Gonzales, California

STATE OF CALIFORNIA AGRICULTURAL

LABOR RELATIONS BOARD

SILVA HARVESTING, INC., Employer, and INDEPENDENT UNION OF AGRICULTURAL WORKERS, Petitioner.	)	Case No. 86-UC-l-SAL 15 ALRB No.

DECISION AND ORDER VACATING DECISION OF INVESTIGATIVE HERRING EXAMINER AND REMANDING UNIT CLARIFICATION PETITION TO REGIONAL DIRECTOR

On August 19, 1986, the Independent Union of Agricultural Workers (IUAW), in its capacity as the certified collective bargaining representative of all the agricultural employees of Silva Harvesting, Inc.,[1/] (Employer) filed a Petition for Clarification of Bargaining Unit pursuant to California Code of Regulations, title 8, section 20385.[2/] The Regional Director (RD) commenced an investigation and concluded that "substantial and material issues are raised as to whether unit clarification as

[1/]Pursuant to a secret ballot election the IUAW was certified as the exclusive bargaining representative of Silva Harvesting, Inc., employees on September 15, 1978.

[2/] A question concerning representation having previously been raised by the filing of a decertification petition on July 28, 1986, the Regional Director (RO) placed the Unit Clarification Petition in abeyance pending resolution results of the August 9, 1986, decertification election. When the decision of the THE setting aside the decertification election became final on June 11, 1987, the RD reinstated the Unit Clarification proceeding.

requested by the IUAW is warranted in the circumstances here."[3/] He further concluded that the issues raised in this case could best be resolved on the basis of record testimony, and/or other evidence, to be developed at an evidentiary hearing. Accordingly, on December 28, 1987, he ordered that such hearing take place before an Investigative Hearing Examiner (IHE).

On June 1, 1988, IHE Thomas Sobel issued a decision pursuant to the order of the RD.[4/] He concluded that Silva

Harvesting, Inc. and a sole proprietorship known as Silva Four together constitute a single employer and recommended that the petition be granted insofar as it seeks to include employees of Silva Four in the bargaining unit previously certified by the ALR3 for Silva Harvesting, Inc.[5/] For the reasons stated below, we vacate the decision of the IHF and remand this matter to the RD for completion of the report prescribed by California Code of Regulations, title 8, section 20385(c).

Under section 20385(a) of our regulations, the focus of the inquiry in these proceedings is whether changed circumstances warranting unit clarification have occurred. The unit

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[3/]In this connection the RD cited the difficulty of resolving relevant questions as to the Employer's status as a single employer with other business entities and noted the dearth of Agricultural Labor Relations Board (Board or ALRB) precedent that would provide "guidance as to whether 'changed circumstances' as required by [Title 8, California Code of Regulations] section 20385 exist here to warrant unit clarification."

[4/]He subsequently issued an "Errata to Investigative Hearing Examiner's Decision" on June 14, 1988.

[5/]Silva Four was not a factor when the Board certified the Silva Harvesting, Inc. unit in 1978.

clarification procedure provides, inter alia, that

> The regional director shall conduct such investigation of the issues raised by the petition as he or she deems necessary. Thereafter the regional director shall issue to the Board a report containing his or her conclusions and recommendations and a detailed summary of the facts underlying them.
>
> * * *
>
> The conclusions and recommendation of the regional director in the report . . . shall be final unless the exceptions to the conclusions and recommendations are filed with the executive secretary .... (Cal. Code Regs., tit. 8, § 20385(c) and (d).)

The authority that is vested in the RD with respect to Unit Clarification petitions derives from Labor Code section 1142(b), wherein it is stated, in pertinent part, that

> The Board may delegate to the personnel of these [regional] offices such powers as it deems appropriate to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists, to direct an election by a secret ballot. ....

In light of the specific delegation of authority that is permitted under section 1142(b) of the Agricultural Labor Relations Act (Act) and the explicit directive to the RD contained in section 20335(c) of our regulations, it is clear that conclusions and recommendations concerning unit clarification matters are to be made in a report to the Board by the RD himself. That procedure was not followed in this case.

Section 1151 of the Act confers upon Regional Directors broad authority to investigate matters such as those at issue here. This investigatory power permits the Regional Director to prepare the type of report contemplated by the Board's regulation

governing unit clarification petitions. Thereafter if any party files exceptions to the Regional Director's report which raise material questions of fact, the Board may, in its discretion, direct further investigation or set the matter or matters for a full evidentiary hearing before an IHE, in which case the IHE's Decision is transferred directly to the Board. Adherence to these procedures will ensure that unit clarification proceedings remain purely investigative in nature and do not result in an inappropriate imposition of burdens of proof.[6/]

In order to comport with the mandate of both the statute and the regulations, we shall vacate the IHE's Decision and remand this matter to the RD. Aside from the IHE' s Decision, and the post-hearing briefs, the record in this case is preserved for use by the RD in preparing his report to the Board. Further investigation may be necessary to resolve the question of whether changed circumstances warranting unit clarification have occurred. In reaching his conclusions and recommendations, the RD shall determine whether the evidence upon which his report is based is legally sufficient to establish the existence of single employer status involving Silva Harvesting, Inc., and any other entity or

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[6/]The procedures that were followed here have resulted in demonstrable prejudice to the Employer. In one instance, the IHE resolved a key issue against the Employer because he did not find the record evidence to be sufficient to overcome his own supposition about the facts. (See IHED, p. d.) Such error would not have occurred if the hearing had been conducted as the purely fact-finding type of proceeding which it was designed to be.

(fn. 6 cent. on p. 5)

entities[7/] and, if so, whether such changed circumstances warrant a clarification of the bargaining unit originally certified for Silva Harvesting, Inc.

ORDER

The Decision of the Investigative Hearing Examiner in this matter is hereby vacated and the petition for unit clarification is remanded to the Regional Director for further proceedings consistent with the decision of the Board herein. After the report of the Regional Director is served on all

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(fn. 6 cont.)

