

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

GREGORY BECCIO dba RIVERSIDE FARMS,)	
)	Case No. 93-RC-1-SAL
Employer,)	
)	
and)	
)	19 ALRB No. 6
LOCAL 890, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,)	(May 28, 1993)
)	
Petitioner.)	
)	

DECISION AFFIRMING DISMISSAL OF ELECTION OBJECTIONS

On February 2, 1993,¹ an election was held among the agricultural employees of Gregory Beccio dba Riverside Farms (Riverside or Employer). The revised tally of ballots showed 14 votes for Local 890, International Brotherhood of Teamsters (Teamsters or Union), 12 votes for No Union, and 1 challenged ballot.

The Employer timely filed elections objections contending that it was not at 50 percent of peak employment at the time of the election, that the Regional Director's peak determination was unreasonable, and that an agent of the Agricultural Labor Relations Board (ALRB or Board) had engaged in misconduct which affected the results of the election. On April 7, the Board's Executive Secretary dismissed all of the Employer's objections for failure to state prima facie grounds for setting aside the election. This matter is now before the

¹ All dates herein refer to 1993 unless otherwise specified.

Board on the Employer's request for review of the Executive Secretary's order dismissing the objections.²

Discussion

Riverside is engaged in organic farming of baby varietal lettuces and baby mix salad greens in the Watsonville, California area. The company also produces baby carrots, cherry tomatoes and yellow pear tomatoes, baby spinach, cauliflower, basil and peppers.

Since the Employer contended that its peak employment for 1993 would not occur until the August-October period, the Executive Secretary applied the Board's established test for reviewing prospective peak determinations: whether the Regional Director's peak determination was reasonable in light of the information available at the time of the investigation. (Scheid Vineyards and Management Company (1993) 19 ALRB No. 1; Charles Malovich (1979) 5 ALRB No. 33.) The Employer submitted documents to the Regional Director showing that 26 workers were employed during the pre-petition payroll period. Gregory Beccio's declaration of January 29 stated that Riverside would have a total of 160 acres in production in 1993, consisting of one parcel of 39 acres (10 acres of which were not in production in 1992), one of 40 acres, and one of plus or minus 65 acres leased

² Neither the Employer's request for review nor its statement of facts and law in support thereof contains any argument regarding Objection No. 4, which alleged Board agent misconduct. Therefore, the Employer's request for review appears to be limited to the issue of peak, and our discussion will be similarly limited.

from David Wyrick. Beccio stated his belief that Riverside's 1993 peak would be 50 to 60 employees.

In his reply to the Employer, the Regional Director observed that the parcels cited by Beccio added up to 144 acres, not 160 acres. Further, 10 acres of the 39-acre parcel were not in production in 1992, and the Regional Director had received no indication that those 10 acres would be in production in 1993. Noting that the Employer in its January 28 response to the petition had stated that it was committed to harvesting 135 acres in the spring of 1993, the Regional Director concluded that the Employer would harvest 135 acres later in the year.³

The Regional Director consulted with Employment Development Department (EDD) representative Joe Dillon, who estimated that peak employment for 135 acres would be 54. On Dillon's recommendation, the Regional Director consulted with the owner of another lettuce growing operation, Sakata Ranches, who estimated that his peak employment would be 45. The Regional Director also reviewed the operations of Coke Farms, a certified organic lettuce grower which farms in the same area as Riverside, and determined that Coke had a peak of 43 employees for 200.27 acres. The Regional Director averaged together the four figures (Riverside's estimate of 60, Dillon's estimate of 54, Sakata's peak of 45 and Coke's peak of 43) and obtained a peak employment

³ The Regional Director also noted that the 135 acre figure was consistent with the 134 acre figure arrived at by subtracting the 10 acres from Beccio's figures of 39, 40 and 65 acres.

figure of 50.5. Since Riverside's pre-petition payroll indicated that 26 employees were working, the Regional Director concluded that the peak requirement had been met.

We find the Regional Director's determination that the Employer would farm a total of 135 acres in 1993 to be more accurate than the Employer's claim that it would farm 160 acres. The Employer itself, in its January 28 response to the petition for certification, indicated that it was committed to harvesting 135 acres. Further, the Employer's statement of facts and law in support of its petition to set aside the election stated that it planned to plant and harvest 135 acres in 1993. The acreage figures in Beccio's January 29 declaration added up to 144 acres, not the 160 acres he claimed, and the Employer failed to show that the 10 acres not in production in 1992 would be placed in production in 1993. Thus, we conclude that 135 acres was a reasonable estimate of Riverside's 1993 production.

The Regional Director's decision to consult with EDD and two other lettuce growers was consistent with the requirement of Labor Code section 1156.4⁴ that the peak determination shall not be based on peak employment for the prior season alone, but rather shall be estimated on the basis of uniformly applied acreage and crop statistics and all other relevant data. In its request for review, the Employer asserts that it should not have been compared to Sakata, a non-organic lettuce grower. The

⁴ All section references herein are to the California Labor Code unless otherwise specified.

Employer also contends that the EDD estimate was unreliable since it also was based on non-organic farm operations. In response to a Board agent's pre-election inquiries, Riverside's owner Gregory Beccio stated that Coke Farms normally farmed only half its total acreage and used less intensive cultural practices than does Riverside.

