

8 Cal. Admin. Code Sec. 20365(e)(1). The Regional Director's Report No. 1 recommended sustaining the challenges to six of the seventeen ballots - expressing no recommendations to the remaining challenges at that time - on the ground that those six voters^{2/} were not agricultural employees within the meaning of the Agricultural Labor Relations Act (ALRA) Sec. 1140.4 (a) and (b).

Further supplemental reports were submitted by the Regional Director on December 9, 1975 (Report No. 2)^{3/} and February 3, 1976 (Report No. 3) .^{4/}

Employer timely filed exceptions to Reports Nos. 1, 2 and 3. Petitioner timely filed exceptions to Report No. 3.

Upon receipt and consideration of the Regional Director's reports and exceptions thereto filed by the employer and petitioner, the Board makes the following findings of fact and conclusions of law.

Clerical Employees

Three employees^{5/} who voted challenged ballots were described in Report No. 1 as "performing clerical functions" in the

^{2/}Of these six voters, three were described as clerical employees, the remaining three described as vehicle mechanics.

^{3/}Upon the Board's request for a more complete record of investigation and findings underlying the recommendations of Report No. 1, Report No. 2 was issued/ confining itself to a job description of the three clericals who had voted in the election.

^{4/}Again pursuant to a Board request, Report No. 3 was issued, addressing itself to the remaining challenged ballots.

^{5/}By name, these three employees were Ruth Johnson, Barbara Williams, and Shawn L. Icenogle.

employer's office.^{6/} Ruth Johnson was described (Report No. 2) as the employer's "bookkeeper", performing clerical functions such as inventory reports and maintenance/updating of books and records. Report No. 2 also noted Ruth Johnson was a salaried employee. Barbara Williams was described (Report No. 2) as performing "only clerical functions . . . , " doing such things as preparing reports and doing statistical work. Report No. 2 noted this employee was also salaried. Shawn L. Icenogle was described (Report No. 2) as performing "general office (clerical) duties . . . , " assisting Ruth Johnson and Barbara Williams. As to these three employees, Petitioner (hereinafter "UFW") challenged their ballots, asserting that they were not agricultural employees within the meaning of the Agricultural Labor Relations Act (ALRA) Sec. 1140.4(a) and (b) .^{7/}

^{6/}A brief description of the employer's operation would be appropriate here. The employer is engaged in the production and processing of eggs (termed "plant activity" by the employer), and in the breeding, hatching and raising of chickens to engage in egg production (termed "ranch activity" by the employer). The employer's plant and ranch operation is housed in one "L" Shaped building. The clerical's work space is located in this building, a few feet from the plant activity. Access to this work space is accomplished via the processing plant.

^{7/}ALRA Sec. 1140.4(b) states in pertinent part:

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 Sec. 2(e) of the Labor Management Relations Act (Sec. 152(3), Title 29, United States Code), and Sec. 3(f) of the Fair Labor Standards Act (Sec. 203(f), Title 29, United States Code).

(fn. cont. on p. 4)

In Hemet Wholesale, 2 ALRB No. 24 (1976), we decided the eligibility of plant clerical employees, specifically reserving for future cases the question of eligibility of office clericals. There we concluded that whether employees of an employer engaged in agriculture, who do not themselves perform actual farming tasks, are agricultural employees depends upon whether the tasks they perform are incident to or in conjunction with the employer's farming operation.

The duties of the instant office clericals were hereinbefore described. Their duties are not unlike the duties of the plant clericals in Hemet Wholesale. In Hemet Wholesale, the clericals were "chiefly involved with maintaining the inventory..." and worked "primarily in the administrative offices, and only occasionally visit[ed] the growing areas to communicate with foremen with regard to the ordering of supplies." Hemet Wholesale, supra, at 16. Hemet Wholesale held that, absent evidence of a confidential employees status, the plant clericals were agricultural employees entitled to vote.

fn. 7 cont.

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

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 Sec. 1141(j)(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, or 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.

