STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
HEMET WHOLESALE,	)	No. 75-RC-5-R
Employer,	)	
and	)	2 ALRB No. 24
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
Petitioner.	)	

On September 9, 1975, an election was held at the premises of Hemet Wholesale ("Employer") pursuant to a Petition for Certification filed by the United Farm Workers of America, AFL-CIO ("UFW"). The tally of ballots shows: UFW - 62, no labor organization - 33, unresolved challenged ballots - 24. Thereafter, the Employer filed objections to the election pursuant to Labor' Code Section 1156.3(c) alleging: (1) that the election was improperly conducted, (2) that the UFW made misrepresentations to the voters during the campaign and on election day which warrant setting the election aside, and (3) that the unit was improperly described in the Direction and Notice of Election. We decline to set aside the election.

I. Objections to the conduct of the election.

The objection that the election was improperly conducted involves the following occurrences: workers remained near the voting area after they voted, an employee who supported the UFW stood near the challenge table for a period of time and indicated to the UFW observer voters to be challenged, and one of the Board

agents conducting the election spoke in Spanish to some of the voters without translating for the benefit of non-Spanish speaking people and also accompanied several voters to the voting booth. In addition, it is alleged that the same Board agent showed favoritism for the UFW during the counting of the ballots.

Witnesses for both parties agreed that voters remained near the polling area after they voted. Robert Dale, a Hemet employee, testified that he came with his crew to vote shortly after the polls opened, and remained with his crew in the area until they had all voted, which was near the polls' closing time. He stated that he sat with other crew members in a shady area approximately 15 feet from the polls, and that they were told at one point by a Board agent to move back, which they did. Vincente Garcia, another Hemet employee, stated that he remained in the voting area walking around and talking with his friends. Cecil Callicott, the observer for the Employer, testified that the Board agents asked the employees several times to disperse before they complied.

Mr. Garcia was the employee who told the UFW observer whom to challenge. Garcia himself had been selected as a UFW observer, but at the pre-election conference the parties were limited to one observer each and Garcia was dropped. Garcia testified that he did not realize when he came to the voting area that he was not supposed to act as an observer. Garcia stood behind the challenge table and told the UFW observer to challenge three people, before being told by a Board agent to leave. He then got in line to vote, and did not return to the challenge table afterwards.

One of the Board agents spoke in Spanish to several of the voters. Mr. Callicott, the company observer, stated that these voters could not speak English and apparently had questions concerning the ballot which the Board agent answered in Spanish. Callicott, who does not speak Spanish, asked the Board agent to translate what she had said on two occasions, and she translated the first time but did not seem to hear the second request. The Board agent also accompanied four or five voters to the voting booth, apparently explaining the voting process, but did not remain there while these people voted.

Callicott testified further that after the polls closed and the votes were being counted, the same Board agent smiled whenever the UFW received a vote and clapped her hands when the final tally showed *a* UFW victory. Callicott verified that the votes were tallied correctly. The UFW observer, Jose Ortiz, testified that he did not see the Board agent smile or clap during or after the counting.

We do not consider these occurrences to be sufficient to warrant overturning the election. It does not appear that the events described interfered with the free expression of the voters' choice. While the proper procedure for Board agents conducting an election is to maintain a quarantined area for purposes of voting only, it has not been demonstrated that the presence of workers near the voting area after they had voted was in any way associated with electioneering or disruption of the voting process. See, Sewanee Coal Operators' Association, 146 NLRB N. 140 (1964). Similarly, the actions of Mr. Garcia appear to have been the product of honest confusion on his part and amounted to no more

than a technical breach of Board rules regarding observers. Moreover, none of the problems with maintaining a quarantined voting area were attributable to the parties themselves, but rather were due to the actions of the voters. See, NLRB v. Monroe Auto Equipment Co., 470 F. 2d 1329 (C.A. 5, 1972), enf'g 186 NLRB No. 18 (1970), where nonaggravated misconduct of union-supporting employees was held to be entitled to little weight in determining whether to set aside an election.

