

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

FOSTER POULTRY FARMS)	
(CHICKEN LIVEHAUL CREW),)	
)	
Employer,)	Case No. 85-RC-8-D
)	
and)	
)	
UNITED FARM WORKERS)	13 ALRB No. 5
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

DECISION AND ORDER SETTING ASIDE ELECTION

Following the filing of a Petition for Certification by the United Farm Workers of America, AFL-CIO, (UFW or Union) a representation election was held on July 30, 1985, among the Livehaul Division No. 1 employees of Foster Poultry Farms (Foster or Employer). The Tally of Ballots showed the following results:

UFW.	59
No Union	41
Unresolved Challenged Ballots.	<u>15</u>
Total.	115

The Employer filed a timely election objection contending that the bargaining unit in which the election was held was inappropriate because it did not include all of Foster's agricultural employees. An investigative hearing was conducted on February 25, 26 and 27, 1986, before Investigative Hearing Examiner (IHE) James Wolpman on the following objection:

Whether the bargaining unit described in the petition is

appropriate or whether a statewide or other unit is appropriate.

On September 12, 1986, the IHE issued his Decision, concluding therein that the Employer's Livehaul Division No. 1 was not an appropriate bargaining unit. The IHE recommended that the Employer's objection be sustained and that the election be set aside. The Employer and the Union each timely filed exceptions and supporting briefs, and the Employer filed a reply brief.

The Board has considered the record and the IHE's Decision in light of the exceptions, briefs and reply brief of the parties and has decided to affirm the IHE's rulings, findings of fact, and conclusions of law as modified herein.

Section 1156.2 of the Agricultural Labor Relations Act (ALRA) 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.

If the employer's operations are situated on adjoining parcels, and therefore are contiguous in a literal sense (Harry Tutunjian & Sons, Packing (1986) 12 ALRB No. 22), the Board has no discretion to certify anything but a single, wall-to-wall unit of all the employer's agricultural employees. However, if the operations are situated on noncontiguous parcels, the Board will then determine whether the employer's agricultural operations lie within a Single Definable Agricultural Production Area (SDAPA) on the basis of their similarity with regard to such factors as water supply,

labor pool, climatic and other growing conditions. (Egger & Ghio Company, Inc. (1975) 1 ALRB No. 17.) Again, a finding that the operations are located in a SDAPA dictates the conclusion that only one bargaining unit is appropriate. Only if the operations are neither literally contiguous nor within a SDAPA, will the Board then consider whether there is a substantial community of interest among the employer's agricultural employees, on the basis of factors considered by the National Labor Relations Board (NLRB) in bargaining unit cases, that would justify a single bargaining unit. Such community of interest factors include physical or geographical location; the extent to which administration is centralized, particularly with regard to labor relations; common supervision; extent of interchange among employees; similarity of jobs, skills and working conditions; and the pattern of bargaining history among employees. (Bruce Church, Inc. (1976) 2 ALRB No. 38.)

From the evidence presented at the hearing herein, we conclude that the Employer's Livehaul Division No. 1 was not an appropriate bargaining unit, and that the appropriate unit appears to be a statewide unit of all of Foster's agricultural employees. We base this conclusion on our finding that the SDAPA factors are applicable to Foster's agricultural operations and indicate that the Employer's poultry facilities are all within a single geographical area for purposes of our statute.

At the hearing, Fenton Williamson, Jr., a member of Foster's senior management team as well as its company counsel, testified that all but about 30 of Foster's approximately 1300

agricultural employees are located at facilities within 95-100 miles of the Employer's headquarters in Livingston. It is about 65 miles from the Livingston headquarters to the three turkey grow-out ranches in the Fresno area, and about 30 miles from Livingston to the outermost chicken ranch in northern Stanislaus County. Williamson stated that the factors that determine the choice of sites for poultry operations are common throughout the San Joaquin Valley. Those factors include an appropriate climate (with a semi-arid, mild winter), availability of good quality water, and access to railroad deliveries that can accommodate 75-car trains. Timothy G. Doss, Foster's property real estate manager, testified that the sandy soil conditions of the San Joaquin Valley are important to Foster's operations because they need good drainage for the heavy equipment that is constantly driven in and out of the ranches.

Dr. Philip L. Martin, professor of agricultural economics at the University of California, testified that in his opinion the eight counties of the San Joaquin Valley constitute a Single Definable Agricultural Production Area. He stated that he had reviewed between 50 and 100 separate reports on California's agricultural and farm labor market, and every one of those reports agrees that the eight counties of the San Joaquin Valley are a unique production and labor market region.

In his recommended Decision, the IHE interpreted our Decision in Prohoroff Poultry Farms (1983) 9 ALRB No. 68 as holding that in all poultry operations the SDAPA factors are not , as significant as in other agricultural enterprises and should

simply be considered as one of the many community of interest factors. After the IKE concluded that the SDAPA factors were of little significance in poultry operations, he proceeded to analyze the community of interest factors to determine the appropriate bargaining unit.

In analyzing the community of interest factors, the IHE found that Foster's management, including that pertaining to labor relations, was highly centralized. Although the chains of command for livehaul crews, livehaul support personnel, and ranch employees are distinct from each other, there is a high degree of coordination among supervisors, and a close working relationship among Foster's various operations.

Regarding similarity of job skills, the IHE found that the job of chicken catching involves skills and tasks similar to those required in turkey catching. Livehaul crew forklift operators and truck drivers employ skills similar to their counterparts in other areas of Foster's operations, as do the livehaul support personnel. Further, the Sycamore Road ranch employees use the same skills and perform the same tasks as other ranch employees of Foster.

The IHE noted that employee wages are set through a centralized decision-making process which takes into account the effort, skill and responsibility of each job. Hiring and terminations can be carried out at the operational level, but must be approved at the next higher level of supervision. Transfers, promotions, grievances, vacations, sick leave and seniority accrual are all governed by company-wide policies and standards.

Fringe benefit plans, a safety program, and a quality control/worker participation program are centrally administered and uniformly applied.

In conclusion, the IHE found that the degree of centralization, integration and coordination in Foster's operations indicates that the limited bargaining unit sought by the UFW is inappropriate and that the Employer's election objection should be sustained.

