STATE OF CALIFORNIA AGRICULTURAL

LABOR RELATIONS BOARD

In the Matter of: MANN PACKING CO., INC., Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner, and WESTERN CONFERENCE OF TEAMSTERS, Intervenor.	)	No. 75-RC-36-M 2 ALRB NO. 15

The United Farm Workers of America, AFL-CIO ("UFW") won a certification election held in a unit of agricultural employees of Mann Packing, Inc., on September 15, 1975.[1/] Pursuant to Labor Code Section 1156.3(c), the employer filed timely objections and this Board directed an evidentiary hearing into four issues alleged to have affected the outcome of the election: (1) whether the commercial nature of the employer's primary business operations would bring all related activities within the exclusive jurisdiction of the National Labor Relations Board; (2) whether certain mechanics and

[1/] The UFW and the Western Conference of Teamsters were petitioners and intervenors, respectively, in a Petition for Certification which resulted in 86 votes for the UFW, WCT 9, and No Union 36. There were 3 void vallots and 19 unresolved challenged ballots which number would not have affected the results of the election.

maintenance operators were improperly included in the unit;[2/] (3) whether there was Board misconduct for failure to notify the employer when ballots would be counted; and, (4) whether the UFW campaigned among employees while they were in transit to the polls in contravention of a preelection agreement and among employees waiting to vote.

I. Jurisdiction

We confront first the question of jurisdiction. The employer is engaged in three business operations; a commercial packing shed, its own farming operation, and a harvesting service in which it harvests broccoli for independent farmers. The packing shed packs, sells and ships broccoli which is cultivated and grown by independent farmers in the Salinas Valley.[3/] H. W. Mann, president of the employer corporation, testified that "we charge a service or packing fee for this service, the balance belongs to the grower. You might say we

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[2/] The petition, as filed, purported to include within the proposed bargaining unit "all agricultural employees of the employer in the Salinas Valleys [sic], excluding packing sheds which, in this case, are noncontiguous, also excluding mechanics and maintenance men represented by the International Association of Machinists, AFL-CIO." The employer stated that it employs four maintenance operators in its packing shed operations who are covered by the preexisting contract with an AFL-CIO affiliate and that it employs nine additional mechanics and maintenance operators who are not currently affiliated with a bargaining representative. The latter group of employees is in issue.

[3/] All of the foregoing processes take place in a commercial packing house located on premises separate and apart from any farming operations. The company's packing house employees are covered by a preexisting collective bargaining agreement with Packing Shed Workers Local 78-A, APL-CIO, entered into over ten years ago pursuant to an election directed by the National Labor Relations Board, and were not included in the proposed unit at issue herein.

market for their account." Additionally, the employer has its own direct farming operation on the 880-acre Jensen ranch, about 10 miles from the commercial packing shed. Broccoli produced here constitutes about 15 percent of the output of the packing business; the balance is derived from crops which the employer harvests from the fields of its independent grower accounts.
Mann Packing also owns harvesting equipment and employs labor crews which harvests its own as well as the crops of other farmers.[4/]

The employer contends that the commercial nature of its integrated packing operation should control since harvesting is but an incidental practice; and that all of its activities fall within the sole jurisdiction of the NLRB. We can not agree.

Section 2(3) of the NLRA expressly excludes from its coverage "any individual employed as an agricultural laborer." In the absence of a definition of "agriculture" in the Federal Act, the NLRB defers to Section 3(f) of the Fair Labor Standards Act, 29 U.S.C., from which Labor Code Section 1140.4(a) is drawn,[5/] and which states in part:

[4/] The employer testified that, upon request, it will undertake to plant a broccoli crop for an independent grower at a set fee per acre and implied that this service has been provided infrequently.

[5/] Labor Code Section 1140.4(b) provides that the term "agricultural employee" shall mean one engaged in agriculture as such term is defined in Section 1140.4 (a), which states that: "The term agriculture includes farming in all its branches, and, among other things, includes the 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 1141J (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."

> ... agriculture includes farming in all its branches and among other things includes the ... harvesting of any agricultural commodities and any practices ... performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including . . . preparation for market, delivery to storage or to market or to carriers for transportation to market. (Emphasis added.)

