

STATE OF CALIFORNIA AGRICULTURAL  
LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
ASSOCIATED PRODUCE DISTRIBUTORS,	)	No. 75-RC-64-M
	)	
Employer,	)	2 ALRB No. 47
	)	
and	)	DECISION ON
	)	OBJECTIONS
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Petitioner.	)	
_____	)	

On September 17, 1975, a representation election was held among the employees of Associated Produce Distributors (employer). The direction and notice of election specified the unit as "all agricultural employees excluding commercial packing shed workers of the employer". The tally of ballots shows the following: United Farm Workers of America, AFL-CIO ("UFW") - 26 votes; no labor organization - 2 votes; unresolved challenged ballots - 3. Since the number of challenged ballots is insufficient to affect the outcome of the election, we do not resolve them.

Objections to the election pursuant to Labor Code Section 1156.3(c) were timely filed by the employer and by General Teamsters, Warehousemen and Helpers Union Local 890 and Truck Drivers, Warehousemen and Helpers Local 898 ("Teamsters") Pursuant to our authority under Labor Code Section 1146, the

decision in this matter has been delegated to a three-member panel of the Board.

### Teamster Objections

The Teamsters objected to the inclusion in the unit of truck drivers and certain other job classifications on the grounds that these employees have a history of separate collective bargaining and do not share a community of interest with other agricultural employees, and on the grounds that the employer may be within the jurisdiction of the NLRB. Similar objections were filed by the Teamsters in a series of cases already decided by this Board. See R. T. Englund Co., 2 ALRB No. 23; Mann Packing Co., 2 ALRB No. 15; Carl Joseph Maggio, Inc., 2 ALRB No. 9; Salinas Marketing Cooperative, 1 ALRB No. 26; West Coast Farms, 1 ALRB No. 15; J. R. Norton Co., 1 ALRB No. 11; Green Valley Produce Cooperative, 1 ALRB No. 8; and Interharvest, Inc.;

1 ALRB No. 2. In those cases, we held that if the employees in dispute are agricultural employees within the meaning of Labor Code Section 1140.4(b), this Board has no jurisdiction under Labor Code Section 1156.2 to exclude them from the unit on the basis of separate bargaining history or separate community of interest.

The status of the truck drivers and related classifications under the National Labor Relations Act is currently pending before the NLRB pursuant to a petition for certification filed with that agency by the Teamsters. We conclude that resolution of their status as agricultural employees is appropriately deferred

until there is a decision by the NLRB or some future proceeding by this Board on a motion for clarification of the unit described herein.<sup>1/</sup> Accordingly, we dismiss these objections.

#### Employer's Objections

On October 27, 1975, the Board issued an order dismissing certain of the employer's objections and setting for hearing paragraphs 2(a) and 2(b) of the employer's petition objecting to election. At the hearing held pursuant to said order on November 11, 1975, the employer withdrew its objection in paragraph 2(a).<sup>2/</sup> With respect to the objection in paragraph 2(b), that the petition for certification was barred by an existing collective bargaining agreement, the employer introduced into evidence a copy of a collective bargaining agreement between it and the Teamsters covering its truck drivers through July, 1976. The agreement is dated August 20, 1974. Labor Code Section 1156.7(a) provides that no collective bargaining agreement executed prior to the effective date of the ALRA shall bar a petition for an election. Accordingly, we dismiss this objection.

There remain for disposition the employer's objections in paragraphs 1 and 7(a) and (b) of its petition. In paragraph 1,

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1/ The eligibility list in the regional office file indicates a total of five employees in the disputed classifications, a number insufficient to affect the outcome of the election. We have previously noted also that if these employees are eventually determined to be under NLRB jurisdiction, their rights will not be prejudiced by this Board's certification of a unit of "all agricultural employees of the employer." Interharvest, Inc., 1 ALRB No. 2. Under these circumstances, further delay in certification would serve no purpose.

<sup>2/</sup>The employer originally claimed that he was not at peak when the election was held. At the hearing, the parties stipulated that he was in fact at peak at that time.

the employer contends generally that the NLRB has preempted the authority of the ALRB to conduct elections and determine labor representatives. In paragraph 7 (b) the employer contends that the NLRB has preempted jurisdiction in this particular matter. We dismiss the objection stated in paragraph 1, since it is in the nature of a general attack on the legality of the ALRA and as such is not a proper subject for review under Labor Code Section 1156.3(c).

Samuel S. Vener Company, 1 ALRB No. 10.

Concerning the objection in paragraph 7 (b), we note that the NLRB has declined to assert jurisdiction over the employer's field workers on the ground that they are agricultural employees.<sup>3/</sup> Under Labor Code Section 1140.4 (b), therefore, these employees are within our jurisdiction, and we dismiss the objection.

In paragraph 7(a) the employer takes the position that if it is determined that the NLRB does not have jurisdiction, then its entire operation should be classified as agricultural, including its shed workers.<sup>4/</sup> This brings before us the question as to whether or not the employer's packing operation and its employees who work there fall within the definitions of

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3/ In NLRB Case No, 20-RM-1907, the employer filed a petition for certification covering a unit including mechanics, hi jos, truck drivers except long haul, shed workers and field workers. On December 2, 1975, the regional director of Region 20 of the NLRB issued her decision dismissing this petition. The dismissal was upheld by the NLRB on February 9, 1976.

4/ The employer also objected that mechanics were excluded from the unit. The direction and notice of election does not exclude mechanics.

"agriculture" and "agricultural employee" stated in Labor Code Section 1140.4(a) and (b). Based upon applicable precedents under the NLRB,<sup>5/</sup> which we are required to follow, we have held in previous cases that packing sheds which pack a significant amount of produce grown by other growers are commercial sheds and the employees who work in these sheds are not agricultural employees. McFarland Rose Production Co., 2 ALRB No. 44; Carl Joseph Maggio, 2 ALRB No. 9.

We take notice that the NLRB found in its investigation of Case No. 20-RM-1907 that the employer is engaged in the business of harvesting, hauling, packing, and selling broccoli, that it provides these services on a contract fee basis to various growers unrelated to it, and that it owns none of the crops for which it provides these services. On the basis of these facts we find that the employer's packing shed is a commercial shed. Thus, its packing shed employees are not agricultural employees, and were properly excluded from the unit. We therefore dismiss the employer's objection in paragraph 7 (a) .

Based on the foregoing, we conclude that there are no grounds for setting aside this election, and order that

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5/ See The Gar in Co. , 148 NLRB No. 138; Colorado River Farms, 99 NLRB No. 160; Decoster Egg Farms, 223 NLRB No. 123; see also Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755, 762-763 (1949) ; Batley-Janss Enterprises, 195 NLRB No. 47, in which the employer first becomes involved with the crop at the harvest stage, as is the case here.

the United Farm Workers be certified as the collective bargaining representative for a unit of all agricultural employees of the employer, excluding commercial packing shed workers of the employer.

Dated: September 15, 1976

Gerald A. Brown, Chairman

Roger Mahony, Member

Richard Johnsen, Member