We find the IHE was incorrect in concluding that the SDAPA analysis is not a significant factor and that his reliance on Prohoroff, supra, to that effect was misplaced. Prohoroff's two poultry operations were not geographically close, being 90 miles apart and in different labor markets. The Board found in that case that the SDAPA factors were relatively insignificant to Prohoroff's egg production operations, and therefore turned to the traditional community of interest factors to conclude that a single bargaining unit was appropriate. Here, however, virtually all of Foster's operations are in close proximity to its Livingston headquarters, and expert testimony established that the SDAPA factors of commonality of climate, water, soil and labor conditions are present and important to Foster's operations.

Thus, we are able to make a unit determination through reliance on the SDAPA factors, and find it unnecessary to rely on the community of interest factors discussed by the IHE, in reaching our conclusion that the Employer's poultry facilities are all within a single geographical area for purposes of our statute.. Consequently, we find that the bargaining unit sought by the

petition is not appropriate, and we accordingly set aside the election and dismiss the petition.

ORDER

By authority of Labor Code section 1156.3, the Agricultural Labor Relations Board hereby orders that the election heretofore conducted in this matter be, and it hereby is, set aside and the Petition for Certification be, and it hereby is, dismissed.

Dated: March 24, 1987

JOHN P. MCCARTHY, Member^{1/}

GREGORY L. GONOT, Member

^{1/}The signatures of Board Members in all Board Decisions appear with the signature of the Chairperson first (if participating), followed by the signatures of the participating Board Members in order of their seniority. Chairman Ben Davidian and Member Ivonne Ramos Richardson did not participate in the consideration of this case.

MEMBER HENNING, Concurring:

While I agree that this election should be set aside on the grounds that the unit is inappropriate, I find myself unable to agree with my colleagues on the rationale supporting that conclusion.

The concept of a Single Definable Agricultural Production Area (SDAPA), developed in Napa Valley Vineyards Co., Inc. (1977) 3 ALRB No. 22, to interpret the statutory term "contiguous" in cases involving fruit or vegetable growers is less useful for agricultural commodities not grown in the open air. The SDAPA factors of commonality of climate, water supply, and soil conditions provide a meaningful tool for determining whether an employer's tomato fields in the Salinas Valley and the San Joaquin Valley are contiguous. (Exeter Packers, Inc. (1983) 9 ALRB No. 76.) But these factors are a poor yardstick for measuring whether, for example, an employer's poultry operations

in San Marcos and Potrero are contiguous. (Prohoroff Poultry Farms (1983) 9 ALRB No. 68.) As we stated in Napa Valley Vineyards Co., Inc., supra;

A finding that places groups of employees of an employer in a single definable agricultural production area merely reflects that the location of the land, the nature of the soil, the climate and the available human and natural resources dictate that the crops grown, the labor force utilized and the time of peak employment will be generally the same. (3 ALRB No. 22, Slip Opinion, p. 14.)

The SDAPA analysis is properly applied to relatively close fruit or vegetable operations subject to geographically similar growing conditions because of such factors as water, climate, soil conditions and labor pools, but is generally not appropriate for indoor animal operations. (Prohoroff Poultry Farms, supra, 9 ALRB No. 68 at p. 8-9.)

Therefore, when an agricultural employer, such as Foster Poultry Farms which produces neither fruit nor vegetables, operates in two or more literally non-contiguous geographic areas, we must exercise our limited discretion in selecting the appropriate bargaining unit utilizing traditional community of interest criteria. (Bruce Church, Inc. (1976) 2 ALRB No. 38; Cream of the Crop (1984) 10 ALRB No. 43.) I therefore find the application of the SDAPA concept to Foster's operations irrelevant in determining the appropriate bargaining unit.

I also disagree slightly with the IHE's treatment of the community of interest factors. When determining the appropriate bargaining unit where, as here, an employer has multiple,

noncontiguous operations, we generally consider all relevant factors, including (1) the geographical proximity of the various locations; (2) the extent to which administration is centralized, particularly with regard to labor relations; (3) the degree of common supervision at the different work sites; (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 skill involved; (6) similarity or dissimilarity in wages, working hours, and other terms and conditions of employment; and (7) the pattern of bargaining history among employees. (See for example, Bruce Church, Inc., supra, 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, supra, 3 ALRB No. 22; Federal Electrical Corporation (1966) 157 NLRB 1130 [61 LRRM 1500]) and the legislative presumption favoring broad "wall-to-wall" bargaining units. (Prohoroff Poultry Farms, supra, 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, no one factor is critical and the analysis will vary from employer to employer, and even from season to season for the same employer. (See, e.g., Peterie Stores (1983) 266 NLRB No. 13 [112 LRRM 1233].)

Here, I agree with the IHE that a single bargaining unit is appropriate. However, I find the analysis more akin to the situation in Bruce Church, Inc., supra, 2 ALRB No. 38, than that • in Prohoroff Poultry Farms, supra, 9 ALRB No. 68.

It is true that Foster Poultry Farms is a highly centralized company with all major decisions (and apparently most of the day-to-day operational decisions as well) made at a relatively high level in the company hierarchy. However, the fact that all the various Foster crew supervisors consult a common manager(s) does not mean the Livehaul crew at issue here has common supervision with the other Foster crews. For example, in Mike Yurosek & Sons (1978) 4 ALRB No. 54, we found locally managed supervision of the work forces important in designating separate bargaining units and in Cream of the Crop, supra, 10 ALRB No. 43, we found common local supervision of geographically separate crews (among other factors) mandating a single bargaining unit. The Livehaul crew is based at Foster's Sycamore Ranch Facility, it performs work at a number of Foster's ranch operations, taking supervisors and some equipment with it to the various locations.