In interpreting this section, the Supreme Court pronounced a distinction between "primary" agricultural activities which may be described as those functions pertaining to actual farming and "secondary agricultural activities which are related but do not entail the actual growing of crops. The Court said:

> As can be readily seen, this definition has two . distinct branches. First, there is the primary meaning. Agriculture includes farming in all its branches. Certain specific practices, such as cultivation and tillage of the soil, dairying etc., are listed as being included in this primary meaning. Second, there is the broader meaning. Agriculture is defined to include things other than farming as so illustrated. It includes any practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm, incidently [sic] to or in conjunction with "such" farming operations. Farmers Reservoir Co. v. McComb, 337 U.S. 755 (1949).

On the basis of this standard, the court found that harvesting is a "primary" activity directly related to the actual production of an agricultural commodity and that employees who actually do the harvesting are agricultural employees regardless of where the work is done, Farmers Reservoir, supra. Furthermore", the purpose of the employer in performing the harvesting operations is immaterial when employees are engaged in direct farming operations which are included in the primary definition of "agriculture." See,

Damutz v. Pinchbeck, 158 P. 2d 882 (2d Cir. 1946); Miller Hatcheries v. Boyer, 131 F. 2d 283 (8th Cir. 1942); Jordan v. Stark Brothers Nurseries, 45 F. Supp. 769 (Wid. Ark. 1942).

Accordingly, we find that the harvesting crews are agricultural employees properly within the jurisdiction of this Board, Labor Code §1140.4(a) and (b).[6/]

II. Unit Determination

Next, the employer seeks an examination of the status of nine mechanics and maintenance operators employed in a machine shop on the Jensen Ranch, asserting that the NLRB has jurisdiction over this category of employees due to the fact that the staff is engaged in the repair and service of automobiles, trucks and other equipment of Mann Packing, a commercial rather than an agricultural enterprise. The first question to be resolved is whether the shop-serviced equipment is employed in agricultural or solely in packing shed operations.

William Ramsey, the employer's general manager, stated that the company has about 85 rolling pieces of equipment which is serviced by the shop mechanics.[7/] The packing shed's

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[6/] Labor Code §1156.2 states in pertinent part that: "The bargaining unit shall be all the agricultural employees of an employer." The employer herein did not allege that it is a labor contractor who merely supplies field workers to individual employers so as to exempt it from the Act. See, Labor Code §1140.4(c).

[7/] The record disclosed 83 pieces of production equipment as follows: 5 harvesting machines, 5 dollies for harvesters plus 7 trucks to roll harvesting equipment; 7 forklifts, 2 trucks which move lowbeds and 10 pieces of tractor equipment. Also, 3 over-the-highway trucks (2 diesels, 1 non-diesel), 3 lowboys which move heavy equipment, 5 hijos, 2 additional trucks which are used to service harvesting equipment on the ranches, 5 buses to transport employees, 2 vans, 6 pipe trailers, 2 irrigation trucks, and 5 booster pumps. Additionally, one pickup which is stationed on the ranch and used to transport equipment from town, another pickup, a truck, 4 forklifts at the shed plus 6 automobiles.

four-man maintenance staff handles most of the equipment servicing as required there although movable packing shed equipment has on occasion been transferred to the shop for repairs and, when needed, one shop mechanic may service equipment at the shed. There is no other interchange of either employees or equipment between the shed and the ranch.[8/]

We find that the bulk of the equipment consists of harvesting and harvesting-related machinery. It is our determination, therefore, that the mechanics engage in practices integrated with and indispensible to the harvesting function which has been found to come within the "primary" meaning of "agriculture" regardless of where the work is performed. Accordingly, the mechanics and maintenance operators who are employed in the Jensen shop and who are charged with the task of servicing the employer's harvesting equipment are agricultural employees.

III. Conduct Affecting the Election

Aside from the jurisdictional arguments, the employer also objected to the Board's failure to notify the employer when ballots would be counted.

In a certification petition filed by the Western Conference of Teamsters (Teamsters), the employer was also alleged to be a member of a proposed multi-employer bargaining unit encompassing approximately 156 individual growers, each of whom had given powers of attorney to the Employer's Negotiating

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[8/] The shop supervisor handles many of the shed's servicing requirements but was not included within the bargaining unit due to his managerial status.