With regard to the actions of the Board agent there is no evidence indicating that she interfered with the balloting. Certainly, speaking in Spanish to Spanish-speaking voters is both necessary and proper. The company observer asked for translation on two occasions only, and it is nowhere indicated that the Board agent refused to translate when asked. The observer was of the opinion that the Board agent spoke in Spanish and accompanied voters to the voting booth only in an effort to explain the voting process. We do not condone the practice of a Board agent accompanying voters to the voting booth, but in the absence of any evidence that this Board agent attempted to influence voters, we will not set the election aside.

If the Board agent did in fact exhibit bias toward the UPW during and after the tally of ballots, certainly such conduct was highly improper on the part of a Board agent. This conduct, however, occurred after the balloting was completed and it is not claimed that the tally was inaccurate. The conduct, therefore, could not have affected the results of the election. See, NLRB v. Dobbs Houses, Inc., 435 F. 2d 704 (C.A. 5, 1970), enf'g 172 NLRB No. 206 (1968); Wald Sound, Inc., 203 NLRB No. 61 (1973).

II Objections to alleged misrepresentations.

With respect to the alleged UFW misrepresentations, the evidence shows that the UFW distributed a campaign flier containing the following language:

> "Q: Do you have to pay to join the United Farm Workers?
>
> A: No I There is no initiation fee in the United Farm Workers. After you are already working under union contract here, you will pay 2% of your earnings per month and no more." (Emphasis in the original.)

The Employer claims that this language constitutes a material misrepresentation in that the UFW Constitution requires initiation fees.[1/]

An identical objection was considered and rejected in Samuel S. Vener Co., 1 ALRB No. 10 (1975). However, since the hearing in this matter occurred before the issuance of Vener and different evidence was introduced than in Vener, we consider the new evidence. As in Vener, we find this objection to be without merit.

Daniel Sudrun, a UFW organizer for four years, testified that he was at the 1973 constitutional convention when the

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[1/] Article X, Section 2 of the UFW Constitution, adopted at its 1973 convention, provides:

> "Commencing January 11, 1974, each applicant for membership shall be required to pay an Initiation Fee of $25. An applicant who cannot immediately pay the Initiation Fee may sign an authorization for his employer to deduct the fee from his paycheck within seven days. However, the National Executive Board may waive or decrease the required Initiation Fee for agriculture laborers desiring to join an Organizational Committee in an area where there are no collective bargaining agreements. Persons obtaining Union membership by reason of full-time Union service shall be exempt from the Initiation Fee."

initiation fee provision was adopted, and that the president of the union was at the same convention given the power to waive the fees. To Sudrun's knowledge the UFW is not now collecting initiation fees, nor has it ever done so.

The Employer introduced the Labor Organization Annual Report for the year 1973 filed with the U.S. Department of Labor Office of Labor-Management Welfare-Pension Reports, which lists under "Cash Receipts" $187,784 collected as "Assessments". [2/] Where the report form asks for receipts from "Fees", no receipts are listed. Although the Employer contends that the "Assessments" were in fact initiation fees, there is absolutely no evidence to support this contention, and the document from its face indicates the contrary.

In addition, the Employer introduced two documents which purport to be collective bargaining agreements between the UFW and two employers not party to this proceeding. The documents were introduced for the purpose of showing that they make provision for the collection of initiation fees. [3/] The documents,

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[2/] Article XIII, Sections 1-4, of the 1973 UFW Constitution provides for the levying and collection of "assessments." Such provisions are entirely separate from the initiation fees established by the Constitution, see, n. 15, supra.

[3/] Subsection C of Section II, Union Security, of the 1970 contract entered into between the UFW and the Larson Company, as amended in 1973, reads in part as follows:

> "Company agrees to deduct from each worker's pay all initiation fees, periodic dues and assessments as required by Union, upon presentation of individual authorizations, signed by workers, directing Company to make such deductions."