However, with little overlap in job skills, employees or supervision among the setup crews, brooder crews, the vaccination crews and clean-up crews, those crews work at the same locations, and have the same profit sharing, major medical, dental and vision, and life insurance plans with uniform payroll periods. Accordingly, I would find that the legislative presumption favoring broad bargaining units requires that all of the

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Employer's agricultural employees in the state of California belong in one bargaining unit and I accordingly concur in my colleagues' result. Dated: March 24, 1987

PATRICK W. HENNING, Member

CASE SUMMARY

Foster Poultry Farms
(Chicken Livehaul Crew)

13 ALRB No. 5
Case No. 85-RC-8-D

IHE DECISION

On July 30, 1985, an election was conducted among the Livehaul Division No. 1 employees of the Employer, with the UFW receiving a majority of the votes cast. The Employer filed an election objection contending that the bargaining unit in which the election was held was inappropriate because it did not contain all of the Employer's agricultural employees. After a hearing on the objection, the IHE issued his Decision recommending that the Employer's objection be sustained and that the election be set aside. The IHE concluded that although the Employer's poultry operations were not literally contiguous, the community of interest factors present in the Employer's operations—i. e. , the degree of centralization, integration and coordination in the Employer's operation—together with the legislative presumption favoring broad agricultural bargaining units, indicated that the limited unit sought by the UFW was inappropriate. Factors the IHE considered important to his conclusion included the constant movement of specialized crews and their supervisors from one location to another, the role of upper management in planning, scheduling and coordinating work and crews, the concentration of decision making with respect to wages, hours and staffing, the establishment of uniform standards for other conditions of employment, and the fact that many operations, including chicken livehaul, have positions similar in skill and training to those in other operations of the Employer. Although the IHE noted that considerable evidence was presented' at the hearing that uniformity of climate, soil conditions and an ample supply of good water are important factors in the Employer's poultry operations, he interpreted a prior Board Decision Prohoroff Poultry Farms (1983) 9 ALRB No. 68, as holding that in poultry operations the Single Definable Agricultural Production Area factors of water, climate, soil conditions and labor pools (see, e. g. , John Elmore Farms (1977) 3 ALRB No. 16) are not as significant as in other agricultural operations, and should be considered on an equal footing with every other community of interest factor.

BOARD DECISION

The Board affirmed the IHE's conclusion that the bargaining unit in which the election was conducted was inappropriate, and concluded that the appropriate unit appeared to be a statewide unit of all the Employer's agricultural employees. The Board based its conclusion on its finding that the Single Definable Agricultural Production Area factors are important to the Employer's operations, and indicated that the Employer's poultry

facilities are within a single geographical area for purposes of the statute. Thus, the Board found it unnecessary to rely on the community of interest factors discussed by the IHE.

The Board therefore sustained the Employer's election objection, set aside the election, and dismissed the petition for certification.

CONCURRING OPINION

Member Henning concurred in the result but would not utilize the Single -Definable Agricultural Production Area concept for agricultural operations not involving open air fruit or vegetable crops. He would instead utilize the traditional community of interest criteria whenever the non-fruit or vegetable operation is literally non-contiguous. Member Henning, while agreeing that the autonomy of the crew and its supervisors from the other employer operations militates toward separate bargaining units, felt that the other community of interest factors weighed heavily in favor of a single bargaining unit. He would therefore find a separate bargaining unit for the Livehaul crew inappropriate.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

Case No. 85-RC-3-D

FOSTER POULTRY FARMS
(Chicken Livehaul Crew),

Employer,

and

UNITED FARM WORKERS
OF AMERICA, AFL-CIO,

Petitioner.

Appearances:

Jay V. Jory
Jory, Peterson & Sagaser
Fresno, California
for the Employer

Dean M. Beer Keene,
California for the
Petitioner

Before: James Wolpman
Investigative Hearing Examiner

DECISION OF THE INVESTIGATIVE HEARING EXAMINER

JAMES WOLPMAN, Investigative Hearing Examiner:

This case was heard by me on February 25, 26 and 27, 1986 in Livingston, California.

A Petition for Certification was filed by the United Farm Workers of America, AFL-CIO on July 23, 1985, seeking to represent certain employees of Foster Poultry Farms. (Bd. Ex. 1-A.) The Petition requested a bargaining unit consisting of the employees at Foster's Livehaul Division #1 at Delhi, California. Thereafter, on July 30, 1985, the Agricultural Labor Relations Board conducted an election among those employees. (Bd. Ex. 1-J.) The results were as follows:

UFW	59
No Union	41
Unresolved Challenged Ballots	<u>15</u>
Total	115

On August 5, 1985, the employer filed a timely objection to the election contending that the bargaining unit in which it was held was inappropriate because it did not include all of Foster's agricultural employees. (Bd. Ex. 1-Q.)

On December 10, 1985, the Executive Secretary of the Board ordered a hearing to be conducted to determine:

"[W]hether the bargaining unit described in the petition is appropriate or whether a statewide or other unit is appropriate." (Bd. Ex. 1-S.)

Both the employer and the union participated in the hearing and both filed post hearing briefs.

Upon the entire record, including my observation of the witnesses, and after careful consideration of the arguments and briefs submitted by the parties, I make the following findings of fact and reach the following conclusions of law.

I. JURISDICTION

Foster Poultry Farms is an agricultural employer within the meaning of section 1140.4(c) of the Act; the United Farm Workers is a labor organization within the meaning of section 1140.4(f) . Foster Farms employs a large number of agricultural employees and they are found both inside and outside of the unit in which the election was held.

II. THE BUSINESS OF THE EMPLOYER

A. Overall Operations

Foster is the largest grower and producer of poultry in the State. It employs over 1300 workers at agricultural facilities scattered throughout Stanislaus and Merced Counties (with a few facilities in neighboring counties).¹ Foster is fully "integrated" in the sense that it operates and owns almost all the facilities at which its chickens and turkeys are hatched, grown and processed.² Operations are further "integrated" in that much of the work is done by crews which are not assigned to a

¹Exact locations are pinpointed on the map which is Employer's Exhibit No. 3; see also Tr. 1:13-17 for an explanation of the map and Employer Exhibits 4 and 5 for additional information on the dispersion of employees and operations.

²Processing, marketing and distribution is performed by Foster Food Products, a wholly owned subsidiary of Foster Poultry Farms.

particular ranch but instead move from ranch to ranch performing the same, specialized tasks at each. For instance, the crews here at issue -- those of Livehaul Division No. 1 -- go from ranch to ranch catching mature chickens, caging them, and then transporting the cages to the processing facility. Other crews move from location to location performing such tasks as readying the ranch for new chicks (Set up Crews), installing them (Breeder Crews), vaccinating them (Vaccination Crews), and cleaning up after they are caught (Clean Up Crews).