Committee. Due to this fact, the Board ordered the ballots impounded upon completion of the voting until the multi-employer bargaining unit question could be resolved. After a hearing on that issue, the Board determined that the proposed unit was not appropriate and on the afternoon of September 17, 1975 ordered the impounded ballots be counted forthwith. See, Eugene Acosta, et al, 1 ALRB No. 1 (1975).

Donald Nucci, office manager for Mann Packing, received a call on the evening of September 17 from an official of the Grower-Shipper Vegetable Association of which the employer is a member informing him that the impoundment order had been lifted and that ballots from a number of elections similarly situated would be counted that evening. The Director of the Board's Regional Office in Salinas had so notified the Association's attorney by telephone at 5:30 p.m. that afternoon. Mr. Nucci arrived at the counting site at about 8:00 p.m. and remained until the Mann tally was completed at 1:00 a.m. the following morning. James D. Schwefel, Jr., the employer's attorney of record in this matter, also was present but did not call the employer because "I saw no need to, Mr. Nucci was there."

Without evidence of misconduct affecting either the accuracy or the integrity of the ballot count by Board agents, we reject the employer's contention that the election itself was improper. See, J. R. Norton, 1 ALRB No. 11 (1975) .

The alleged misconduct by the UFW concerns two categories of conduct; conversations between an election observer and potential voters and electioneering on buses transporting employees to the polls. For reasons hereafter

stated, we think that the allegations do not establish conduct adversely affecting the outcome of the election.

Prior to assuming his duties as an election observer for the period during which his own crew was to vote and at the request of a Board agent, Francisco Perez asked an undetermined number of potential voters to stand in line and remain quiet. Two of the employer's observers objected to this conduct, but did not overhear the nature of the remarks.

The employer urges that we adopt the rule of Milchem, Inc., 176 NLRB No. 46 (1968), in which the NLRB found that prolonged conversations between parties to the election and potential voters waiting to vote were objectionable per se without investigation as to content. Mr. Perez was not a party to the election within the meaning of the Milchem rule as he was not an observer at the time of the alleged infractions. Furthermore, he addressed employees at the request of the Board's agent and for the purpose of maintaining order in the election area.

The employer also alleges that at the pre-election conference, all parties agreed that there would be no campaigning or electioneering on company buses transporting employees to the election site. While the evidence indicates there was discussion and some apparent agreement on this matter the precise nature and the extent of the oral agreement is unclear. Mr. Perez boarded his bus with a supply of bumper strips which read "Chavez Si Teamsters No" and "Si Se Puede" and which, according to his testimony, he handed out to anyone who wanted them. Robert Vasquez, personnel director for the company, said all buses

had been heavily plastered with similar stickers for several weeks prior to the election and that the employer had not removed them "in order to not antagonize anyone."

In the absence of evidence establishing that the parties in fact agreed to a rule against electioneering and that it encompassed the distribution of campaign literature, we do not find that the additional dissemination of identical materials, without more is improper.[9/]

In addition to the objections as described above, the employer also objected to inclusion of certain other categories of employees whom, it claimed are not within the jurisdiction of this Board. The categories included hijo operators, drivers and machine operators. A similar objection to the inclusion of these and other categories of employees in a number of elections was raised by Teamsters Locals 890 and 898 on the grounds that they come within the coverage of the NLRA and are therefore not "agricultural employees" and that even if they are agricultural employees, they should be excluded because of their separate history of collective bargaining and separate community of interest (the Teamsters have a collective bargaining agreement covering the disputed classifications).

Since the issue of the status of these truckers as agricultural employees is now before the National Labor Relations Board, and since their votes could not have affected the outcome

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[9/] We do not here reach the question of what action the Board would take should it find that an express agreement had been violated. Parties are encouraged to enter into agreements and it is suggested that they be reduced to a writing so that problems of content and interpretation may be avoided.

of the election, we defer a determination of whether they are agricultural employees to the NLRB, to the agreement of the parties, or to a future preceeding of the Board. Cf. Interharvest, Inc., 1 ALRB No. 2 (1975).

Accordingly, the United Farm Workers of America, AFL-CIO, is certified as the bargaining representative of all agricultural employees of Mann Packing, Inc., excluding those employees employed in off-the-farm packing sheds.

Certification ordered.

Dated: January 22, 1976

Roger Jf. Mahony, Chairman

Joseph R. Grodin

Joe C. Ortega

LeRoy Chatfield

Richard Johnsen, Jr.