Part B under Union Security in the UFW contract with Paul Masson Company, dated June 23,1975, states as follows:

(fn. cont. on p. 7)

however, make the collection of initiation fees discretionary with the union, and there was no evidence introduced showing that initiation fees were collected under the contracts.

In sum, the evidence does not show that the campaign flier distributed by the UFW constitutes a misrepresentation of fact. The evidence affirmatively shows that the UFW has waived initiation fees, and the Employer has failed to demonstrate that such fees were ever collected.

An additional allegation by the Employer is that statements were made to eligible voters which were designed to confuse them. There was testimony from two employees that they were told by UFW supporters that they would be ineligible to vote in the election. Both employees did in fact vote in the election. This objection is overruled.

III. Objections to the unit description.

Finally, we consider the Employer's contention that the unit as described by the regional director was improper. The regional director issued a Direction and Notice of Election which described the unit as follows:

> "All agricultural workers at the main nursery on both sides of Hewett Street and at the propagation unit on Menlo Street, including canning workers and excluding mechanics, plant clericals, heavy equipment operators, delivery personnel, office clericals, and those truck drivers who do not handle nursery stock."

The Employer contends that the workers in the excluded

(fn. 3 cont.)

> "The Union shall be the sole judge of the good standing of its members. Any employee who fails to tender the uniformly required initiation fees, or regularly authorized dues and/or assessments as prescribed by Union shall be immediately suspended or discharged upon written notice from Union to P-M . . . ."

classifications are "agricultural employees" within the meaning of Labor Code Section 1140.4(b), [4/] and therefore should not have been excluded.

The Employer's contention poses a procedural issue of considerable significance. Unit issues, in the sense that term is used under the National Labor Relations Act, arise under the ALRA only where agricultural employees of the Employer are

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[4/] Labor Code Section 1140.4 (b) states in pertinent part as follows:

> "The term 'agricultural employee' or 'employee' shall mean one engaged in agriculture, as such term is defined in subdivision (a). However, nothing in this subdivision shall be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2 (e) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code)."

Subdivision (a), of Section 1140.4, incorporated into the above definition of "agricultural employee", states:

> "The term 'agriculture[1] 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 market or to carriers for transportation to market."

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employed in two or more noncontiguous geographical areas.[5/] Only then does the Board have discretion to determine the scope of the bargaining unit, and a claim that the regional director improperly determined the geographical scope of the bargaining unit is a proper subject for review under Labor Code Section 1156.3(c). Where the agricultural employees of the employer are employed in a single geographical area, or in contiguous geographical areas, the statute mandates inclusion of all agricultural employees of the employer.[6/] Disputes as to whether or not particular employees are agricultural employees within the meaning of the Act are not litigable in a Section 1156.3(c) proceeding. Such disputes do not involve the geographical scope of the bargaining unit, nor do they ordinarily involve the validity of the election itself. Rather, such disputes at the time of the election involve simply a question of voter eligibility. See, 8 Cal. Admin. Code §20350 (b)(4).

Where it is unclear as to whether employees in certain classifications are agricultural employees entitled to

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[5/] Labor Code Section 1156.2 states:

> "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."

[6/] The statutory inclusion of all agricultural employees is subject to the implicit exclusion from coverage under the Act of employees whose job functions are closely aligned with management, such as supervisors and guards, see, Yoder Bros., Inc., 2 ALRB No. 4, nn. 8 and 9, and managerial and confidential employees, n. 14, infra.

vote, such employees must vote subject to challenge if the question of their eligibility is to be considered in determining the outcome of the election. See, 8 Cal. Admin. Code §20350(b)(4). If the number of challenges is determinative of the outcome, then the question of eligibility will be determined pursuant to the challenge procedures prescribed in applicable regulations. See, 8 Cal. Admin. Code §§20365(e) and (f). If the number of challenges is not determinative, if the employees in the disputed classifications fail to vote, or if they are permitted to vote without challenge, then the results of the election will be certified on the basis of the tally (subject to resolution of any proper objections), and the issue of the eligibility of such voters will not be a basis for overturning the election. Such a rule, in accord with NLRA precedent, is necessary in order to provide finality to the election procedure. NLRB v. A. J. Tower Co., 329 U.S. 324 (1946).