The growing system is "closed" or "self-contained" in the sense that all of Foster's poults are bred, hatched and raised to be marketed by Foster as mature meat birds. Neither its breeder hens, nor their eggs, nor the maturing poults are available for marketing.

B. The Work of Livehaul Division No. 1

Livehaul Division No. 1 is a functionally distinct operation. It is headquartered at the employer's Sycamore Road facility in Delhi, and it consists of approximately 130 employees, 97 of whom work in the crews which go from ranch to ranch. The rest serve in a support capacity, repairing and maintaining equipment and performing clerical and janitorial tasks.

It takes 56 days for a flock to mature. During most of that time, the chickens are kept on "grow-out" ranches. A ranch usually consists of 10 chicken houses with 20,000 chickens per house and 200,000 per ranch.³ At the end of each 56 day cycle, a

³some ranches are much larger, housing up to 800,000 chickens.

livehaul crew made up of catchers, forklift drivers and catcher/truck drivers visits the ranch, either at night [8 p.m. to 4 a.m.] or early in the morning [4 a.m. to noon]. One of the permanent employee assigned to the ranch (a Ranchman) has usually prepared for their arrival by beginning to "roll up" the curtains and, the feeding and watering equipment which are suspended from the rafters of the houses. Upon arrival, the catchers and drivers complete the "roll up", while the forklift operators unload the cage modules and begin moving them into place. To catch the chickens, the catchers move in a row from one end of the house to the other using rolled fencing to herd the birds, grabbing them, four per hand, halting only to put them in cages (24 per cage). As each module of cages (300-360 chickens) is filled, a fork lift operator brings up a new module, picks up the full one, and loads it on a truck. It normally takes 45 minutes to complete a truckload. The driver then leaves for the processing plant, delivers the chickens for slaughter, and returns for another load. The crews report to the Sycamore Road facility at the beginning of each shift and return there at the end.

The livehaul support personnel all work on the premises at Sycamore Road. There are mechanics (A, B, and C classifications), welders and a tireman who maintain the trucks and forklifts and repair the cages and modules. There are also clericals to handle Division's paperwork and janitors to maintain the facility.

III. THE ISSUE

The sole issue in this proceeding is whether, under the terras of section 1156.2 of the Act, Livehaul Division No. 1 constitutes the appropriate unit for collective bargaining.

Resolution of that issue must begin with a careful analysis of section 1156.2 -- its language, the policy considerations which underly it, and the manner in which it has been interpreted in previous Board decisions. Only then can the circumstances of Livehaul Division No. 1 be examined to determine whether it can stand apart from the rest of Foster's operations as a distinct bargaining unit.

IV. THE LEGAL STANDARDS TO BE APPLIED *IN* BARGAINING UNIT DETERMINATIONS UNDER THE ALRA.

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 employeas in which a secret ballot election shall be conducted.

The first sentence states the legislative policy that bargaining units should follow an "industrial" model; that is, all of the employees of an employer should be placed in a single, overall unit - a "wall to wall" unit, as it is termed. (See Hearing before Assembly Labor Relations Committee on Assembly Bill No. 1533 (May 12, 1975), p. 5 (testimony of Rose Bird) and pp. 13-16 (testimony of Jerry Cohen); see also Vista Verde Farms v. ALRB

(1981) 29 Cal. 3d 307, 323-324.) This is a very different policy from that contained in the National Labor Relations Act, which is based on a compromise between the historical positions of the AFL and the CIO, between craft and industrial unionism.

The Legislature recognized one exceptional situation where the "industrial" model does not automatically prevail. The second sentence of section 1156.2 describes it as occurring where employees of the same employer are "employed in two or more noncontiguous geographical areas." In that instance, the Board is given discretion to establish more than one bargaining unit. Even there, however, discretion is limited. While the NLRB has discretion to certify "an appropriate unit", the ALRB must pick "the appropriate unit."

* * *

The issue of what the legislature meant by "non-contiguous geographical areas" was not long in reaching the Board. In Egger & Ghio Company, Inc. (1975) 1 ALRB No. 17, the employer operated two Ranches, 10 miles apart. The petitioning union, claiming the two to be contiguous, sought a single unit; while the employer argued that the requirement of geographical continuity meant the properties should actually abut. The Board accepted the union's position, saying:

We do not reach the conclusion, urged upon us by the Employer, that the two ranches are in noncontiguous geographical areas. We find that they are both situated within a single definable agricultural production area. (Id. at p. 6.)

The Board thus held that the requirement of geographical contiguity would be met by properties which do not actually touch, so

long as they are within a single definable agricultural production area. It then undertook to define "a single agricultural production area" (which later came to be known by its acronym, "SDAPA") as one in which water supply, labor pool, climate and other growing conditions are similar.⁴

The Board, however, did not stop there. It went on to offer an alternative ratio decidendi.

Furthermore, even if the two ranches were in different geographical areas, we find that a substantial community of interest prevails among all Egger & Ghio agricultural employees. (Id. at p. 7 .)

The "community of interest" terminology comes directly from the NLRB. By adopting it, the ALRB acknowledged that in cases where geographical contiguity was absent, it would resort to NLRB criteria in determining the scope of a unit -- common supervision, the frequency of employee interchange, and the similarity of job skills and working conditions. (Id. at p. 7 .)

The next two multi-location cases, Bruce Church, Inc. (1976) 2 ALRB No. 38 and Bud Antle, Inc. (1977) 3 ALRB No. 7, involved the highly integrated operations of two of the State's largest lettuce producers. Each had operations in different parts of the State separated by distances up to several hundred miles. The Board acknowledged the lack of geographical contiguity, but nevertheless found single overall units to be appropriate. In so doing, it further elaborated on the factors to which would be used

⁴The Board noted that those factors are not necessarily exhaustive, (Id. at p. 7 and footnote 5 .)

to determine the existence or non-existence of a community of interest:

1. The physical or geographical location of the locations 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. Similarity or dissimilarity in wages, working hours, and other terms and conditions of employment; and
7. The pattern of bargaining history among employees. (Bruce Church, Inc., supra at p. 5.)⁵

Again following the NLRB, the Board pointed out that no single factor is critical and that what may be determinative in one situation may not be controlling in another. (Id. at p. 4.)

