STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| In the Matter of: | ) | |
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| EGGER & GHIO COMPANY, INC., | ) | No. 75-RC-2-R |
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| Employer, | ) | 1 ALRB No. 17 |
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| and | ) | |
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| UNITED FARM WORKERS OF AMERICA, AFL-CIO, | ) | |
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| Petitioner | ) | |
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Pursuant to petition by the United Farm Workers of America, AFL-CIO (hereafter "UFW") the Board's Riverside Regional Office directed an election in a unit consisting of all agricultural employees of Egger & Ghio Company, Inc. (hereafter "Employer") at its two ranches in San Diego County. The UFW received a majority of the ballots cast[1] and Employer has filed objections pursuant to Labor Code Section 1156.3(c).[2]

Relying on Section 1156.2 which provides that the bargaining unit shall be all the agricultural employees of an Employer, the Riverside Regional Office of the Agricultural Labor Relations Board directed an election in a single bargaining

[1]The election was held on September 8, 1975. A total of 172 votes were cast as follows: UFW 130, No Union 26, and 16 unresolved challenged ballots which number would not have affected the outcome of the election.

[2]All references are to the Labor Code unless otherwise indicated.

unit comprising all agricultural employees at the two Egger & Ghio ranches as requested by the petitioning Union.

The Employer requested that the election be set aside on the ground that the Regional Director's findings were in error and that, under the circumstances of this case, a single unit encompassing employees of both ranches was inappropriate. The Employer claimed that the two ranches are noncontiguous and should therefore have consisted of two separate bargaining units, basing this claim on the additional language of Section 1156.2 which directs the Board to determine the appropriate unit or units when the agricultural employees are employed in two or more noncontiguous geographical areas. Additionally, the Employer cited several acts of allegedly wrongful conduct on the part of both the Union and the Board which it claimed affected the outcome of the election.

The Board dismissed three of the allegations for procedural defects. Three other allegations were set for an evidentiary hearing: (1) the unit question as described above; (2) distribution of UFW sponsored leaflets containing material misrepresentations of fact designed to induce employee support for the UFW; and (3) failure of the Board's agent to order a cessation of improper electioneering by the UFW in the polling area on the day of the election. The latter objection was withdrawn by the Employer at the commencement of the hearing and the hearing officer permitted offers of proof going to two of the three dismissed items. At the conclusion of the hearing, the Employer filed supplemental briefs which were incorporated in the Board's

record for consideration of this matter.

Additionally, the Employer requested a reconsideration of the dismissed items claiming that the Board lacked discretion to dismiss allegations contained in a Section 1156.3(c) petition since the language therein mandates a hearing on all allegations.[3] This claim is without merit. See Samuel S. Vener Company, 1 ALRB No. 10, 1975.

Nevertheless, the Board agreed to reconsider the dismissal of the allegations in response to the Employer's request. Each of the allegations raises issues identical to those considered and decided in Vener, supra. We find that Vener is dispositive and, accordingly, the Board affirms its dismissal of these three allegations.

Of the dismissed items, the Employer's first claim was that the Board designated "No Union" symbol which appeared on the ballots used in the election did not afford voting employees a symbol representative of the Employer and was therefore not clear. This allegation had been dismissed on the ground that the ballot format used in the election was in compliance with Regulations Section 21000. Vener rejected the Employer's claim that the symbol chosen to represent a vote for "No Union" is unclear, finding that "the circle with a diagonal slash is a long-standing, internationally recognized symbol for "no" which would be familiar to voters, particularly those from foreign nations."