Although not contributing to our decision to vacate the IHE's decision, the role of the RD's representative at the hearing is also of some concern to the Board. Rather than simply seeking to ensure that the record reflected evidence which the RD had relied upon in calling for an investigative hearing, the RD's representative appeared to be soliciting testimony for the purpose of advancing a particular theory relative to the single employer issue. To that extent he was conducting himself as if he were an advocate in an adversarial proceeding and thereby exceeded his proper role as a representative of the RD in a purely investigative proceeding. Even if this unit clarification matter could be construed as one in which the integrity of the Board's processes has been placed in issue, and we do not believe it can, the participation of the RD's representative went beyond what was necessary to ensure a fully developed record.

[7/]In this regard, the RD should make a careful assessment of the degree to which each of the four factors in the single employer test has been met. (See Alabama Metal Products, Inc. (1986) 180 NLRB No. 123 for a recent application of the four factor test: by the National Labor Relations Board.) Ccncomitantly, he should avoid making assumptions about the degree of control that is exercised by the owner of Silva Harvesting, Inc., with respect to the operations or labor relations of other entities. (See fn. 5.)

parties, exceptions thereto may be filed in accordance with California Code of Regulations, title 8, section 20383(d). Dated: April 26, 1989

BEN DAVIDIAN, Chairman[8/]

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

[8/] The signatures of Board Members in all Board decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board Members in order of their seniority.

CASE SUMMARY

Silva Harvesting, Inc.
(IUAW)

15 ALRB No. 2
Case No. 86-UC-l-SAL

IHE DECISION

The IHE heard this matter after the Regional Director was unable to come to a conclusion as to whether unit clarification was warranted at Silva Harvesting, Inc. (SHI) because of changed circumstances. It was the Union's contention that the unit certified for SHI should now be made to include the employees of Silva Four (S4) because those two entities should be considered a single employer. Both SHI and S4 are owned by the same individual and the broccoli and cauliflower grown by S4 is harvested and packed by SHI. S4 also grows and harvests lettuce in a number of regions as the result of having bought out another grower in 1936. The S4 lettuce is sold through SHI, which entity also sells a variety of other produce it does not harvest itself. SHI's operations are run by George Amaral while the sole stockholder of SHI, Ed Silva, Jr., owns and operates S4 himself. Amaral would consult Silva only on important decisions for SHI. Amaral handled all labor relation's matters for SHI. There is some cross-collateralization of assets and a small interchange of employees as between SHI and S4. Granting the petition for unit clarification as to the agricultural employees of S4 would more than double the size of the original SHI unit and would change the composition of the unit from one that included only broccoli and cauliflower harvesters to one that included both farming and harvesting employees working in a wide variety of crops.

The IHE applied the traditional four factor test for determining single employer status. He determined that SHI and S4 do constitute a single employer because they are commonly owned; have common management in the person of Ed Silva (although run on a day-to-day basis by different people); have some interrelation of operations; and may be determined to have common control of labor relations because of the consultation between Amaral and Silva. He therefore recommended that the petition be granted insofar as it seeks to include employees of Silva Four in the bargaining unit previously certified by the Agricultural Labor Relations Board for Silva Harvesting, Inc.

(The IHE's Decision also includes an analysis of the appropriateness of one bargaining unit for the single employer entity. However, in light of the Board's disposition of the unit clarification

matter, a discussion of this portion of the IHE's Decision is rendered moot.)

BOARD DECISION

The Board concluded that in light of the specific delegation of authority that is set forth in Labor Code section 1142(b) and the explicit directive to the Regional Director (RD) that is contained in section 20385(c) of the agency's regulations, it is necessary for conclusions and recommendations concerning unit clarification matters to be made in a report to the Board by the RD himself. Since that procedure was not followed and may have resulted in prejudice to one of the parties, the Board determined that the IHE's Decision must be vacated and the unit clarification petition be remanded for completion of a report by the PD. In so doing, the Board noted the need for the RD to determine (1) whether the evidence upon which his report is based is legally sufficient to establish the existence of single employer status involving Silva Harvesting, Inc., and any other entity or entities, and, (2) if so, whether such changed circumstances warrant clarification of the bargaining unit originally certified for SHI. The Board also expressed concern about the nature of the participation by the RD's representative at the hearing conducted by the IHE.

* * *

This Case Summary is 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:	)	
SILVA HARVESTING INC.,	)	Case No. 86-UC-l-SAL
Employer,	)	
and	)	
INDEPENDENT UNION OF AGRICULTURAL WORKERS,	)	
Petitioner.	)	

Appearances:

Terrence R. O'Connor
Salinas, California for the
Employer

Pete Maturino
Salinas, California
for the Petitioner

Clifford Meneken Salinas,
California for the General
Counsel

Before: Thomas Sobel
Investigative Hearing Examiner

DECISION OF INVESTIGATIVE HEARING EXAMINER

THOMAS SOBEL, Investigative Hearing Examiner:[1]

INTRODUCTION

On August 19, 1986 Petitioner Independent Union of Agricultural Workers, the duly certified representative of all the employees of Silva Harvesting Inc., filed a Petition for Clarification of Bargaining Unit, the pertinent parts of which allege, in haec verba:

> The existing certification includes all agricultural employees of Edward Silva Jr., doing business as Silva Harvesting Inc. Said employees job classifications including, but not limited to, Harvest workers, tractor drivers, truck drivers, irrigators, Thin and Hoe, service men and mechanics: the relevant property covered by this certification is located in Monterey, San Benito, San Luis Obispo, and Santa Cruz counties in the State of California.
>
> Since December 1, 1983 Edward Silva, Jr. doing business as Silva Harvesting Inc. has attempted to rid itself of the farming and harvesting aspect of the bargaining unit, certified in No. 78-RC-20-M by setting up farming and harvesting companies that are merely an alter-ego of Edward Silva Jr., doing business as Silva Harvesting Inc. Said alter-ego farming and harvesting companies perform work in subversion of the current contractural Agreement between Independent Union of Agricultural Workers and Edward Silva Jr./Silva Harvesting Inc., Edward Silva Jr./doing business as Silva Harvesting Inc., had maintained a financial and administrative interest in and control of said farming and harvesting operations including but not limited to, iceburg

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[1/] After the close of the hearing, Petitioner filed what was essentially a Motion to Re-Open the Record (although not denominated as such) to include additional evidence. The Employer opposed the motion, but separately argued that, if I were to re-open the record, *I* should also consider certain evidence proffered by it. To the extent that either motion seeks to re-open the record, I hereby deny them both.

