STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: NAPA VALLEY VINEYARDS, CO., Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	No. 75-RC-29-S 3 ALRB No. 22

On September 29, 1975, a petition for certification was filed by the United Farm Workers of America, AFL-CIO ("UFW"), seeking to represent the agricultural employees of the employer, Napa Valley Vineyards, Co. In an election held on October 4, 1975, the votes were cast as follows: UFW - 141, void ballots - 3, no labor organization - 9, challenged ballots - 12. Pursuant to Labor Code Section 1156.3(c),[1/] the Employer timely filed objections to the election. The issues set for hearing were:

(1) May a company holding a farm labor contractor's license under Section 1682 of the California Labor Code be considered an employer within the meaning of Section 1140.4(c) of the Act?

(2) Did the regional director improperly determine the geographical scope of the bargaining unit by combining the company's Asti employment with its Napa Valley employment unit?

[1/]All references unless otherwise indicated are to the California Labor Code.

(3) Was the number of agricultural employees employed in the Asti unit for the payroll period immediately preceding the filing of the petition less than 50 percent of the employer's peak agricultural employment for the current calendar year?

(4) Did the employer receive sufficient notice of the exact time and place of the election?

(5) Did the regional director improperly refuse to establish a separate polling place at Asti?

(6) Did the Board agent improperly refuse to allow employees from Asti to vote subject to the challenge?[2/]

(7) Did the regional director improperly refuse to segregate and count separately the ballots of the Asti employees?

(8) Did a supervisor serve as the UFW observer during the election?

The threshold objection in this case is whether Napa Valley Vineyards is an agricultural employer within the meaning of Section 1140.4 (c) of the Agricultural Labor Relations Act and thereby subject to the Board's jurisdiction. An agricultural employer is defined by Section 1140.4 (c) of the ALRA *as* follows:

> The term 'agricultural employer' shall be liberally construed to include any persons acting directly or indirectly in the interest of an employer in relation to an agricultural employee", any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor

[2/]Objections five and six were withdrawn by the employer in its post-hearing brief. Accordingly they are dismissed.

> as defined by Section 1682, and any person functioning In the capacity of a labor contractor. The employer engaging such labor contractor or persons shall be deemed the employer for all purposes under this part. [Emphasis added.]

Counsel for the company contends that because the company is registered as a farm labor contractor, it is excluded from coverage under the ALRA. The basis of the company's argument is that the exclusion of farm labor contractors is meaningful only if the company's operations would otherwise qualify it for inclusion as an agricultural employer. According to this argument if a company is a harvesting association or a land management group as well as a farm labor contractor it must be excluded. The union argues the converse. Its position is that if the term "agricultural employer" is given a liberal construction as required by Section 1140.4 (c), a company that, functions as a land management group or person who manages land use for agricultural purposes is included in the statute's definition of an agricultural employer even if it also is registered as a farm labor contractor.

Prior to considering the question of the scope of inclusion of an "agricultural employer" and exclusion as a "labor contractor" under Section 1140.4 (c), we note that the stated policy of the Act is to "protect the right of agricultural employees to full freedom of association ... to negotiate the terms and conditions of their employment, ... to be free of the interference, restraint or coercion of employers of labor, or their agents, ... [and] to provide for collective bargaining rights for agricultural. employees." Section 1140.2. Section 1140.4 (a) through (j)provides a set of definitions to identify the class of persons

and activities subject to the provisions of the Act. Agriculture is broadly defined to include "farming in all its branches." Section 1140.4 (a). Agricultural employees are likewise broadly defined, the scope of eligibility defined as abutting the jurisdiction of the National Labor Relations Act, including in our Act all those excluded from the coverage and protections of the NLRA as "agricultural employees." Section 1140.4(b).

To determine the basis of the company's factual qualifications to both the definitions of an agricultural employer and farm labor contractor it is appropriate first to analyze the nature of the company's business operations. As quoted supra, the exclusion under Section 1140.4 (c) applies to "any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1632, and any person functioning in the capacity of a labor contractor." The definition included by Section 1682 (b) states:

> (b) 'Farm labor contractor' designates any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer, engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to such persons.

