEZ
Acting Regional Director
AGRICULTURAL LABOR RELATIONS
BOARD
528 South A Street
Oxnard, California 93030

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE 3Y MAIL
(1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Ventura, I am over the age of eighteen years and not a party to the within entitled action. My business address is:
528 South A Street, Oxnard, CA 93030

On september 14, 1983 I served the within _____

REGIONAL DIRECTOR'S RECOMMENDATION ON UNIT CLARIFICATION

PETITION. TANI FARMS, 83-UC-3-OX(SM).

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 Oxnard, California addressed as follows:

CERTIFIED MAIL

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Executed on September 14, 1983 at Oxnard, California.

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