We find, however, that the Regional Director's comparison to other farm operations was reasonable.⁵ The Employer's assertions with regard to Coke were not supported by any documentation and were not shown to be within Beccio's

⁵ In affirming the reasonableness of the Regional Director's method of estimating prospective peak, we note that the Employer did not suggest a more reasonable method. For example, there is no indication that the Employer suggested other farms that would provide a better comparison with its own operations. Even if the Employer's assertion concerning the acreage at Coke Farms is correct, there are several reasonable ways of computing the average of the various estimates that reflect that Riverside was at 50% of peak. As explained below, we have adjusted the figures provided by the Employer to bring them in line with the assumptions underlying the other estimates to which they were compared.

If Riverside's assertion is correct and the 43 figure relates to only 100 acres in actual production at Coke Farms, the adjusted figure for 135 acres would be 58. If the Employer's top figure of 60, which presumably was based on 160 acres in production, is similarly adjusted based on 135 acres, the estimated peak figure is 50.6. When the 58 and the 50.6 figures are averaged along with the EDD and Sakata estimates (54 and 45), the result is 51.9, which puts Riverside at peak given the pre-petition payroll figure of 26. If the midpoint of Riverside's estimated prospective peak is used instead (55) and adjusted for 135 acres, that results in a peak figure of 46 and the average of the four estimates drops to 50.75.

If the Coke Farms figure is simply eliminated from the comparison and the midpoint of Riverside's estimate is used (55), the average of the three remaining estimates is 51.3.

personal knowledge.⁶ Further, although Sakata was a non-organic grower, its peak employment figure of 45 was actually higher than that of Coke (43), a certified organic lettuce grower. The Regional Director generously allowed Riverside's highest estimate of 60 employees into his calculations, even though the Employer's estimate seemed to be based on its inflated claim of 160 acres in production.⁷

The Employer also objected that the Regional Director erred in finding that Riverside was "not an employer" for the 60 acres owned by David Wyrick but acted only as a labor contractor for Wyrick Farms for that acreage. However, since the Regional Director included the Wyrick acreage in his estimate of Riverside's total acreage, his determination on the labor contractor issue, even if erroneous, is harmless.⁸

⁶ The record before the Board does not indicate whether or not the Board agent investigated Beccio's assertion that the peak figure of 43 for Coke Farms was not an accurate basis for comparison because, according to his assertion, Coke Farms normally had only about 100 acres in production. Even if there were a duty to investigate the assertion and no such investigation took place, for the reasons explained in footnote 5, there was no prejudice to the Employer.

⁷ As the Executive Secretary pointed out in his order dismissing the objections, since the Employer estimated it would need 50 to 60 workers for 160 acres, it would appear that a decrease in acreage (from 160 to 135 acres) should result in a lower peak employment figure.

⁸ The Employer also objects to the Executive Secretary's reliance on Mario Saikhon, Inc. (1976) 2 ALRB No. 2 and Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal. App. 3d 970 [224 Cal. Rptr. 366], both "past peak" cases, as authority in this "prospective peak" case. In Saikhon, a "past peak" case, the Board held that where there is high turnover of employees during a payroll

(continued...)

We conclude that the Employer has failed to demonstrate that the Regional Director's prospective peak estimate was unreasonable in light of the information available at the time of his investigation. (Scheid Vineyards and Management Company, supra. 19 ALRB No. 1; Charles Malovich, supra, 5 ALRB No. 33.) We therefore affirm the Executive Secretary's dismissal of the Employer's election objections herein.

DATED: May 28, 1993

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

⁸ (...continued)
period, it may be appropriate to measure peak by averaging the number of employees working over all the days of the given payroll period. In Adamek. the court of appeal held that the Board was statutorily prohibited from averaging employment for the pre-petition payroll period.

In the instant case, the Regional Director did not compute either the prospective peak employment or the current payroll employment by averaging the number of employees per day. Rather, the Regional Director simply estimated the actual employee count for prospective peak by averaging the estimated employee counts computed by EDD, Sakata, Coke and Riverside itself. Since the instant case does not involve Saikhon-type averaging of either the current or peak employment period, we view the Executive Secretary's discussion of Saikhon and Adamek as unnecessary. Consequently, the Employer's argument that the Executive Secretary should not have relied on the two cases is irrelevant to the result herein.

CASE SUMMARY

Gregory Beccio dba
Riverside Farms
(Teamsters)

19 ALRB No. 6
Case No. 93-RC-1-SAL

Background

Following an election in which Teamsters Local 890 was selected as the exclusive representative of the Employer's agricultural employees, the Employer filed election objections alleging that the election was conducted when the Employer was not at 50 percent of peak employment, that the Regional Director's peak determination was unreasonable, and that an agent of the Board had engaged in misconduct which affected the results of the election. The Executive Secretary dismissed all of the Employer's objections for failure to state prima facie grounds for setting aside the election. Thereafter, the Employer filed a request for review of the Executive Secretary's order dismissing its objections.

Board Decision

Neither the Employer's request for review nor its statement of facts and law in support thereof contained any argument regarding alleged Board agent misconduct. Therefore, the Board determined that the Employer's request for review was limited to the issue of peak.

Since the Employer was contending that its 1993 peak would occur later in the year (prospective peak), the Board found that the Executive Secretary had correctly stated the test for reviewing the Regional Director's peak determination: whether the peak determination was reasonable in light of the information available at the time of the investigation. The Board found that the Regional Director had accurately determined that the Employer would farm 135 acres in 1993 rather than the 160 acres it claimed. The Board also found that the Regional Director had acted reasonably in comparing other farming operations and averaging their employment needs to arrive at a fair estimate of Riverside's peak employment needs. Finding that the Regional Director had reasonably determined the Employer to be at 50 percent of peak at the time of the election, the Board upheld the Executive Secretary's dismissal of the Employer's election objections.