This same section further defines the key term of "fee" in Subsection (e) as:

> . . . the difference between the amount received by a labor contractor and the amount paid out by him to persons employed to render personal services to, for or under the direction of a third person; (2) any valuable consideration

> received or to be received by a farm labor contractor for or in connection with any of the services described above, and shall include the difference between any amount received or to be received by him, and the amount paid out by him, for or in connection with the rendering of such services.

This statute covering farm labor contractors is a licensing statute which is liberally construed according to its purpose which is to protect farm laborers from labor contractor abuses. Johns v. Ward (1959), 170 C.A. 2d 780, 339 P. 2d 926. The role of the labor contractor defined by Section 1682 has been likened to that of a middleman—-one who contracts with growers to provide labor when needed. See, California Senate Fact Finding Committee on Labor and Welfare, California Farm Labor Problems, Part 1, 177-84 (1961). The fee is a percentage override of the actual cost of labor. Thus, a labor contractor is one who collects his fees and makes his profits from the laborers actually doing the work. Johns v. Ward, supra.

Napa Valley Vineyards and its corporate predecessor have had a farm labor contractor's license since 1971. In the Napa Valley the company has approximately 100 permanent employees,[3/] and seven permanent employees in the Sonoma Valley. The Napa Valley workers are generally sent out to work from the "Rutherford complex" where the company office and housing is located and where its equipment is stored and repaired. The Sonoma Valley workers are sent out from the company's location in Asti. The concentration of the workers in the various landowner's vineyards[4/]

[3/]After the harvest in November the payroll may temporarily have only approximately 30 employees. At peak the company has more than 200 employees.

[4/]The company submitted a list of 20 different owners of the land it farms, six of which appear to be nonindividual business entities. See Company Exhibit "C".

depends on which operations are involved. During harvesting, all the crews may be concentrated in one area on a given day, and on the next day the same crews could be scattered in three or four areas. During other operations the crews are scattered and could be in almost every area on the same day. The interchange of the company's equipment among these various locations basically parallels the work and location of the employees. Some of the operations referred to in the testimony of the company's general manager as "spot jobs"[5/] do comport with the accepted definition of the role, functioning and reimbursement of a farm labor contractor. However, the company's manager readily admitted that in most of the contracts it forms with the landowners, the company "performs all the major farming operations throughout the course of the year, rather than spot jobs. ... ."

The Board accepted as evidence under seal a contract which the company submitted as "representative" of its farming arrangements with most landowners.[6/] The contract defined the duties of the company as follows:

[5/]"Spot jobs" were described as operations which might involve a job to "pick a vineyard and maybe that would be the only thing that we do." Although one of the company's foremen testified that in five years as an employee with the company, during which time he had worked on all the different owners' land, he had never known of an arrangement for a spot job only, we do not find it necessary to draw a conclusion regarding this conflicting testimony. As is discussed infra, whether or not the company provides limited services, does not preclude us from finding that it functions primarily as a person managing land for agricultural purposes.

[6/]The Board notes the cooperation and reasonableness of counsel for both parties in their willingness to reach an acceptable arrangement to protect the confidentiality of this document. The portions of the contract referred to in this opinion relate only generally to the duties of the Napa Valley Vineyards Company. Counsel for the company indicated that such references "would not present any problems." The Board hereby orders this document resealed and kept under seal in the files of the executive secretary.

> 2.2 MANAGERS AS INDEPENDENT CONTRACTOR. Owner hereby engages MANAGER as an independent contractor to manage farming of the vineyards now and thereafter located on the land. Manager shall use reasonable efforts to furnish the labor, equipment, materials and supplies and to do and perform all acts and services reasonably necessary to farm said vineyards in a good and farm-like manner consistent with the practices used from time to time by manager in farming its own and other vineyards in Napa County, California. Farming of the vineyards shall include, without limitation, planting, budding, and pruning said vineyards. In addition to manager's farming duties, manager shall plant such new vines and remove and replant aging vines and shall make such other improvements to the land as owner shall direct by instructions in writing. Manager shall also deliver grapes harvested to point of delivery as owner shall designate in writing.
>
> 2.3 MANAGER'S AUTHORITY. Managers authorized to enter on to .the land and to do all things related or incidental to its obligations hereunder.

