

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CALIFORNIA FLORIDA PLANT)	Case No.	2011-RC-001-SAL
COMPANY, L.P.,)		
)		
Employer,)	37 ALRB No. 2	
)		
and)		
)	(August 1, 2011)	
UNITED FARM WORKERS)		
OF AMERICA,)		
)		
Petitioner.)		
_____)		

DECISION AND ORDER

On May 19, 2011, California Florida Plant Company, L.P., (CFPC) filed a single exception to the Regional Director’s Challenged Ballot Report in the above-entitled matter. Specifically, CFPC excepted to the Regional Director’s conclusion that a challenge to Mauricio De Almeida (Almeida) be sustained on the grounds that he was a student who received academic credit at his community college for his work with CFPC. As explained below, we overrule the challenge to Almeida.

Background

On February 4, 2011, the United Farm Workers of America (UFW) filed a Petition for Certification to represent the agricultural employees of CFPC. On February 11, 2011, a representation election was held and the Tally of Ballots showed the following results:

United Farm Workers of America	12
No Union	7
Unresolved Ballots	<u>5</u>
Total Ballots Cast	24

Almeida was omitted from the voter eligibility list by the Regional Director on the grounds that he could not be found on the payroll list as having worked during the eligibility period, and he was subsequently challenged as “not on list” because he was a student. The UFW also challenged Almeida on the grounds that he was a supervisor.¹

The Regional Director's investigation of the challenged ballots revealed that Almeida worked for CFPC from January 2009 until October 2009, during which time he earned regular wages. In October of 2009, CFPC offered Almeida a four-year scholarship to obtain a degree in agriculture. At the time of the election, Almeida was enrolled in ABT 99 at Hartnell College, a community college.

Almeida received approximately \$3,440.00 for tuition, plus \$800.00 for books and food, for the Spring 2011 semester. In addition, Almeida was provided with living quarters on the CFPC worksite which included electricity, phone, internet, water and heat. Almeida also received a Valero gas card to purchase \$300.00 worth of gasoline per month. CFPC also pays for Almeida’s medical and dental insurance, which is about \$600-\$800 per month.

¹ That issue, as well as the alleged supervisory status of three other challenged voters, will be the subject of an evidentiary hearing.

The Regional Director's Challenged Ballot report described Almeida as a student intern with CFPC. Almeida's duties included checking heating for the green houses at night, checking plants each morning that needed to be irrigated that day, accompanying the production manager on his daily rounds and being informed by the production manager as to what needed to be watered, scouting pests, packing, and transportation. According to Almeida's declaration, he works about 44 hours per week on a schedule that varies according to production. The amounts he receives pursuant to the scholarship do not vary with the amount of hours worked.

In upholding the challenge to Almeida on the basis of his student status, the Regional Director relied entirely on National Labor Relations Board (NLRB) precedent regarding whether a student who also is employed by his school is "primarily a student" and therefore not a statutory employee. Applying the factors set forth in *Brown University and International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, AFL-CIO* (2004) 342 NLRB 483 (*Brown University*) and two prior NLRB decisions² determining the voting status of student employees, the Regional Director concluded that Almeida was primarily a student and therefore not a statutory employee.³

² *Leland Stanford Junior University* (1974) 214 NLRB 621 (*Leland Stanford*) and *Adelphi University* (1972) 195 NLRB 639.

³ Those factors included: 1) Enrollment as a student in an academic program of the employer; 2) being required to do the paid work in order to obtain the degree; 3) receiving academic credit for the paid work; and 4) the amount paid for the work is not dependent on the nature or intrinsic value of the services performed or the skill or
(Footnote continued...)

CFPC argues in its exception, among other things, that the Regional Director's legal analysis was flawed in that *Brown University* and the other NLRB decisions relied upon by the Regional Director did not involve an employee who had an ongoing working relationship with the employer before becoming a student and that every case cited by the Regional Director involved employees who worked for and were enrolled at teaching institutions either as graduate students or interns.

Based on the record before us, Almeida is a statutory employee.

Analysis

The NLRB decisions cited by the Regional Director, although applicable as NLRB precedent with respect to the policy of excluding student-workers who are primarily students from the category of statutory employee, are inapposite on their facts.⁴ *Brown University* and *Leland Stanford*, involved factual situations in which the student-workers at issue were employees of the same academic institutions in which they were

(Footnote continued)

function of the recipient, but instead was determined by the goal of providing the student with financial support. (*Brown University, supra*, 342 NLRB at 486.)