Where an election is certified on the basis of the tally, and a labor organization is designated as bargaining representative for the employees, questions may arise as to whether particular employees are within the bargaining unit statutorily mandated to include all agricultural employees and defined geographically in the certification. Such questions may then be raised through a motion by either party for clarification of the unit.

Because the challenge procedure is the proper method for determining voting eligibility in an election, the unit should be described in the Direction and Notice of Election simply as "all agricultural employees of the employer," subject to whatever geographical limitation may be determined to be appropriate.

In this case, however, the regional director undertook to exclude specific classifications of employees whose ineligibility was far from clear. Such conduct could affect an election by deterring employees in the disputed classifications from voting, and on that ground the unit description could be a proper subject of objection under Labor Code Section 1156.3(c) if the number who did not vote was sufficient to affect the outcome. Here, however, the Employer makes no such argument, and, in fact, 16 of the 17 employees who were contended at the hearing to have been improperly excluded voted challenged ballots. The UFW margin of victory was 29. Consequently, the Employer's contention as to the unit description, considered as an objection under Labor Code Section 1156.3(c), is overruled, and the United Farm Workers of America, AFL-CIO, is certified as bargaining representative for all agricultural employees of the Employer.

Because the status of the disputed classifications was fully litigated in the hearing, however, and because it is obviously of value to the parties to have a determination as to the unit status of these classifications as soon as possible for purposes of bargaining, we will treat the Employer's contention as a request for clarification of the bargaining unit. On that basis, we agree with the Employer's contention, and find that the employees in all the disputed classifications are agricultural employees within the meaning of the Act and therefore properly part of the bargaining unit for which the union is certified.

The Employer is engaged in the production of container-grown ornamental nursery stock which is cultivated in greenhouses. The Employer's property contains a propagation nursery, a main nursery, and administrative offices. The basic nursery work, such

as propagating, watering, transplanting (or "canning" as referred to in the unit description) is performed by employees who are considered by both parties to be agricultural employees. The nature of the Employer's business requires additional classifications of employees to perform inventory, maintenance, sales, and delivery work. As part of the Employer's operations, the nursery plants are sold and distributed directly to retail merchants and landscape architects.

It is apparent from the definitions contained in Labor Code Sections 1140.4(a) and (b) that the jurisdiction of this Board with regard to "agricultural employees" precisely complements that of the National Labor Relations Board. Section 2(3) of the NLRA excludes from the coverage of that Act "any individual employed as an agricultural laborer." Since July, 1946, Congress has added a rider to the NLRB's annual appropriations measure which, in effect, directs the NLRB to be guided by the definition of "agriculture" provided in Section 3(f) of the FLSA in determining whether an individual is an "agricultural laborer" within the meaning of Section 2(3) of the NLRA. See, Jacobs Engineering Co., 216 NLRB No. 148 (1975); D'Arrigo Brothers Co. of Calif., 171 NLRB No. 5 (1968). ALRA Section 1140.4(a) sets out a definition of "agriculture" which is essentially identical to FLSA Section 3(f). We are therefore bound to follow applicable precedent of the courts, the NLRB, and the U.S. Department of Labor[7] in interpreting that definition.

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[7] The Department of Labor has published an official interpretive bulletin analyzing in great detail the various types of activity which fall under the statutory definition. 29 C.F.R. Part 780.

FLSA Section 3(f) was interpreted authoritatively by the United States Supreme Court in Farmers Reservoir and Irrigation Co. v. McComb, 337 U.S. 755 (1949).[8/] The Court stated basic analysis which must be followed in determining whether a

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[8/] In approaching the problem the Court looked broadly at the developing function of modern agriculture.