> lettuce, mix-lettuce, celery, cabbage. These farming and harvesting operations include, but are not limited to Edward Silva Jr., Silva Four, Amaral Farms, and Mid-Valley Farms.

Because of the pendency of a question concerning representation (raised by the filing of a decertification petition one month before the filing of the Unit Clarification petition,) the Regional Director placed the Unit Clarification petition in abeyance, where it remained until June 11, 1987, when the decision of the Investigative Hearing Examiner setting aside the decertification election became final.[2] Upon reviving the Unit Clarification proceeding, the Regional Director commenced an investigation and on December 28, 1987 the Regional Director issued a Notice of Hearing on Unit Clarification Petition on the grounds that

> substantial and material issues are raised as to whether unit clarification....is warranted in the circumstances here. The conclusion is reached because of the limited and conflicting evidence regarding the ownership of the companies involved; the degree of employees interchange, if any, between such companies, among other factors relevant to a unit clarification determination.

These proceedings followed.

I. THE CERTIFICATION

Pursuant to a secret ballot election the IUAW was certified as the representative of all the agricultural

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[2/] The decertification election was held on Augusi 4, 1986. It resulted in a no-union vote. The incumbent union (Petitioner here) filed timely objections to the election. The objections were determined to be well-taken and the election was held not to be representative.

employees of Silva Harvesting Inc. on September 15, 1978. The tally of ballots was:[3]

IUAW	139
No-Union	20
Challenged	25
Void	2

FINDINGS OF FACT

II. THE ENTITIES INVOLVED

A. SILVA HARVESTING

1. General Description of the Operation

Silva Harvesting Inc. (Silva Harvesting) is *a* corporation owned by Ed Silva and his wife, Evelyn. The Board of Directors consists of Ed and Evelyn Silva and David and Yvonne Morisoli. David Morisoli is Ed Silva[1]s brother-in-law. The same four individuals are"also officers of the corporation: Ed Silva is president; Evelyn Silva is Vice-President; David Morisoli is Secretary; and Yvonne Morisoli is Treasurer. Silva Harvesting's business address is P. 0. Box Z, Gonzales, California. Silva Harvesting neither owns nor leases any land for agricultural production; it does own a packing shed and the property upon which

[3]I have taken administrative notice of information pertaining to Representation Case No. 78-RC-20-M in the Board's Index of Certifications. See Seine Line Fisherman's Union of San Pedro (1962) 136 NLRB 1. Although the matter noticed is not a subject of mandatory notice, Evidence Code section 451, inasmuch as representation cases are not subject to the strict rules of evidence, I have followed the NLRB practice in taking notice of materials in Board files. I note, however, that the Tally of Ballots would surely be subject to notice under Evidence Code section 452(c), in which case this decision will serve to inform

it sits.[4]

Ed Silva described the primary business of Silva Harvesting as the sale of perishable crops. Of course, if that were all it did, it would probably not be an agricultural employer at all;[5] however, Silva Harvesting also employs harvesting crews which harvest, and pack the cauliflower and broccoli (cole crops) sold by it. It is these workers, indisputably agricultural, who have historically been covered by the collective bargaining agreement between Petitioner IUAW and Silva Harvesting.

The broccoli and cauliflower harvested and packed by Silva Harvesting crews is not grown by Silva Harvesting. It is grown by a variety of growers, including Silva Ranch No. 4 (Silva Four), Mid-Valley Farms (Mid-Valley), and Amaral Farms (Amaral), the three entities whose employees Petitioner contends ought to be included in the Silva Harvesting unit. In addition to harvesting and packing broccoli and cauliflower grown by these entities, Silva Harvesting also harvests and packs broccoli and cauliflower grown by a number of other growers, such as Bud Antle, David Gill, and Tondre Alarid, to name a few. Sale of broccoli and cauliflower accounts for one quarter of the total sales of Silva Harvesting;

(Footnote 3 Continued)
the parties of my intention to take notice of the Tally. Any objections to my taking notice can then be lodged with the Board as the ultimate trier-of-fact. See Evidence Code section 455.

[4]The company also owns a lot zoned for commercial use in Visalia.

[5]Labour Code section 1140.4 (a) provides:

> The term "agriculture" includes farming in all its branches, and, among other things, includes the

half of that broccoli and cauliflower is grown by Silva Four, Mid-Valley and Amaral Farms.

Silva Harvesting employs three harvesting crews year round, two for broccoli and one for cauliflower. These crews work rain, or shine, harvesting in slickers during the rainy season. Cauliflower is cut and its leaves removed in the field where it is wrapped and boxed in cartons bearing a Silva Harvesting label. The cartons are loaded onto specialized tractors with high clearance and "rice and **cane"** tires to provide traction in mud.[6/] The tractors drive to the edge of the field where the cartons are loaded onto trucks. In contrast to cauliflower, broccoli is not field-packed. The heads are cut, placed on a belt, dumped into a bin, and the bins lifted onto trucks for delivery either to Silva

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(Footnote 5 Continued)

> cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. [Emphasis added]

As can be seen from the underlined language, marketing alone, when not performed as incident to a farming operation, is not included within the definition of agriculture.

[6]The tractors are used exclusively for broccoli and cauliflower and not for any other crops .

Harvesting's shed, or to the freezer, or directly to market. The trucks which haul both crops along the highway are supplied by Silva Transport Company.[7]

Silva Harvesting has a sales force which sells the produce. Silva Harvesting is not paid directly by growers for its services; rather, it recoups its costs -- and takes its profit -- upon sale of the produce, passing on to the grower whatever amounts in excess of its standard fee is realized by the sale. As Ed Silva put it, if Silva Harvesting can't sell the broccoli or cauliflower for more than the $3.50 per carton it charges for cutting, packing and shipping it, "then we'll turn it back to the grower" -- in other words, Silva Harvesting won't even cut it.

The harvesting crews are supervised by George Amaral who generally runs the company on a day to day basis, consulting with Ed Silva, according to Silva, only on important decisions.[8] However, even as to those matters about which he is consulted, Silva claims he defers to Amaral's judgment. It is Amaral who has historically negotiated with the IUAW on behalf of Silva Harvesting; Ed Silva has never done any of the negotiating.