With these decisions, the meaning and interpretation of the second sentence of section 1156.2 seemed clear: A single unit was appropriate wherever operations were contiguous, and operations were contiguous where they were within a single definable agricultural production area. If they were not, a overall unit

⁵Later, in Prohoroff Poultry Farms (1983) 9 ALRB No. 68, the Board harkening back to its earlier decision in Napa Valley Vineyard Company (1977) 3 ALRB No. 22, added an eighth factor: The fact that no labor organization is seeking organization in another unit.

would still be appropriate if the employees shared a community of interest.

But then, in John Elmore Farms (1977) 3 ALRB No. 16, the Board, with one member dissenting, altered its analytic approach. The concept of a SDAPA, which in Egger & Ghio had been tied to the nondiscretionary directive which followed upon a finding of geographical contiguity, was shifted over to the discretionary category heretofore reserved for the community of interest analysis:

We hold here that separate operations of an employer do not have to be contiguous to be in a single definable agricultural production area. Under the power granted the board in Labor Code Section 1156.2 to "determine the appropriate unit or units" in cases where they are non-contiguous, the fact that such such operations are in a single definable agricultural production area will be significant factor. (Id at p. 5 .)

Just how significant is evident from the next paragraph: Once a SDAPA is found, a single, overall unit will be certified without the necessity of undertaking a full community of interest analysis.

(Id. at p. 5 .) Nonetheless, a short while later in Napa Valley Vineyard Company (1977) 3 ALRB No. 22, the Board, after finding a SDAPA, went on to "note" the existence of two community of interest factors -- prior bargaining history and the fact that the union had petitioned for and organized on the basis of a single unit -- as "lend[ing] support to our finding that a single unit is appropriate." (Id. at pp. 13-14.)

Later on, in Prohoroff Poultry Farms (1983) 9 ALRB No. 68, the Board indicated that NLRB community of interest factors

were to be evaluated in the light of a presumption favoring a single, employer wide unit:

"[U]nlike the NLRB's presumption favoring single site units for collective bargaining, the legislative presumption underlying the ALRA favors comprehensive units." (Id. at p. 10; see also, Cream of the Crop, 10 ALRB No. 43 (1984), p. 4.)

Prohoroff contained one other embellishment on the existing analytic approach to non-contiguous operations -- one especially relevant here. Prohoroff was engaged in egg production at two locations, 90 miles apart. At one, the chickens were bred and raised, at the other, they were kept during their mature egg laying period. In finding a single unit to be appropriate, the Board chose to skip over the SDAPA analysis and to proceed directly to the community of interest criteria.

The analysis concerning whether they [the two ranches] are within a single definable agricultural production area (SDAPA) is more properly applied to relatively close crop operations subject to geographically similar growing conditions because of such factors as water, climate, soil conditions and labor pools. Since such factors are, as the IHE pointed out, relatively insignificant to PPF's poultry operations, the SDAPA factors are not of material assistance here in the unit question. Rather, we turn to the more traditional community of interest criteria in selecting the appropriate unit. (Id. at pp. 8-9.)

* * *

The emergent test, then, begins with a determination of whether the acreage is non-contiguous, interpreting "contiguity" in its literal sense. If it is contiguous, the inquiry ends, and the Board is without discretion to certify any but a single, wall

to wall unit. If, however, the acreage is non-contiguous, the Board will, in most instances, exercise its discretionary perogative to determine whether the properties are within a single definable agricultural production area.⁶ If they are, the inquiry will terminate, and an overall unit will be found appropriate. If, however, the properties are not within a SDAPA, the Board, in the exercise of its discretion, will consider a variety of factors, including the legislative presumption favoring wall to wall units, in determining whether employees at different locations share a sufficient community of interest to warrant their inclusion in a single bargaining unit. If they do not, the Board will select the appropriate smaller unit or units.

Suppose that happens. Must each smaller unit include all of the agricultural employees at each distinct location, or may the Board, in an appropriate case, exercise its discretion to carve out a craft or functional unit consisting of fewer than all of those working at one location?

The Board answered this question in John Elmore, supra, by saying that section 1156.2 required it to "include in the unit all of the employees of the employer at the one or more noncontiguous sites it finds within the scope of the appropriate unit." (Id. at D. 3.) It reached the same result later that year in

⁶The exception being the poultry industry where the finding of SDAPA is "relatively insignificant" and the Board will focus on traditional community of interest criteria. Prohoroff Poultry Farms, supra.

J.R. Norton/ 3 ALRB No. 66 (1977). There the union had petitioned for and obtained an election in a single unit consisting of all agricultural employees at two locations in different valleys, 90 miles apart. The IHE found that the two locations were not within a SDAPA, and so proceeded to consider whether the workers shared a community of interest. The employer pointed out that the lettuce crews which moved back and forth from one location to the other had little in common with the employees permanently assigned to each location and argued that this lack of shared interest precluded the certification of a single unit. The IHE found the argument inapposite because it incorrectly presumed that the Board had the power to certify a separate unit (at one or both locations) which included permanent employees but excluded lettuce workers. (IHE Decision pp. 6-7.) The IHE therefore dismissed the employer's objection; on review, the Board upheld the dismissal.

It is clear, therefore, that even in situations where more than one unit is appropriate, the Board reads section 1156.2 as precluding the certification of a unit consisting of fewer than all of the employees working at any one location -- even when those employees lack a community of interest.

V. THE APPROPRIATENESS OF A UNIT WHICH DOES NOT INCLUDE ALL AGRICULTURAL EMPLOYEES WORKING AT THE SYCAMORE ROAD FACILITY

Having examined the Board's approach to unit determinations involving non-contiguous properties, it is appropriate now to turn to the unit here at issue -- Livehaul Division #1.