> "Whether a particular type of activity is agricultural depends, in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. In this way functions which are necessary to the total economic process of supplying an agricultural product, become, in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it. Thus, the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity. The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. But the maintenance man in a power plant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by farmers. The production of power and the manufacture of fertilizer are independent production functions, not agriculture."

particular activity falls under the statutory definition of agriculture as follows:

> "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 to or in conjunction with 'such' farming operations." 337 U.S. at 762-763.

Employees who work in the fields and are directly involved in the planting, cultivation, and harvesting of crops are obviously involved in functions which fall within the primary definition of agriculture. The application of the secondary definition, however, raises more difficult problems of the type which are presented in the case before us.

The job duties of the excluded classifications were explained at the objections hearing by Tom Hamblin, personnel manager for the Employer. These duties are summarized below.

Mechanics. There are six employees in the mechanic classification.[9/] Their jobs involve repair and maintenance of all equipment used at the nursery, including trucks and heavy equipment, water lines and pumps, electrical service, etc. All of their time is spent on mechanical work and all of this work is performed on company equipment and on company premises.

[9/] At the hearing on objections these six individuals were stated to be Benjamin Bacerra, Raymond Cornele, Pasquel Lopez, Willie Pickle, Jimmy Ray Scally, and Curtis Riggins. Board records indicate that all six cast unresolved challenged ballots.

Heavy Equipment Operators. There is one full-time heavy equipment operator.[10] There is another, unidentified employee who is qualified to do the same work, but divides his time between this work and ordinary nursery work. These employees operate a skip, or Huff, loader. This machine is used to mix the potting soil used for the propagation and growing of all the plants at the nursery. The potting soil is not sold commercially. All of this work is performed on company property.

Heavy Truck Drivers. There are three heavy truck drivers.[11] They drive tractor-trucks towing a van for delivery of nursery stock directly to customers at various points in Southern California. They help in the loading of the trucks, but this operation is supervised by a shipping foreman. Ordinary nursery workers also help in the loading. When there are no deliveries to be made, the truck drivers help with other work around the nursery, such as moving plants, etc.

Sales-deliverymen. There are three sales-deliverymen.[12] Although their work was described as primarily selling plants to the Employer's retail customers, they also deliver plants in pickup trucks. They are paid a salary rather than commissions. They deal directly with the customers in working up orders, and at the nursery they pick out and tag the plants needed to fill

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[10] This employee, Vincente Valenzuela, voted a challenged ballot.

[11] All three, Angel Martin, Fred Valenzuela, and Gerald Lee Worthington, voted challenged ballots.

[12] All three, Virgil Garrett, James Stewart Blake, and Cecil Callicott, voted challenged ballots. Another individual, Wesley R. Mudge, was not mentioned at the hearing, but Board records indicate that he was included in this category in voting a challenged ballot.

the orders. The tagged plants are loaded by the nursery workers. These employees appear to have little direct contact with the nursery workers.

Plant Clericals. There are four plant clericals.[13] Their work is chiefly involved with maintaining the inventory of nursery supplies, such as cans for the propagation and growing of the plants, fertilizer, seeds, insecticides, etc. They work primarily in the administrative offices, and only occasionally visit the growing areas in order to communicate with foremen with regard to the ordering of supplies. These employees do not work with the payroll, and there is no evidence that any of their work relates to personnel matters.[14]

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[13] Of these, three —- Bess Ricketts, Mildred Gross, and Elsie Starr —- voted challenged ballots. The fourth, Evelyn Pratt, does not appear on the eligibility list and did not vote a challenged ballot.

