

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)

BRUCE CHURCH, INC. ,)

Employer,)

and)

UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)

Petitioner and)
Intervenor,)

and)

WESTERN CONFERENCE OF)
TEAMSTERS,)

Petitioner and)
Intervenor.)

NO. 75-RC-2-M
75-RC-28-M
75-RC-39-M
75-RC-118-M
75-RC-119-M

2 ALRB No. 38

These consolidated cases arise from election petitions filed by United Farm Workers of America, AFL-CIO ("UFW") and Western Conference of Teamsters ("Teamsters") seeking various representation elections among the agricultural employees of Bruce Church, Inc. ("employer"). At issue is the appropriate bargaining unit or units for such employees: whether they may be represented separately on an area-by-area basis, as the UFW has contended,, or whether a single statewide bargaining unit is appropriate, as the employer and the Teamsters have contended, On January 27, 1976, the Board determined that a. statewide unit was appropriate, and directed that an election be conducted on

that basis, stating that an opinion detailing the grounds for that conclusion would be forthcoming. This is that opinion ^{1/}

I.

On September 2, 1975, the UFW petitioned for an election among employees of the employer in the Santa Maria Valley (Case No. 75-RC-2-M). Two days later the Teamsters petitioned for a statewide unit (Case No. 75-RC-28-M) and the

^{1/} The employer has filed a motion to disqualify Chairman Roger M. Mahony and Member LeRoy Chatfield from participation in the deliberation and decision in this case. In Bud Antle, Inc., 2 ALRB No. 35 (1976) we previously considered a similar motion to disqualify Member Chatfield. The employer has presented no facts not considered by the Board in that case. We therefore again decline to disqualify Member Chatfield and deny the motion with respect to him.

In support of its motion to disqualify Chairman Roger M. Mahony, the employer alleges, based solely upon information and belief, the following grounds for disqualification: that Chairman Mahony served as secretary for and as a member of the U.S. Catholic Bishops Committee on Farm Labor which allegedly was a vocal supporter of the UFW, that Chairman Mahony is intimately acquainted with UFW staff and leadership, that he identifies with the causes, goals, leadership and purposes of the UFW, that he has conducted Catholic masses for UFW members and has participated in UFW demonstrations and marches, that in 1967 he acted as an election observer at DiGiorgio Ranch on behalf of the UFW, and that, as a result of all of the above, he is biased and prejudiced in favor of the UFW. Chairman Mahony has responded to these allegations in a declaration under penalty of perjury which is attached to this opinion. We conclude that the bulk of the employer's allegations are factually incorrect, that Chairman Mahony's relationship to farm labor disputes in California has been as a neutral party acting in the role of mediator, and that the facts do not support the conclusion that Chairman Mahony is identified with or biased in favor of the UFW. We therefore deny the employer's motion to disqualify Chairman Mahony. Moreover, as in the case of Member Chatfield, the facts with respect to Chairman Mahony's involvement in California's farm labor problems over the last several years were considered by the Senate in confirming his appointment. Therefore, our decision and reasoning in Bud Antle, Inc. applies equally to a motion to disqualify Chairman Mahony and provides a separate ground for denying the employer's motion with, respect to him.

employer supported the Teamster unit position. The regional director concluded, however, that a statewide unit was inappropriate and conducted an election on the basis of the UFW petition. The UFW received a majority of the votes cast, and the employer filed timely objections based on its claim that the unit was inappropriate.

The Teamster petition in Case No. 75-RC-28-M was withdrawn, but on September 9, 1975 the Teamsters filed a second petition for a statewide unit (Case No. 75-RC-39-M). That petition was dismissed by the regional director, and the Teamsters filed a request for review of that dismissal.

On September 16, 1975 the Teamsters and the UFW both filed petitions for election among employees of the employer in the Salinas Valley, Cases Nos. 75-RC-118-M and 75-RC-119-M respectively. The Teamster petition was expressly filed under protest consistent with that union's position that only a statewide unit was appropriate. The employer filed its protest to the proposed unit on the same ground. This time the Teamsters received a majority of the votes cast, and again the employer filed objections to the election based upon its claim that the unit was inappropriate.

On October 11, 1975 the Board issued an order consolidating all of the above cases for hearing on the unit issue. After hearing and after receipt of post-hearing briefs filed by the parties, the issue was submitted to the Board for decision.^{2/}

^{2/}A third election, in a San Joaquin Valley unit, was conducted November 4, 1975 on petition by the Teamsters Case No. X X X X X. The Teamsters received a majority of ballots cast, and objections were filed, but the cases was held in abeyance pending outcome of the unit issue, on which hearings had already commenced.

II.