The record reflects that this enumeration of duties fairly represents the work, performed by the company in most of its operations. Such operations involve the complete and continuing performance of all major farming duties throughout the year. The company's general manager described the nature of the agreements the company enters into with the landowners as being mostly "short-term contracts." The only inherent short-term aspect of these contracts is a standard provision for a 60-day termination by either party. The record shows the actual term of the contracts is generally at least one year and usually much longer. The fact that the company has approximately 100 permanent employees who work year-round performing all the tasks necessary for the planting, pruning, and harvesting of the vines[7/] and the

[7/]Additional tasks performed regularly on most of the land that the company manages include pruning, shredding the bush, tying the canes to wire, cutting heads off budding vines, discing between rows, hoe plowing between vines, suckering, planting, replanting, and harvesting.

fact that the entire process of planting and bringing to cultivation and harvest a new vineyard is a three-year cycle indicates that in spite of the contractual provisions allowing for termination, these agreements in effect operate as long-term contractual relationships. The evidence revealed that the company has been involved in this process from the initial planting stage in most of the land it presently is managing.

The company is completely responsible for the day-to-day operations and decisions involved in the operations at the various vineyards they farm. Although the owners may participate in major decisions involved in the operations of their vineyards, the company's contact with the owners varies from weekly to only three or four times in a year.[8/] There was also evidence of one occasion where even though the owner did not want his land cultivated, the company foreman instead followed the company's orders to cultivate the land. The fact that the company performs year-round farming operations indicates the owners have contracted with it to do more than just to provide for a fee the laborers for individual farming operations. The contract demonstrates an all-encompassing function whereby the company is "to perform all acts and services reasonably necessary to farm such vineyards in a good and farm-like manner ... ." [Emphasis added.] Given these facts, it cannot be denied that the company's duties qualify it as acting directly in the owners' interests as a "land management group" or person who "manages land used for agricultural purposes" as included in Section 1140.4(c).

[8/]The manager of the Asti operations testified that he consults with those who "represent themselves ... as the ones in control of the land" and that he did not know who actually held title to the land.

A further factor weighing in our determination that the company functions as something more than does a normal farm labor contractor is the type of fee arrangements it has with the various landowners. The fee associated with the performance of duties as a farm labor contractor is characterized as a percentage off the top of the total amount paid for the cost of labor, that is, the actual cost of the labor doing the work plus an override. The record is clear that the company, collects such fees. But here again its fees reflect the fact that it performs services far beyond those normally provided by a farm labor contractor. Its additional and inclusive land management function is reflected and compensated by an additional fixed per acre management fee which the company usually charges.

The record establishes that the company, while performing virtually all the services normally provided by a farm labor contractor, also provides important additional services in its day-to-day management of the vineyards. Thus, we return to the basic issue of how to resolve the conflict presented by a factual situation which indicates that a company performs substantial farming operations qualifying it as a land management group or person who manages land used for agricultural purposes and in conjunction with such operations provides labor and collects fees as a farm labor contractor. The issue is whether such a person or company is to be included in the jurisdiction of the Act as an agricultural employer within the meaning of Section 1140.4(c) or is to be excluded from the jurisdiction of the Act because it is a farm labor contractor. In Kotchevar Brothers, 2 ALRB No. 45 (1976), we found that a custom harvester who was also a labor

contractor within the meaning of Section 1682 was included in the Act's jurisdiction as an agricultural employer where its duties and compensation were beyond those of the normal farm labor contractor. We therefore have already denied the validity of the company's basic argument that the exclusionary language of Section 1140.4 (c) has no meaning unless the person or company initially qualifies under that section's inclusionary language.[9/]

In determining whether a person or company registered as a farm labor contractor is in fact serving other functions which qualify it as the agricultural employer of the workers he supplies, we find apposite the reasoning and guidelines in the Fair Labor Standards Act, 29 CFR Section 780.330 used to determine whether sharecroppers and tenant farmers are employees or independent contractors[10/] and 29 CFR Section 780.331 concerning whether crew leaders or labor contractors are the employers of the workers they supply.