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[7]Silva Transport is another entirely separate entity. There is no contention that the drivers are under our Board's jurisdiction. Indeed, the NLRB conducted an election among these drivers in 1978. See Stipulation, I: 154.

[8]In this respect, Silva distinguished between a decision with a grower to "grow" 100 acres of broccoli for Silva Harvesting and a decision to "grow" 1000 acres of broccoli; according to Silva, a 100 acre deal is not major while a 1000 acre deal is, and he and Amaral "would talk about it."

To the extent the testimony that Silva has never negotiated with the IUAW may be taken to mean that there is no common control of labor relations between Silva Harvesting and Silva Four,[9] I do not take it as probative on that point, in view of Silva's testimony that he and Amaral consult on important decisions. While it is possible that Ed Silva does not regard what his company will pay its employees as an "important" decision, absent more convincing proof on the question than the mere fact that only Amaral actually sits down with the IUAW, I cannot believe that Amaral negotiates with the IUAW without consulting with Silva.[10]

In addition to broccoli and cauliflower, Silva Harvesting also sells a variety of other produce, including carrots, mixed lettuce (iceberg, redleaf, and romaine), endive, celery, and several kinds of citrus. None of this other produce is harvested or packed by Silva Harvesting's field employees even though it is all sold in boxes bearing a Silva Harvesting label. Like the

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[9]The Employer does not argue this point directly: it only argues that George Amaral has nothing to do with the labor relations of any other entity without considering the labor relations role of Ed Silva as owner of both companies.

[10]See NLRB v. Royal Oak Tool & Machine Co. (6th Cir. 1963) 320 F.2d 77, 81. Although on a much stronger record, the Court observed that it would strain its credulity to believe that officals of one company who also controlled a spin-off company would stay out of the labor relations policy of the spin-off company.

cole, this produce comes from growers throughout the state, including Silva Four, Mid-Valley and Amaral. Thus, Silva Four grows carrots, peppers, sugar beets and lettuce, Amaral grows mixed vegetables and celery, and Mid-Valley Farms grows celery and iceberg lettuce, for sale by Silva Harvesting. Silva Harvesting sells this produce for a fee, once again taking its fee from the price it receives before remitting the rest to any of its grower "suppliers." This arrangement is no different than that which obtains between Silva Harvesting and any of the other growers selling any other crop through Silva Harvesting (such as citrus.)

As a shipper, Silva Harvesting generally does not finance the growing of the crops it sells, H George Amaral testified that Silva Harvesting has advanced money to Mid-Valley for a final irrigation before harvest, but that this was quite unusual.

> They [Mid-Valley Farms] needed, at one time, they needed an advance and what not. And we gave them an advance after it was -- It was close to harvesting. And they needed more water. I don't recall what it was.
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> * * *
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> Well, when I talked to Ed Silva, at the time it was to do it like he said before. It had to do with -- It was more than, you know, we was talking about alot of money there that's involved in the celerv.

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[11]Since Silva Harvesting apparently pays the labor and other costs associated with "shipping" before receiving any proceeds from the sale of the produce it ships, in a certain sense it has a financial interest in the crops it sells. But the nature of this interest is different from that of a grower since, as Ed Silva testified, Silva Harvesting won't harvest unless it is able to get its money back.

> And whether Silva Harvesting wanted to get involved at all, putting any money in the crop at all, it's not our place to put any money in it.
>
> But he had, you know, the crop was close to harvesting. They needed water and what not. And we decided to give them an advance to keep our half[12] going so we could harvest it.

Although this sort of participation in the growing end is unusual, George Amaral routinely coordinates the growing and shipping functions of getting a crop to market. Ed Silva testified: "George goes there and sits and decides how many acres we plant, how many weeks we plant, when they come together and when we don't have too much." In connection with this, Amaral also insures the quality of the produce that Silva Harvesting ships even when it is packed by someone else. Amaral testified, for example, that he has had to reject celery being packed by Mid-Valley Farms. However, he denied exercising any quality control over lettuce shipped by Silva Harvesting; this was done by Ed Silva.

> On any commodity, I will bring — Like I say, I don't know much about celery. And I will bring either a sample to the sales person. They're the ones that are selling it. I don't know what — Their customers sometimes they don't make sense, but you have to please them.

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[12]Amaral's testimony about keeping "our half" going is suggestive Since Silva Harvesting itself had no joint deals, "the half" he may have been referring to was "the half" of a joint deal between Silva Four and Mid-Valley in which case Silva Harvesting would essentially have been carrying a Silva Four operation. On the other hand, Amaral may only have been referring to keeping "his" celery buyers satisfied. It is simply not clear what he meant.

So, I bring a sample to them. And if they tell me it's good, I'll put it in a box. If they tell me it's no good, I don't put it in a box.

Q (by Petitioner) Are your job duties the same with Silva Ranch number Four in the iceberg lettuce or the head lettuce?

A Again, the Silva, the lettuce at Silva Four, I don't know enough about lettuce, as you well know.

I don't know nothing about lettuce to know what the difference from anything they -- Mr. Silva handles all of that. And I believe he brings it -- He does the same thing.[13]

Since 1985, when it installed a new computer, Silva Harvesting has provided office services for a number of growers, including preparation of payroll checks and W-2 forms. It now prepares payroll for itself, Silva Transport, Nature-Pak, Silva Four, Mid-Valley, Amaral, and T & J Farms. Silva Harvesting receives a fee for each payroll check it writes and for each W-2 form it issues.

2. Labor Relations History of Silva Harvesting Martha Cano, past President of Petitioner IUAW and the one who filed the Petition for Certification in 1978, testified that she initially filed for an election among four labor contractor-supplied crews harvesting broccoli and cauliflower.

[13]Directly after this statement, Amaral quickly added, "I don't know if [Ed] knows enough," thus weakening what he had just testified about. I discount this portion of Amaral's testimony. Throughout his testimony, Amaral displayed a tendency to protest "too much." I just cannot believe Ed Silva knows less than his sales people do about "marketable" lettuce.