The policy of the Agricultural Labor Relations Act with respect to bargaining units is set forth in Labor Code section 1156.2

"The bargaining unit shall be all the agricultural employees of the 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's farming operations in California are conducted in four valleys -- the Salinas Valley, the San Joaquin Valley, the Imperial Valley, and the Santa Maria Valley -- separated from one another by distances up to several hundred miles. There is no dispute that these valleys constitute separate and noncontiguous geographical areas in relation to one another. Hence, the Board must determine the appropriate unit or units.

In making that determination it is appropriate to look for guidance to decisions of the National Labor Relations Board in cases involving choice between single location and multiple location units of the same employer.^{3/} The NLRB consistently maintains that the appropriateness of units will be determined "not by any rigid yardstick, but in light of all the relevant circumstances of the particular case". Frisch's Big Boy, 147 NLRB No. 551 (1964). No formula for unit appropriateness is possible. No single criterion is determinative; and what may be determinative in one situation may not be determinative in another. E . g . , McCann Steel Company, 179 NLRB No. 635 (1969); Peerless Products Company, 114 NLRB 1586 (1955).

^{3/} NLRB unit determination criteria are relevant under the ALRA only where the agricultural employees are employed in two or more noncontiguous geographical areas. Where the employees are employed in the same or contiguous geographical areas, the Board is without discretion to establish separate units.

Nevertheless, NLRB decisions yield a number of factors which that agency has relied upon in determining unit appropriateness. These include: (1) the physical or geographical location of the locations in relation to each other., e.g., See's Candy Shops, Inc., 202 NLRB 538 (1973), Dixie Belle Mills, Inc., 139 NLRB 629 (1962); (2) the extent to which administration is centralized, particularly with regard to labor relations, e.g., Twenty-First Century Restaurant, 192 NLRB 831 (1971); Purity Supreme, Inc., 197 NLRB 915 (1972); (3) the extent to which employees at different locations share common supervision, e.g., Purity Food Stores, Inc., 150 NLRB 1523 (1965); (4) the extent of interchange among employees from location to location, e.g., Gray Drug Stores, Inc., 197 NLRB 924 (1972); Arthur S. Carter, d/b/a Carter Camera & Gift Shops, 130 NLRB 276 (1961); (5) the nature of the work performed at the various locations and the similarity or dissimilarity of the skills involved, e.g., Cheney Bigelow Wire Works, Inc., 197 NLRB 1279 (1972); (6) similarity or dissimilarity in wages, working hours, and other terms and conditions of employment, e.g., V.J. Elmore 5C, 10C and \$1.00 Stores, Inc., 99 NLRB 1505 (1952); and (7) the pattern of bargaining history among employees, e.g., Meijer Supermarkets, Inc., 142 NLRB 513 (1963). We proceed to consider these factors in relation to the operations of this employer.

III.

The employer is one of the nation's largest growers of lettuce. It conducts farming operations throughout California in the Santa Maria, Salinas, San Joaquin and Imperial Valleys, and in parts of Arizona as well. Ninety percent of its land is

devoted to the growing of lettuce, with secondary field crops in some of the areas.

The administration of the company's operations is highly centralized in its main office in Salinas, California. The company's management staff/ which is located there, determines the number of acres to be devoted to individual crops in all areas; makes all major decisions regarding procurement, land leases, harvesting/ and marketing; enters into statewide insurance contracts; and maintains all accounting, payroll, and record-keeping for the individual areas. With respect to personnel policy, the management staff in Salinas has conducted collective bargaining on behalf of the company on an operations-wide basis, and has ultimate responsibility for decisions with respect to promotion, transfer/ and dismissal of employees.

The production of lettuce involves several operations: land preparation, thinning, cultivation irrigation and fertilization, and harvesting. Because of climatic differences and planting schedules/ these operations are conducted at the various locations of the employer at different times of the year. The same work, and the same skills and job classifications, however, are involved in each operation regardless of where it is conducted.

The employer's nonmanagement work force includes both "permanent" employees, who work at least 240 hours per year, and "casual" employees, who work typically less than four weeks a year. There are approximately 1,700 permanent employees, and these perform about 75% of the total work done by the employer. Of this number there are two groups of stationary employees, i . e . ,

those workers who do not move from valley to valley in the employer's field operation. One group of approximately 125 are tractor drivers who perform land preparation, cultivation mid fertilization. The second group is composed of about 125 irrigation workers who perform irrigation work at the various locations. This combined group of 250 workers are stationed at the different farms on a permanent basis. Of the remaining 1,450 permanent employees, 70% on a statewide basis work in at least two of the four valleys throughout the year; and 30% work in at least three of the valleys. There are at least an equal number of "casual" employees hired during the course of the year. Individuals who desire full-time year around employment move from valley to valley with the season. Many of these work in only one of the production steps, and follow the cyclical nature of the seasons so that they can always be engaged in their area of work expertise.