29 CFR Section 780.330 states:

> ... the answer to the question of whether an individual is an employee or an independent contractor under the definitions in this Act lies in the relationship in its' entirety, and is not determined by common law concepts. It does not depend upon isolated factors but on the 'whole activity' An employee is one who as a matter of economic reality follows the usual path of an employee. Each case must be decided on the basis of all facts and circumstances, and as an aid in the assessment, one considers such factors as the following:

[9/] We note also the impracticality of this argument in serving the purposes of the ALRA. It would be only a matter of simple bookkeeping for all agricultural employers within the meaning of Section 1140.4 (c) to, at least in some measure, supply labor for a fee in such a fashion to qualify for and be licensed as farm labor contractors.

[10/] Independent contractors are considered employers in the Fair Labor Standards Act.

(1) The extent to which the services rendered are an integral part of the principal's business; (2) the permanency of the relationship; (3) the opportunities for profit or loss; (4) the initiative, judgment, or foresight exercised by the one who performs the services; (5) the amount of investment; and (6) the degree of control which the principal has in the situation. [Emphasis added.]

29 CFR Section 780.331 states in pertinent part:

> (b) The situation is different where the farmer only establishes the general manner for the work to be done._ Where this is the case, the labor contractor is the employer of the workers if he makes the day-to-day decisions regarding the work and has the opportunity for profit or loss through his supervision of the crew and its output. As the employer, he has the authority to hire and fire the 'workers and direct them while working in the fields. Complaints by the farmer about the quality or quantity of the work or about a worker are made to the contractor or his representatives, who makes whatever action he deems appropriate. His opportunity for profit or loss comes from his control over the time and manner of performance of work by his craw and his authority to determine the wage rates paid to his workers. [Emphasis added.]

In considering the "whole activity" of Napa Valley Vineyards, in light of the above listed factors we note first that it has approximately 107 permanent employees and thus spends only a small portion of its time during peak assembling crews. The fact that the company generally performs all the vineyard operations from planting through harvesting indicates that the company is rendering services that are the bases of and thus clearly integral to the landowner's business. Although the landowners may participate in major decisions such as what and when to plant and do have ultimate control in the sense that they may terminate the contract, it is the company which determines the day-to-day operations of the land and thus has the most

immediate control over the workers and their working conditions. The all-inclusive functions of the company indicate it was hired to exercise its own initiative, judgment and foresight in managing the various owners' land. Finally, in considering the company's actual relationship to the workers, the record is clear that the company has the authority to hire and fire them and their daily work assignments are determined and supervised by the company.

Following the words of 29 CFR Section 780.330, that the relationship in its entirety "does not depend upon isolated factors but on the 'whole activity'" we have focused on all the functions of the company, that is, on what it actually does, to reach our conclusion that it is an agricultural employer within the meaning of Section 1140.4 of the Act. We further find it supports the purposes of our Act which includes the right of agricultural employees "to negotiate the terms and conditions of their employment" [Section 1140.4] to find this company to be the employer. Here it is the company, did not the landowners, which determines the terms and conditions of the workers' employment and thus it best serves the interest of the workers to negotiate directly with the company as their employer. Thus, in response to the company's first objection, we hold that a company holding a farm labor contractor's license under Section 1682 may be an employer within the meaning of the ALRA. We find therefore that the company is an agricultural employer within the meaning of Section 1140.4(c) because it functions as a land management group and as a "person" who manages land used for agricultural purposes.

The employer's second major objection to the election is that it was improper for the regional director to find appropriate

a unit encompassing all the employees of the employer in the Napa and Sonoma Valleys. For the reasons discussed below, we find the regional director's unit determination to be correct.

Napa Valley Vineyards employs agricultural employees in the nearby Napa and Sonoma Valleys, which are separated by a small range of mountains. These valleys are used to produce basically the same crops. The valleys have only a minimal difference in their growing seasons and have similar needs for labor. We find that the operations of the employer here are in a single definable agricultural production area. See Egger & Ghio Company, Inc., 1 ALRB No. 17 (1975); John Elmore Farms, 3 ALRB No. 16 (1977).