[14] The payroll work is performed by "office clericals." Although this classification was excluded from the unit in the Direction and Notice of Election, the Employer offered no evidence at the hearing specifically dealing with the identities or duties of such employees. It is possible that some office workers participate directly in management decisions or assist and act in a confidential capacity to persons responsible for an employer's labor relations policy so as to be excluded from coverage of the Act as "managerial employees" or "confidential employees." See, NLRB v. Bell Aerospace Co., Div. of Textron, Inc., 416 U.S. 267 (1974); Palace Laundry Dry Cleaning, 75 NLRB 320 (1947); Ford Motor Co., 66 NLRB 1317 (1946). Cf., Yoder Brothers, Inc., supra, n. 8. Since no evidence was presented with regard to the office clericals, we do not consider whether or not this classification, or individual employees within the classification, should have been included in the unit. If question should arise in the future with regard to the inclusion or exclusion of these workers from the unit, the Board will entertain a motion for clarification of the unit.

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We find that the employees in all five classifications which the Employer argues were improperly excluded are agricultural employees, and as such they are included in the unit. The nursery operations of the Employer constitute "farming" as this term relates to the production of horticultural commodities under the primary definition of Labor Code Section 1140.4(a), see 29 C.F.R. §780.205, and the work of the contested employees falls within the secondary definition in that it is "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 market . . . ." Practices which relate to the farmer's own farming operations and not to the farming operations of others and which are in addition subordinate to such operations come within the secondary definition. Mitchell v. Huntsville Nurseries, 267 F. 2d 286 (C.A. 5, 1959); NLRB v. Olaa Sugar Co., 242 F. 2d 714 (C.A. 9, 1957); Mr. Artichoke, Inc., 2 ALRB No. 5. The practices in question here relate entirely to the Employer's own farming operations, and there is no evidence that the Employer handles or markets the products of other farmers. See, 29 C.F.R. §780.137. In addition, the work of all the contested employees is incidental to the Employer's farming operations, in that none of their work constitutes an independent business. See, 29 C.F.R. §780.144.

The operations of this Employer in many ways parallel those involved in Rod McLellan Co., 172 NLRB No. 157 (1968). There the employer operated a nursery producing cut flowers and potted plants. Working at the nursery itself were field and greenhouse workers, as well as employees who repaired the

greenhouse, machinery, and boiler room equipment. The employer marketed its products by means of a retail shop on the premises, delivery directly to customers, and *a* route-selling operation in which it solicited and filled orders for its horticultural products from commercial enterprises. Certain of the employer's products were found to be nonagricultural in nature, such as soil and bark mixes which were essentially manufactured on the premises and sold commercially. The NLRB found that the work performed by the field and greenhouse workers fell within the primary definition of agriculture, and that to the extent that the other employees handled the horticultural commodities of the employer, their work fell within the secondary definition. The NLRB stated:

> "The maintenance, repair, and powerhouse activities are necessary to the growing operation. Cutting, grading, sorting, potting, and packing do not change the Employer's flowers and plants or enhance their value; rather, these activities merely prepare them for normal marketing. Sale and delivery of these items through the retail shop, on the market, or along routes, are the final steps in this operation. Thus, as this work is either performed by the Employer or on its premises as incident to or in conjunction with its horticultural operation, it is exempt activity."

In the case before us, the work performed by the mechanics, heavy equipment operators, heavy truck drivers, and sales-deliverymen clearly fall within the scope of activities considered to be agricultural in Rod McLellan Co., supra. The first two categories listed above perform their work on company property and the work is clearly an intrinsic part of the farming operations. The latter two categories come within that part of Labor Code Section 1140.4(a) making delivery to market an

agricultural operation. See also, 29 C.F.R. §780.154. Similarly, the plant clericals, dealing primarily with maintenance of the inventory necessary for the basic horticultural production, perform work which is incidental to and in conjunction with the farming operations. See, 29 C.F.R. §780.158. We therefore find that these workers are agricultural employees.

Certification of all agricultural employees of the Employer issued.

Dated: February 2, 1976

Roger M. Mahony

LeRoy Chatfield

Joseph R. Grodin

Richard Johnsen, Jr.