The Employer's next claim, that UFW organizers unlaw-

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[3]Section 1156.3(c) provides that upon receipt of such a petition, "the Board, upon due notice, shall conduct a hearing to determine whether the election should be certified."

fully trespassed upon the Employer's property to solicit employee support, was dismissed for failure to establish a prima facie case of continued effect on the outcome of the election. In Vener, the Board found that the question in reviewing conduct affecting an election is "whether the activity interfered with worker's ability to make a free choice concerning a collective bargaining representative" and, on similar facts, found that "peaceful, non-disruptive organization activity, even if accomplished through an arguable trespass, generally has no such effect...particularly when the Employer did not allege that the organizer's conduct exceeded the boundaries of our access rule."[4]

The final claim was that the California Employment Development Department referred farm workers applying for state financial aid to the UFW office in San Ysidro for assistance in completing required forms and that the Union used this opportunity to solicit the workers' signatures on authorization cards. This allegation was dismissed on the ground that Section 20315(c) of the regulations provides that matters pertaining to employee showing of interest under Chapter 5 are not proper subjects for review. Again, the identical issue was considered by the Board in Vener and it was determined that there was no showing of conduct affecting the election.

Of the two remaining allegations, the issue of misrepresentation of material facts arose from a UFW prepared leaflet containing a promised waiver of membership initiation fees otherwise required by the Union's constitution and which

[4]The Vener decision expressed no opinion as to the circumstances under which organizers' entry onto the Employer's property beyond that permitted by the rule may be grounds for setting aside an election.

leaflet was made available to employees at Egger & Ghio ranches. The Employer moved to incorporate by reference the testimony and documentary evidence received during an investigation into the identical issue in Vener. In that case, the Board found that no evidence was presented that the UFW in fact charges an initiation fee, contrary to the representation in its leaflet. Because of the similarity of facts, we find Vener dispositive on the issue of alleged misrepresentations.

The major objection to the election was the Employer's disagreement with the Regional Director's finding of a single unit encompassing employees of both ranches.

The Employer contended first that the ranches are geographically noncontiguous as there is a ten mile separation between them. Next, the Employer asserted that the ranches are distinct operations as the employees at the two ranches are separately supervised and, because there is some difference in the types of crops grown, employee skills and rates of pay.

The policy of the ALRA regarding bargaining units is stated in Section 1156.2:

> 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.

The Employer operates two ranches in San Diego County, one at Otay Mesa and the other at Palm City. They are separated

from each other by a distance of ten miles. Tomatoes and beans are grown at both ranches, but celery is grown only at the Otay Mesa ranch. Workers employed in celery perform slightly different tasks from those employed on tomatoes and beans, and receive a 10 cent per hour salary differential; otherwise the hours, rates of pay and working conditions among the employees at the two ranches are the same. Immediate supervision at the two ranches is separate, but Robert Egger, Jr. manages both ranch operations and is responsible for all personnel hirings and assignments. There is some degree of interchange of employees between the two ranches, but its exact nature and extent is not reflected in the record.

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. 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.

San Diego County consists of widely diversified geographical areas ranging from coastal lowlands and desert to mountain growing areas at elevations of up to 6,000 feet. These factors account for growing seasons which vary from three to twelve months a year. Although separated by a distance of ten miles and a difference in elevation of 600 feet, these

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two ranches are within the same geographical area due to the similarity of such factors as water supply, labor pool, climatic and other growing conditions.[5]

The National Labor Relations Board finds single bargaining units appropriate when the employees share a community of interests which is determined by common supervision, the frequency of interchange of employees and the similarity of jobs, skills and working conditions.[6] The record established evidence of common supervision as well as some interchange of personnel, similar skills, rates of pay, hours and working conditions among many workers on either ranch.

The Employer has not demonstrated that the Regional Director abused his discretion in designating a multi-ranch unit. Although the ranches are physically separate, the similarity of geographic growing conditions, the integrated nature of the Employer's operation, and the close community of interest of the employees make it plain that, under the facts of this case, a single unit composed of all employees at both

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[5]Based on Agriculture Crop and Natural Resources Report, County of San Diego, Department of Agriculture, 1974. The cited factors should not be considered limiting.

[6]Purity Supreme, Inc., 197 NLRB 915 (1972); Gray Drug Stores Inc., 197 NLRB 924 (1972). See also, Sears, Roebuck and Co., 191 NLRB 398 (1971).

Egged & Ghio ranches is appropriate.

Certification ordered.

Dated: December 11, 1975.