Where separate operations of an employer are not contiguous, we have the power to "determine the appropriate unit or units." Section 1156.2. We said in John Elmore, supra, that

the fact that the operations of an employer are in a single definable agricultural production area will be a significant factor in our unit determination.

We note here that prior bargaining history on a single unit basis covering these employees and the fact that the union has petitioned for and organized on the basis of a single unit are additional factors that indicate a single unit is appropriate. We therefore find that the unit determination made by the regional director was proper.

In making our finding here, we do, as the dissent correctly points out, rely heavily on the fact that these employees work within a single definable agricultural production area. A finding that places groups of employees of an employer

in a single definable agricultural production area merely reflects that the location of the land, the nature of the soil, the climate and the available human and natural resources dictate that the crops grown, the labor force utilized and the time of peak employment will be generally the same. The combination of these factors within a single definable agricultural production area makes it more appropriate for all agricultural employees of an employer to be in a single unit for collective bargaining purposes, as the similarly located employees' interest in negotiating with their employer will most often coincide in both time and place. Where such is not the case, then separate units for employees of an employer in a single definable agricultural production area, unless they are contiguous, might be appropriate. Here, though, the fact that there is a history of collective bargaining by these employees as a part of a single local in the same union and the fact that these employees were organized on a single unit basis lend support to our finding that a single unit is appropriate. Since the NLRB has wide discretion to select craft, departmental, plant and other units, the tests utilized to measure community of interest of employees is frequently simply irrelevant to the consideration of which group of "all agricultural employees" is appropriate. We believe the single definable agricultural production area standard to be significant and realistic.

In determining that the regional director's unit determination was proper, we find employer's objections three and seven [supra, p. 2], to be moot. We therefore dismiss these objections.

The employer's fourth objection, that it did not receive sufficient notice of the exact time and place of the

election, is based on its argument that it did not receive a copy of the notice and direction of election until the pre-election conference, even though the employees and union had received them the day before the pre-election conference. This distribution of the notices prior to the pre-election conference is not contrary to the basic policy followed by the Board agents. Furthermore we find the employer in fact had actual notice of the exact time and place of the election. This is indicated in the telegram,[11/] sent by employer's counsel to the regional director on Friday, October 3, 1975[12/] stating "My client has been advised this afternoon that an election will be held tomorrow from 2:00 p.m. to 6:00 p.m. at the company's Rutherford location." The fact that the employer did in fact have notice negates any prejudicial effect of not having been physically served with the notice and direction of election until the pre-election conference. Accordingly, we dismiss this objection.

The employer failed to present evidence at the hearing with regard to its objection that the UFW observer was a supervisor Accordingly, we dismiss this objection.

Finally, we uphold the regional director's dismissal of employer's allegation that supervisors were responsible for obtaining the signatures for and collecting the authorization cards supporting the representation petition. This objection was dismissed pursuant to Section 20315 [8 Cal. Admin. Code Section 20315] of the Board's regulations which provides that matters relating to the sufficiency of employee support shall not be

[11/]Board Exhibit "H".
[12/]The day before the pre-election conference

reviewable by the Board in any proceeding under Chapter 5 of the Act. The rule of nonlitigability of matters relating to the sufficiency of employee support does not mean that substantial questions as to the propriety of the manner in which a union obtained its showing of interest will be ignored in the context of a representation proceeding. John V. Borchard Farms, 2 ALRB No. 16 (1976). The Board's regulations provide a procedure by which parties questioning the sufficiency of employee support may submit this issue to the regional director before an election is ordered. Jack or Marion Radovich, 2 ALRB No. 12 (1976). 8 Gal. Admin. Code Section 20315(b) states:

> (b) Any party having evidence concerning such matters may submit said evidence to the Board or the regional director. However, the Board or the regional director may refuse to consider any evidence which is not submitted within 48 hours of the filing of the petition.