The unit petitioned for included all Foster Farms crews who travel from ranch to ranch catching, caging, and hauling chickens to the processing plant. It also included the employees who support those crews by repairing and servicing their vehicles and cage modules, by performing the clerical tasks associated with chicken livehaul, and by cleaning maintaining the premises at Delhi from which the crews operate and in which other support employees function. But it did not include the two Ranchmen at the adjacent Sycamore Road grow-out ranch. The parties stipulated that they are permanently assigned to that ranch and that it is physically contiguous to the livehaul operation. (1 : 5 3 .)

Under the Board's interpretation of section 1156.2 in John Elmore & Sons, a unit limited to livehaul and excluding the Sycamore ranch employees is unacceptable; for, even if the union prevailed in its claim that there should be more than one unit at Foster:

Even [t]here, where the Board must use its discretion in determining the scope of the appropriate bargaining unit, it has no discretion in determining the composition of the bargaining unit. Labor Code section 1156.2 requires that the Board include in the unit all the employees of the employer at the one or more noncontiguous sites it finds within the scope of the appropriate bargaining unit. (Id at p. 3 .)

It makes no difference that the livehaul employees and the ranch employees lack a community of interest. (J . R . Norton, supra, see also R . C . Walter & Sons (1 9 7 6) 2 ALRB No. 14 .)⁷

⁷In Walters, the union sought a unit of field workers, excluding packing shed employees working in a shed physically adjacent to one of the vineyards. They had little in common with the field workers; yet the Board found the partial unit inappropriate simply because the shed and vineyard were contiguous. Because Walters

One could, I suppose, point to the fact that livehaul crews spend most of their time away from the Sycamore Road location and argue that they are "rovers" who have no real location and who therefore cannot be contiguous to anyone or anything. The trouble with the argument is that livehaul has a substantial presence at Sycamore Road: Crews report there at the beginning and end of their shifts, and support employees work there day in and day out. This presence is as substantial as that of the lettuce crews in J.R. Norton. Furthermore, from time to time, livehaul crews actually work at the Sycamore Road grow out Ranch, catching and hauling chickens.

* * *

In view of the requirement that all agricultural workers at each location be included, Petitioner's only hope is a unit which includes all Sycamore Road operations, grow-out as well as livehaul.

There is, however, a threshold difficulty with such a redefinition of the unit. Because the two ranch employees were

arose before John Elmore and after Egger & Ghio and because of an express Statement of Legislative Intent dealing with packingsheds (Senate Journal, Third Extraordinary Session, May 26, 1975), the board felt it had no discretion to certify any but a wall to wall unit even though not all of Walter's other vineyards were contiguous. (Id. at p. 2.) Because of this, the decision is not, strictly speaking, applicable precedent. However, it does demonstrate that the legislative preference for overall units leads inevitably to situations where employees lacking a community of interest will find themselves together in the same unit.

not afforded an opportunity to vote, there is the question of whether their disenfranchisement affects the validity of the election.

In resolving disenfranchisement issues, the ALRB has adopted an outcome determinative test. An election will only be set aside if the number of workers deprived of the vote is sufficient to affect its outcome. (Mike Yurosek & Sons, Inc. (1978) 4 ALRB No. 54.) The justification for the test is to be found in the seasonal nature of agriculture and the consequent requirement that elections be held only when employment is near peak. That, in turn, necessitates deferring the resolution of objections, including those addressed to the composition of the unit, until after balloting. It also means that elections, once held, can seldom be re-run the same year. Hence, the Board's reluctance to overturn them unless the outcome could be altered.

Here the vote was 59 to 41 for union representation with 15 unresolved challenges. (Board Ex. 1-I.) Assuming for the moment that the unit is appropriate, the disenfranchisement of the two grow-out ranch employees would not be outcome determinative because, even if all of the challenged and disenfranchised votes (15 + 2) were cast against the union, the end result would be the same (the union would win, 59 to 58). Therefore, the disenfranchisement of the Ranchmen would not stand in the way of certification if the Sycamore Road unit is otherwise appropriate.

It is to that issue that I now turn.

VI. THE-APPROPRIATENESS OF A UNIT WHICH INCLUDES ALL
AGRICULTURAL EMPLOYEES AT THE SYCAMORE ROAD FACILITY.

The required redefinition of the proposed unit to include all Sycamore Road agricultural employees has the effect of blurring the clear, functional lines of demarcation which characterized the unit originally sought. It now contains a group of workers who have exact counterparts at every other grow-out ranch and who, except for the accident of their location, are no more akin to livehaul employees than are their counterparts elsewhere. This is a circumstance which will manifest itself throughout the discussion of the community of interest factors below. From Petitioner's point of view, the best that can be said is that it involves only a small part of the redefined unit (2 out of approximately 132 employees).

A. SDAPA

In the usual non-contiguous situation, the first -- and frequently dispositive -- step in finding the appropriate unit is a determination of whether geographically separated locations are within a single definable agricultural production area, a SDAPA. But Foster is a poultry producer; and, according to Prohoroff, in "poultry operations, the SDAPA factors are not of material assistance." (Id. at p. 9 .)

There are two possible interpretations of this language: (1) SDAPA factors have no relevance whatsoever; or (2) SDAPA factors are relevant and helpful but not controlling, i . e . , the SDAPA criterion is on equal footing with every other community of interest factor.

Although a literal reading of above language points to the first interpretation, I chose the latter. I do so because considerable evidence was presented at hearing that the quality and uniformity of climate, soil condition and water supply do, along with other factors, operate to limit and circumscribe Foster's geographical expansion. Poults require an ample supply of good quality water. They require a climate which does not run to extremes.⁸ And, while soil condition is not nearly as critical as it is with crops, soil that is firm and sandy makes it easier to utilize the motorized equipment and transport necessary to large scale poultry production. The north central portion of the San Joaquin Valley has an ample supply of decent water, fairly moderate temperatures and firm, sandy soil.

As for the labor market aspect of SDAPA, there is, even in Prohoroff, nothing to suggest that a common labor supply is not just as important in poultry raising as it is in the cultivation of crops. Foster has a large work complement and its operations appear every bit as labor intensive as those of other agricultural enterprises. I therefore accept as relevant and material the expert testimony of Dr. Phillip Martin that all Foster operations are within a single labor market spanning the entire San Joaquin

⁸Temperature extremes can, of course, be moderated by insulation and heating, but that is only achieved at added cost and by sacrificing the efficiency inherent in the utilization of similar construction materials and methods throughout the operation.