The job description and duties of the office clericals in the instant case show that their duties are incident to and in conjunction with the employer's poultry operation. There is no contention that the office clericals collectively constitute a separately organized, independent productive activity. We find that their function is subordinate to the employer's "agricultural" activity.^{8/} Thus, the clerical employees herein - Ruth Johnson, Barbara Williams, and Shawn L. Icenogle - are agricultural employees within the meaning of the ALRA, and are entitled to vote. Challenges to their ballots are overruled.

Vehicle Mechanics

Three employees^{9/} who voted challenged ballots were described in Report No. 3 as "mechanics," performing repair and maintenance work on semi- and pick-up trucks, farm equipment used for oats, chicken manure loaders and spreaders, and other equipment used to haul chickens. All of these vehicles and farm equipment were used in the employer's poultry operation. The repair and maintenance shop was located -on the premises of the employer. Report No. 3 noted that all of the three mechanics occasionally went to other ranches and performed similar maintenance duties.

^{8/}"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." Farmers Reservoir and Irrigation Co. v. McComb, 337 U. S. 755 (1949).

^{9/}By name, these employees were Kenneth Gregoire, Sr. , James D. Lauderdale, and Kenneth J. Gregoire, Jr.

This Board first addressed the question of whether mechanics of an agricultural employer are themselves agricultural employees in Salinas Marketing Cooperative, 1 ALRB No. 26 (1975). There we found that mechanics, "who rarely do their work in the fields, service all employers' vehicles and harvesting equipment including equipment in the packing shed" (Salinas Marketing Cooperative, supra, at 10) were agricultural employees^{10/} within the meaning of the ALRA. Where mechanics are involved in the repair and maintenance of the machinery and vehicles of an agricultural employer, and where such machinery and vehicles are used in conjunction with or incident to the employer's agricultural operations, such mechanics are properly within the jurisdiction of the ALRA. See, e.g. Carl Joseph Maggio, 2 ALRB No. 9 (1976); Mann Packing Co., 2 ALRB No. 15 (1976); Salinas Greenhouse Co., 2 ALRB No. 21 (1976); Hemet Wholesale, 2 ALRB No. 24 (1976); California Coastal Farms, 2 ALRB No. 26 (1976). ^{11/}

The Regional Director in Report No. 3 apparently concluded that, because the mechanics in the instant case serviced interstate

^{10/}In accord, Luce & Co., 98 NLRB No. 166 (1952); Eastern Sugar Associates, 99 NLRB No. 121 (1952).

^{11/}The U. S. Department of Labor interpretative bulletin states at C.F.R. Sec. 780.158(a):

...Employees of a farmer who repair the mechanical implements used in farming, as a subordinate and necessary task incident to their employer's farming operations, are within Section 3(f). It makes no difference that the work is done by a separate labor force in a repair shop maintained for the purpose, where the size of the farming operation is such as to justify it.

and intrastate diesel trucks and also did occasional repair work for other farmers, they were thereby beyond the reach of the ALRA. We cannot agree. In McAnally Enterprises, Inc., 152 NLRB No. 50 (1965), mechanics who repaired and maintained McAnally's agricultural equipment, including its interstate and intrastate trucks, were found to be agricultural employees.

A somewhat similar situation was found in Mann Packing Co., supra. There, the mechanics, in addition to servicing machinery used as an incident to or in conjunction with the employer's agricultural operation, also occasionally serviced machinery from a nonagricultural commercial packing shed operation. The Board found that the "bulk" of the servicing was performed on machinery used as an incident to or in conjunction with the employer's agricultural operation, and accordingly found the mechanics to be agricultural employees.^{12/}

In the instant case, it is not contended that the inter-and intrastate diesel trucks of the employer, or any other of the serviced machinery of the employer, are not used as an incident to or in conjunction with the employer's poultry operation. It is uncontroverted that a substantial majority of the mechanics' time is spent servicing the employer's vehicles and machinery on the employer's premises. We find that the three mechanics are agricultural employees entitled to vote. Challenges to their ballots are overruled.