The employer did not submit any evidence that supervisors had participated in obtaining the authorization cards until after the pre-election conference on October 4, 1975, when it submitted a handwritten letter to the Board agent who had conducted the pre-election conference alleging the supervisory participation. At this time, more than 48 hours had passed since the filing of the petition.[13/] Thus, it was within the regional director's

[13/]Under the new regulations, 8 Cal. Admin. Code Section 20300 (j)(4), we have extended this time limit to 72 hours. "Any party which contends that the showing of interest was obtained by fraud, coercion, or employer assistance, or that the signatures on the authorization cards were not genuine, shall submit evidence in the form of declarations under penalty of perjury supporting such contention to the regional director within 72 hours of the filing of the petition." Even under this new regulation, which is not controlling in this case, the employer still failed to present this matter within the allotted time.

discretion to refuse to consider the employer's claim. We do not *find* the regional director abused his discretion, especially in light of the fact that this matter was not called to his attention until just a few hours before the election was to take place. The employer knew an election had been ordered, and knew the exact time and place of the election.

We find no showing of good cause for the employer's failure to present this matter to the regional director within the allotted time period. Under these circumstances, we find the election itself to have been an accurate and fair manifestation of the employees' sentiments. "It is the election ... which decides the substantive issue whether or not the union ... actually represents a majority of the employees involved in a representation case." NLRB v. J. I. Case Co.', (9 Cir. 1953) 201 F. 2d 597, 95 NLRB No. 207. We therefore uphold the regional director's dismissal of this objection.

Based on the foregoing, we conclude that there are no grounds for setting aside this election, and order that the United Farm Workers of America, APL-CIO, be certified as the collective bargaining representative of all the agricultural workers of the employer in Napa and Sonoma Counties.

Dated: March 7, 1977

Gerald A. Brown, Chairman

Ronald L. Ruiz, Member

Robert B. Hutchinson, Member

MEMBER JOHNSEN, Dissenting:

I dissent. I would find that the two farming operations are located in noncontiguous geographical areas and would then determine that separate bargaining units would be appropriate.

The phrase "noncontiguous geographical area" in Labor Code Section 1156.2. imposes a limitation upon the requirement that the bargaining unit shall be all the agricultural employees of an employer in order "to encourage, and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment ...." Labor Code Section 1140.2. Such limitation is a logical response to the probability that geographically disparate agricultural operations would give rise to single units of employees who did not share common skills, rates of pay and other terms and conditions of employment or for whom "the unit determination would fail to relate to the factual situation" simply because physical separation alone would obviate the potential for concerted bargaining activity. See, e.g., Kalamazoo Paper Box Corp., 136 NLRB 138, 49 LSRM 1715 (1962).

Therefore, the term "noncontiguous geographical area" should be liberally construed in order to permit the Board to exercise its discretion as to the appropriate unit or units. Otherwise, as stated by a charter member of this Board:

> "The legal consequence of finding that employees work in a single geographical area is that further inquiry as to the appropriateness of the unit ceases, and the employees are included in that unit no matter how little they have in common." [Emphasis added.] Grodin, "California Agricultural Labor Act: Early Experience," 15 Ind. Rels. 275, at 279 (1976).

Napa Valley Vineyards manages wine growing operations in distinctly noncontiguous geographical areas: the Napa and Sonoma Valleys. The two locations are separated by approximately 40 miles and a small range of mountains. To reach Asti from Rutherford it is necessary first to traverse an initial mountain range into Knight's Valley, then to pass through the Alexander Valley, the Geyserville area, and finally to a small range of hills south of Cloverdale where Asti is located.

The majority itself implicitly found geographical noncontiguity in order to exercise its statutory discretion to determine the appropriate unit or units pursuant to Labor Code Section 1156.2.

In determining that a single bargaining unit is appropriate the majority relies chiefly on two factors:

1. There is a history of bargaining under a single unit, and

2. The locations, though in noncontiguous geographical areas, are still within a single definable agricultural production area.

While either or both of the stated factors may yield valid considerations in some cases, it is my opinion that neither is applicable here. A history of single unit bargaining may indicate that bargaining on that basis is viable or may in itself create a community of interest among the covered employees. However, it is a dubious test when, as here, the collective bargaining agreement was entered into without benefit of the protections accorded farm workers under the provisions of Labor Code Section 1140, et sag., or when the contract had expired nearly two years prior to this election.