There is also a high degree of mobility from area to area among supervisory personnel. Approximately 61% of the supervisory and administrative personnel move from area to area with the season. Well over half of the supervisory, management, and administrative personnel exercise their responsibility at each of the four locations.

A substantial amount of equipment travels with the workers from area to area as well. Approximately 70 to 80 percent of all farm equipment is moved from valley to valley with the seasonal operation.

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The employer has had a series of collective bargaining agreements with the Teamsters on a company-wide basis since 1970.^{4/} Three successive agreements, signed in 1970, 1973, and 1975 have provided uniformity of wages and working conditions throughout the company's operations. The wages paid for each classification are identical, and there is a uniform health insurance program, pension program, company-wide seniority system, health and safety policy, leave of absence policy, vacation plan, overtime policy, and grievance procedure.

IV.

The facts of this case are strikingly similar to those in Vacuum Cooling Company, 107 NLRB 611 (1953), in which the NLRB confronted conflicting unit positions with respect to the operations of a company engaged in the packaging of produce, principally lettuce, at 10 or 11 different locations throughout California and Arizona. All the local operations were seasonal, depending upon harvest periods. Some locations operated simultaneously, most of them having seasons which overlapped. When work at one place ceased the machine equipment was moved to

^{4/} In Eugene Acosta, et al., 1 ALRB No. 1, we declined to give controlling weight to prestatutory bargaining history between the Teamsters and a group of employers for the purpose of determining whether that group constituted an appropriate multi-employer bargaining unit. In determining whether a single location or a multi-location unit is appropriate, bargaining history is only one of the factors which the NLRB considers. It is unnecessary for us to determine the propriety of considering prestatutory bargaining history for that purpose here, since the other factors militating in favor of a statewide unit are independently sufficient to warrant that result. We refer to the bargaining history only insofar as it establishes the context in which wages and working conditions were uniformly determined on a multi-location basis.

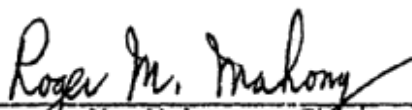
another location, along with supervisory staff and a substantial number of the employees. Some of the employee complement at each location was purely local, and returned only from season to season. A general manager oversaw the work at all locations, and determined wages and hours at all locations. Conditions of employment were virtually identical at all locations, and all employees worked generally the same hours, were paid on the same basis, and progressed along the same lines of promotion. There was some history of collective bargaining on a multi-location basis, though the scope of bargaining was less extensive than the entire operation. The NLRB concluded:

"The similarity of work at all locations, their centralized control, and the interchange and transfer of employees among them clearly shows that only a unit embracing all the Employer's locations is appropriate here."

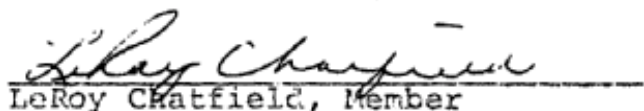
Based on the high degree of centralization of management, particularly as to personnel policies, the similarity of work and skills, the uniformity of wages and working conditions, and the extensive seasonal transfer of employees and supervision from one location to another, we reach the same conclusion here as regards the employer's California operations. Unlike the NLRB, we have no jurisdiction over operations outside the State of California, and consequently cannot include the employer's Arizona operations within the bargaining unit. In similar situations the NLRB has found to be appropriate that portion of the employer's operations that lie within its jurisdiction. See Detroit and Canada Tunnel Corp., 83 NLRB 727 (1949) (excluding employees who worked exclusively in Canada); Retail Clerks International Association, AFL-CIO, 153 NLRB 204, 226 (1965).

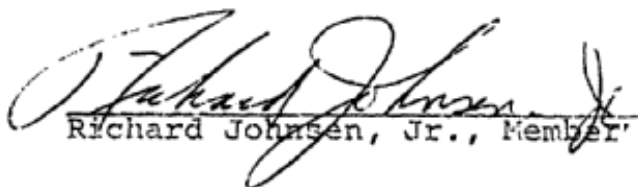
Accordingly, we find a statewide unit of all agriculture employees of the employer, excluding those who work exclusively outside the State of California, to be appropriate for purposes of collective bargaining. The elections held pursuant to petitions in Case Nos. 75-RC-2-M, 75-RC-119-M and 118-M are set aside on the ground that the units in which such elections were conducted were not appropriate.^{5/} We have previously given instructions for the conduct of an election on a statewide basis in accordance, with the conclusion reached in this opinion.