^{12/} cf. Carl Joseph Maggio, 2 ALRB No. 9 (1976), where one mechanic who worked exclusively on machinery from a commercial packing shed operation was found not to be an agricultural employee.

Alleged Supervisors

Three employees^{13/} who voted challenged ballots were challenged as being supervisors. Keith Coffman was described in Report No. 3 as loading and unloading trucks on the dock, receiving orders from the plant manager and transmitting them to the men who also work the dock, and handling the paperwork involved. Manuel Moreno was described in Report No. 3 as overseeing the performance of 12 - 13 women who work on machines which place eggs into cartons and receiving orders from and reporting to the plant manager. Report No. 3 stated, without elaboration, that Mr. Moreno effectively recommended hiring, firing, raises, transfers, and adjusted the workers' grievances "by taking the workers' complaints to" the plant manager. The employer's exceptions describe Mr. Moreno as a "leadman" or "floor leader", responsible for maintaining and dating the cartons into which eggs were placed by the above-mentioned 12 - 13 women. The Regional Director recommended sustaining the challenge to Mr. Moreno and overruling the challenge to Mr. Coffman.

It is uncontroverted that the work of both Mr. Coffman and Mr. Moreno is prompted by receipt of a written egg order or verbal directive coming from the plant office or their respective supervisors. Their daily work is then in fulfillment of and pursuant to that egg order. Discretion and/or independent judgment is exercised, if at all, only within the narrow confines of the

^{13/}By name, these employees were Keith Coffman, Margaret Chavez, and Manuel Moreno.

exact egg order. In this respect, the duties of Mr. Coffman^{14/} and Mr. Moreno can be said to be "merely routine or clerical" in nature. See ALRA Sec. 1140.4 (j) .

In agriculture labor, given the cultural and language diversity that abounds between employer and employee^{15/} and among employees themselves, it is perhaps inevitable that some employees will possess a higher visibility insofar as the dissemination of work orders and/or employee inquiries are concerned. Such a higher visibility is insufficient to render that employee a supervisor within the meaning of the ALRA.^{16/} Even if that employee of higher visibility were to engage in minor coordination or supervision of the work order, he or she would not necessarily, for that reason alone, become a supervisor within the meaning of the ALRA. The

^{14/}In its exceptions to Report No. 3., the UFW asserts in essence that Mr. Coffman, after receiving egg orders from the plant manager, "directs" and "exercises independent judgment" in fulfillment of that order with respect to other dock workers, thereby rendering him a supervisor. We disagree. We think this is an example of a situation where the exercise of authority is merely routine or clerical in nature. We do not think, however, that Mr. Coffman is sufficiently clothed in the garments of independent authority to render him a supervisor within the meaning of the ALRA.

^{15/}Facts in the record indicated that at both the work stations of Mr. Coffman and Mr. Moreno, some employees were non-English speaking, while it appeared that the orders were written or transmitted in English.

^{16/}Occupying "a special position in the company in the eyes of the employees is not a sufficient basis from which to conclude [one] is a supervisor..." Salinas Greenhouse Co., 2 ALRB No. 21 (1976) at 3.

F2d 772, 776, (9th Cir., 1973) stated:

The leadman or straw boss may give minor orders or directives or supervise the work of others, but he is not necessarily a part of management and a "supervisor" under the Act.^{17/}

We find that Mr. Coffman is not a supervisor within the meaning of the ALRA, and is entitled to vote. The challenge to his ballot is overruled.

The status of Mr. Moreno, however, is clouded by the Regional Director's non-detailed finding that he effectively recommends the hiring, firing, raises, and transfers of other employees and adjusts the workers' complaints by taking them to the plant manager. The Employer's exceptions offer a detailed denial of this finding. We conclude that the Regional Director's report with respect to this challenge is not dispositive and therefore, pending further investigation, make no final disposition of this challenge at this time.