As to the second factor, the Board introduced the term, "single definable agricultural production area," in Egger & Ghio Company, Inc., 1 ALRB No. 17 (1975). The intention was to define this term rather narrowly in terms of common -water supply, labor pool, climate, soil conditions, and marketing practices; it was used by the Board to define the term "geographical areas" for purposes of determining contiguity under ALRA, Labor Code Section 1156.2.

Since Egger & Ghio Company, Inc., supra, a majority on the Board has reinterpreted the phrase "single definable agricultural production area" to define a larger area than was apparently intended in Egger. In so doing, the majority was able to find that two farming operations located within separate and noncontiguous "geographical areas" were nevertheless both within a "single definable agricultural production area". Exactly this finding has been made by the majority in both John Elmore Farms, 3 ALRB No. 16 (1977) and the case before us. In both of these cases, the Board has implicitly found that two farming operations

are in noncontiguous geographical areas without indicating what standards are to be used to make such a determination.[1/] In each case, the majority has then determined that both farming operations are located within a single agricultural production area. This is the basis for their determining that a single unit would be appropriate for both operations. I disagree with this approach.

When two or more farms are in noncontiguous geographical areas, the Board is obligated to examine the unit and may still determine that a single bargaining unit is appropriate. In so doing, the Board should consider the criteria set forth in Bruce Church, Inc., 2 ALRB No. 38 (1976). In that case, the Board outlined the various factors to be used in determining the appropriate unit for two operations in noncontiguous geographical areas. These criteria are based on NLRB precedent and focus on whether there exists a community of interest, among the workers. They include:

1. The geographical locations of the operations,

2. The extent to which the employees at the different locations share common supervisors,

3. The managerial autonomy at the separate locations with regard to personnel decisions, wages, and working conditions,

4. The frequency of employee interchange between the locations,

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[1/] In the case at hand, the majority states that: "Napa Valley Vineyards employs agricultural employees in the nearby Napa and Sonoma Valleys, which are separated by a small range of mountains. These nearby valleys are used to produce basically the same crops. The valleys have only a minimal difference in their growing seasons and have similar needs for labor. We find that the operations of *the* employer here are in a single definable agricultural production area." Napa Valley Vineyards at p. 13. See, also, John Elmore Farms, supra, dissenting opinion.

5. The nature of work performed at the various locations and the similarity of the skills involved, and

6. The bargaining history of the employees.

A sufficient community of interest among the workers of a single bargaining unit is necessary for bargaining and administration of the contract governing the unit in such a way as to assure the workers the fullest freedom in exercising their Section 1152 rights. Whenever a finding of noncontiguity is made, so that the Board in its discretion must determine the appropriate unit, the Bruce Church criteria should be examined in detail. Such an examination in this case indicates that a single unit would not be appropriate for the two operations.

According to the record, there is no integration of the employer's Asti [Sonoma Valley] and Rutherford [Napa Valley] operations nor is there an interchange of employees, supervision, or equipment between the two location.

The record reveals that the two locations are completely autonomous units with virtually no contact between operations. In more than five years, the Asti manager has never been to the Rutherford office and telephone contact between the operations rarely occurs more than once or twice a year. The manager at Asti makes the day-to-day operating and personnel decisions without consultation or approval of the employer's Rutherford office.

Different wages and working conditions prevail as between the two groups of employees. Separate seniority lists are maintained at each location and the picking rates are computed differently. In Asti, the workers pick individually and are paid individually per bucket, as is the common practice in that area.

Under this arrangement the highest paid worker is paid about twice as much as the lowest paid worker. In the Napa Valley the workers are paid in groups for their picking. They generally form into groups of eight, pick into a common gondola and then are paid on a per-tonnage basis with each member of the group receiving the same pay for their joint work. There are no picking rates established for individuals based on individual output in the Napa Valley operations.

The record shows that the bargaining agreement had expired approximately two years prior to the election and that during the interim period significant changes had been made in wages and working conditions.

Based on all of the foregoing, I do not feel that there was a community of interest sufficient to conclude that a single bargaining unit is appropriate.

Dated: March 7, 1977

Richard Johnsen, Jr., Member