Dated: February 23, 1976


Roger M. Mahony, Chairman


Joseph R. Grodin, Member


LeRoy Chatfield, Member


Richard Johnson, Jr., Member

^{5/} The employer filed other objections to the elections, which were consolidated for hearing with the unit issue. In view of our determination of the unit issue, it is unnecessary to reach those other objections. The election conducted in Case No. 75-RC-122-F (see note supra) is set aside in conformity with this opinion.

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
)
BRUCE CHURCH, INC.)
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_____)
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Nos. 75-RC-2-M, et al.

DECLARATION OF ROGER M. MAHONY

It Roger M. Mahony, hereby declare under penalty of perjury as follows:

I am Chairman of the Agricultural Labor Relations Board.

In an affidavit by Michael T. Payne/ submitted to the Board in support of the employer .'s motion to disqualify me from decision on the matter of Bruce Church, Inc. , Case Nos. 75-RC-2-M, 75-RC-28-M, 75-RC-39-M, 75-RC-118-M and 75-RC-119-M, Mr. Payne cited seven reasons why I should disqualify myself from taking part in any proceedings involving Bruce Church, Inc.

With regard to Items 1 and 2, it is alleged, first, that from 1970 to 1972, I served as secretary to the U. S. Catholic Bishop's Committee on Farm Labor and second, that since 1970, I served as a member of that Committee. It is true that I served as secretary to the Committee between 1970 and 1972 but I was never a member of the Committee. The Committee's role was as mediator between the parties to California's farm labor disputes in an effort to bring peace to labor relations in the agricultural industry. The Committee was not aligned with and did not act as a supporter for any one of the parties.

Thirdly, it is alleged that I became intimately acquainted with members of the UFW, its staff, attorneys and organizational committee, and Mr. Cesar Chavez. I will state without reservation that between 1965 and 1975. I became acquainted with virtually every single grower involved in the; farm labor dispute in the State of California, with all the officials of the United Farm Workers of America, and with all the officials of the Western Conference of Teamsters and its affiliates. My acquaintanceship with all the principals and participants of each group was and is of the same professional level.

Fourthly, it is alleged that my personal beliefs and viewpoints caused me to respect and identify with the causes, goals, leadership and purposes of the UFWA. That is a totally inaccurate. conclusion, since my involvement in the farm labor dispute had as its objective to find a peaceful solution to the bitter conflict that had separated so many members of the agricultural industry. I have publicly proclaimed the right of farm workers to organize and to join the union of their choice. My public declarations clearly attest to this consistent position, and I have filed with the California Senate Rules Committee copies of my public statements to this effect which date from 1966 through 1975. I have always advocated the use of secret ballot elections to enable farm workers to choose for themselves the union they wish to represent them, or to choose no union.

Fifthly, it is alleged that at various times and at various places, I conducted Catholic masses for members of the UFWA. I have only attended two Catholic masses for farm workers

over a ten-year period; one was the occasion of a funeral in Arvin, California, for a farm worker who had been shot in the fields; the other was the occasion of the dedication of a clinic for farm workers in the Delano area. In addition, I have frequently attended religious services for various members of the agricultural industry, be they growers or workers. I further deny without any reservation that I have ever participated in rallies, demonstrations and marches on behalf of the UFWA. I have never attended nor participated in such events on behalf of any segment of the farm labor dispute.

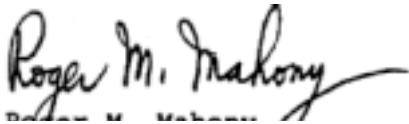
Sixthly, it is alleged that on or about 1967, I acted as an election observer at the DiGiorgio Ranch on behalf of the UFWA. I honestly do not know who invited the Diocese of Monterey-Fresno to send an official representative to the election held at the DiGiorgio Ranch. I was requested to be the participant observer for the diocese and was sent there by Bishop Aloysius J. Willinger. I do know that all of the observers were agreed to by all parties to the election, and therefore, there is no way my presence could be construed to be on behalf of one party to the election.

Finally, it is alleged that -ray close identification with the causes, purposes, goals and leadership of the UFWA prevents me from serving impartially on the Agricultural Labor Relations Board. I totally and absolutely deny that allegation. My commitment to see peace in the agricultural industry is my only motive for participating in finding solutions to this dispute over the past ten years. I never have been nor am I now an advocate for any side

in the dispute. My sole concern is that farm workers have the right to be represented by the collective bargaining organization of their choosing, and to make that choice through a secret ballot election. I believe that my participation on the ALRB enhances my commitment to serve all parties objectively and impartially.

Executed at: Sacramento, California

Dated: February 23, 1976

A handwritten signature in cursive script that reads "Roger M. Mahony". The signature is written in dark ink and has a fluid, connected style.

Roger M. Mahony
Chairman