Valley.⁹

There are, of course, other important determinants of the geographical scope of Foster's operations which bear little relationship to the SDAPA factors. The most important is transportation, the cost of moving feed to the ranches and poult to the processing plants. An important countervailing consideration is the need to keep flocks far enough apart to prevent the spread of possible infections and diseases from ranch to ranch.

While the cost of transportation and the risk of disease are important, they do not exclude consideration of climate, soil, water and labor supply. Because these SDAPA factors do affect the geographical dispersion of operations, they are entitled to some weight -- albeit not as much as with other commodities -- in unit determinations in the poultry industry.¹⁰

B. Other Criteria for Determining Community of Interest

1. The extent to which administration i.3 centralized, particularly with regard to labor relations.

⁹I do not, however, accept Dr. Martin's pronouncement that the existence of a single labor market in the Valley means that climate, soil, and weather are uniform throughout. He could cite no studies or literature to support his generalization and it is at odds with the specific, helpful testimony of management witnesses that Foster's soil, water and climatic needs would not be particularly well met elsewhere in the Valley.

is nothing very novel about relegating the SDAPA concept to the status of other community of interest factors. "The physical or geographical location of the locations in relation to each other" is obviously related and, under Bruce Church, Inc. is relevant and material in determining a community of interest. (Id . at p. 4.)

Foster Farms is family owned; its overall management and direction resides in the Executive Committee of the Board of Directors. That Committee, and especially its family members, exercises extensive control over the operation of the corporation, considerably more so than the typical corporate executive committee. Committee member Fenton Williamson was quite right in saying, "We have very much a hands-on centralized management." (11:4.) Considering the size of Foster's operation, the degree of control from the top is indeed remarkable.

Closely linked to this centralization is the degree of integration described earlier. (Supra, pp. 3-4.) Individual ranches have little autonomy; they are continually visited by specialized crews or individuals who come to the ranch, perform their function, then move on to the next ranch where they repeat it, anon. That kind of integration and specialization works well only in an environment of meticulous scheduling and coordination. (See, for example, Er. Exs. 6 & 7.) And that, in turn, is only possible where control is centralized.

Labor relations is no exception. Although there are two levels of management between the Director of Personnel, Ralph Meraz, and the personnel officer at Livehaul No. 1, Meraz is directly involved in setting wage rates, in determining staffing and hiring policies, and in reviewing discharges and terminations. In other areas, such as transfer and promotion, leaves of absence and grievances, guidelines have been established by upper manage-

ment which to a considerable extent determine how lower level supervision will act in any given situation. (Er. Ex. 14.)

2. The extent to which employees at different locations share common supervision.

The managerial structure at Foster Farms is one in which supervision follows function, rather than location. There are three functions at Sycamore Road: (1) catching, caging and hauling (Catchers, Fork Lift Operators and Truck Drivers); (2) service and support (Mechanics, Welders, a Tireman, Clericals and Janitors); and (3) raising chickens on the grow-out Ranch (Ranchmen). The chain of command for each is distinct from the others and, with the exception of the Ranchmen, even more distinct from those at other operations and locations.

It would be erroneous, however, to read too much into the existence of functionally distinct chains of command. It must be remembered that any supervisory structure which divides a single production process into its functional components requires much more coordination among supervisors that would be needed if the process were divided into separate, self-sufficient entities.

I find there to be a close working relationship among Foster's various operations, but it springs from the need for careful coordination rather than from the company's managerial superstructure.

3. The extent of interchange among employees from location to location.

There are two types of employee interchange: (1) Permanent transfers or promotions in and out of the proposed unit,

and (2) temporary assignments or transfers in which an employee or a group of employees is moved in or out of the unit for a limited time. The latter is more indicative of a shared community of interest than the former because temporary reassignment indicates that skills are readily interchangeable and structural barriers are minimal. Permanent transfers or promotions are more problematical. The reasons behind them -- an employee's desire to find a position with higher pay or more opportunity or management's desire to restructure or to promote from within -- are not nearly so indicative of a common bond.

Over the years there has been considerable movement into and out of Livehaul No. 1, but most of it has been of a permanent nature, due either to reorganization (the division of the original livehaul operation into chicken livehaul and turkey livehaul) or to Foster's policy of encouraging promotion from within. (Er. Ex. 21.) Only on occasion have crew members been temporarily assigned to work in turkey livehaul. There is little indication of temporary assignments in the opposite direction (from turkey to chicken livehaul); and, even more rarely, of reassignments to or from other operations. (Once, in 1980, catchers were used to hang chickens at the processing plant.)

The same situation prevails among livehaul support employees. Despite the fact that many possess skills similar to those found elsewhere, seldom are they temporarily re-assigned. Instead, equipment belonging to other operations is occasionally

brought to Sycamore Road for servicing or repair, but even that is infrequent. Likewise, heavy diesel work on livehaul trucks is only occasionally done at Foster's shop in Livingston.

4. The nature of the work performed at various locations and the similarity or dissimilarity of the skills involved.

The similarity or dissimilarity of skills utilized and tasks performed. Catching is easily learned, but it takes time to work up to an acceptable output because of the stamina required for the job. The only other operation with similar skills and tasks is turkey livehaul. Forklift operators are found throughout Foster's operations, all take the same basic two-week training course and all must be certified every two years.

Beyond that, the skills needed to operate on dirt surfaces are learned on the job. The same is true of the truck drivers. They have counterparts throughout the Foster operation,, all take a two-week company wide training course, and all must have Class 1 licenses.

Support personnel have varying degrees of skill, running the gamut from the three Mechanic classifications through Welders, Tiremen and Clericals down to Janitors. All have counterparts elsewhere in the operation. The only distinctive fact about the support employees is that most began by working in the crews.

The Sycamore Road ranch employees utilize the same skills and perform the same tasks as Ranchmen elsewhere.

Interface and overlap with other crews and other workers.