After investigation, the Board identified Silva Harvesting as the statutory employer. After certification, it was Cano who negotiated the first two collective bargaining agreements between Petitioner and Silva Harvesting, and who subsequently serviced the agreements. She testified that in 1981 she was aware that Silva Harvesting was harvesting broccoli and cauliflower grown by S & S, the predecessor to Silva Four, and that she was later aware that Silva Four and Amaral Farms grew a variety of produce marketed by Silva Harvesting in Silva Harvesting boxes. According to her, the relationship between these entities and Silva Harvesting was of no concern to the union because the unit she had organized was that of the broccoli and cauliflower harvesters: "Like I say he cut for alot of growers. It didn't matter who he cut for. He was a harvester, so all that mattered was that the crews got paid the hourly rates."

However, Cano also testified that the contracts she negotiated included an irrigator rate in case Silva Harvesting went into the "growing business". Additionally, she filed a grievance in 1981 seeking to include some irrigators in the unit but this grievance was withdrawn.[14] Later, in 1983, Petitioner filed two grievances seeking to include in the unit: (1) some lettuce harvesting crews packing lettuce into Silva Harvesting

[14]The irrigators may have been employed by S & S

boxes and (2) some labor contractor crews tying cauliflower on a ranch supplying cauliflower to Silva Harvesting. Both grievances were dropped. Ed Thornton, who handled the 1981 "irrigator" grievance on behalf of Silva Harvesting, testified that the union was "constantly trying to include" employees in the bargaining unit who were employed by Ed Silva in his other companies.

3. Financial Relationships

Ed Silva personally has obtained loans from the Salinas Production Credit Association by pledging equipment, accounts, and farm products "owned" or "acquired" by the various business entities he owns, including Silva Four, Silva Transport Service and Silva Harvesting, Inc. He has also obtained loans specifically for Silva Harvesting from the Salinas Production Credit Association using Silva Four equipment as collateral.

B. SILVA FOUR, MID-VALLEY AND AMARAL

1. Silva Four is wholly owned by Ed Silva and his wife. In business since approximately 1980, it is the successor to S & S Farms, also owned by Ed Silva and his wife, which operated from 1976 until the creation of Silva Four. Silva Four's mailing address is the same as that of Silva Harvesting.

Silva Four both grows and harvests crops. As noted previously, it grows broccoli and cauliflower, but does not harvest them. It also grows carrots, peppers, and sugar beets in the Salinas Valley. The farming operation has between 20 and 25 employees. There is some confusion in the record about whether

these Silva Four employees also grow lettuce or whether Silva Four only has a lettuce harvest operation. It is clear, however, that if Silva Four performs any cultural practices on lettuce it will be in the Salinas valley since that is the only place it farms. Silva Four got into the lettuce business in 1985 when it bought the Ralph Samsel Company and it follows the lettuce season throughout California, harvesting lettuce in Salinas, Huron and Holtville. When Silva Four took over the Samsel operation, Silva hired Samsel's field supervisor, Joe Puga, to run it. In 1987 Puga was replaced by Pete Celia. Silva Four does not use Silva Harvesting equipment in its lettuce operation. Lettuce harvesters use different equipment than cole harvesters and work under different conditions; for example, they do not harvest in rainy weather.

Silva Four grows its lettuce either by itself or in "joint deals" with other growers in which each grower puts up half the costs of growing the crop.[15] Silva Four has such deals with Larry Hansen, Rianda Brothers, Pat Perry, as well as with Mid-Valley and Amaral. When Silva Four harvests the lettuce, Silva Harvesting sells it, taking its profit from the sale and remitting the rest to the growers. Peak employment for Silva Four in 1986 was around 162 employees;[16] in 1987 it was 177.

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[15]Silva spoke of a variety of arrangements: "Silva 4 and Samsel's crews cut lettuce. Silva 4 grows some. Silva 4 owns the crop, or pieces of it...."

[16]Co. Exh. 1 gives two peaks, one for Salinas (162) and one for El Centre. (165).

2. Mid-Valley is wholly owned by Bob Franscioni. Its mailing address is P. 0. Box 56, Gonzales, California. As stated earlier, it grows a variety of crops marketed by Silva Harvesting including broccoli, cauliflower, fresh pack celery, and lettuce. Only the broccoli and cauliflower is harvested by Silva Harvesting. Mid-Valley does its own celery harvest, but Silva Four harvests the lettuce which Mid-Valley grows in joint deals with Silva Four. In business since 1978, Mid-Valley used to grow for Bruce Church and other shippers. Mid-Valley has its own supervisors. Peak employment was 41 in 1986 and 70 in 1987.

3. Manuel Amaral Farms is wholly owned by Manual Amaral, George Amaral's father. It's mailing address is P. 0. Box 1429, Gonzales, California. Besides growing broccoli and cauliflower, Amaral also grows and harvests lettuce and celery for sale by Silva Harvesting among other shippers. Although Amaral has borrowed Silva Harvesting equipment, George Amaral testified that loaning equipment back and forth is common practice in the Salinas valley. Peak employment for Manual Amaral Farms in 1986 was 82 and 46 in 1987.

III. INTERCHANGE OF EMPLOYEES

The parties stipulated that in 1986, 23 employees worked for both Silva Harvesting and Silva Four;[17] four employees worked

[17]The Employer introduced evidence which generally showed that the employees who worked for both Silva Harvesting and Silva Four during the same pay periods worked the same number of hours for Silva Harvesting as the rest of the members of their Silva Harvesting crew did. I take it that the argument would follow

for both Silva Harvesting and Amaral; five employees worked for both Silva Four and Amaral; two employees worked for Silva Harvesting, Silva Four, Amaral and Mid-Valley; one employee worked for Silva Harvesting, Silva Four, and Amaral;[18] and finally, as many as four employees worked for both Amaral Farms and Mid-Valley Farms.[19]

IV. ANALYSIS

A. INTRODUCTION

Before considering the parties' conflicting contentions, let me briefly describe the unit sought by the Petition. The

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(Footnote 17 Continued)

(although it has not been explicity made) that, under these circumstances, the employees' appearance on both payrolls does not evidence "interchange" between the two operations, but "moonlighting" on the part of some employees. Although the record is silent as to the circumstances under which the employees came to be employed by both Silva Harvesting and Silva Four, the fact that the employees moved from one operation to another indicates that the job skills required for each operation are not so different as the Employer argues. Even if the overlap is not highly probative on the question of centralized control, it is probative on the question of similarity of job skills.