Margaret Chavez was described in Report No. 3 as an inspector who reported on the work of other inspectors. The Employer's exceptions to Report No. 3 noted that Ms. Chavez was a quality control egg inspector who had been employed there longer than any other employee (12 years), including management. The UFW's exceptions to Report No. 3 stated that reports by Ms. Chavez of inferior work by any individual "invariably" led to transfer or discharge of that individual. The Regional Director recommended overruling the challenge to Ms. Chavez.

^{17/}In accord, NLRB v. Swift and Co., 114 NLRB 951; enf; 240 F2d 65 (9th Cir., 1957); NLRB v. Houston National Gas Corp., 198 NLRB No. 35, enf; 478 F2d 467 (5th Cir., 1973).

The UFW asserts that Ms. Chavez effectively recommends the hire, fire, transfer, or discharge of other employees, and has done so. The employer states that Ms. Chavez does not so function, and has not. The Regional Director does not confirm, deny, or otherwise address this question. Consequently, we find the Regional Director's report with respect to this challenge not dispositive and therefore, pending further investigation or hearing, make no final disposition of this challenge at this time.

Truck Drivers^{18/}

In Hemet Wholesale, supra, three heavy truck drivers were found to be agricultural employees. The Board found that the duties of the truck drivers fell within the secondary meaning of agriculture in that they were "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." The Board further found that the trucking activities did not constitute an independent business. Hemet Wholesale, supra, at 17. See also, 29 C.F.R. 154.

In the instant case, the truck drivers work full-time transporting the employer's poultry products to market. There is

^{18/}The question of whether or not truck drivers are within the jurisdiction of the ALRA has been presented to the Board before. See Interharyest/ Inc., 1 ALRB No. 2 (1975); J. R. Norton, Co., 1 ALRB No. 11 (1975); West Coast Farms, 1 ALRB No. 15 (1975); Carl Joseph Maggio, Inc., 2 ALRB No. 9 (1976); California Coastal Farms, 2 ALRB No. 26 (1976). In these cases, the Board deferred resolution of the question because the same question involving the same parties was pending before the NLRB. In the instant case, no such situation obtains.

no contention that the employer's method of transportation constitutes an independent business. The employer's "method of transportation to market seems common enough among poultry raisers and, although the drivers performed few typical farm labor duties, this is not, in itself, sufficient to warrant the finding that this was a separate trucking business." NLRB v. Strain, 405 F2d 1025, 1032 (5th Cir., 1959).

We find that the seven truck drivers^{19/} herein are agricultural employees and are entitled to vote. Challenges to their ballots are overruled.

Employee Not on List

One employee - Avery Lemon, described in Report No. 3 as a truck driver working in the same capacity as the truck drivers above - was challenged as not being on the eligibility list. The Regional Director indicates that Mr. Lemon was in fact employed during the appropriate eligibility period but was left off the list inadvertently. Neither party takes issue with this. Accordingly, the challenge to Mr. Lemon based on his absence from the eligibility list is overruled.

In Report No. 3, the Regional Director nevertheless recommends sustaining the challenge to Mr. Lemon apparently because

^{19/}These employees were Jackie Armstead, Robert Lameraux, Tim Larkin, Gilbert L. Lay, Bobby Chambers, William H. Jones and John Cranfill. The Employer's exceptions stated that John Cranfill was not a truck driver but a dock worker, with duties similar to a previously mentioned dock worker, Mr. Coffman. We need not determine Mr. Cranfill's primary duties since in either position for the employer he is an agricultural employee.

of his truck driver status. For the reasons stated above, we find that Mr. Lemon is an agricultural employee entitled to vote. We decline to accept the Regional Director's recommendation.

Conclusion

The Regional Director is hereby ordered to open and count the 15 ballots for which the challenges have herein been overruled, and to issue a new tally. If the revised tally indicates that the remaining challenged ballots will be determinative of the election, this Board shall conduct such investigation and/or hearing as it deems necessary as to those ballots.

Dated: November 2, 1976

Gerald A. Brown, Chairman

Richard Johnson, Jr. , Member

Roger M. Mahony, Member

Robert B. Hutchinson, Member

Ronald L. Ruiz, Member