The close coordination required for the crew system to work has

already been described. From the standpoint of day to day operations, it means that other crews, most commonly those involved in cleanup, will work on the heels of the catchers. It also occasionally happens that other crews will be on the property at the same time as livehaul, tending to flocks which have not yet matured. The degree of interface between livehaul and the other crews is, however, minimized because 60% of the catching goes on at night when no one else is working, and the other 40% takes place during the early morning shift, only part of which overlaps the normal day shift.

Only one task is performed by both livehaul and non-livehaul employees. Ranchmen prepare the chicken house for the catch by rolling up the curtains and some of the feeding and watering equipment; the catchers complete the roll up when they arrive.

5. The similarity or dissimilarity of wages, working hours, and other terms and conditions of employment.

Wages. Executive Committee member Fenton Williamson described the manner in which wages are determined:

"[T]here is more centralized decision-making on wage and compensation levels than there is, even, on staffing Generally, the process is that it starts from the top down and out of -- from Tom Foster and those people that report to him, certain guidelines usually emerge as to what the parameters should be on the coming year, as to what the ranch of increases or whatever would be for the subsequent year. That's communicated down through the system; it's massaged, and feedback is received from the various functional levels and then comes back up through the chain of command for ultimate sign-off. (1:110.)

* * *

Q: (By Mr. Beer) So, when you said that Ralph Meraz [Director of Personnel] and Paul Carter [Manager of Production] are involved in this process, they actually make the decision, they say, okay, so-and-so should get a wage increase and x-y should get a wage increase, but z should not get a wage increase?

A: Well, they will say livehaul crew No. 1 should or shouldn't get a wage increase; if they should get a wage increase, it ought to be limited to 4 percent and we ought to do this on an overtime, or not do this on overtime, and where there's a difference in job function we sought to do this or not do this. They will get down to the nitty-gritty and of how it's to be done. The only discretion would be maybe in a particular individual. (II:71.)

Mr. Meraz indicated that effort, skill, responsibility and labor demand are taken into account in setting rates; he also explained that, although Foster has no formal job evaluation system, it utilizes internal and external job surveys to achieve wage parity within and without the operation. This is especially true of positions, such as Mechanic and Truck Driver, which are found throughout the operation.

There is no piecework at Foster, and pay periods are the same for all hourly employees.

Working Hours. Hourly employees work a 5 day, 40 hour week. Because chickens and turkeys are excited by light, livehaul crews have traditionally worked only at night. In the last few years, however, Foster has altered the practice so that it now does about 40% of its chicken catching during an early morning shift (4:00 a.m. to noon). Turkeys are still caught only at night. While there are night shifts at the feed mill and the manure processing plant (and, possibly, at the hatchery), there

are no other comparable shifts in the agricultural operation. Livehaul support personnel work a normal day shift.

Other terms and conditions of employment. Staffing guidelines are established by upper management with input from affected areas. Hiring is done at the operational level, but must be concurred in at the next higher level of supervision. (Er. Ex. 14.) Terminations can be handled at the operational level, but the director of personnel would be involved in any which are at all out of the ordinary. Transfers and promotions are governed by a standard company-wide policy which limits the discretion of lower level supervisors. (Er. Exs. 14 & 22.) The same is true of leaves of absence and grievances ["employee concerns"]. (Er. Ex. 14.) There are specific company-wide standards for vacations, sick leave, holidays, funeral leave, seniority accrual and severance pay. (Er. Ex. 14.) Like most large businesses, Foster has a number of fringe benefit plans -- health, dental and vision, profit sharing, long term disability, and group life insurance -- which are centrally administered and uniformly applied. (Er. Exs. 15-19.) There is also a centralized safety program (Er. Ex. 23) and a quality control/worker participation program which, when fully implemented, will involve all Foster employees. (Er. Ex. 20.)

6. History of bargaining and the fact that no labor organization is seeking a different unit.

While there have been other attempts to organize Foster's agricultural employees, there are no certifications and no history of bargaining in this or any other agricultural unit.

While no labor organization is presently seeking to represent the employees at Sycamore Road in a broader or narrower unit, I decline to give much weight to that fact. To have unit determinations turn on scope of the petition would allow for the possibility of a situation in which an employee complement maintains the same level of centralization, benefits, integration, interchange and so forth, yet at one point in time is an appropriate unit and at another is not, simply because in the first instance the unit was described in a petition for certification, while in the second it was not. While such an outcome may be consistent with the NLRB's duty to pick "an" appropriate unit; it does not appear compatible with the ALRB's legislative injunction to certify only "the" appropriate unit.

C. Conclusion

Centralization, integration and coordination are the hallmarks of Foster's operation. They are manifest in almost every aspect of the business -- in the functional interdependence of the different facilities which make up the enterprise, in the constant movement of specialized crews and their supervisors from location to location, in the role of upper management in planning, scheduling and coordinating the work of facilities and crews, in the concentration of decision making with respect to wages, hours and staffing, and in the establishment of uniform and detailed standards and guidelines for the other conditions of employment. In addition, there is the fact that many operations, including

chicken livehaul, have positions similar in skill and training to those found at other Foster facilities and operations.

These are the very considerations which led the Board to find a single, overall unit appropriate in Bruce Church, Inc., supra. Indeed, given the obvious differences between raising chickens and growing lettuce, it is remarkable just how similar the two enterprises are from the standpoint of centralization, integration and coordination. (See especially the discussion at Pages 6 through 8 of the Board's opinion in that case.)

In Bruce Church a single unit was found appropriate even though operations were spread over hundreds of miles in different agricultural production areas in widely different parts of the State; whereas here, the entire operation is within a single production area in one part of one valley with its most distant facilities just over 100 miles apart.

Given the overall coherence of Foster Farms' operation, the fact that chicken livehaul is, for the most part, functionally distinct, works different hours, and has a few fairly unique job categories is simply not enough to overcome the legislative presumption favoring broad agricultural bargaining units.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, I recommend that the Employer's objection be sustained and

that the election held July 30, 1985 be set aside.

Dated: September 12, 1986.

A handwritten signature in black ink, appearing to read 'J. Wolpman', with a long horizontal flourish extending to the right.

JAMES S WOLPMAN
Investigative Hearing Examiner