

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
 )  
RANCH NO. 1, INC., ) No. 75-RC-75-F  
 )  
Employer, )  
 )  
and ) 2 ALRB No. 37  
 )  
 )  
UNITED FARM WORKERS OF )  
AMERICA, AFL-CIO )  
 )  
Petitioner. )  
\_\_\_\_\_ )

On September 26, 1975, the United Farm Workers of America, AFL-CIO, ("UFW") filed a Petition for Certification covering all agricultural employees of Ranch No. 1, Inc. The petition alleged a current employment level of approximately 100 persons. Following an election on October 3, 1975<sup>1/</sup> the employer objected to the election on the single ground that the number of agricultural employees currently employed by Ranch No. 1, Inc., as determined from its payroll immediately preceding the filing of the petition, was less than 50 percent of the peak agricultural employment for the year 1975. That issue was set for evidentiary hearing.

Ranch No. 1, Inc., consists of approximately 600 acres of which 352 are planted in grapes and the remainder in potatoes, sugar beets, cotton and corn. The employer contends that its peak employment for 1975 occurred during the payroll period ending August 10, 1975 when it employed 244 workers primarily to harvest and field

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<sup>1/</sup> The election results were: UFW - 65, no union - 14, unresolved challenges - 12, void ballots - 1.

pack table grapes <sup>2/</sup>

The employer introduced into evidence employee time cards and the corresponding weekly payroll register for the payroll periods ending August 10, 1975, the alleged peak, and September 21, 1975, the payroll period immediately preceding the filing of the petition for an election. In accordance with our decision in Mario Saikhon, Inc., 2 ALRB No. 2 (1976), we have reviewed the payroll records, to determine the average number of employee days worked during each payroll period. We find that although 107 employees <sup>3/</sup> worked during the payroll period ending September 21, 1975, the average number of employee days worked that week was only 59.5<sup>4/</sup> because many employees worked for only one or two days. For the

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<sup>2/</sup> The ranch manager testified that the number of agricultural employees employed in the weeks surrounding August 10 and September " were as follows: July 21 - 102, July 27 - 161, August 3 - 191, August 10 - 244, August 17 - 155, August 24 - 108, August 31 - 90, September 7 - 49, September 14 - 17, September 21 - 109, September 27-159, and October 4 - 44.

<sup>3/</sup> Our review of the time cards reveals that 104 persons worked during the week of September 21. The names of three additional persons were on the computer printed weekly payroll register. This total of 107 employees differs slightly from both the employer's estimate of 109 employees and the union's estimate in its election petition of approximately 100 employees.

<sup>4/</sup> The average number of employee days for each of the two payroll periods was calculated by determining the actual number of employees who worked on each day of the week, then adding the totals for the six days of Monday through Saturday and dividing by six. Sunday was not added in for either period because only a few employees worked on each Sunday so that the addition of Sunday and division by seven would yield an average number of employee days which is not representative of the average of the other six days. However, had Sunday been included in the calculations, the resultant comparison would not yield a different result as under that calculation the average number of employee days worked for the week ending August 10 would be 165 and for the week ending September 21 would be 52.

payroll period ending August 10, 1975, during which 241<sup>5/</sup>- employees worked, the average number of employee days worked was 191.

Since 59.5 is less than 50 percent of 191, we conclude that the petition for election in this case was not timely filed because the employer's payroll for the payroll period immediately preceding the filing of the petition does not reflect 50 percent of the peak agricultural employment for the employer for the calendar year.<sup>6/</sup> Labor Code § 1156.4.

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<sup>5/</sup> There were time cards for 235 employees; the names of six others were on the computer printed weekly payroll register. Our computation again yields a slightly different number than the number of workers (244) which the employer contends were employed that week.

<sup>6/</sup> The UPW introduced into evidence excerpts from reports of the Employment Development Department, which show employment levels in the harvesting of table grapes in Kern County (where the employer is located) for two-week periods throughout August and September, 1975. The UFW contends that section 1156.4 of the Labor Code requires us to consider such evidence in determining peak, and not to rely solely on employment records of the particular employer involved.

We disagree with the UFW's interpretation of section 1156.4. The relevant portion of that section provides: "[T]he 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. In this connection, the peak agricultural employment for the prior season shall alone not be a basis for such determination, but rather the Board shall estimate peak employment on the basis of acreage and crop statistics which shall be applied uniformly throughout the State of California and upon all other relevant data." (Emphasis added.)

We think the clear import of that provision is that the Board is required to take into account crop and acreage statistics only when it is alleged that peak will occur at some future point in the calendar year. In such circumstances, reliance on employment records for the prior season might well be inadequate to project peak for the current year. However, where, as here, it is contended that peak employment has already occurred within the current calendar year, a comparison between employment figures in the two relevant payrolls will fully reveal whether the petition for certification was timely filed. No supplemental data concerning crop or acreage

We set aside the election without prejudice to the right of any labor organization to file a new petition which meets the statutory requirements.

Dated: February 23, 1976

Roger M. Mahony      Richard Johnson  
James Grover      Lily Chapman

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(fn. 6 cont.)

statistics is necessary to make the purely mathematical computation of whether the payroll for the period immediately preceding the filing of the petition was 50 percent of the payroll in the earlier period claimed to constitute peak.

We note, as an aside, that the evidence introduced by the UFW does not refute the employer's contention as to peak in this case. The state reports show that the peak season for table grapes in Kern County extended from July 28 to September 20, 1975. The period claimed to constitute peak by the employer occurred in August, within the peak period designated by the EDD reports.