⁴ Section 1148 of the Agricultural Labor Relations Act (ALRA) provides that the Agricultural Labor Relations Board shall follow applicable precedents of the National Labor Relations Act (NLRA), as amended. The Board has departed from NLRB precedent on issues of voter eligibility and employee status when the NLRA and the ALRA have differed significantly on this issue. As neither the NLRA nor the ALRA directly address the situation of student-workers who may have an academic relationship with their employers, and both define the term "employee" broadly, no significant conflict can be said to exist between the two statutes on this issue that would justify departure from NLRB precedent addressing this question of law. In fact, the ALRA, interpreted and applied in isolation, would include Almeida as a statutory employee given its broad definition of employee without any exclusion for student-workers.

enrolled, and but for their enrollment as students, they would not have been employed in the positions they held. (*Brown University, supra*, 342 NLRB at 488 [“As indicated, the first prerequisite to becoming a graduate student assistant is being a student.”]). The NLRB applied its “primarily a student” test in these decisions to avoid having collective bargaining dictate the terms of the academic relationship, such as grading and curriculum, so as not to intrude on the academic freedom of the academic institutions at issue. The application of the “primarily a student” test presumed the existence of an academic relationship and an employment relationship between the student-workers and their employers.

Such is not the case in this matter. The academic freedom the NLRB sought to preserve in *Brown University* and *Leland Stanford* is not at issue in this matter. The record does not reflect that CFPC plays a role in setting curriculum for or grading Almeida in the ABT 99 course. There is no evidence before us that CFPC plays a teaching role with respect to Almeida other than providing a cooperative education opportunity, which may not last beyond a semester, for which the faculty at Hartnell College can be expected to determine the grade for Almeida. Nor does the record provide any evidence that, unlike the academic institutions in *Brown University* and *Leland Stanford*, the ongoing employment relationship CFPC has with Almeida is contingent upon an ongoing teaching relationship *between CFPC and Almeida* that implicates grading and curriculum issues. On the facts before us, Employer is a benefactor, not an educator or an academic institution.

ORDER

The challenge excluding Almeida on the grounds that he is primarily a student is overruled.

DATED: August 1, 2011.

Genevieve A. Shiroma, Chair

Cathryn Rivera-Hernandez, Member

Carole V. Migden, Member

CASE SUMMARY

CALIFORNIA FLORIDA PLANT CO., L.P.
(United Farmer Workers of America)

37 ALRB No. 2
Case No. 2011-RC-001-SAL

On February 4, 2011, the United Farm Workers of America (UFW) filed a Petition for Certification to represent the agricultural employees of California Florida Plant Co., L.P. (Employer). On February 11, 2011, a representation election was held and the Tally of Ballots showed the following result: "union," 12; "no union," 7; and 5 unresolved challenged ballots. As the unresolved challenged ballots were sufficient in number to determine the outcome, the Regional Director conducted an investigation of the eligibility of the challenged voters/employees. Mauricio De Almeida (Almeida) had been omitted from the voter eligibility list by the Regional Director on the grounds that he could not be found on the payroll list. He was subsequently challenged as "not on list" by the Regional Director because he was a student. The Regional Director upheld the challenge to Almeida based on his student status. Almeida received a scholarship from employer that paid for tuition, books, food and gas, and also received housing. The amount of Almeida's scholarship did not vary with the amount of hours he worked. He was enrolled in ABT 99 at Hartnell College, a community college.

In upholding the challenge, the Regional Director relied entirely on National Labor Relations Board (NLRB) precedent regarding whether a student who is also employed by his school is "primarily a student" and therefore not a statutory employee. Applying factors set forth in *Brown University and International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, AFL-CIO* (2004) 342 NLRB 483 and two prior NLRB decisions, the Regional Director concluded that Almeida was primarily a student and therefore not a statutory employee. Employer timely filed an exception to the Regional Director's report.

The Board upheld Employer's exception and overruled the challenge. The Board held that the NLRB decisions cited by the Regional Director were applicable precedent with respect to the policy of excluding student-workers who are primarily students from the category of statutory employee but were inapposite on their facts, as they involved situations where student-workers were employees of the same academic institutions in which they were enrolled. The NLRB applied the "primarily a student" test in these decisions to avoid having collective bargaining dictate the terms of the academic relationship, such as grading and curriculum, so as not to intrude on the academic freedom of the academic institutions at issue. The application of the "primarily a student" test presumed the existence of an academic relationship and an employment relationship between the student-workers and their employers.

In this case, the record did not reflect that Employer played a role in setting curriculum for or grading Almeida in the ABT 199 course. The record also did not reflect that, unlike the academic institutions in the NLRB cases, the employment relationship between Employer and Almeida was contingent upon an ongoing teaching relationship between Employer and Almeida. On the facts before the Board, Employer is a benefactor, not an educator or an academic institution. The challenge excluding Almeida on the grounds that he was primarily a student was overruled.

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