[18]Mario Villaneva's name appears on all four payrolls. There is some dispute about whether it is the same person because a different Social Security number appears on the Mid-Valley payroll than appears on all the other payrolls. In view of the fact that the social security numbers on all four payrolls have the same digits (although in a different order on the Mid-Valley payroll) and (2) that the same address is given on all four payrolls, I find that it is the same person.

[19]Since two of the names have different social security numbers and there is no further evidence from which to conclude that the employees who share the same name are identical, I can draw no stronger conclusion than the maximum number of the same employees employed by both companies.

original unit consisted of Silva Harvesting's broccoli and cauliflower harvesters whose peak employment levels have recently fluctuated from a high of 129 (in 1986) to a low of 118 (in 1987). Petitioner seeks to add to this unit: all the employees of Silva Four (with a peak of around 162 employees in 1986 and 177 employees in 1987); all the employees of Mid-Valley Farms (with a peak of 41 in 1986 and 70 in 1987); and all the employees of Amaral Farms (with a peak of 82 in 1986 and 46 in 1987). The composition of the unit would also change if the petition were granted: a unit consisting solely of cole harvesting crews would become one with both farming and harvesting employees working in a wide variety of crops. The increase in size, as well as the difference in composition of the unit which would result if the petition were granted, are among the grounds the Employer contests the petition.

B. THE APPROPRIATE STANDARD

Although Petitioner has abandoned its original alter ego theory, it now contends that unit clarification is appropriate because Silva Four, Mid-Valley and Amaral should be considered, along with Silva Harvesting, as parts of a single-integrated enterprise.[20] The Employer, on the other hand, argues that what Petitioner essentially seeks is an "accretion" to the unit. In light of its present analysis, Petitioner urges me to look to (1)

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[20]On its face, the Petition for Clarification speaks as though it were seeking to repair the dismemberment of an historically existing unit caused by the transfer of unit work to Silva Four, Mid-Valley and Amaral. It is clear from the evidence adduced at

functional intergration (or interrelation) of the operations; (2) centralized control of labor relations; (3) common management of business operations; and (4) common ownership, in order to determine whether the entities ought to be considered a "single employer." See, Holtville Farms (1984) 10 ALRB No. 49; Tex-Cal Land Management Corp and Dudley M. Steele (1985) 11 ALRB No. 31 The Employer urges me to apply the criteria developed by the NLRB in accretion cases.

> [These] guidelines encompass the presence or absence of a variety of factors such as: (1) the degree of interchange among employees, (2) geographical proximity, (3) integration of operations, (4) integration of machinery and product lines, (5) centralized administrative control, (6) similarity of working conditions, skills and functions, (7) common control over labor relations, (8) collective bargaining history, and (9) the number of employees at the facility to be acquired as compared with the existing operation. Morris, Developing Labor Law, 2nd Ed. Vol. I, p. 369

Although some of the criteria are common to both analyses they actually point in different directions. Accretion analysis is essentially a "unit" determination, that is, one which seeks to determine whose terms and conditions of employment will be the subject of bargaining. "Single employer" analysis, on the other

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(Footnote 20 Continued)

hearing that no transfer of operations in this sense has taken place; indeed, the unit Petitioner organized, petitioned for, and has historically represented, has remained intact. Nor has there been any showing that, in structuring his business in the way he has since the certification, Ed Silva was motivated by anti-union considerations. Petitioner has quite properly abandoned its alter ego theory.

hand, aims to determine who has the obligation to bargain about whichever employees are in the unit. Although under the NLRA, attribution of the bargaining obligation is logically prior to determination of its scope,[21] under the ALRA unit determinations are ordinarily subsumed by "employer" determinations. This is so because under our Act the Board is given discretion to create other than wall-to-wall units only when an agricultural employer operates in two or more noncontiguous geographic areas; in the absence of any showing of geographic "separateness," the statute commands that the bargaining unit "shall be all the agricultural employees of an employer." In Foster Poultry Farms (1987) 13 ALRB No. 5, the Board summarized the guiding principles of unit determination under our Act:

> If the employer's operations are situated on adjoining parcels, and therefore are contiguous in a literal sense (Cite) 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. (Cite) 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

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[21]See e.g., Alabama Metal Products Inc. (1986) 280 NLRB No. 123; Frank N. Smith Associates (1971) 194 NLRB 212; Vernon Calhoun Packing Co., Inc. (1968) 173 NLRB 753 enf'd per curiam (5th Cir.

(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.

Thus, the Petitioner is correct that this is, at least initially, an employer "identity" case, for only if I first determine that any of the entities are "sufficiently integrated" with Silva Harvesting[22] to be considered part of a single employing entity, can I proceed further. On the other hand, if a single employer is found to exist, I cannot take account of the unit criteria upon which the Employer relies in arguing against the petition unless the statute permits the Board to exercise its

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(Footnote 21 Continued)

1971) 436 F.2d 588; Baton Rouge Water Works Company (1968) 170 NLRB 1183, Enf'd 417 F.2d 1065. Even under the NLRA's "two-step" analysis, if no "single employer" (or alter ego) relationship exists (and there is otherwise no question of multi-employer bargaining involved) the employees of one "entity" cannot be "accreted" to those of another.

[22]The NLRB' s four-factor "single-employer test" really aims at making this ultimate determination. Thus, in describing its test for "Joint" Employers, the NLRB ' s 21st Annual Report, notes:

> [The Board] early reaffirmed the long-established practice of treating separate concerns which are closely related as being a single employer. . . . The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together.

Our own Board has put the matter the same way:

> The focus in a joint employer case is whether two or more business entities demonstrate a sufficient degree of interrelatedness on a number of levels to be considered a single employer under the Act. John Elmore Farms

discretion in determining the scope of the unit.[23] I shall take each of these matters in turn.

C. THE "STATUTORY EMPLOYER" QUESTION

1. The Status of Mid-Valley and Amaral Farms

I do not find Mid-Valley or Amaral to be "sufficiently integrated" with any of the other entities to be considered together with them as a single employer. In the first place, there is no common ownership: Mid-Valley and Amaral are owned by Bobby Franscioni and Manual Amaral respectively, neither of whom has any interest in Silva Harvesting or Silva Four. Conversely, neither Ed nor Evelyn Silva, the owners of Silva Harvesting and Silva Four, has any interest in Mid-Valley or Amaral. Petitioner urges that common ownership is demonstrated by (1) Silva's use of crops grown by Mid-Valley and Amaral as collateral for Production Credit Association Loans to either Silva Harvesting or Silva Farms; (2) Silva Harvesting's advance of money to Mid-Valley to bring a crop to harvest and (3) the absence of any written agreements between Mid-Valley, Amaral and Silva Harvesting.

None of these factors alters my conclusion that the element of common ownership is absent. First, David Morisoli

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(Footnote 22 Continued)

(1982) 8 ALRB No. 20, p. 5.

I shall later detail, the Employer makes a novel argument that the statute impliedly forbids the Board from granting the Petition in the circumstances of this case.

testified that the "interest" Silva used as collateral was his interest in the "proceeds" from the sale of crops. I do not think a seller's use of accounts receivable from the sale of products, not manufactured by him, as collateral for a loan, proves that the seller "owns" the business which produced the products. Second, in view of the lack of evidence that Silva Harvesting typically "advanced" money to Mid-Valley, I do not regard the testimony about the one-time advance to bring in the celery as highly probative on the question of integration of operations. Finally, the absence of written agreements in situations where a grower owns a crop and a shipper only markets it for him, is not at all unusual according to the uncontradicted testimony of Grower Shipper Vegetable Association President Ed Angstadt.

There is no common management: neither Ed Silva nor George Amaral "runs" either Mid-Valley or Amaral. The fact that Silva Harvesting's salespeople or George Amaral supervises the quality of the pack is not proof of common management in view of Silva Harvesting's independent -interest as a "shipper" in a saleable product. See e.g., Tex-Cal Land Management (1985) 11 ALRB No. 31. The testimony about Amaral's figuring out how many acres "to plant" suggests a close working relationship between Silva Harvesting and all the growing entities who supply the produce Silva sells, but I do not believe that proof of such a "working relationship" represents proof of "common management",

which to my mind entails a right to control or direct.[24]

Nor has Petitioner shown that Ed Silva or George Amaral participates in any way in setting the terms and conditions of employment of the employees of Mid-Valley or Amaral. NLRB v. Royal Oak Tool and Machine Co. (6th Cir. 1963) 320 F.2d 77, 81; NLRB v. Lund (8th Cir. 1939) 103 F.2d 815; Pulitzer Publishing Co. v. NLRB (8th Cir. 1980) 618 F.2d 1275 cert. den. 101 S.Ct 217. Although the absence of this factor has been said to be fatal to a single-employer claim, Alabama Metal Products Inc. (1986) 280 NLRB No. 123 Slip Opn., n. 1, I conclude that the lack of common ownership, management and control of labor relations all militate against a finding that Mid-Valley and Amaral are sufficiently integrated with Silva Harvesting to constitute a single employer under the Act.

However, I conclude otherwise with respect to Silva Four and Silva Harvesting. Common ownership plainly exists; common management also exists (in the person of Ed Silva) even though both companies are run on a day to day basis by different people. See Abatti Farms and Abatti Produce (1987) 3 ALRB No. 83. The offices are in the same location. The assets of the two entities

[24]In referring to the lack of common control of labor relations here, I am, of course, only referring to the non-lettuce harvesting part of the Amaral or Mid-Valley operations. I will consider the relation of Silva Four's operation to Silva Harvesting in the next section.

are used interchangeably by Ed Silva. Tex-Cal Land Management (1986) 12 ALRB No. 26. One quarter of the total sales of Silva Harvesting comes from the sale of broccoli and cauliflower, a good deal of which is grown by Silva Four. Moreover, since it is Ed Silva who coordinates Silva Four's lettuce harvesting operation with Silva Harvesting's marketing needs, he performs the same day-to-day management function for Silva Harvesting that George Amaral generally performs for Silva Harvesting.

The conclusion that Silva Four and Silva Harvesting are a single employer requires a wall-to-wall unit of all their employees unless some statutory condition exists for the Board to exercise its discretion to create a-unit of less than all their employees. Since neither party viewed the case as turning upon this question, no real argument has been presented on it. However, the Employer does make an entirely separate argument, drawn from accretion cases, which, originally directed towards the entire unit sought by the Petitioner, also merits consideration in the context of the present question.

Relying on Renaissance Center Partnership (1979) 239 NLRB 1247, the Employer contested the initial unit sought by Petitioner on the grounds that, were the petition to be granted, the newly included employees would be deprived of the opportunity to decide for themselves whether they wish to be represented by a union. In Renaissance Center, a Petitioner seeking unit clarification was the certified collective bargaining representative for all

full-time and regular part time security officers and guards employed by the employer at the Renaissance Center in Detroit. The center contained office towers, retail establishments, restaurants, parking facilities, and a hotel. The hotel had its own security guards who had not been organized when the certification issued. Sometime after unsuccessful collective bargaining had commenced, the Employer decided to merge its security force with that of the hotel. At the time of the merger, the certified unit had 59 employees; the hotel security force had 67. The union sought clarification of the existing unit to include the 67 additional guards in the original unit of 59. The employer sought an election to determine whether the former hotel employees desired representation.

Although the Board noted that upon merger, "the former hotel security employees and the members of the unit had become indistinguishable" - sharing common supervision and identical terms and conditions of employment, performing identical duties and wearing identical uniforms -- it declined to find an accretion:

> The accretion doctrine ordinarily applies to new employees who have common interests with members of an existing bargaining unit and who would have been included in the certified unit or are covered by a current collective-bargaining agreement. A number of the factors which the Board considers necessary for an accretion are present in this case. But the Board is cautious in making such a finding, particularly when the accreted group numerically overshadows the existing certified unit, because it would deprive the larger group of employees of their statutory right to select their own bargaining representative. This right is a fundamental precept of the Act.

* * *

> The number of employees the Union desires to add to the certified unit exceeds the number currently included in that unit. The Union is thus seeking to resolve the status of the former hotel security officers without providing them an opportunity to express their desires regarding representation.
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> * * *
>
> We therefore find that the Regional Director's decision finding an accretion improperly disenfranchises the former hotel employees and that the certified unit is no longer appropriate because of the merger of the two security groups and resultant intermixing of the represented and the larger unrepresented work forces. Rather, only the overall security force of the Employer is now appropriate. Because the Union claims to represent all of the Employer's guards and security officers, a question concerning representation exists in the overall unit. We therefore order that the Union's clarification petition be dismissed. 239 NLRB at 1247-48 See also NLRB v. Stevens Ford 2nd Cir. 1985, 773 F.2d 468, 469-470

The Employer argues that the majoritarian principle is likewise so strongly embedded in our Act that when the number of employees sought to be included in the unit is great in comparison with the number of employees already in the unit, that the Board cannot now merge the two groups of employees.

Since the language which incorporates the majoritarian principle in the NLRA is quite similar to that contained in the ALRA,[25] at first blush it appears reasonable to conclude that the two acts must be read the same and, therefore, that the

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[25]compare Section 9(a) of the NLRA with Labor Code section 1156

majoritarian principle must qualify the Board's ordinary mandate to create a wall-to-wall unit.

The analogy to the Renaissance Center case is a powerful one/ but I do not find it ultimately persuasive in view of the peculiar election requirements of our Act. While there is no question that our Act, like the NLRA, recognizes the principle of majority rule, it also recognizes that agriculture is a seasonal industry characterized by a work force that not only fluctuates widely in size, but also varies greatly in composition, and not only from season to season, but also from payroll to payroll. As a result, the Legislature has accomodated the principle of majority rule to realities of employee turnover and the seasonality by the so-called "peak requirement" of our Act. Labor Code 1156.4 provides that:

> Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included in this part, the board shall not consider a representation petition or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition.

Elections are timely, therefore, not only during the period of maximum employment, but also when the employer is at only 50 percent of maximum employment. And it is a majority of this 50 percent that the Act considers representative enough to bind the entire future complement of the employer's employees

(which could be as nearly four times the electoral majority.)[26] Under this explicit statutory scheme, I can see no way to distinguish the interest possessed by the employees who would naturally return to an employer's operation during peak, -- whose number might double the number of employees employed during an election, but who didn't get a chance to vote and who would nevertheless be bound by the choice of those who did,—from the interest possessed by the 160 or 170 employees of Silva Four who would be added to the unit as a result of my finding that Silva Four and Silva Harvesting are a single employer. Accordingly, the state of affairs which so troubled the national Board in Renaissance Center, namely that the size of the unit would double if an accretion were granted, is actually built into the very structure of every collective bargaining relationship under our Act by the peak requirement.

This is not to say there is no case in which the majoritarian principle in our Act would forbid greatly expanding the size of the unit. However, on this record, which reveals that the union won its representative status by securing 139 votes, I do not find Renaissance Center controlling since the peak

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[26]Let us take a statewide unit with a peak payroll period of 700 employees. Under Labor Code section 1156.4 and 1156.3(a) an election petition would be timely during a payroll period in which only 350 employees are employed. If all of these employees voted (a dubious assumption, of course) the choice of 176 employees would bind the peak unit of 700 employees.

principles I outlined above would, at least theoretically, permit that "majority" to bind a unit with a peak of nearly four times that number (and adding the peak employment of Silva Four to that of Silva Harvesting does little more than double the size of the unit.[27]) The inapplicability of Renaissance Center to this case does not settle the matter of the appropriate unit, for the statute does give the Board discretion to determine the appropriate unit when the employees of the employer are employed in noncontiguous geographic areas and Silva Four has harvest employees throughout the state. Accordingly, I must next consider whether a statewide unit is appropriate. The closest case I can find to the situation we face here is Cream of the Crop (1984) 10 ALRB No. 43.

In that case, the Employer grew and harvested carrots and broccoli in Monterey County and harvested carrots only in Imperial County. This is quite similar to the situation in the instant case in which the Employer (Silva Harvesting and Silva Four) has a Salinas-based operation which includes cole (harvesting) and (the growing of) peppers and carrots (and perhaps lettuce), all of which would automatically be included within a single unit if the

[27]In this connection, I should also point out that the peak employment level of the two operations considered together is not necessarily the same as the combined peaks of each operation considered separately.

lettuce harvest did not also leave Salinas.[28] If I understand the Cream of the Crop decision, the Board (Member Waldie dissenting) held a single unit appropriate only because of the similarity in the operation which overlapped the two noncontiguous areas. In other words, because the carrot operation was the same in Monterey as it was in Imperial, a statewide unit was considered appropriate despite the real differences between the broccoli and the carrot operations:

> 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, significantly similarity exists between the carrot operation in Salinas and the Imperial Valley. Not only was there substantial similarity in skills and working conditions, 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.
>
> 10 ALRB No. 43, pp. 4 -5

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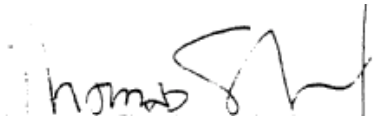
[28]This is so because the Salinas Valley being a single definable agricultural production area, a wall-to-wall unit is mandated by the Act.

Accordingly, I recommend the Petition be granted *as* to the lettuce harvesting employees of Silva Four alone.

DATED: June 1, 1988



THOMAS SOBEL
Investigative Hearing Examiner

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: SILVA HARVESTING INC'. , Employer, and INDEPENDENT UNION OF AGRICULTURAL WORKERS Petitioner.	Case No. 86-UC-l-SAL ERRATA TO INVESTIGATIVE HEARING EXAMINER'S DECISION

The sentence appearing on page 31 of the Decision of the Investigative Hearing Examiner in the above-captioned matter should read: "Accordingly, I recommend the Petition be granted as to the agricultural employees of Silva Four alone."

DATED: June 14, 1988

THOMAS SOBEL
Investigative Hearing Examiner